

# OCCUPATIONAL AND PERSONAL PENSION SCHEMES (GENERAL) REGULATIONS, 2011

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## **OCCUPATIONAL AND PERSONAL PENSION SCHEMES (GENERAL) REGULATIONS, 2011**

IN exercise of the powers conferred on the Minister responsible for Pensions by Section 207 of the National Pensions Act, 2008(Act 766) and on the recommendations of the Board of the National Pensions Regulatory Authority, these Regulations are made this .....day of .....2011.

### *Application for approval as trustee*

#### **Application**

1. (1) A person may in accordance with sections 122 and 123 of the Act apply to the Authority to be appointed as a trustee to manage an occupational pension scheme, a provident fund scheme, a personal pension scheme or any other privately managed pension scheme.

(2) The Authority shall not approve an application for appointment as a trustee unless the applicant satisfies the requirements specified under regulation 2 or 4.

#### **Eligibility requirements for company incorporated in Ghana**

2. (1) A company incorporated in Ghana which desires to be appointed as a trustee by the Authority shall

- (a) be a registered company with a name including the word "trust" or "trustee";
- (b) have at least 3 directors; all of whom shall be individual persons;
- (c) limit it's business to trust business;
- (d) submit to the Authority an auditors report in accordance with these regulations;
- (e) satisfy the Authority
  - (i) that the controllers of the applicant are persons of good reputation and character and, in particular, have not been

convicted by a Court of competent jurisdiction whether in Ghana or elsewhere, of an offence involving fraud or dishonesty;

- (ii) that the chief executive officer and a majority of the directors including an independent director have the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful administration of a registered scheme; and
- (iii) that it is capable of carrying on the business of administering registered schemes.

(2) On receipt of an application, the Authority shall enter and inspect the premises intended to be used by the applicant for carrying on the business of administering registered schemes.

(3) The Authority may refuse to grant an application if the applicant fails to allow the Authority to enter and inspect the premises intended to be used for the trust business.

(4) An approved trustee shall employ a compliance officer with the relevant professional qualifications and experience.

(5) The compliance officer shall

- (a) ensure that the provisions of the Act or Regulations made under the Act are complied with;
- (b) report to the Chief Executive Officer of the Authority cases of non-compliance with the provisions of the Act or Regulations made under the Act by the approved trustee; and
- (c) liaise with the Authority on matters which in the opinion of the Authority are necessary to enhance compliance by the approved trustee with the provisions of the Act and Guidelines issued under the Act.

(6) An approved trustee who fails to employ a compliance officer is liable to pay a fine of two hundred and fifty penalty units and for each day that the default subsists shall pay a fine of fifty penalty units and shall have its licence suspended after thirty days.

### **Auditor's report on prescribed capital requirements**

3. (1) The auditor's report referred to under regulation 2 (1) (d) shall be prepared by an auditor appointed by the applicant.

(2) The report shall be in writing and addressed to the applicant.

(3) The report shall be submitted to the Authority on or before the date that the Authority may specify.

(4) The auditor's report shall

(a) state whether or not the applicant has complied with the prescribed capital requirements; and

(b) include other observations, elaborations, qualifications or explanations as the auditor considers necessary.

(5) Where the Authority requires an applicant to rectify a matter relating to observations, elaborations, qualifications or explanations, the applicant shall submit to the Authority, before the end of a period specified by the Authority a second report prepared by the same auditor who prepared the first report.

(6) The second report shall state whether or not the matter relating to the observations, elaborations, qualifications or explanations included by the auditor in the written report has been addressed by the applicant.

### **Eligibility requirements for individual persons**

4. An individual person who desires to be appointed as a trustee shall

(a) be ordinarily resident in Ghana; and

- (b) satisfy the Authority that that person is a person of good reputation and character and, in particular, has not been convicted by a Court of competent jurisdiction whether in Ghana or elsewhere, of an offence involving fraud or dishonesty.

### **Applicant's other business compatible with interests of scheme members**

5. (1) The Authority may approve an application under regulation 1 (1) if the other businesses carried on by the applicant are in the opinion of the Authority compatible with the interests of the members of an occupational pension scheme, a provident fund scheme or a personal pension scheme.

(2) Sub regulation (1) applies even if the applicant complies with the provisions of these Regulations in respect of appointment of trustees.

### **Member-nominated Trustees and Directors**

6. (1) For the purposes of this regulation

- (a) “member-nominated trustee” includes 'member-nominated directors';
- (b) “requirements” means the requirements for trustees to put in place and implement arrangements to provide that at least one-third of the trustees are member-nominated trustees; and
- (c) “trustees” means trustees of an occupational pension scheme or provident fund scheme or a group personal pension scheme registered by the Authority;

(2) A trustee shall ensure that arrangements are put in place to provide for at least one-third of the total number of trustees to be member-nominated trustees within six months after the registration of a scheme and implement the arrangements.

(3) For schemes where all the trustees are individuals or individuals and companies, the member-nominated trustees' requirements rather than the member-nominated director's requirements apply.

(4) Where a trustee body comprises both individuals and companies, each company counts as a single trustee for the purpose of determining the total number of trustees.

(5) For schemes where all the trustees are companies, the member-nominated director's requirements apply.

(6) Where a company is the sole trustee then the member-nominated director's requirements apply to the total number of company directors.

(7) Where a trustee body has more than one company as trustee then the member-nominated director's requirements apply separately to each company.

### **Trustees' knowledge and understanding**

7. (1) In this regulation "trustee" includes directors of a corporate trustee board.

(2) An individual trustee of an occupational pension scheme, provident fund scheme or personal pension scheme shall

- (a) have appropriate knowledge and understanding of the law relating to pensions and trusts and the investment of the assets of the schemes, and
- (b) be conversant with its scheme-related documents, that is, the trust deed and rules of the scheme, any statement of investment principle and any other document that records current policy relating to the administration of the scheme generally.

(3) For the purposes of this regulation

- (a) the degree of knowledge and understanding required is that appropriate for the purposes of enabling the individual to properly exercise the functions of a trustee of a registered scheme, and
- (b) being conversant with documents is having a working knowledge of those documents to the extent that the trustee is able to use them effectively when required to do so in the course of carrying out the duties of a trustee of a scheme.

(4) A corporate trustee shall ensure that an individual who exercises a function in relation to the scheme as a director of a trustee company, or in another capacity, has the appropriate level of knowledge and understanding of

- (a) the trust deed and rules of the scheme as if that person were an individual member of a trustee board,
- (b) any statement of investment principles,
- (c) any other document recording current policy relating to the administration of the scheme generally.

(5) The requirement in subregulation (4) applies whether the corporate trustee is:

- (a) a company formed to act as a professional trustee for any number of pension schemes;
- (b) a company formed only for the purpose of acting as a trustee of a particular pension scheme; or
- (c) a company such as the sponsoring employer acting as the scheme trustee.

(6) The Authority shall issue Guidelines in respect of the scope of knowledge and understanding of trustees.

(7) An approved trustee shall obtain the relevant trustee training from training institutions and courses approved by the Authority.

(8) A newly-appointed individual trustee shall within six months from the date of appointment as trustee complete the required training.

(9) An approved trustee who successfully completes the relevant trustee training program shall be given a 'Certificate of Successful Completion' approved by the Authority.

(10) The certificate is proof to sponsors or to the Authority that the learners and scheme members understand all that is required to manage a successful registered scheme.

(11) The knowledge and understanding of an approved trustee shall be updated annually in accordance with Guidelines issued by the Authority and learning programs designed to update the knowledge of the trustee.

(12) The Authority shall review its Guidelines where necessary and shall publish the reviewed Guidelines on its website or any other print media determined by the Authority.

(13) The Authority shall take into consideration the relevant knowledge and understanding acquired by a trustee in the renewal of the licence of an approved trustee.

*Registration of occupational pension schemes, provident fund schemes or personal pension schemes.*

## **Preliminary**

8. For the purpose of regulations 9 to 27

"applicant" in relation to an occupational pension scheme, provident fund scheme, or personal pension schemes means an applicant seeking to register a scheme in accordance with section 129 or 135 of the Act and, if an application is made by two or more trustees, means those trustees jointly;

"scheme" in relation to the application made by an applicant, means the occupational pension scheme, provident fund scheme or personal pension scheme to which the application relates, and

"an approved trustee", in relation to an application to register an occupational pension scheme, a provident fund scheme or a personal pension scheme includes a reference to an individual person or company that has applied for approval as an approved trustee under section 123 of the Act.



## **Undertaking to comply with requirements and standards**

9. (1) An application for registration of an occupational pension scheme, provident fund scheme or a personal pension scheme shall be in accordance with sections 129 to 135 of the Act.

(2) An applicant shall give an undertaking to the Authority by deed, or by a document similar to a deed acceptable to the Authority that the applicant shall ensure that, as far as reasonably practicable, the requirements and standards prescribed in these Regulations in relation to an occupational pension scheme, a provident fund scheme or a personal pension scheme shall be complied with if registered.

## **Application requirements**

10. (1) An application for registration of an occupational pension scheme, a provident fund scheme or a personal pension scheme shall be made to the Authority and signed

(a) by at least two directors of the company if the applicant is or includes a company; and

(b) by at least two of those persons, including the independent trustee if the applicant consists wholly of individual persons.

(2) Where an application is made by persons all of whom are individual persons, each of those persons who is not an independent trustee shall be a member of the scheme.

(3) A person is an independent trustee if that person satisfies the requirements specified in section 119 (2) of the Act.

(4) Where an application is made by persons one or more of whom are companies and the others are individual persons, each of those individual persons shall be members of the scheme.

(5) An application to register a provident fund scheme as an employer sponsored scheme shall include particulars of the employer sponsoring the scheme.

(6) Where an application is made by persons any of whom are individual persons, each of those individual persons shall produce to the Authority a performance guarantee or satisfy the Authority that the trustee shall enter into a guarantee before the operation of the scheme.

(7) A performance guarantee relating to a person

- (a) shall be issued in writing by an authorised financial institution or authorized insurer;
- (b) shall impose a continuing obligation on the authorized financial institution or authorised insurer to indemnify the scheme against any loss sustained by the scheme or the scheme members as a result of
  - (i) a failure by the person concerned to perform a duty imposed on approved trustees by or under the Act; or
  - (ii) a breach of any fiduciary duties on the part of the person concerned;
- (c) shall be governed by the laws of Ghana; and
- (d) may allow the guarantor to terminate its obligation under the guarantee by giving not less than thirty days' written notice to the Authority and to the person concerned before terminating the obligation.

### **Application to include statement of investment policy**

11. (1) The applicant shall attach to the application a statement setting out the investment policy and investment objectives of the scheme.

(2) The statement of investment policy shall include sufficient information to enable scheme members to ascertain in relation to each constituent fund of the scheme

- (a) the investment objectives of the fund;

- (b) the policy as to the kinds of securities and other assets in which the fund may be invested;
- (c) the policy as to the balance between different kinds of securities and other assets of the fund; and
- (d) the risks inherent in implementing the policies in paragraphs (b) and (c) and the return expected to result from giving effect to those policies.

### **Notice of registration of group personal pension scheme**

12. (1) The Authority shall publish in the Gazette a notice of registration of a group personal pension scheme registered under Section 135 of the Act not later than thirty days after the registration.

(2) The notice of registration shall contain

- (a) the name of the scheme;
- (b) the name and address of the approved trustee of the scheme; and
- (c) the informal sector group for which the scheme relates.

### *Requirements and standards for registered schemes*

### **Eligibility of approved trustees of employer sponsored scheme**

13. (1) Where all the approved trustees of an employer sponsored scheme are individual persons, at least one of those trustees shall be an independent trustee and the others shall be members of the scheme.

(2) Where one or more of the approved trustees of an employer sponsored scheme are companies and the other trustees are individual persons, each of the individual persons shall either be an independent trustee or a member of the scheme.

### **Appointment of officer of approved trustee that is a company**

14. (1) Where an approved trustee of a registered scheme is a company and the office of an officer of the company becomes vacant, an application shall be made to the Authority to seek the consent of the Authority to appoint another officer to replace that officer within thirty days after the occurrence of the vacancy.

(2) A person shall not be appointed to act as an officer in respect of an approved trustee of a registered scheme that is a company except the Authority gives its prior written consent for the appointment.

### **Approved trustee that is a company to maintain statutory reserve fund**

15. An approved trustee of a registered scheme which is a company, shall maintain a statutory reserve fund which shall be credited annually with

- (a) fifteen percent of the net profit after tax and before appropriation; or
- (b) any other percentage of the net profit as the Authority may prescribe as contingency fund to meet the claims for which it may be liable as determined by the Authority.

### **Maintenance of valid performance guarantee**

16. An approved trustee of a registered scheme who is an individual trustee shall

- (a) maintain a valid performance guarantee,
- (b) on receipt of a notice from the Authority that its performance guarantee does not satisfy the requirements of the Authority, issue another performance guarantee before the expiration of the current guarantee.

## **Non-refusal of scheme applicants**

17. (1) An approved trustee shall not refuse an application for
- (a) membership of a registered scheme that is made by or on behalf of a relevant employee of a participating employer, or
  - (b) by a self-employed person who is fifteen years of age or above and below retirement age if the employee or person,

provides the relevant information required by the approved trustee with respect to the application for membership of the scheme and agrees in writing to comply with the governing rules of the scheme.

(2) An approved trustee shall not refuse an application for participation in a registered scheme that is made by or on behalf of an employer if the employer, provides the relevant information required by the approved trustee with respect to the application for membership of the scheme and agrees in writing to comply with the governing rules of the scheme.

(3) An approved trustee shall not refuse an application for membership of a registered scheme that is made by a person only for the purpose of maintaining a preserved account within the scheme if that person provides the relevant information required by the approved trustee with respect to the application for membership of the scheme and agrees in writing to comply with the governing rules of the scheme.

(4) An approved trustee shall disclose the following information to a person who applies to become a scheme member or participating employer:

- (a) the requirements and information required for application for membership of or participation in the scheme;
- (b) the governing rules of the scheme; and
- (c) scheme information, including all of the fees and charges payable under the scheme.

(5) An approved trustee shall give a person who applies to join a scheme a notice of acceptance within thirty days from the date of receipt of the information required for the application for membership or participation in the scheme, or from the date on which the applicant agrees to observe and accept the governing rules of the scheme.

(6) An approved trustee may terminate the membership of a scheme member in accordance with the governing rules of the scheme and shall

- (a) in the case of a scheme member who is a relevant employee, terminate the membership with the written consent of that member or give the participating employer of that member sixty days notice before the termination; or
- (b) in the case of a scheme member who is a self-employed person or former self-employed person, who is 15 years of age or over and below retirement age, terminate the membership with the written consent of that member and give the member sixty days notice before the termination.

(7) An approved trustee

- (a) may terminate the participation of an employer in accordance with the governing rules of the scheme and with the written consent of the participating employer; and
- (b) shall give the participating employer sixty days notice before the termination.

(8) A scheme member whose accrued benefits are being transferred or have been transferred shall not

- (a) be charged fees, or
- (b) be subjected to financial penalties, restrictions or requirements

that prevent or hinder the relevant participating employer or the scheme member from terminating its participation in the registered scheme of the transferor trustee or the liability to contribute to that registered scheme.

### **Acceptance of contributions and accrued benefits being transferred**

18. (1) An approved trustee of a registered scheme shall accept contributions paid by participating employers and self-employed persons who are members of the scheme.

(2) Accrued benefits may be transferred from one scheme to another registered scheme in accordance with these Regulations.

### **Requirements with respect to voluntary contributions**

19. (1) An approved trustee of a registered scheme shall not pay accrued benefits from voluntary contributions except by reference to the contributions and the income or profits derived from their investment.

(2) The governing rules of a registered scheme shall provide that

- (a) participating employers shall pay to the trustee of the scheme any voluntary contribution made by their employees on request by the employees who are members of the scheme;
- (b) where a participating employer elects to make voluntary contributions in respect of any employees who are members of the scheme, the contributions shall vest in the employees as accrued benefits in accordance with the governing rules of the scheme; and
- (c) where an employee or a self-employed person who is a member of a registered scheme elects to make voluntary contributions, the contributions shall vest in full as accrued benefits in that employee or self-employed person when the contributions are received by the approved trustee of the scheme.

## **Fees not to be charged for transfer of accrued benefits other than actual expenses**

20. (1) An approved trustee shall not charge a member of the scheme any fees or impose financial penalties for the transfer of accrued benefits from a registered scheme to another scheme or from one account to another account within the scheme, except

- (a) actual and reasonable expenses incurred by the trustee as a result of redeeming funds in connection with the transfer from a unit trust or similar type of investment, and
- (b) purchasing units in another investment, where a difference in price of the units is normally associated with the redemption of those funds and the purchase of those units.

## **Fees not to be charged for transfer of accrued benefits in certain circumstances**

21. (1) An approved trustee of a scheme shall not charge fees or impose financial penalties for the transfer of the member's accrued benefits to another scheme or from one account to another account within the scheme where contributions have ceased to be paid to a registered scheme by or on behalf of a scheme member.

(2) Sub regulation (1) applies to the first transfer of benefits made in respect of the member and only if

- (a) the transfer is made within twelve months after the date on which the contributions ceased to be paid; and
- (b) the amount of benefits, at the time of the transfer, does not exceed fifty Ghana Cedis.

## **Scheme may consist of one or more constituent funds**

22. (1) A registered scheme may consist of a single constituent fund, or of two or more constituent funds.

(2) A constituent fund shall be approved by the Authority.



(3) Where the scheme comprises two or more constituent funds, each of the funds shall have different investment policies .

(4) The Authority may cancel the approval of a constituent fund of a scheme on application made by an approved trustee of the registered scheme.

(5) An application under sub regulation (4) shall

(a) be in a form approved by the Authority;

(b) be accompanied by the relevant documents, and

(c) contain any other information specified in the Guidelines of the Authority.

(6) The Authority may, by written notice, require an applicant to provide additional information and documents reasonably necessary for the determination of an application.

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

(8) Where a registered scheme is cancelled, the approval granted in respect of each constituent fund of the registered scheme shall be considered as cancelled.

### **Statement of investment policy to be maintained in respect of each registered scheme**

23. A statement of investment policy

(a) shall be prepared and maintained in respect of each registered scheme.

(b) shall include sufficient information to enable scheme members to ascertain in relation to each constituent fund of the scheme

(i) the investment objectives of the fund;

- (ii) the policy as to the kinds of securities and other assets in which the fund may be invested;
- (iii) the policy as to the balance between different kinds of securities and other assets of the fund; and
- (iv) the risks inherent in implementing the policies, and the return expected to result from giving effect to the policies.

**Control objectives and internal control procedures to be maintained for each registered scheme**

24. (1) Each registered scheme shall establish and maintain control objectives while the scheme is registered.

(2) The control objectives of a registered scheme shall include the following:

- (a) ensuring that the scheme assets are safeguarded in the interests of scheme members;
- (b) ensuring that the Guidelines made by the Authority with respect to prohibited investment practices are not contravened;
- (c) ensuring that the limitations and prohibitions imposed under these Regulations with respect to the investment of the funds of the scheme in restricted investments are complied with;
- (d) ensuring that the requirements on prohibited investment practices and Guidelines on investment of pension funds with respect to permissible investments are complied with in relation to the scheme;
- (e) ensuring that the funds of the scheme and the scheme assets are, except as permitted by these Regulations, kept separate from the participating employers, the approved trustee of the scheme, service providers and other persons appointed or engaged for the purposes of the scheme.

(3) Each registered scheme shall establish internal control measures to achieve the control objectives of the registered scheme and shall maintain and comply with the control objectives while the scheme is registered.

(4) The internal control measures shall include procedures for

(a) monitoring investments to ensure that the control objectives are achieved;

(b) monitoring the assets and liabilities of the scheme to ensure that the funds of the scheme and the scheme assets are kept separate from those of the participating employers, the trustee and any other persons such as service providers; and

(c) ensuring the accuracy of statements, returns and reports required to be lodged with the Authority.

(5) The control objectives and internal control measures established and maintained for the scheme may be reviewed when necessary.

### **Investment standards to be complied with**

25. (1) The funds of a registered scheme shall be invested only in accordance with investments permitted under these Regulations and Guidelines on investment of pension funds issued by the Authority.

(2) The Guidelines shall be published in the *Gazette*.

(3) A pension fund manager appointed in relation to the scheme by the approved trustee of the scheme shall comply with provisions on investment under these Regulations and Guidelines issued by the Authority on investment of pension funds.

### **Requirements with respect to particulars specified in application for registering group personal pensions scheme**

26. A group personal pension scheme, shall comply with the particulars of the scheme

specified in the application for registration under section 135 of the Act which has been approved or modified by the Authority after the scheme has been registered.

### **Failure of approved trustee to ensure compliance with certain requirements and standards**

27. An approved trustee of a registered scheme who fails to comply with regulation 23, 24 or 26 is personally liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

#### *Functions of approved trustees*

### **Approved trustee's general duties with respect to administration of a scheme**

28. An approved trustee of a registered scheme shall in the administration of the scheme

- (a) exercise a level of care, skill, diligence and prudence that is reasonably expected of a prudent person who is acting in a similar capacity and who is familiar with the operation of registered schemes;
- (b) make use of relevant knowledge and skill that the trustee is reasonably expected to have due to the trustee's business or occupation;
- (c) ensure that the funds of the scheme are invested in different investments to minimize the risk of losses except where in particular circumstances it is prudent to have only one investment;
- (d) act in the interest of the scheme members and not in the trustee's own interest;
- (e) act in accordance with the governing rules of the scheme; and
- (f) supervise and exercise proper control over service providers appointed or engaged for the purposes of the scheme.

## **Approved trustee to appoint pension fund manager**

29. (1) An approved trustee of a registered scheme shall
- (a) appoint a pension fund manager to manage the investment of the funds of the scheme; and
  - (b) ensure that the contract for the appointment of the pension fund manager is in conformity with the First Schedule.
- (2) A person shall not be appointed as a pension fund manager unless that person
- (a) is a company incorporated in Ghana; and is licensed by the Securities and Exchange Commission as an investment adviser under the Securities Industry Act, 1993 (PNDCL 333);
  - (b) has a paid up stated capital of not less than GH¢200,000 and net assets of at least the same amount or an amount that may be determined by the Authority from time to time; and
  - (c) meets any additional requirement that may be determined by the Authority.
- (3) The trustee shall in appointing a pension fund manager ensure that
- (a) the selection and appointment of the pension fund manager is recorded in writing;
  - (b) there is no conflict of interest between the pension fund manager and other persons who have a contractual relationship with the trustee, or any other trustee, that could prejudice the interests of scheme members;

- (c) the pension fund manager has the resources including human resources necessary to carry on business as a pension fund manager; and
- (d) the pension fund manager has in place adequate controls and safeguards with respect to the investment of funds of the scheme to protect the interests of scheme members.

(4) A trustee shall not appoint a person as a pension fund manager in respect of the scheme unless the person is independent of

- (a) the trustee; and
- (b) the custodian of the scheme assets.

### **Independence of pension fund manager**

30. For the purposes of regulation 29 (4), a pension fund manager is independent of the approved trustee of the scheme and of the custodian of the scheme assets if:

- (a) the manager is not an associate of the trustee or custodian;
- (b) a person is not the controller of both the manager and the trustee or custodian or any associate of the trustee or custodian; and
- (c) the manager acts independently of the trustee and custodian in their dealings with the scheme.

### **Investment management contract**

31. (1) An approved trustee of a registered scheme shall ensure that a valid investment management contract exists between the trustee and the pension fund manager appointed for the scheme.

(2) The investment management contract shall specify the obligations of the pension fund manager with respect to the investment of funds of the scheme.

(3) The contract shall be in conformity with provisions specified in the First Schedule.

(4) The approved trustee of a registered scheme shall not appoint a pension fund manager for a scheme unless

- (a) the trustee has given an undertaking by deed, or by a document similar to a deed to notify the manager in writing of any matters that the trustee regards as pertinent to the manager's appointment; and
- (b) the manager has given an undertaking by deed, or by a document similar to a deed to notify the trustee in writing of any changes to matters referred to in paragraph (a) within thirty days after those changes have occurred.

(5) Despite any provision in the governing rules of a scheme an investment management contract relating to a scheme that exempts or limits the pension fund manager from liability for negligence or fraud is void.

### **Approved trustee to ensure compliance with prescribed capital requirements**

32. A company which is an approved trustee shall ensure that the prescribed capital requirements are complied with at all times.

### **Duties of approved trustee with respect to investment of scheme funds**

33. (1) An approved trustee of a registered scheme shall ensure that

- (a) a pension fund manager appointed for a scheme acts in the interest of the scheme members and shall not connive with other persons in transactions that relate to investment of the funds of the scheme,
- (b) where a transaction involving the acquisition of an asset for or in relation to a scheme is entered into between relevant persons, the consideration payable for the asset shall not be greater than the prevailing market price,

- (c) where a transaction involving the disposal or lending of an asset for or in relation to the scheme is entered into between relevant persons, the consideration payable for the asset shall not be less than the prevailing market price,
- (d) service providers appointed or engaged for a scheme do not retain any payment or benefit from a third party, either directly or indirectly in the acquisition, disposal or lending of scheme assets,
- (e) a pension fund manager appointed for a scheme does not acquire or dispose of securities at brokerage rates that exceed the customary institutional full-service brokerage rates applicable to the acquisition and disposal of securities; and
- (f) the acquisition or disposal of securities is done in accordance with the best commercial practice applicable to the preparation and execution of financial transactions.

(2) For the purposes of sub regulations (b) and (c) relevant persons are

- (a) the approved trustee and any service provider appointed or engaged for the purposes of the scheme;
- (b) the participating employers of scheme members; or
- (c) associates of any of the participating employers of a scheme member, or of a service provider appointed or engaged for the purposes of the scheme.

(3) Sub regulation (d) shall not prevent a third party from providing the service providers with goods or services that are of demonstrable benefit to the scheme or scheme members.

### **Approved trustee to appoint custodian of scheme assets**

34. (1) An approved trustee of a registered scheme shall



- (a) appoint an eligible person in accordance with eligibility requirements for the appointment of a custodian of scheme assets specified under these Regulations to be the custodian of the scheme assets;
- (b) ensure that the scheme assets are kept by, or are under the control of the custodian; and
- (c) enter into a custodial agreement with the custodian setting out the functions of the custodian with respect to the assets of the scheme.

(2) The agreement shall be in accordance with the requirements in relation to custodial agreements specified under these Regulations.

### **Prohibited investment practices**

35. (1) An approved trustee of a registered scheme shall not
- (a) enter into a repurchase agreement with the funds of the scheme;
  - (b) lend securities held in respect of the scheme;
  - (c) use the funds of the scheme to acquire financial futures contracts or financial option contracts;
  - (d) subject the scheme assets to any encumbrance; or
  - (e) use the scheme assets for any other investment practices that may be prohibited by the Authority.

### **Conflict of interest issues**

36. (1) An approved trustee or pension fund manager shall not
- (a) invest pension fund assets in instruments that are subject to any type of prohibitions or limitations on the sale or purchase of such instruments,

- (b) trade on margin accounts or take positions with pension fund assets,
- (c) keep “short positions” that is short selling on borrowing of securities,
- (d) trade in financial instruments with pension fund assets at prices different from the market price allowable on the Securities Exchange on the day the transaction is effected whether or not the purchase or sale price is higher or lower than the market price,
- (e) invest pension fund assets in shares or any other securities issued by
  - (i) the approved trustee or pension fund manager;
  - (ii) a pension fund custodian;
  - (iii) a shareholder or director of the approved trustee or pension fund manager or pension fund custodian holding pension fund assets on its behalf except in equities within prescribed limits and money market instruments, specifically certificates of deposit and bankers acceptances, issued by a bank or discount house on its behalf, and traded on a money market electronic platform open to the public and approved by the Bank of Ghana; or
  - (iv) securities or assets not listed or traded at a registered Securities Exchange.
- (f) sell pension fund assets to
  - (i) itself,
  - (ii) any shareholder, director or affiliate of the approved trustee or pension fund manager,
  - (iii) any employee of the approved trustee or pension fund manager,

- (iv) the spouse or relative of persons referred to in paragraph (i) to (iii),
- (v) affiliates of any shareholder of the approved trustee or pension fund manager, or
- (vi) a pension fund custodian holding pension fund assets to the order of the approved trustee.

(2) An approved trustee, pension fund manager, or agent of an approved trustee or pension fund manager shall not

- (a) purchase pension fund assets under its management,
- (b) apply pension fund assets under its management by way of loans and credits, or as collateral for a loan taken by any person, or
- (c) divulge or utilise confidential information regarding pension fund assets investment decisions, for any personal, corporate or related benefit.

### **Approved trustee to provide information to scheme members**

37. (1) An approved trustee of a registered scheme shall ensure that a person who becomes a member of a scheme is given a document containing information relating to the scheme within sixty days of that person becoming a member of the scheme.

(2) The document shall

- (a) include a general description of the scheme, such as the terms, fees and charges payable under the scheme;
- (b) specify particulars of funds if the scheme consists of two or more constituent funds; and

- (c) specify the person, if any, designated by the trustee as the contact person for the scheme either by name or by reference to the person's position or job description, and the means by which the person can be contacted.

(3) Where a member of an employer sponsored scheme or a master trust scheme is an employee of a participating employer, the trustee shall give to the member's employer the document referred to in sub regulation (1) and the employer shall give the document to the member within fourteen working days of receipt of the document by the employer.

### **Approved trustee to give membership certificates to relevant employees**

38. (1) An approved trustee of a scheme shall within sixty days after a relevant employee of a participating employer becomes a member of a registered scheme give a membership certificate to the employee.

(2) A membership certificate shall specify

- (a) the name of the scheme;
- (b) the name of the approved trustee of the scheme;
- (c) the address of the trustee's principal place of business in Ghana, or the trustee's residential address if the trustee is an individual person and does not have a place of business in Ghana;
- (e) the name of the scheme member; and
- (f) the date of issue of the certificate.

(3) An approved trustee of a registered scheme may arrange to give to the member's employer the membership certificate and the employer shall give the certificate to the member within seven working days after the employer receives it.

## **Approved trustee to provide scheme members with annual benefit statements**

39. (1) An approved trustee of the scheme shall
- (a) within three months after each financial period of a registered scheme, provide each member of the scheme with a benefit statement setting out the member's contributions as at the end of that period, whether or not the financial statements of the scheme for that period has been audited,
  - (b) notify members in writing of subsequent audit adjustments made to the benefit statements that affects a member's balance within thirty days of being aware of the audit adjustments.
- (2) Where the financial period of a registered scheme is extended beyond twelve months, the approved trustee of the scheme shall provide each member of the scheme with
- (a) a benefit statement for the first twelve months of the financial period; and
  - (b) another benefit statement prepared and issued as at the end of the extended financial period.
- (3) A scheme member's benefit statement shall
- (a) specify the name of the member, the name of the scheme and the name of the approved trustee of the scheme;
  - (b) specify the total contributions paid to the scheme in respect of a member during a financial period and any contribution periods for which contributions in respect of the member were not paid;
  - (c) specify the value of accrued benefits of the member as at the beginning and end of the financial period;
  - (d) specify the total contributions paid by a self-employed person to the trustee of the scheme during the financial period;

- (e) specify the total contributions paid by an employer to the trustee of the scheme for its employees during the financial period;
- (f) specify particulars of amounts transferred to or from the scheme during the financial period; and
- (g) contain any other information that may be determined by the Authority.

(4) The benefit statement shall be prepared on accrual basis, except that contributions and items relating to contributions not yet received by the approved trustee of the scheme may be included on cash basis.

(5) A benefits statement in respect of a registered scheme paid by or for a scheme member shall include a separate information with respect to

- (a) the mandatory contributions paid by or in respect of the member, and the accrued benefits derived from the mandatory contributions; and
- (b) the voluntary contributions paid by or in respect of the member, and the accrued benefits derived from the voluntary contributions.

(6) Where a member of an employer sponsored scheme or a master trust scheme is an employee of a participating employer, the trustee shall give a member's benefit statement to the member's employer and the employer shall give the benefit statement to the member within fourteen working days of receipt of the statement by the employer.

(7) An approved trustee of a registered scheme shall not comply with this regulation where a person has ceased to be a scheme member for a period of three months after the end of a financial period of the scheme and the accrued benefits of the member has been transferred to another registered scheme or paid in accordance with sections 101 or 110 of the Act.

## **Approved trustee to assist participating employers and scheme members**

40. (1) An approved trustee of a registered scheme shall, as far as reasonably practicable assist scheme members and participating employers to participate effectively in the operation of the scheme by

- (a) responding to inquiries in respect of the scheme, including those relating to
  - (i) the total amount of contributions received by the trustee in respect of a scheme member and the dates on which the contributions were received or the date on which a contribution was last received;
  - (ii) information in a document that the trustee has given to scheme members or participating employers; and
- (b) dealing with complaints from scheme members or participating employers.

(2) For the purposes of sub regulation (1), a trustee may designate a person as a contact person of the scheme either by name or by reference to the person's position or job description, and specify the means by which the person can be contacted.

## **Approved trustee to inform scheme members of changes in business particulars**

41. (1) An approved trustee of a registered scheme shall by written notice inform scheme members, a participating employer of a change in its business name, address, telephone number or facsimile number within thirty days and in any case not later than fourteen days after the occurrence of the change.

(2) A change of a business name shall be with the approval of the Authority.

(3) A person who fails to give the required notice under sub-regulation (2) is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

(4) Where a member of an employer sponsored scheme or a master trust scheme is an employee of a participating employers, the trustee shall inform the member's employer of the change and the employer shall notify the member of the change within fourteen working days after the employer receives the notice.

### **Approved trustee to inform scheme members of requirements relating to voluntary contributions**

42. (1) An approved trustee of a registered scheme shall, by written notice, inform the scheme members and participating employers of the procedure, and requirements for making changes to the payment of voluntary contributions within fourteen days of receipt of an inquiry or a request for a change in the payment of voluntary contributions.

(2) Where a member of an employer sponsored scheme or a master trust scheme is an employee of a participating employer, the trustee shall deliver the written notice to the member's employer and the employer shall deliver the notice to the member within fourteen working days of receipt of the notice.

### **Approved trustee to ensure presence of independent trustee at meetings**

43. (1) An approved trustee of an employer sponsored scheme shall ensure that the independent trustee of the scheme is, as far as reasonably practicable, present at meetings of the trustees.

(2) Where a decision is taken at a meeting of the trustees at which the independent trustee is absent, the minutes of the meeting shall be given to the independent trustee within seven days after the meeting and the independent trustee shall within seven days after receipt of the minutes acknowledge in writing, acceptance of the decisions taken at the meeting.

(3) Where the independent trustee does not agree with a decision in respect of matters involving investment of scheme assets or matters that are prejudicial to the interest of scheme members, the independent trustee shall report the matter to the Authority.



## Disclosure of interest

44. (1) An individual person who is an approved trustee of a registered scheme shall within thirty days of becoming aware of a matter that gives rise or is likely to give rise

- (a) to a conflict of interest between the person's duties as a trustee of the scheme, and other duties of that person or the person's personal interest; or
- (b) to the suspension or revocation by the Authority of the person's approval as a trustee in the case of an independent trustee

shall disclose in writing the nature of the interest to persons who are approved trustees of the scheme.

(2) An officer of a company which is an approved trustee of a registered scheme shall within thirty days of becoming aware of a matter that gives rise or is likely to give rise

- (a) to a conflict of interest between the person's duties in relation to the scheme as an officer of the company and either the person's other duties as an officer of the company or the person's personal interests or
- (b) to the suspension or revocation by the Authority of the company's approval as a trustee, if the officer is an independent director

shall disclose in writing the nature of the interest to the company and to each of the other officers of the company and, if the trustee includes individual persons, to each of them.

(3) An approved trustee who receives a disclosure under sub-regulation (2) shall

- (a) record the disclosure in a record book, and
- (b) make the record book available at reasonable hours for inspection by the Authority or a scheme member on request.

(4) The decision of an approved trustee shall not be invalidated if the approved trustee does not disclose its interest in a matter.

(5) This regulation does not apply to the interest of a person in a matter which arises by virtue of the fact that that person is a contributor to an occupational pension scheme or a provident fund scheme or a personal pension scheme.

(6) An approved trustee or an officer of a company who discloses the nature of its interest in respect of a matter shall not, unless the other trustees agree, or in the case of a company unless the directors of the company agree that the approved trustee or officer of the company

(a) be present during deliberation of the matter; or

(b) take part in a decision in respect of the matter.

(7) For the purposes of this regulation, a person has a personal interest in a matter if that person

(a) has obtained or can obtain, whether directly or indirectly, a pecuniary or other advantage; or

(b) has conferred or can confer a benefit on:

(i) a relative or friend; or

(ii) a body of which the person is a member or with which the person has a close connection; or

(iii) any other person to whom the person is under an obligation, whether legal or moral.

### **Approved trustee to notify Authority of events of significant nature**

45. (1) An approved trustee of a registered scheme who becomes aware of the occurrence of an event of a significant nature shall

- (a) not later than the third working day of becoming aware of the event, give written notice to the Authority setting out the particulars of the event unless the event is specified in the Guidelines of the Authority;
- (b) keep a record of particulars of the event; and
- (c) permit the Authority to inspect the record at any reasonable time during business hours.

(2) The approved trustee shall in writing to the Authority give further and better particulars of the event where the Authority requests for more information on the event.

(3) An event of a significant nature includes

- (a) any event that causes the approved trustee to contravene the provisions of the Act , the governing rules of the scheme or breach a condition to which the approved trustee is subject to;
- (b) the winding-up of the approved trustee, the appointment of a receiver or manager of the assets of the approved trustee;
- (c) any change or proposed change of a controller of the approved trustee, where the approved trustee is a company or includes a company; or
- (d) any material change in the approved trustee's capacity or ability to act as an approved trustee, including
  - (i) a systems failure which may affect the approved trustee's ability to perform its duties;
  - (ii) the cancellation, expiration or termination of the insurance in respect of the scheme,
  - (iii) the death or incapacity of a person that affects the person's ability to carry out that person's duties where the approved trustee is or includes a company; or

- (iv) the cancellation, expiration or termination of the performance guarantee in respect of a person if the approved trustee is or includes an individual person.

### **Authority's approval in respect of amendments to governing rules of registered scheme**

46. (1) An approved trustee of a registered scheme shall notify the Authority in writing of an amendment to be made to the governing rules of the scheme and give the Authority a copy of the proposed amendment.

(2) An amendment to the governing rules of the scheme shall not take effect unless the Authority approves the amendment and notifies the trustees in writing of its approval.

(3) Sub-regulations (1) and (2) does not apply to amendment proposed to be made or made to the governing rules in respect of or by a participation agreement of a registered scheme unless the amendment relates to mandatory contributions or voluntary contributions and is in a form approved by the Authority.

(3) In this regulation, a reference to an amendment to the governing rules of a registered scheme includes a reference to addition of new provisions, or substitution or omission of existing provisions of the rules of the scheme.

### **Approved trustee to ensure separation of scheme assets**

47. (1) An approved trustee of a registered scheme shall ensure that the scheme assets are

- (a) administered and dealt with as trust property;
- (b) applied only for the purposes of the scheme;
- (c) separately recorded in the appropriate records and distinguished;

- (i) from other records;
- (ii) from the trustee's personal assets; and
- (iii) from any assets held by the trustee for the benefit of a participating employer or any other person.

(2) Sub regulation (1) (a) and (b) applies even if the trustee appoints a custodian or pension fund manager to perform functions in relation to the scheme assets.

### **Approved trustee to deduct money in respect of administrative expenses**

48. An approved trustee of a registered scheme may with the approval of the Authority deduct moneys from each scheme member's account as fees for administrative expenses of the scheme.

### **Interest on scheme's assets placed on deposit**

49. Where a scheme's assets are placed on deposit, the approved trustee shall ensure that the rate of interest received for the deposit is reasonable having regard to the rate of interest available on the market

- (a) at the time of the deposit; and
- (b) for deposits of a similar amount and nature.

### **Offences**

50. A person who, without reasonable excuse, fails to comply with a requirement or duty imposed on that person under regulations 28, 29, 30, 31, 32, 33, 34, 35, 36 or 47 commits an offence and is liable on summary conviction to a fine of not less than one thousand, two hundred and fifty penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

## *Service providers*

### **Eligibility for appointment as custodian of scheme assets**

51. (1) A person shall not be appointed as a custodian of scheme assets unless that person
- (a) is a bank or a wholly owned subsidiary of a bank;
  - (b) has a sufficient presence and control in Ghana; and
  - (c) is independent of the approved trustee and pension fund managers appointed in respect of the scheme.
- (2) A person has a sufficient presence and control in Ghana if:
- (a) that person's day-to-day business activities in relation to its business in Ghana including the keeping of records in relation to its activities are conducted wholly in Ghana; and
  - (b) that person has sufficient expertise and management resources in Ghana to conduct its business operations effectively.
- (3) A person satisfies the requirements under sub-regulations (1) and (2) if that person
- (a) is licensed by the Securities and Exchange Commission as a custodian under the Securities Industry Act, 1993 (P.N.D.C.L. 333);
  - (b) has a paid up stated capital as stated in the Banking Act, 2004 (Act 673) and net assets of at least the same amount; and
  - (c) issues a guarantee to the full sum and value of pension fund assets held by it or to be held by it.
- (4) A guarantee relating to a custodian
- (a) shall be issued in writing by an authorized financial institution or authorised insurer;

- (b) shall impose a continuing obligation on the authorized financial institution or authorized insurer to indemnify the scheme against any loss sustained by the scheme or the scheme members as a result of a failure by the custodian to perform an obligation imposed under the Act;
- (c) shall be governed by the laws of Ghana; and
- (d) may allow the guarantor to terminate its obligation under the guarantee only by giving not less than thirty days' written notice in advance to the Authority and to the custodian.

### **Custodial agreement**

52. (1) An approved trustee of a registered scheme
- (a) who appoints a custodian to administer the scheme assets shall incorporate in the contract of appointment of the custodian, a custodial agreement in accordance with the Second Schedule, and
  - (b) shall take reasonable steps to ensure that the custodian complies with the terms of the relevant custodial agreement.

(2) An approved trustee who, without reasonable excuse, fails to comply with the custodial agreement commits an offence and is liable on summary conviction to a fine of not less than one thousand, two hundred and fifty penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

### **Use of central securities depository**

53. (1) An agreement entered into between the approved trustee of a registered scheme and a custodian of scheme assets may provide for scheme assets to be held in a central securities depository.

(2) A central securities depository shall not be considered as a custodian carrying on business in Ghana for the purpose of this regulation.

## **Approved trustee to review service providers' reports**

54. (1) An approved trustee of a registered scheme shall for the purposes of performing its functions under the Act request each service provider appointed or engaged by the trustee to submit to the trustee

- (a) a report of any material event;
- (b) an annual report, and
- (c) any other reports.

(2) An event is a material event if it involves

- (a) a material change, or a proposal for a material change, relating to the eligibility of the service provider; or
- (b) a material breach of the obligations of the service provider.

(3) A service provider shall submit to the Trustee a report of a material event within thirty days after the event occurs.

(4) Where the material event involves a proposal for a material change relating to the eligibility of the service provider, the service provider shall submit a report of the event to the Trustee within thirty days after the service provider becomes aware of the event.

(5) An annual report shall

- (a) contain a copy of the audited profit and loss account and of the balance sheet for the financial year of the service provider that ends on or before the relevant financial period of the scheme, together with a copy of the auditor's report on those documents and the directors' report for that year; and



- (b) be accompanied by a report by the auditor of the service provider stating whether or not, in the auditor's normal course of duties, the auditor is aware of
  - (i) a failure of the service provider to comply with the service provider's obligations under the contract of appointment or engagement entered into between the trustee and the service provider; or
  - (ii) a false declaration made by the service provider to the trustee or any other person

and the report shall give particulars of the failure or false declaration.

(6) A service provider shall submit to the Trustee an annual report relating to the scheme at least two months before the deadline after each financial period.

(7) The trustee shall review the reports submitted to the trustee by the service provider.

(8) Where the trustee doubts the accuracy of the report, the trustee shall make inquiries to ascertain whether or not the service provider has properly performed the obligations delegated by the trustee.

(9) Where after an inquiry, the trustee is not satisfied that the service provider has performed the delegated obligations, the trustee shall either

- (a) terminate the appointment or engagement of the service provider; or
- (b) take steps necessary to rectify the failure of the service provider to perform the delegated obligations and prevent its re-occurrence.

## **Service providers to report certain matters to the Authority**

55. (1) A service provider, shall by written notice report immediately to the Authority if the service provider in the course of performing its obligations relating to a registered scheme

- (a) becomes aware that the approved trustee of the scheme is not complying with regulation 57 or 58 in respect of accounting and other records to be kept under these Regulations;
- (b) identifies any transaction that, in the service provider's opinion will result or has resulted in a misappropriation of the funds of the scheme or the scheme assets;
- (c) identifies any payment from the funds of the scheme that, in the service provider's opinion, is materially prejudicial to the interests of scheme members or is in contravention of section 100 or 101 of the Act or Regulations made under the Act;
- (d) becomes aware that scheme assets are mixed with or have been mixed with the funds of the trustee;
- (d) identifies a matter that causes the service provider to form an opinion that the requirements specified in the Guidelines if any, with respect to prohibited investment practices and with the requirements of these Regulations and Guidelines on investment of pension funds have not been complied with;
- (e) becomes aware that the trustee has not complied with regulation 103 in respect of failure to pay mandatory contributions; or
- (f) becomes aware of any matter that can reasonably affect the interest of scheme members detrimentally.

(2) A service provider may, by written notice

- (a) bring the matter to the trustee's attention;
- (b) request the trustee to provide the service provider with an explanation of the matter and the related circumstances; and
- (c) require the trustee to rectify the matter within a specified period as the service provider considers reasonable

before reporting the matter to the authority and shall notify the Authority if the trustee complies with the request and requirement in the notice.

(3) A scheme asset is considered to be mixed with the funds of the trustee or the assets of another person when a custodian of the scheme assets

- (a) is also the holder of assets of one or more other registered schemes or other financial schemes or undertakings;
- (b) mixes scheme assets with those other assets; and
- (c) does not keep a separate account of the scheme assets and those other assets in a manner to be able to identify them separately.

### **Power of Authority on becoming aware of matters reported**

56. (1) Where the Authority is notified of a matter under regulation 55 and the Authority is of the opinion that the matter can be rectified, the Authority may, by written notice direct the trustee to rectify the matter at the trustee's own expense within the period specified in the notice.

(2) The Authority may in addition to directives given to the trustee

- (a) by written notice request the auditor of the scheme to provide the Authority with a report indicating whether the trustee has rectified the matter within thirty days after the end of the period specified in the notice and at the expense of the trustee, and
- (b) attach a copy of the notice given to the trustee to rectify the matter.

(3) An approved trustee who contravenes sub regulation (1) commits an offence and is liable on summary conviction to a fine of not less than one thousand, two hundred and fifty penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

### *Accounting and other records*

#### **Proper accounting records to be kept**

57. (1) The approved trustee of a registered scheme shall keep accounting records to explain transactions of the scheme and the financial status of the scheme.

(2) The records shall be kept

- (a) in a manner to show a true and fair status of the financial transactions of the scheme during each financial period;
- (b) the disposition of its assets and liabilities at the end of each financial period;
- (c) in a manner that ensures convenient and proper auditing in accordance with these Regulations;
- (d) at a specific place that can be readily accessible in Ghana to enable the Authority discharge its duties.

(3) The records shall be made available to the Authority on request for inspection at reasonable times and without charging a fee.

#### **Separate accounts for each scheme member**

58. (1) An approved trustee of a registered scheme shall maintain a separate account for each scheme member.

(2) The account shall specify the member's accrued benefits and show the difference between the aggregate amount and

- (a) in the case of a scheme member who is a relevant employee, contributions paid by the member's employer to the scheme in respect of the member;
- (b) contributions paid to the scheme by the member;
- (c) any amount transferred to the account in accordance with provisions on portability of accrued benefits under these Regulations;
- (d) any investment income of the scheme that is attributable to the member's accrued benefits;
- (e) any amount by which the value of the scheme investments attributable to the member's accrued benefits has appreciated;
- (f) accrued benefits that have been paid to or in respect of the member;
- (g) fees for administrative expenses deducted or deductible by the trustee from the account under these Regulation unless those expenses are waived by the trustee;
- (h) any amount by which the value of the scheme investments attributable to the member's accrued benefits has depreciated;
- (i) any other amounts payable under the Act from the account.

(3) The trustee shall ensure that each member's account is kept in a manner that ascertains the market value of the accrued benefits of a member at least once every month.

(4) In the case of a scheme member who is a relevant employee of a participating employer, the trustee shall arrange for the member's contribution account to be divided into the following sub-accounts:

- (a) a sub-account specifying
  - (i) mandatory contributions paid for a member by the member's current employer in accordance with section 3(1) of the Act ;
  - (ii) any contribution surcharges paid by the member's employer on arrears; and
  - (iii) the income or profits arising from investments of the contributions, surcharges and benefits taking into account any losses;
- (b) a sub-account specifying
  - (i) mandatory contributions paid for the member by the member's current employer under Section 3 (2) of the Act ;
  - (ii) the income or profits arising from investments of the contributions, and benefits under sub-regulation 4 (iii) taking into account any losses;
- (c) a sub-account specifying
  - (i) the voluntary contributions paid for a member by the member's current employer;
  - (ii) any contribution surcharges paid by the member's employer on the arrears; and
  - (iii) the income or profits arising from the investments of the contributions and benefits taking into account any losses;
- (d) a sub-account specifying
  - (i) the voluntary contributions if any paid by the member while employed by the member's current employer; and

- (ii) the income or profits arising from the investments of the contributions and benefits taking into account any losses;
- (e) a sub-account specifying
  - (i) voluntary contributions paid by or for the member while employed by a former employer or while self-employed and transferred to the member's contribution account; and
  - (ii) the income or profits arising from the investments of the contributions and benefits taking into account any losses.

(5) In the case of a scheme member who holds a preserved account in the scheme, the trustee shall arrange for the member's preserved account to be divided into the following sub-accounts:

- (a) a sub-account specifying:
  - (i) mandatory contributions paid by or for the member and transferred to the member's preserved account in accordance with payment of accrued rights under these Regulations;
  - (ii) any contribution surcharges in respect of mandatory contributions paid by the member's employer while the member is employed by a former employer, and any contribution surcharges paid in respect of mandatory contributions paid by the member while self-employed;
  - (iii) the income or profits arising from investments of the contributions surcharges and benefits taking into account any losses; and
  - (iv) the special contributions if any paid for a member and the income or profits arising from investments of those contributions, taking into account any losses; and
- (b) a sub-account specifying:

- (i) voluntary contributions paid by or for a member and transferred to the member's preserved account; and
- (ii) the income or profits arising from investments of the contributions and benefits taking into account any losses.

(6) The trustee shall ensure that amounts relating to a scheme member's account are recorded in the appropriate sub-accounts of the member's contribution account.

(7) A trustee shall not divide a member's sub-account into further sub-accounts, other than the sub-accounts specified under this regulation.

### **Financial period of registered scheme**

59. (1) The first financial period of a registered scheme starts from 1<sup>st</sup> January of the date on which the scheme was registered and ends on 31<sup>st</sup> December of the year or as may be determined by the Authority.

(2) The trustee shall ensure that every subsequent financial period of the scheme is the period ending on each anniversary of the date determined under sub regulation (1).

### **Approved trustee to prepare statement of accounting policies**

60. (1) An approved trustee of a registered scheme shall prepare a statement of accounting policies specifying the accounting policies to be followed in preparing financial statements for the scheme under regulation 75 within thirty days of becoming an approved trustee.

- (2) The statement shall specify
  - (a) the basis on which the assets of the registered scheme are valued or are to be valued, and
  - (b) which amounts are regarded or shall be regarded as income from the investment of scheme assets.



## **Approved trustee to prepare financial statements**

61. (1) An approved trustee of a registered scheme shall cause to be prepared a profit and loss account and a balance sheet as at the last day of the period that gives a true and fair view of the financial position of the scheme before the deadline after a financial period of a scheme.

(2) The balance sheet shall specify the assets and liabilities of the scheme and the obligations in respect of benefits payable to scheme members shall be regarded as liabilities for that purpose.

(3) An approved trustee shall cause to be prepared a statement of account which gives a true and fair view of the scheme's financial transactions for the relevant financial period.

(4) The statement shall specify the

- (a) fees for administrative expenses deducted or deductible by the trustee from scheme members' accounts;
- (b) contributions and contribution surcharge if any paid and payable by scheme members and recovered from scheme members or their employers where applicable;
- (c) total returns derived from investing the funds of the scheme taking into account capital appreciation and depreciation;
- (d) total amount of accrued benefits paid to scheme members;
- (e) total amount of accrued benefits payable to scheme members which are not paid;
- (f) amount of accrued benefits transferred to the scheme and from the scheme, during the financial period.

(5) A trustee shall ensure that the accounting policies used in the preparation of financial statements is included in or attached to the financial statements.

## **Auditor's report to be attached to financial statements**

62. An approved trustee of a registered scheme shall take reasonable steps to ensure that the auditor's report on the financial statements prepared for that period is attached to, or endorsed on the financial statements before the deadline for each financial period of the scheme.

## **Financial statements to be in conformity with applicable accounting guidelines**

63. (1) An approved trustee of a scheme shall ensure that the financial statements for a registered scheme include a statement to the effect that the financial statement was prepared in accordance with the applicable accounting guideline.

(2) An approved trustee who fails to comply with sub-regulation (1) is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

## **Comparative amounts to be included in financial statements**

64. (1) Where a particular amount is specified in a financial statement for the financial period of a registered scheme the approved trustee of the scheme shall ensure that the corresponding amount for the immediately preceding financial period of the scheme if any is shown in the statement in a way to allow easy comparison between the first-mentioned amount and the corresponding amount.

(2) Where the first-mentioned amount has been determined on a different basis from the corresponding amount and the different basis materially affects the determination of the corresponding amount then

- (i) the corresponding amount shall be adjusted in a way to make it consistent with the basis on which the first-mentioned amount was determined; and
- (ii) the particulars of the adjustment and the reasons for the adjustment shall be disclosed in a note to the financial statement.

## **Signing of financial statements**

65. An approved trustee of a registered scheme shall ensure that financial statements relating to the scheme are signed

- (a) by at least two directors of the company if the trustee is or includes a company; or
- (b) by at least two persons including the independent trustee if the trustee consists wholly of individual persons.

## **Scheme report to be prepared**

66. (1) The approved trustee of a registered scheme shall, for each financial period of the scheme ensure that a scheme report is prepared for the scheme in accordance with these Regulations

- (2) The scheme report shall
  - (a) include a commentary on the financial development of the scheme which is consistent with the financial statements;
  - (b) include particulars of changes that have been made to the governing rules of the scheme since the end of the immediately preceding financial period of the scheme;
  - (c) specify how scheme members can obtain further information about the scheme and its operation and who the information may be obtained from;
  - (d) give particulars of
    - (i) the auditor who audited the financial statements of the scheme for the financial period;

- (ii) any service provider, bank, legal adviser, broker or other agent appointed or engaged by the trustee for the purposes of the scheme during that period; and
- (iii) the persons who were controllers of that associate during that period if the trustee is or includes a company;

and specify whether any of the persons was an associate of the trustee during the financial period;

- (e) give particulars of the directors of the company who as at the end of the financial period were in office if the trustee is or includes a company;
- (f) give particulars of appointments and termination of appointments of directors of the company during that period including the dates of the appointments and terminations; and
- (g) provide any other information that in the opinion of the trustee is necessary for a proper understanding of the scheme and its operations by scheme members.

(3) Where the trustee consists of individual persons or includes individual persons the scheme report shall give particulars of

- (a) the persons who were the approved trustees of the scheme as at the end of the financial period;
- (b) the independent trustee of the scheme during the financial period; and
- (c) appointments and terminations of appointment of trustees during that period including the dates of those appointments and terminations of appointments.

(4) For the purpose of this regulation "particulars", in relation to a person, means:

- (a) the person's name; and
- (b) the person's business address or, if the person is an individual person and does not have a place of business in Ghana, the person's residential address.

### **Investment report to be prepared**

67. (1) An approved trustee of a registered scheme shall ensure that an investment report is prepared for each financial period of the scheme.

- (2) The investment report shall include
  - (a) an analysis of the investments held by the trustee in respect of the scheme and particulars of the income derived from the investments during the financial period concerned;
  - (b) a commentary by the trustee on the analysis;
  - (c) particulars of the investment policy followed by the trustee during the financial period and any change in the statement of investment policy that will materially affect the risk attached to the investments of the scheme;
  - (d) for each constituent fund of the scheme for the financial period and for each of the two immediately preceding financial periods if any
    - (i) the amount of net income excluding capital appreciation or depreciation derived from the investment of the funds of the scheme;
    - (ii) the amount by which the value of the scheme assets has appreciated or depreciated during the financial period; and

- (iii) the value of the scheme assets derived from the investment of the funds of the scheme as ascertained in accordance with the applicable accounting guideline.

(3) Information in relation to an investment report shall be adequate to provide scheme members with a proper understanding of

- (a) the investments made in respect of the scheme;
- (b) the net return derived from those investments excluding any appreciation or depreciation of the value of the scheme assets attributable to those investments; and
- (c) the appreciation or depreciation of the value of the scheme assets attributable to the investments.

#### **Approved trustee to comply with relevant regulations**

68. The approved trustee of a registered scheme shall comply with regulations 66 and 67 before the deadline after the end of each financial period of the scheme.

#### **Approved trustee to ensure preparation of annual report**

69. (1) An approved trustee of the scheme shall publish an annual report consisting of

- (a) the financial statements of the scheme for that period;
- (b) the auditor's report on those statements;
- (c) the scheme report prepared for that period; and
- (d) the investment report prepared for that period.

(2) An annual report may include any other information relating to the scheme and its administration as the trustee considers appropriate.

## **Scheme members may request for copies of annual report**

70. (1) A scheme member may request for a copy of the annual report in respect of the scheme for any specified financial period which is within five years before the date of the request from the trustee.

(2) The trustee shall give to the scheme member a copy of the annual report within thirty days after receiving the request and on payment of a fee determined by the Authority.

## **Register of scheme members to be kept**

71. (1) The approved trustee of a registered scheme shall keep a register of scheme members.

(2) The register shall specify

(a) the name of each scheme member,

(b) the member's residential address,

(c) the member's date of birth,

(d) whether the scheme member is a self-employed person or a relevant employee of a participating employer and if the member is an employee, the name and business address of the employer; and

(e) any other particulars that the trustee considers necessary.

## **Other records to be kept**

72. (1) The approved trustee of a registered scheme shall keep other records in relation to the management of the scheme other than accounting records to explain the operation of the scheme.

(2) The provisions in regulation 57 (2) and (3) apply to records to be kept under these Regulations.

## **Period for which accounting and other records are to be kept**

73. The approved trustee of a registered scheme shall ensure that
- (a) accounting or other records required to be kept in respect of a scheme is kept for at least seven years after the end of the financial period in which the record is made; or
  - (b) records that relate to a person's membership of the scheme are kept for at least five years after the person ceases to be a scheme member.

## **Offences**

74. An approved trustee who fails to comply with a requirement or duty imposed on approved trustees under regulation 57 or 58 commits an offence and is liable on summary conviction to a fine of not less than one thousand, two hundred and fifty penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

### *Functions of auditors*

## **Approved trustee to ensure financial statements are audited**

75. (1) An approved trustee of a registered scheme shall ensure that the scheme's financial statements for a financial period are audited before the deadline after that period.
- (2) An approved trustee who fails to take reasonable steps to comply with sub-regulation (1) commits an offence and is liable on summary conviction to a fine of not less than one thousand, two hundred and fifty penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.



## Approved trustee to appoint auditor to audit scheme accounts

76. (1) An approved trustee of a scheme shall appoint at least one person as auditor of the scheme within three months after the day on which a scheme is registered under section 129 or 135 of the Act , or within such extended period as the Authority may permit.

(2) An auditor of a registered scheme shall hold office until

- (a) in the case of an individual person the death of that person,
- (b) in the case of a firm that is not reconstituted, dissolution of that firm, or
- (c) the removal or resignation from office of the auditor in accordance with these Regulations,
- (d) the expiration of the period for which the auditor was appointed; and
- (e) the auditor ceases to be qualified to be the auditor of a registered scheme.

(3) The trustee shall within thirty days of a vacancy occurring in the office of auditor of a registered scheme, or within an extended period permitted by the Authority appoint another auditor to fill the vacancy.

(4) A person shall not be appointed as the auditor of a registered scheme unless that person

- (a) has consented to act as auditor of the scheme by written notice given to the trustee before the appointment; and
- (b) has not withdrawn the consent by another written notice.

(5) An appointment made by a trustee contrary to sub-regulation (5) is of no effect.

(6) An approved trustee who fails to take reasonable steps to comply with a requirement of this regulation commits an offence and is liable on summary conviction to a fine of one thousand, two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than four years or to both.

### **Functions of the Authority where approved trustee fails to appoint**

77. (1) An approved trustee of a registered scheme shall

- (a) notify the Authority in writing of its inability to appoint an auditor for the scheme within fourteen days after the day on which the appointment is required to be made; and
- (b) may apply in writing to the Authority to extend the period within which the trustee is required to appoint an auditor.

(2) The Authority may extend the period for appointment of an auditor of the scheme for a further period of not more than thirty days after receipt of an application, if the Authority is satisfied with the reasons given by the trustee.

(3) Where a trustee fails to appoint an auditor of the scheme the Authority may

- (a) appoint one or more persons who consent to be appointed as auditor of the scheme; and
- (b) determine the fees to be paid to the auditor.

(4) The approved trustee of the scheme shall pay the auditor's fees as determined by the Authority.

(5) An approved trustee who fails to take reasonable steps to comply with a requirement under this regulation commits an offence and is liable on summary conviction to a fine of one thousand, two hundred and fifty penalty units.

## Qualifications for auditor

78. (1) Subject to sub regulations (5), (7) and (8), a person is qualified to be an auditor of a registered scheme if that person is a member of the Institute of Chartered Accountants (Ghana) with a certificate to practice.

(2) A person shall not

- (a) consent to be appointed as auditor of a registered scheme;
- (b) act as auditor of a scheme; and
- (c) prepare a report required to be prepared by an auditor of a registered scheme,

unless that person is qualified to be an auditor of a registered scheme.

(3) Sub regulation (2) does not prevent a person who is not qualified as an auditor from participating in the preparation of a report if that person is under the supervision of a qualified person.

(4) A firm shall not

- (a) consent to be appointed as auditors of a registered scheme;
- (b) act as auditors of a scheme;
- (c) prepare a report required to be prepared by an auditor of a registered scheme,

unless at least one of the partners of the firm is a person qualified to be an auditor of a registered scheme.

(5) Where the approved trustee of a registered scheme is a company, a person is not qualified to be auditor of the scheme if that person is a:

- (a) controller of the company;

- (b) partner, employer or employee of the controller; or
- (c) partner or employee of an employee of the controller.

(6) Where the approved trustee of a registered scheme is a company, a person shall be considered to be a controller of the trustee if that person is a controller of a company that is an associate of the trustee.

(7) Where the approved trustee of a registered scheme consists of trustees who are individual persons, a person is not qualified to be auditor of the scheme if that person is a partner, employer or employee of any of the individual persons.

(8) Where the approved trustee of a registered scheme consists of trustees one or more of whom is a company and the others are individual persons, a person is not qualified to be auditor of the scheme if the person

- (a) is a controller of the company;
- (b) is a partner, employer or employee of the controller;
- (c) is a partner or employee of an employee of the controller;
- (d) is a partner, employer or employee of any of the individual persons.

(9) For the purposes of this regulation a person is not a controller of an approved trustee that is a company only because the person is a liquidator of the company or of an associated company.

(10) An auditor of a registered scheme who in the course of an appointment knowingly acts in a manner that disqualifies the auditor from acting as auditor of the scheme shall immediately resign from the office of auditor of the scheme.

(11) A partner of a firm that is appointed as auditor of a registered scheme who knowingly disqualifies the firm from acting as auditor of the scheme in the course of the appointment shall immediately cause the firm to resign from the office of auditor of the scheme.

(12) A person who, without reasonable excuse, fails to comply with this regulation commits an offence and is liable on summary conviction to a fine of not less than one thousand, two hundred and fifty penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

### **Removal and resignation of auditor**

79. (1) An approved trustee of a registered scheme may remove an auditor of the scheme from office if the approved trustee

(a) informs the Authority, by written notice, of the removal and the reasons for the removal; and

(b) serves a copy of the notice of removal on the auditor within seven working days.

(2) An auditor shall within seven working days after receiving a copy of the notice, write to the Authority specifying in the auditor's opinion the reasons for the removal.

(3) An auditor of a registered scheme may resign as auditor of the scheme by written notice given to the approved trustee of the scheme.

(4) An auditor of a registered scheme who does not desire to be appointed for a further period shall by written notice inform the approved trustee of the scheme of its intentions.

(5) The auditor's notice of resignation or not seeking re-appointment shall include

(a) a statement to the effect that, to the best of the auditor's knowledge and belief, there are no circumstances relating to the resignation or decision not to seek reappointment that would prejudicially affect the interests of scheme members to a material extent; or

(b) a statement specifying the circumstances that gave rise to the resignation or decision not to seek reappointment.

(6) The auditor shall within two working days after giving the notice to the trustee, give the Authority a copy of the notice.

(7) The trustee shall give the Authority a copy of the auditors notice of resignation or not seeking re-appointment within fourteen working days after receipt of the notice.

(8) On the retirement or withdrawal of a partner from a firm, if the firm is no longer capable of acting as auditor of a registered scheme the firm shall by written notice given to the approved trustee of the scheme resign from acting as auditor of the scheme.

(9) The firm shall give the notice to the approved trustee within fourteen days after the retirement or withdrawal of the partner from the firm.

### **Effect of winding up of office of auditor**

80. The auditor of a registered scheme ceases to hold office on the commencement of the winding up of the scheme.

### **Fees and expenses of auditor**

81. The approved trustee of a registered scheme shall pay the fees and expenses of an auditor of the scheme from the funds of the scheme.

### **Auditor to report on financial statements**

82. (1) The auditor of a registered scheme shall report to the approved trustee of the scheme the status of

- (a) the financial statements of the scheme,
- (b) the scheme's accounting records, and
- (c) other records relating to the scheme.

(2) The report shall be given to the trustee within a reasonable time to enable the trustee comply with deadlines for the submission of financial statements.

- (3) An auditor's report shall
- (a) state whether or not the financial statements relating to the scheme are properly drawn up
    - (i) to give a true and fair view of the matters required under regulation 61; and
    - (ii) in accordance with regulations 60, 61, 63 and 64 in material respects, and, if not, specify in what respects those statements are, in the auditor's opinion, not properly drawn up;
  - (b) state whether or not proper accounting and other records have been kept during the relevant financial period in respect of the funds of the scheme, the scheme assets and financial transactions entered into in relation to the scheme and specify in what respects the records were not properly kept; and
  - (c) state whether or not the requirements specified in the Guidelines and under regulation 35 with respect to prohibited investment practices and the Guidelines on investment of pension funds under these Regulations have been complied with as at the end of that period.

(4) The auditor may include in the auditor's report any other explanations and qualifications that the auditor thinks relevant.

(5) The auditor's report shall be attached to, or endorsed on, the financial statements.

### **Auditor to report certain matters to Authority**

83. (1) The auditor of a registered scheme who

- (a) becomes aware of any matter that would cause the auditor to qualify the auditor's report on financial statements made in respect of the scheme;
- (b) becomes aware that the approved trustee of the scheme is not complying with regulation 57 or 58;
- (c) identifies any transaction that, is or has resulted in a misappropriation of the funds of the scheme or the scheme assets;
- (d) identifies any payment from the funds of the scheme that is materially prejudicial to the interests of scheme members or is in contravention of section 96 of the Act or of these Regulations;
- (e) becomes aware that the scheme assets are or have been mixed with the funds of the trustee or the assets of any other person;
- (f) identifies any matter that causes the auditor to believe that the requirements specified in the Guidelines with respect to prohibited investment practices and the requirements of regulation 35 and Guidelines on investment of pension funds have not been complied with; or
- (g) becomes aware that the trustee has not complied with regulation 103, except as in the course of performing the auditor's duties

shall report the matter immediately to the Authority by written notice.

(2) The auditor shall in complying with sub regulation (1) (d) state whether or not the trustee has paid moneys taken out of the funds of the scheme within thirty days after bringing the matter to the attention of the trustee.

(3) A scheme asset is considered to be mixed with the funds of the trustee where a custodian of the scheme assets

- (a) is also the holder of assets of one or more other registered schemes or other financial schemes or undertakings;



- (b) mixes scheme assets with those other assets; and
  - (c) keeps a separate account of the scheme assets and other assets of the scheme for separate identification.
- (4) The auditor may, by written notice to the trustee
  - (a) bring the matter to the trustee's attention; and
  - (b) request the trustee to provide the auditor with an explanation of the matter and the related circumstances;
- (5) The auditor shall not give notice to the trustee
  - (a) where the matter relates to a transaction that has resulted in a material misappropriation of the funds of the scheme or the scheme assets; or
  - (b) where the matter is of a nature that will detrimentally affect the interests of scheme members.

### **Power of Authority on becoming aware of matters reported**

84. (1) The Authority may, by written notice to a trustee, direct the trustee to rectify a matter, in the auditor's report at the trustee's own expense within a period specified in the notice.

(2) The Authority shall by written notice, request the auditor to provide the Authority with a further report to show whether the trustee has rectified the matter and the auditor shall comply.

(3) The Authority shall attach a copy of the notice directing the trustee to rectify a matter in the auditor's report to the written request submitted to the auditor under sub-regulation (1).

(4) An approved trustee who fails to comply with a direction given by the Authority under sub regulation (1) commits an offence and is liable on summary conviction to a fine of not less than one thousand and five hundred penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

### **Access of auditor to scheme records**

85. The auditor of a registered scheme shall

- (a) have access at reasonable times to the accounting records and other records that are required to be kept in relation to the scheme by the trustee or by a service provider appointed or engaged by the trustee for the scheme;
- (b) have access at reasonable times to the accounting records and other records that a company is required by law to keep if the trustee is or includes a company; and
- (c) request from the trustee and any service provider information and explanations that the auditor requires in order to perform a duty imposed on the auditor under these Regulations.

### **Auditor's opinion with respect to information and explanations**

86. The auditor of a registered scheme shall determine whether information and explanations requested from a trustee, has been obtained for the purposes of reporting on matters specified under regulation 83 and may treat

- (a) information contained in a remittance statement lodged with the trustee of the scheme in respect of a scheme member who is a relevant employee of a participating employer,
- (b) particulars given to the trustee by a scheme member who is a self-employed person, as conclusive evidence of the member's relevant income,

in accordance with provisions on scheme membership and contributions under these Regulations.

### **Obstruction of auditor**

87. (1) An approved trustee of a registered scheme or service provider appointed or engaged for a scheme shall

- (a) allow the auditor of the scheme access to accounting records and other records relating to the scheme and to the approved trustee of the scheme that are in the person's possession;
- (b) give any information or explanation to the auditor when required by the auditor; and
- (c) not obstruct, hinder or delay the auditor in the performance of the auditor's duties or the exercise of the auditor's powers.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine of not less than one thousand and five hundred penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment of not more than five years or to both.

### **Certain statements of auditor not admissible evidence**

88. An auditor of a registered scheme who acts in good faith in respect of a statement made by the auditor in a notice given by the auditor to the Authority in answer to an inquiry by the Authority or, reasons for the auditor's removal or resignation from office or for not seeking reappointment as an auditor of the scheme is not liable for breach of duty.

**Approved trustee to lodge trustee's return with Authority**

89. (1) An approved trustee of a registered scheme that is a company or includes a company shall within six months after each financial year, lodge with the Authority for that period a trustee's return in accordance with this regulation.

(2) Where an approved trustee consists of or includes individual persons, each person shall within six months after each relevant period, lodge with the Authority for that period a trustee's return.

(3) The relevant period is

(a) in the case of a company, the financial year of the company;

(b) in the case of an individual person, the financial period of the registered scheme in respect of which the person is a trustee or, if the person is a trustee in respect of two or more registered schemes, one of the schemes nominated by the person and notified in writing to the Authority.

(4) A nomination may be varied in respect of a later relevant period with the consent of the Authority.

(5) A trustee's return shall include a declaration

(a) that the trustee continues to satisfy the requirements for approval as a trustee under section 123 of the Act and has, during the relevant period, complied with all conditions specified in the notice of approval given to the trustee;

(b) that the trustee continues to satisfy requirements and comply with conditions with the exception of those requirements and conditions specified in the declaration.

(6) A trustee's return shall include a statement indicating

- (a) in the case of a company
  - (i) particulars of the address of the company's principal place of business in Ghana;
  - (ii) the appointment of the auditor relating to the trustee was terminated during the relevant period whether by resignation or by any other means and particulars of the termination and of any other auditor appointed to replace that auditor; or
- (b) in the case of an individual person
  - (i) particulars of the address of the person's principal place of business in Ghana; or
  - (ii) the person's residential address if the person does not have a place of business in Ghana.

have changed during the relevant period and specify the changes.

(7) Where the trustee includes a company, the trustee shall attach to the trustee's return a copy of the

- (a) balance sheet and profit and loss account of the company relating to the immediately preceding financial year, and
- (b) auditor's report and the directors' report for that year.

(8) Where the trustee is an individual person who is an independent trustee , the trustee shall attach to the return

- (a) evidence of a valid performance guarantee with an authorized financial institution or an authorized insurer to secure the performance by that trustee of duties imposed on an approved trustee under the Act; and

- (b) a copy of any variation if the guarantee was varied during the relevant period.
- (9) A trustee's return shall be signed
- (a) by at least two directors of the company in the case of a company;  
and
  - (b) by that trustee in the case of an individual person.

### **Requirements under section 167 of the Act**

90. (1) For the purposes of section 167 (1) of the Act , the date for the submission of an annual report is the deadline after each financial period of a registered scheme.

- (2) An annual report shall include
- (a) a statement by the trustee indicating whether persons appointed or engaged as service providers for a scheme have complied with the obligations imposed on them with respect to the scheme and give particulars of the non-compliance and rectifications;
  - (b) a statement by the trustee of any events of a significant nature relating to the scheme that occurred during the relevant financial period which have not been reported to the Authority and specify the events;
  - (c) a statement as to whether or not the provisions of the Act and of the governing rules of the scheme have been complied with in all material respects in respect of the scheme during the relevant financial period and, if those provisions have not been complied with, give particulars of the failures to comply with those provisions;
  - (d) evidence that the trustee has and had in force for the relevant financial period, adequate insurance to indemnify scheme members against losses that may be incurred by members as a result of the administration of the scheme by the trustee or by a service provider

appointed or engaged to provide services for the purposes of the scheme and, if the insurance was varied during that period, give particulars of the variation;

- (e) a declaration that the trustee has, during the relevant financial period, supervised, and exercised proper control over service providers appointed or engaged for the purposes of the scheme; and
  - (f) any other information as may be prescribed by Guidelines.
- (4) The annual report shall be signed
- (a) by at least two directors of the company if the trustee is or includes a company; and
  - (b) by at least two persons, including the independent trustee if the trustee consists wholly of individual persons.

#### **Meaning of relevant period for the purposes of regulations 92, 93 and 96**

91. (1) For the purposes of regulations 92, 93 and 96 the relevant period of a scheme is

- (a) the financial period of that scheme if the trustee concerned is the approved trustee of only one registered scheme; or
- (b) either the financial period of one of the schemes specified by the trustee or the financial year of the trustee notified in writing to the Authority where the trustee is the approved trustee of two or more registered schemes and a report prepared in respect of regulation 93 relates to two or more of the schemes.

(2) The relevant period nominated by the trustee may be varied in respect of a later relevant period with the consent of the Authority.

## **Approved trustee to report on control objectives and internal control measures**

92. (1) The approved trustee of a registered scheme shall, before the deadline after each relevant period report to the Authority

- (a) the control objectives of the scheme; and
- (b) the major procedures and internal control measures for achieving the objectives

(2) Where the trustee is the approved trustee of two or more registered schemes and the control objectives and procedures and internal control measures for each of the schemes are the same the trustee may lodge a single report in respect of all of the schemes.

(3) A report shall be accompanied by an auditor's report prepared in accordance with regulation 93.

- (4) The report shall be signed
  - (a) by at least two directors of the company if the trustee is or includes a company; and
  - (b) by at least two of the persons including the independent trustee if the trustee consists wholly of individual persons

## **Duty of auditor in respect of approved trustee's report**

93. (1) The approved trustee of a scheme or schemes shall within thirty days after preparing a report submit the report to

- (a) the auditor of the scheme if the report relates to only one scheme;
- (b) the auditor of the relevant scheme if the report relates to two or more schemes and the trustee specifies the financial period of one of the schemes to which the report relates as the relevant period nominated under regulation 91 (1) (b); or



- (c) the auditor of the trustee if the report relates to two or more schemes and the financial year of the trustee is the relevant period nominated under regulation 91 (1) (b).

(2) The approved trustee shall give the auditor sufficient time to enable the auditor review the trustee's report and the auditor shall submit the reviewed report to the trustee on time to enable the trustee to submit a report to the Authority.

(3) The auditor shall review the trustee's report and shall in writing to the trustee state

- (a) whether or not the trustee established and maintained appropriate control objectives for the scheme during the period to which the report relates;
- (b) whether or not effective internal control measures were established and maintained for the purpose of achieving those objectives;
- (c) whether or not the internal control measures, if any were likely to have been sufficiently effective to provide a reasonable assurance that the control objectives established and maintained for the scheme would be achieved if those measures were fully and properly implemented; and
- (d) whether or not, in the course of reviewing the trustee's report, the auditor became aware of any shortcomings in the internal control measures that could materially affect the operation of the scheme including its financial position or the financial interests of scheme members and specify the shortcomings.

### **Approved trustee to report on compliance with capital requirements**

94. (1) An approved trustee that is a company or includes a company shall within four months after the end of each financial year of the company, lodge with the Authority a report stating

- (a) whether or not the prescribed capital requirements have been complied with in respect of the company throughout that financial year; and
- (b) if the prescribed capital requirements were not complied with, in what respects the company did not comply with the requirements.

(2) The report shall be accompanied by the auditor's report on the company prepared in accordance with regulation 93 and signed by at least two directors of the company.

### **Duty of auditor in respect of trustee's report**

95. (1) An approved trustee that is a company shall submit its report to its auditor within thirty days after the preparation of the report.

(2) The auditor shall on receipt of the trustee's report, review it and in writing to the approved trustee state

- (a) whether or not, in the auditor's opinion, the prescribed capital requirements have been complied with as at the end of the financial year of the company; and
- (b) if the prescribed capital requirements were not complied with, in what respects the requirement were not complied with.

(3) The auditor shall ensure that the auditor's report is given to the company in sufficient time to enable the company report to the Authority

(4) The auditor of a company to which regulation 93 applies shall

- (a) have access at all reasonable times to the accounting and other records that the company is required by law to keep; and
- (b) require from the company, and from a controller or employee of the company, information and explanations that the auditor may require in order to prepare its report.

- (5) A company to which this regulation applies shall ensure that
- (a) the auditor of the company is allowed access to any accounting and other records of the company relevant information that are in the possession of the company or of the controller or any other controller, employee or agent of the company;
  - (b) explanation in respect of matters are given to the auditor as and when required by the auditor; and
  - (c) the auditor is not hindered, obstructed or delayed in the performance of duties under this regulation.

(6) A company that, without reasonable excuse, fails to comply with sub regulation (5) is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

**Power of Authority to direct approved trustee to rectify matters**

96. (1) The Authority may by written notice direct an approved trustee of a company to rectify a matter within a specified period if the Authority

- (a) becomes aware, that the auditor's report on the accounts of a company that is included in an approved trustee's report has been qualified in some material respect; and
- (b) is of the opinion that the matter is capable of being rectified.

(2) Where the Authority becomes aware, whether as a result of an auditor's report or by other means that

- (a) appropriate control objectives were not established and maintained in respect of a registered scheme during a relevant period;

- (b) effective internal control measures were not established and maintained for the purpose of achieving those objectives; or
- (c) there were shortcomings in the internal control measures that could materially affect the operation of the scheme including its financial position or the financial interests of scheme members;

the Authority may, by written notice given to the approved trustee of the scheme, direct the trustee to rectify the matter within a period specified in the notice.

(3) Where the Authority

- (a) becomes aware, whether as a result of an auditor's report or by other means that a company that is or included in an approved trustee has not, during a financial year of the company, complied with the prescribed capital requirements applicable to the company; and
- (b) is of the opinion that the matter is capable of being rectified, the Authority may, by written notice given to the company, direct it to rectify the matter within the period specified in the notice.

(4) The Authority shall within thirty days after giving a direction to rectify a matter

- (a) by written notice request the auditor concerned to provide the Authority, within thirty days after the end of the period specified in the notice and at the expense of the company or trustee concerned, with a further report indicating whether or not the trustee has rectified the matter; and
- (b) attach to that notice a copy of the notice directing the company or trustee concerned to rectify the matter.

(5) A company

- (a) that is an approved trustee; or

- (b) that is included in an approved trustee

that, without reasonable excuse, fails to comply with a direction given under sub regulation (1) or (3) is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days

(6) An approved trustee who, without reasonable excuse, fails to comply with a direction given under sub regulation (2) is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

(7) An auditor shall comply with a request made to the auditor in accordance with sub regulation (4).

### **Approved trustee to lodge monthly return with Authority**

97. An approved trustee of a registered scheme shall lodge with the Authority information relating to the participating employer and members of the scheme in the form prescribed by the Authority within fourteen working days after the last day of each calendar month.

#### *Scheme membership and contributions*

### **Participating employer to calculate pensionable salary and pay mandatory contributions**

98. A participating employer of a registered scheme shall for each contribution period, calculate

- (a) the amount of pensionable salary of each relevant employee of the employer who is a member of the scheme;
- (b) the amount of mandatory contributions that the employer must pay to the approved trustee of the scheme in respect of each relevant employee in accordance section 3 (2) of the Act ; and

- (c) the amount of mandatory contributions that the employer must deduct from the pensionable salary of each relevant employee and pay it to the approved trustee of the scheme in respect of each employee in accordance with section 3 (1) of the Act .

### **Participating employer to provide remittance statement to approved trustee**

99. (1) A participating employer shall when paying contributions to the approved trustee of a registered scheme ensure that the contributions are accompanied by a remittance statement, in a form specified or approved by the Authority, for the contribution period or periods to which the contributions relate.

- (2) The remittance statement shall include
  - (a) the amount of relevant income of each relevant employee who is a scheme member for the contribution period or each of the contribution periods, as the case may be;
  - (b) the amount of mandatory contributions paid under section 3(2) of the Act by the employer to the scheme in respect of that employee for that period or each of those periods, as the case may be;
  - (c) the amount of mandatory contributions deducted from the employee's relevant income under section 3(1) of the Act by the employer and paid to the scheme for that period or each of those periods, as the case may be;
  - (d) the amount of voluntary contributions, if any, deducted from the employee's pensionable salary by the employer and paid to the scheme for that period or each of those periods, as the case may be;  
or
  - (e) the amount of voluntary contributions, if any, paid by the employer to the scheme in respect of the employee for that period or each of those periods, as the case may be.

## **Authority to give participation certificates to participating employers**

100. (1) Where the Authority is satisfied that
- (a) an employer has complied with section 3(1) or (2) of the Act ; or
  - (b) an employer who has been previously issued a certificate has changed its name from that shown on the certificate,

the Authority shall give to the employer, through the approved trustee of the registered scheme in which the employer participates, a new certificate showing the employer's new name certifying that the employer is a participating employer in the registered scheme specified in the certificate.

(2) The approved trustee of a registered scheme shall ensure that the certificate is given to the participating employer within fourteen working days after the trustee receives it.

- (3) A participating employer shall display the participation certificate
- (a) at the premises of the employer in Ghana where the employer's employees are employed; or
  - (b) if the work that the employees perform is not at the premises of the employer in Ghana, at the employer's principal place of business in Ghana.

(4) The certificate may either be the original certificate or a certified copy issued by the Authority.

### *Duty of approved trustees and recovery of arrears*

## **Approved trustee to check calculations of mandatory contributions**

101. An approved trustee of the registered scheme shall on receiving a remittance statement from a participating employer

- (a) check the accuracy of the arithmetical calculation of the amount specified in the statement as the mandatory contribution paid in respect of each scheme member to which the statement relates; and
- (b) ensure that the mandatory contribution paid in respect of the employee tallies with the amount specified in the statement as the contribution paid.

### **Rate of contribution surcharge**

102. The contribution surcharge is an amount equal to three per cent per month of the amount in arrears.

### **Approved trustee to inform Authority of failure to pay mandatory contribution**

103. (1) An approved trustee of a registered scheme shall by written notice inform the Authority within ten days after the contribution day of the failure of a participating employer or self-employed person to pay a mandatory contribution in full.

- (2) The notice shall specify
  - (a) the name of the participating employer;
  - (b) the correspondence address including electronic mail telephone number and facsimile number if any of that employer or person;
  - (c) the name of the scheme in which that employer participates or of which that person is a member;
  - (d) the day for contribution payment;
  - (e) the amount of the arrears, if known to the approved trustee; and
  - (f) any other information as may be required by the Authority.



## **Approved trustee to take actions required by Authority**

104. An approved trustee of a registered scheme shall take action that may be reasonably required by the Authority in connection with the recovery of arrears or a contribution surcharge.

## **Authority to give notice to defaulter and approved trustee to inform Authority of non-payment**

105. (1) The Authority shall within thirty days after receiving a notice under regulation 103 serve on the defaulter a written notice requiring the defaulter to do all or any of the following

- (a) pay the arrears and the contribution surcharge payable on the arrears to the approved trustee of the registered scheme within the period specified in the notice;
- (b) explain to the Authority the reason for failing to pay the arrears to enable the Authority determine whether there has actually been a default;
- (c) comply with any other requirement specified in the notice;
- (d) lodge with the trustee, when paying the arrears and contribution surcharge, a remittance statement, which shall include the amount of the contribution surcharge paid if the defaulter is a participating employer.

(2) The Authority may not serve a notice on the defaulter where the Authority is reasonably satisfied that

- (a) the defaulter has paid all of the arrears and contribution surcharges payable on the arrears to the approved trustee;
- (b) the defaulter has paid part of the arrears and contribution surcharges to the approved trustee and that the outstanding arrears and contribution surcharges are irrecoverable;

- (c) that all of the arrears and contribution surcharges are irrecoverable;
- (d) there has not actually been a default; or
- (e) the service of a notice under sub regulation (1) is not reasonably practicable in all the circumstances of the case.

(3) The notice served may include a requirement to produce to the Authority for inspection payroll records or a copy of an auditor's report with respect to those records.

(4) A person who, having been served a notice requiring an explanation under sub regulation (1)(b), fails to comply with the requirement within the period specified in the notice shall be considered as a defaulter.

(5) The Authority shall send a copy of any notice served by it to the approved trustee of the scheme concerned within thirty days after serving the notice.

(6) An approved trustee who has not received payment of arrears and contribution surcharge within the payment period shall by written notice inform the Authority within ten days after the end of that period.

(7) The Authority may serve another written notice on the defaulter on receiving a notice from the approved trustee.

(8) This regulation does not apply if legal proceedings have been instituted to recover from the defaulter the amount of arrears or contribution surcharge in default.

(9) A defaulter shall comply with the requirements of a notice served on the defaulter under this regulation.

### **Approved trustee to check calculations of arrears and contribution surcharge**

106. (1) The approved trustee of a scheme shall check that the arithmetical calculations of the arrears and contribution surcharge payable by a defaulter are correct having regard to the remittance statement lodged by a participating employer, or to the information given by a self-employed person.

(2) The approved trustee shall notify the participating employer and the Authority of the discrepancy.

(3) The trustee shall require the employer or person to rectify the discrepancy as soon as the approved trustee notices a discrepancy between the relevant calculations in respect of the arrears or the contribution surcharge, and the amount received by the trustee as arrears or as the surcharge practicable.

### **Crediting of payments**

107. (1) An approved trustee of a scheme shall credit an amount to the relevant scheme member's account in accordance with accounting and other records to be kept under these Regulations if the trustee is satisfied that the amount of contributions or, where applicable, the amount of arrears and contribution surcharge, paid by a participating employer is correct.

(2) An approved trustee who, without reasonable excuse, fails to comply with sub-regulation (1) is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

### *Other duties of employers and self-employed persons*

### **Participating employer to give monthly pay-records to scheme members**

108. (1) A participating employer shall

- (a) prepare a pay-record for each month in respect of each relevant employee of the employer who is a scheme member; and
- (b) ensure that the record is given to the employee not later than seven working days after the payment, or the last payment if there is more than one payment, of mandatory contributions during the month concerned.

(2) A pay-record shall contain the following information:

- (a) the amount of each payment of relevant income paid to the employee by the employer during the month;
- (b) the amount of each mandatory contribution paid by the employer in respect of the employee during the month;
- (c) the amount of each mandatory contribution deducted in respect of the employee during the month;
- (d) the amount ,if any, of each voluntary contribution paid by the employer in respect of the employee during the month;
- (e) the amount ,if any, of each voluntary contribution deducted in respect of the employee during the month; and
- (f) the date on which the contributions were paid to the approved trustee of the registered scheme concerned.

(3) A pay-record shall either be in writing or in a form that enables employees to easily read the information contained in the pay-record.

### **Employers to keep records**

109. (1) An employer of a relevant employee shall ensure that a record of each payment of relevant income made by the employer to the employee is kept.

(2) The record shall include

- (a) the total amount of each payment;
- (b) the respective amounts of the items making up each payment described as "pensionable salary" in regulation 156 ; and
- (c) the date on which each payment is made.

(3) An employer of a relevant employee shall ensure that a record of the date on which the employee's employment with the employer began is kept in respect of the employee until at least six months after that employment ceases.

(4) An employer of a relevant employee who is a member of a registered scheme shall ensure that records of the following particulars are kept in respect of the employee

- (a) the name and correspondence address of the employee, and the date on which the employee's employment with the employer began; and
- (b) the notice if any given by the employee authorizing the employer to deduct voluntary contributions from the relevant income of the employee for payment to the registered scheme.

(5) The records shall be kept until at least six months after the employee has ceased to work for the employer.

(6) An employer of a relevant employee who is a member of a registered scheme shall ensure that the information required to be included in the remittance statement is kept in respect of the employee until at least seven years after the date of the remittance statement.

(7) An employer who, without reasonable excuse, fails to comply with this regulation is liable to pay a penalty of two hundred and fifty penalty units for each day after the contribution period that the employer fails to keep the required records.

### **Participating employer to respond to inquiries relating to registered scheme**

110. A participating employer shall within fourteen days after receiving an inquiry from a relevant employee of the employer regarding contributions that have been made or are required to be made in respect of the employee to a registered scheme, reply to the inquiry in writing.

### **Participating employer to notify trustee of certain information**

111. (1) A participating employer in a registered scheme shall give written notice to the approved trustee of the scheme of the date of payment of relevant income of each relevant employee of the employer when the employee becomes a scheme member.

(2) A participating employer in a registered scheme shall give written notice to the approved trustee of the scheme of any change of

- (a) the employer's business address including electronic mail, telephone number or facsimile number, if any;
- (b) the residential address, telephone number or date of payment of relevant income of each relevant employee of the employer; and
- (c) the employer's name as shown in the participation certificate issued under regulation 100 to the employer, within thirty days of the change.

*Portability of accrued benefits*

**Preliminary**

112. For the purpose of regulation 113 to 124

- (a) "transferee trustee" means the approved trustee of the registered scheme to which the accrued benefits of a member of another registered scheme are to be transferred in accordance with an election;
- (b) "transferor trustee" means the approved trustee of the registered scheme from which the accrued benefits of a member of the scheme are to be transferred, whether to another registered scheme or to another account within the same scheme, in accordance with an election;
- (c) a reference to an election made under these regulations or under any particular provision in these regulations includes a reference to an election taken to have been so made; and
- (d) a reference to a person being notified under these regulations or under any particular provision in these regulation includes a reference to the person taken to have been notified.

**Transfer of accrued benefits of a member of an employer sponsored scheme**

113. (1) An employee shall, subject to sub- regulation (2), elect to have accrued benefits transferred to

- (a) an account in a master trust scheme nominated by the employee; or
- (b) an existing account of the employee in a group personal pension scheme

if accrued benefits of the employee are held in a contribution account in an employer sponsored scheme and the employee ceases to be employed by the participating employer concerned in the scheme.

(2) Where an employee who is a member of an employer sponsored scheme ceases to be employed by the participating employer of the scheme and is subsequently employed by another employer, the employee may, instead of making an election under sub regulation (1), elect to have the employee's accrued benefits in the scheme transferred to the contribution account in the registered scheme in which the new employer is participating in relation to that employee.

(3) An election is effective when written notice of the election is given to the transferee trustee concerned or to the employee's new employer.

(4) The employer shall give written notice of the election to the transferee trustee concerned within thirty days after the new employer has received a notice of the election.

(5) The former employer shall in respect of a relevant employee inform the approved trustee that the employee has ceased to be in employment and specify the date on which the employment ceased

- (a) in the remittance statement that the former employer is required to lodge with the approved trustee of the employer sponsored scheme concerned in respect of the contribution period that ends immediately following the employee's cessation of employment; or
- (b) by written notice given to the approved trustee of the employer sponsored scheme concerned no later than the date on which that remittance statement is required to be lodged, inform the approved trustee.

(6) Where an employee fails to give notice of an election within three months after the approved trustee of the employer sponsored scheme concerned has been notified, by the employee's former employer or by the employee, that the employee has ceased to be employed by the former employer

- (a) the employee shall be considered at the end of that period to have elected to have the employee's accrued benefits in the scheme transferred to a preserved account in a master trust scheme nominated by the transferor trustee concerned and administered by either that trustee or another approved trustee; and
- (b) the transferor trustee is taken at the end of that period to have been notified of the election

and give notice to the member.

(8) This regulation does not apply to an election or in relation to an election under section 108 (6) of the Act or any concomitant transfer of the accrued benefits of an employee.

### **Transfer of accrued benefits of a member of master trust scheme or group personal pension scheme**

114. (1) An employee may elect to have the accrued benefits of that employee transferred to

- (a) another account in the scheme; or
- (b) an account in another master trust scheme nominated by the employee; or

if the accrued benefits are held in a contribution account in a master trust scheme and the employee ceases to be employed by the participating employer concerned in the scheme.

(2) An employee may elect to have the employee's accrued benefits in a scheme transferred to the contribution account in the registered scheme in which the new employer is participating if the employee who is a member of a master trust scheme ceases to be employed by the participating employer concerned in the scheme and subsequently becomes employed by another employer.



- (3) An election under sub regulation (1) is effective
  - (a) in relation to an account referred to in paragraph (a) when written notice of the election is given to the transferor trustee concerned; and
  - (b) in relation to an account referred to in paragraph (b) when written notice of the election is given to the transferee trustee concerned.
- (4) An election under sub regulation (2) is effective when written notice of the election is given to the transferee trustee concerned or to the employee's new employer.
- (5) An employer shall give written notice of the election to the transferee trustee concerned within thirty days after the new employer has received notice of the election
- (6) The former employer shall in respect of a relevant employee inform the approved trustee of the employee's cessation of employment and of the date on which the employment ceased
  - (a) in the remittance statement that the former employer is required to lodge with the approved trustee of the registered scheme concerned in respect of the contribution period that ends immediately following the employee's cessation of employment; or
  - (b) by written notice given to the approved trustee of the registered scheme concerned no later than the date on which that remittance statement is required to be lodged.
- (7) An approved trustee may accept a written notice given by the employee concerned as evidence of the employee's cessation of employment and the date of cessation if the approved trustee of the registered scheme concerned is satisfied that the former employer cannot be located or refuses to comply with sub regulation (6).
- (8) A written notice given by an employee shall be in a form approved by the Authority.

(9) Where an employee fails to give notice of an election within three months after the approved trustee of the registered scheme concerned has been notified, by the employee's former employer or by the employee, that the employee has ceased to be employed by the former employer

- (a) the employee shall be considered to have elected to have its accrued benefits held in the contribution account concerned in the scheme transferred to a separate preserved account in the same scheme; and
- (b) the transferor trustee concerned is considered the end of that period to have been notified of the election.

and give notice to the employee.

(10) This regulation does not apply to an election under in Section 108 (6) of the Act or any concomitant transfer of the accrued benefits of an employee.

### **Transfer of accrued benefits of self-employed person**

115. (1) Where the accrued benefits of a self-employed person are held in a contribution account in a master trust scheme, that person may, at any time, elect to have those benefits transferred to

- (a) an account in another master trust scheme nominated by the person; or
- (b) an account in a group personal pension scheme to which the person is eligible to belong.

(2) Where the accrued benefits of a self-employed person are held in a contribution account in a group personal pension scheme, the person may, at any time, elect to have those benefits transferred to

- (a) an account in a master trust scheme nominated by the person;
- (b) an existing account of the person in another group personal pension scheme; or

- (c) an account in another group personal pension scheme to which the person is eligible to belong.

(3) An election is effective when written notice of the election is given to the transferee trustee concerned.

(4) An organisation shall give written notice of an election to the transferee trustee concerned within thirty days after the organization receives a notice of the election.

### **Transfer of accrued benefits in preserved accounts in master trust scheme or group personal pension scheme**

116. A member of a master trust scheme or a group personal scheme may elect to have the accrued benefits held in a preserved account of the member in the scheme transferred to another registered scheme to which the member is eligible to belong by giving written notice of the election to the transferee trustee concerned.

### **Transfer by participating employer of employee's accrued benefits**

117. A participating employer of a scheme may elect to have the accrued benefits of an employee held in the contribution account in the scheme in respect of a member's employment transferred to another registered scheme in which the employer is a participant

- (a) by giving written notice of the election to the transferee trustee in the event of the winding up of the scheme under section 118 of the Act;  
or
- (b) by giving notice, personally or through the transferee trustee, of its intention to cease participation in the first scheme in respect of that member.

### **Form of election**

118. An election shall be in a form specified or approved by the Authority.

## **Approved trustee to notify scheme member of member's options of transfer**

119. An approved trustee of a registered scheme shall within thirty days of receipt of a notice that a scheme member has ceased to be employed by a participating employer or ceased to be self employed and the member has not given written notice of an election inform a member in writing of

- (a) the different options that the member has with respect to the transfer of accrued benefits and the time within which the member may elect to exercise one of those options; and
- (b) the consequences of not electing to exercise one of the options within that time;

and give notice to the employee.

## **Duty of approved trustee on being notified of election**

120. (1) A transferee trustee shall within thirty days after being notified of an election give written notice of the election to the transferor trustee.

(2) The transferee trustee shall complete the appropriate portions of the election form and serve the completed form on the transferor trustee.

(3) The transferor trustee shall

- (a) take practicable steps to ensure that all the accrued benefits concerned are transferred in accordance with the election; and
- (b) arrange for the accrued benefits concerned to be transferred to a separate account within the same registered scheme in accordance with the election within thirty days after being notified of an election.

(3) A person who opts for an election shall give to the transferor trustee, and the transferee trustee if any, the information as is requested by the trustee to enable the transfer to be made.

## **Approved trustee to give transfer statement to scheme member**

121. (1) A transferor trustee shall within thirty days after complying with regulations 121 (2), 124 (2) or 125 (2) give to a scheme member a transfer statement containing
- (a) the name of the transferor trustee, the name of the scheme and the account number of the account from which the transfer was made;
  - (b) the name and address of the member;
  - (c) the amount expressed in money of the accrued benefits transferred from the account and the respective amounts specified in each sub-account of the account immediately before the transfer;
  - (d) the name of the registered scheme to which the member's accrued benefits have been transferred, the name and business address of the transferee trustee and the date on which the transfer was made;
  - (e) an itemised statement of any expenses relating to the transfer that have been deducted from the accrued benefits by the transferor trustee before making the transfer; and
  - (f) whether or not any contribution or any contribution surcharge outstanding in relation to the account is irrecoverable and, if so, the amount of the contribution or surcharge if known to the transferor trustee
- (2) The transferor trustee shall give to the transferee trustee
- (a) a copy of the transfer statement; and
  - (b) a copy of the election form completed by the transferor trustee

within thirty days after giving a transfer statement to a scheme member.

## **Confirmation of transfer to new scheme**

122. When the accrued benefits of a member of a registered scheme are transferred to another registered scheme, the transferee trustee shall within thirty days after receiving the benefits, notify the member in writing of the transfer and the amount transferred.

## **Accrued benefits not to be transferred if mandatory contributions or contribution surcharges outstanding**

123. (1) A transferor trustee shall not transfer the accrued benefits of a member in respect of an election of contributions or contribution surcharges or both which are due for payment in relation to the scheme member's account unless

- (a) the Authority has, by written notice, given its consent for the trustee to give effect to the election; or informed the trustee that all of the outstanding sums are irrecoverable;
- (b) the outstanding contributions or contribution surcharges have been paid to the transferor trustee; or
- (c) some of the outstanding sums have been paid to the trustee and the Authority has, by written notice, informed that trustee that the other outstanding sums are irrecoverable.

(2) The transferor trustee shall take reasonably practicable steps to ensure that the accrued benefits including the outstanding sums if any paid to the trustee are transferred in accordance with the election within thirty days after receiving the outstanding contributions or contribution surcharges or after receiving notice from the Authority.

## **Accrued benefits not to be transferred if scheme accounts are being audited or if scheme is being investigated**

124. (1) A transferor trustee shall not transfer accrued benefits if at the time of election

- (a) the Authority has served on the transferor trustee a notice requiring that trustee to arrange for an auditor to investigate and to prepare a report under section 166 of the Act ; or
- (b) the Authority has served on that trustee a notice informing the trustee that the Authority intends to conduct an investigation under section 186 of the Act, unless the Authority
  - (i) gives its written consent for the trustee to give effect to the election, or
  - (ii) notifies the trustee of the results of the valuation of the scheme assets carried out in relation to the report of the investigation.

(2) The trustee shall take reasonably practicable steps to ensure that the accrued benefits are transferred in accordance with the election and the results of the valuation of the scheme assets within thirty days after the Authority has given its written consent for the transferor trustee to give effect to the election, or has notified the transferor trustee of the results of the valuation of the scheme assets.

#### *Payment of accrued benefits*

### **Claim for payment on attaining retirement age**

125. (1) A claim for the payment of the accrued benefits of a scheme member or a former scheme member is payment made in accordance with section 101 or 110 of the Act.

(2) A member of a registered scheme who has reached the retirement age may lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits.

(3) The claim shall be in a form specified or approved by the Authority.

## **Requirements of sections 111 and 219 of the Act**

126. (1) A contributor who is not covered under a mandatory pension scheme and retires shall utilise seventy five percent of accrued benefits to purchase an annuity for life guaranteed for fifteen years and payable monthly from a Life Insurance Company licenced by the National Insurance Commission.

(2) An employee who retires in accordance with section 219 of the Act shall utilise seventy-five percent of the balance standing to the credit of the employee's retirement savings account to purchase an annuity for life guaranteed for fifteen years and payable monthly from a Life Insurance Company licenced by the National Insurance Commission.

(3) The Authority may consult the National Insurance Commission to ensure that the insurer is able to meet its liabilities in respect of annuity payment.

(4) Twenty five percent of the accrued benefits of the contributor or the balance standing to the credit of the employee shall be paid as lump sum benefit.

(5) The Authority may issue guidelines to change the proportion that may be paid as annuity or lump sum benefits.

## **Claim for payment on attaining early retirement age**

127. (1) A member of a registered scheme who wishes to be paid the member's accrued benefits shall lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits in accordance with this regulation.

(2) The claim shall be in a form specified or approved by the Authority.

(3) The claim shall be accompanied by

(a) evidence satisfactory to the trustee that the member has reached the early retirement age; and

(b) a statutory declaration.



## **Claim for payment on death**

128. (1) Where a member of a registered scheme dies, a personal representative of the member may lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits.

(2) The claim shall be in a form specified or approved by the Authority.

(3) A claim made by a person who has been nominated or purports to be the personal representative of the relevant scheme member shall be accompanied by letters of administration, probate or any other relevant document.

(4) Where there are no personal representatives of the member's estate, or if they are unwilling to act, the trustee may treat the member's accrued benefits as unclaimed benefits.

## **Additional classes of persons entitled to be paid accrued benefits**

129. For the purposes of section 101 of the Act , a member of a registered scheme who has not reached the retirement age is, subject to this regulation, entitled to be paid by the approved trustee of the scheme, the whole of the member's accrued benefits in the scheme as a lump sum if the member

(a) has attained the age of fifty years and is not employed or self-employed;

(b) is not a citizen of Ghana and has permanently emigrated from Ghana or desires to emigrate permanently from Ghana; or

(c) is totally incapacitated.

## **Claim for payment on ground of permanent emigration from Ghana**

130. (1) A member of a registered scheme who is not a citizen of Ghana and who , before reaching the retirement age, wishes to be paid the member's accrued benefits in the scheme on the ground that the member has emigrated, or desires to emigrate, from

Ghana permanently, shall lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits.

(2) The claim shall be in a form specified or approved by the Authority.

(3) The claim shall be accompanied by a statutory declaration by the claimant that the claimant has emigrated, or will emigrate from Ghana permanently on a specified date.

(4) A person who has been paid accrued benefits from a registered scheme on the ground that, on a specified date, the person has emigrated, or was about to emigrate, from Ghana permanently is not, before reaching the retirement age, entitled to be paid the member's accrued benefits from the same or another registered scheme on the ground that, on a later date, the person purports to have emigrated, or is about to emigrate, from Ghana permanently.

(5) If a member of a registered scheme claims to be entitled to be paid the member's accrued benefits in the scheme on the ground that, on a specified date, the member has emigrated, or is about to emigrate, from Ghana permanently, the approved trustee of the scheme

(a) before paying those benefits to the member shall notify the Authority in writing of the particulars of the claim, including the specified date of the permanent emigration from Ghana, and the reason for which the claim is made; and

(b) may pay those benefits to the member unless the Authority has within fourteen days after being given notice, informed the trustee in writing that the member has previously been paid accrued benefits from a registered scheme on the ground that the member claimed to have permanently emigrated from Ghana on an earlier date.

(6) The approved trustee of the scheme shall, by written notice, give to the Authority particulars of the payment within thirty days after paying the member's accrued benefits on the ground that the member has emigrated, or is about to emigrate, from Ghana permanently.

(7) The particulars shall include the member's name, the date of the member's emigration, the amount paid and any other information that may be specified by the Authority.

(8) Sub regulation (5) or (6) does not apply in relation to the payment of an outstanding mandatory contribution or contribution surcharge under regulation 132.

(9) Where accrued benefits held in an account of a member of a registered scheme is paid to the member with a view that the member has emigrated, or will emigrate on a specified date from Ghana permanently, the member is not before attaining the retirement age

- (a) precluded from making a further claim on the ground of permanent emigration on that specified date if the claim is for the payment of other accrued benefits of the member held in another account in that scheme, or
- (b) for the payment of other accrued benefits of that member in another registered scheme.

### **Claim for payment on ground of total incapacity**

131. (1) A member of a registered scheme who, before attaining the retirement age, wishes to be paid the member's accrued benefits in the scheme due to total incapacity shall lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits.

(2) The claim shall be in a form determined by the Authority.

(3) The form shall be endorsed by a recognised medical officer.

(4) The applicant shall attach a passport photograph to the form and the appropriate thumb prints shall be taken on the form.

(5) The Authority shall forward the application to a Medical Board for certification.

(6) The Medical Board shall be constituted by the Regional or District Director of health services and shall include a representative of the Authority.

(7) Upon certification by the Medical Board the approved trustee shall pay the member's accrued benefits to the member.

(8) Where a claim is made by a scheme member of a registered scheme who was, immediately before becoming totally incapacitated, unemployed, the approved trustee of the scheme may pay the member's accrued benefits to that member, subject to the requirements specified under sub-regulation (2) to (7).

### **Approved trustee to ensure payment of accrued benefits within certain periods**

132. (1) The trustee shall ensure that accrued benefits are paid to the claimant not later than thirty days after the lodgment of the claim, where

- (a) a claim for the payment of a scheme member's accrued benefits is lodged with the approved trustee of a registered scheme;
- (b) the claimant satisfies the trustee that the claimant is entitled to be paid those benefits; and
- (c) at the time of the lodgment of the claim, there is no outstanding mandatory contribution or contribution surcharge in respect of the member.

(2) The trustee shall ensure that, not later than sixty days after the lodgment of the claim, accrued benefits are paid to the claimant together with all outstanding contributions and contribution surcharges paid to the trustee in respect of the member since the lodgment of the claim, where

- (a) a claim for the payment of a scheme member's accrued benefits is lodged with the approved trustee of a registered scheme;
- (b) the claimant satisfies the trustee that the claimant is entitled to be paid those benefits; and

- (c) at the time of the lodgment of the claim, there are outstanding mandatory contributions or contribution surcharges in respect of the member.

**Accrued benefits not to be paid if scheme accounts are being audited or if scheme is being investigated**

133. (1) An approved trustee of a registered scheme who receives a claim for payment of a member's accrued benefits, or a request for other payment of scheme assets out of the scheme shall not pay accrued benefits or value scheme assets if at the time of the lodgment

- (a) the Authority has served on the trustee a notice requiring the trustee to arrange for an auditor to investigate and to prepare a report under section 166(3) of the Act ; or
- (b) the Authority has served on the trustee a notice informing the trustee that the Authority intends to conduct an investigation under section 186 of the Act, unless the Authority has

given its written consent for the trustee to make the payment, or has notified the trustee of the results of the valuation of the scheme assets carried out in relation to the report or the investigation.

(2) The trustee shall

- (a) determine the accrued benefits payable to the member including the arrears and contribution surcharge if any paid to the trustee, and determine those benefits by reference to the valuation if any; and
- (b) pay to the member the accrued benefits

within thirty days after the Authority has given its written consent for the trustee to make the payment, or has notified the trustee of the valuation of the scheme assets.

## **Approved trustee to ensure claimant is provided with final benefit statement**

134. Where an approved trustee of a registered scheme pays accrued benefits to a claimant the trustee shall ensure that the claimant is provided with a final benefit statement containing the following information:

- (a) the name of the trustee, the name of the scheme and the account number of the account from which the payment is made;
- (b) the name and address of the scheme member concerned;
- (c) the total amount of the accrued benefits paid to the claimant and the date on which the benefits were paid to the claimant;
- (d) an itemised statement of any expenses relating to the payment of the accrued benefits that were deducted from those benefits by the trustee before making the payment;
- (e) if any contribution or contribution surcharge was outstanding at the time of the payment
  - (i) the amount of the contribution or surcharge if known to the trustee; and
  - (ii) if the contribution or surcharge was irrecoverable, the fact that it is irrecoverable and the amount concerned if known to the trustee.

### *Unclaimed benefits*

## **Duty of approved trustee if scheme member cannot be located**

135. (1) Where a member of a registered scheme or other person is entitled to be paid a member's accrued benefits but does not lodge a claim with the approved trustee of the scheme, the trustee shall take steps specified in the Guidelines within thirty days after the trustee becomes aware that the member or other person cannot be located.

(2) Where the trustee cannot locate the member or other person within six months, the accrued benefits shall be registered as unclaimed benefits at the end of that period.

(3) This regulation does not apply in a case where a scheme member of a registered scheme who has reached the retirement age has not lodged a claim with the approved trustee of the scheme for payment of the member's accrued benefits.

### **Duty of approved trustee if claimant cannot subsequently be located**

136. (1) Where a member of a registered scheme or any other person has lodged a claim with the approved trustee of the scheme for the payment of the member's accrued benefits and the trustee is satisfied that the member or other person is entitled to be paid the accrued benefits but cannot locate that person the trustee shall take the steps specified in the Guidelines, within thirty days after the trustee becomes aware that the member or person cannot be located.

(2) Where the trustee cannot locate the claimant within six months the accrued benefits shall be regarded as unclaimed benefits at the end of that period.

(3) Where the trustee sends a cheque

(a) to a claimant in respect of the payment of a scheme member's accrued benefits but the claimant does not present the cheque for payment within the period specified in the Guidelines; and

(b) the trustee is unable to locate the claimant during the period of six months after the expiry of the period specified in the Guidelines,

the accrued benefits shall be regarded as unclaimed benefits at the end of the six-month period.

### **Duty of approved trustee to notify scheme member who has reached retirement age of his entitlement**

137. (1) Where a member of a registered scheme attains the retirement age

and does not lodge a claim with the approved trustee of the scheme for payment of the member's accrued benefits, the trustee shall within twelve months after the member has reached the retirement age, give a written notice to the member to

- (a) inform the member of the member's entitlement to be paid in respect of the member's accrued benefits; and
- (b) request the member to reply in writing to the trustee specifying whether or not the member elects to retain the member's accrued benefits with the scheme.

(2) Where the trustee does not receive a reply to a request within six months after giving notice and is unable to locate the member by any other means, the accrued benefits of the member in the scheme shall be considered as unclaimed benefits at the end of that period.

(3) Where the trustee receives a reply to a request indicating that the member elects to retain the member's accrued benefits within the scheme or does not receive a reply to the request but is able to locate the member, the trustee shall serve on the member a benefit statement in accordance with regulation 39.

(4) The benefit statement shall

- (a) include only those particulars listed in regulation 39 (3) that are applicable to the member; and
- (b) be accompanied by a notice informing the member that
  - (i) the member's accrued benefits are being retained in the scheme; and
  - (ii) the member may at any time lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits in accordance with regulation 126.

(5) The trustee shall pay the member's accrued benefits to the member if the trustee receives a reply to the written notice given to the member under sub regulation (1)



indicating that the member elects not to retain the member's accrued benefits in the scheme

**Duty of approved trustee when scheme member whose accrued benefits are retained in a scheme cannot be located**

138. (1) An approved trustee of a registered scheme who becomes aware that a scheme member on whom a benefit statement has been served cannot be located while the member's accrued benefits is retained in the scheme, shall within thirty days after becoming aware of the failure, take steps as are specified in the Guidelines.

(2) If the trustee cannot locate the member within six months after taking the specified steps, in the Guidelines the accrued benefits shall be considered as unclaimed benefits at the end of that period.

**Approved trustee to submit to Authority particulars of scheme members who have unclaimed benefits**

139. (1) The approved trustee of a registered scheme shall submit to the Authority a quarterly report containing

- (a) particulars of scheme members
  - (i) who have unclaimed benefits in the scheme as at the end of the quarter to which the report relates;
  - (ii) whose particulars have not previously been provided to the Authority in accordance with regulation 141;
  - (iii) whose unclaimed benefits have been claimed in the quarter to which the report relates; and
- (b) any other information relating to unclaimed benefits as may be specified in the Guidelines.

(2) The quarterly report shall be submitted within the period, and in the manner, specified in the Guidelines.

## **Register of scheme members who have unclaimed benefits to be kept**

140. (1) The Authority shall establish and maintain a register of scheme members of a registered scheme who have unclaimed benefits in the scheme.

(2) The register

- (a) may be in a form, and contain the information, as the Authority may determine;
- (b) shall be kept at the offices of the Authority.
- (c) shall be made available for inspection to enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has any unclaimed benefits in the scheme; and
- (d) may be made available on the website of the Authority.

(3) A member of the public may inspect the register during ordinary business hours of the Authority.

## **Disposal of unclaimed benefits in employer sponsored scheme**

141. (1) The approved trustee of an employer sponsored scheme shall within six months after classifying accrued benefits as unclaimed benefits, transfer the benefits to a master trust scheme nominated by the employer concerned or in accordance with the governing rules of the scheme.

(2) Unclaimed benefits in an employer sponsored scheme continue to vest in the scheme members concerned.

## **Unclaimed benefits in master trust scheme or group personal pension scheme**

142. The approved trustee of a master trust scheme or a group personal pension scheme shall

- (a) continue to retain any unclaimed benefits in the scheme; and

- (b) the unclaimed benefits shall continue to vest in the scheme members concerned and the former members of the employer sponsored scheme.

## **Offences**

143. An approved trustee who, without reasonable excuse, fails to comply with regulation 132, 133, 134 or 140 is liable to pay a penalty of two hundred and fifty penalty units for each day that the default subsists and shall have its licence suspended after thirty days.

### *Winding up of registered schemes*

## **Preliminary**

144. For purposes of regulations 145 to 154

- (a) "application" means an application made under Section 118 of the Act to the Authority for its consent to the voluntary winding up of an employer sponsored scheme; and
- (b) "scheme assets" includes the funds of each constituent fund of the registered scheme concerned.

## **Circumstances in which employer sponsored scheme may be wound up voluntarily**

145. An employer sponsored scheme may be wound up under section 118 of the Act if

- (a) the only participating employer or the only remaining participating employer ceases to participate in the scheme or gives notice to the approved trustee of the scheme that the employer intends to cease to participate in the scheme;
- (b) the only participating employer or the only remaining participating employer is an individual person and

- (i) there is a change of ownership of the business of that employer, whether by transfer or otherwise;
  - (ii) the person dies;
  - (iii) the occurrence of an event that entitles a creditor to present a bankruptcy petition against the person;
  - (iv) the person is found by a Court of competent jurisdiction to be of unsound mind and incapable of managing the person's personal affairs; or
- (c) where the only participating employer or the only remaining participating employer is a body corporate
- (i) and there is a change of ownership of the body corporate, whether by acquisition of the company's shares, or a transfer of the assets of the body corporate or otherwise; or
  - (ii) the commencement of the winding up of the body corporate;
- (d) the only participating employer or the only remaining participating employer is a partnership and the partnership is dissolved without being reconstituted because of the death, retirement or withdrawal of a partner or the admission of a new partner.

### **Application for Authority's consent**

146. (1) The approved trustee or participating employer of an employer sponsored scheme may make an application to the Authority to give consent to the voluntary winding up of the scheme.

(2) The application shall

- (a) be in form prescribed by the Authority;
- (b) contain a statement specifying the reasons for the winding up of the

scheme and the assets and liabilities of the scheme as at a date not earlier than four days before the application was made; and

- (c) be accompanied by a statutory declaration and a winding up proposal that complies with sub regulation (3) and (4).
- (3) The statutory declaration shall
- (a) be to the effect that, as a result of having conducted an inquiry into the affairs of the scheme, the approved trustee of the scheme is satisfied that all existing liabilities including obligations to scheme members can be met from the scheme assets; and
  - (b) be signed
    - (i) by at least two directors of the company if the trustee is or includes a company; or
    - (ii) by at least two of those persons, one of who must be an independent trustee if the trustee consists wholly of individual persons.
- (4) The winding up proposal shall specify
- (a) whether or not there are any scheme assets and the arrangements made for the realization and disposal of the scheme assets; and
  - (b) whether or not there are any members of the scheme and the arrangements made for the transfer of the accrued benefits of the members of the scheme to another registered scheme.

### **Consent of Authority to winding up of employer sponsored scheme**

147. (1) The Authority may consent to the voluntary winding up of an employer sponsored scheme without appointing a liquidator if, on receiving an application, the Authority is satisfied that

- (a) there are no scheme assets to be realized or disposed of and if there are any such assets, appropriate arrangements have been made for their realization and disposal;
- (b) there are no remaining scheme members or if there are remaining scheme members, appropriate arrangements have been made for those members' accrued benefits to be transferred to another registered scheme acceptable to the Authority.

(2) The Authority may consent to the voluntary winding up of an employer sponsored scheme subject to the appointment of a liquidator if, on receiving an application, the Authority is satisfied that

- (a) there are scheme assets, and appropriate arrangements have not been made for their realization and disposal; or
- (b) there are remaining scheme members, and appropriate arrangements have not been made for those members' accrued benefits to be transferred to another registered scheme acceptable to the Authority.

(3) The Authority may impose reasonable conditions that the Authority considers appropriate in respect of the winding up of an employer sponsored scheme.

(4) Where the Authority proposes to appoint a liquidator to conduct the winding up of the scheme the Authority

- (a) shall consult the applicant before the appointment; and
- (b) may require the participating employer to give to the Authority a performance guarantee in respect of the payment of the liquidator's fees and the expenses incurred in winding up the scheme.

(5) The performance guarantee shall

- (a) be in writing and issued by an authorized financial institution; and

- (b) impose an obligation on the authorized financial institution to indemnify the liquidator against any loss sustained by the liquidator as a result of a failure by the participating employer to pay the liquidator's fees and the expenses incurred in winding up the scheme.

(6) The winding up of an employer sponsored scheme commences on the date on which notice of the consent is given to the applicant or, at a later date specified in the notice.

(7) Within thirty days after giving its consent, the Authority shall give written notice of its consent to the applicant and, if the applicant is not the approved trustee of the scheme to the trustee concerned.

(8) The notice shall specify

- (a) the conditions which the Authority has imposed with respect to the winding up;
- (b) the name and address of the liquidator and the terms and conditions of the liquidator's appointment if the Authority appoint a liquidator to conduct the winding up; and
- (c) the date on which the winding up is to commence.

(9) An applicant shall publish in at least two newspapers with wide circulation in Ghana a notice

- (a) that the scheme is being wound up and that the Authority has given its consent to the winding up under section 118 of the Act ;
- (b) specifying any conditions imposed by the Authority in granting its consent to the winding up;
- (c) specifying the name and address of the liquidator if a liquidator has been appointed to conduct the winding up; and
- (d) specifying the date on which the winding up commenced

within fourteen days after the Authority has given its consent for the winding up of the scheme.

(10) The applicant shall within fourteen days after the date on which the notice is published, serve a copy of that notice

- (a) on each of the remaining scheme members if there are any remaining scheme members;
- (b) on the trustee if the applicant is not the approved trustee of the scheme; and
- (c) on the employer if the applicant is not the participating employer concerned.

### **Appointment of liquidator**

148. (1) On appointing a liquidator to conduct the voluntary winding up of an employer sponsored scheme, the Authority shall give notice in writing of the appointment to the approved trustee or participating employer.

(2) The Authority may appoint another person if the office of the liquidator becomes vacant for any reason.

### **Effect of winding up employer sponsored scheme**

149. (1) After the commencement of the voluntary winding up of an employer sponsored scheme, member of the scheme ceases to be a member and an employer ceases to be a participant in the scheme.

(2) An approved trustee of a scheme or, a liquidator appointed to conduct the winding up of a scheme shall transfer any mandatory contributions or voluntary contributions paid to the scheme after three months from the commencement of the winding up of the scheme to the Authority to be dealt with in a manner consistent with the Act .



## Effect of appointment of liquidator

150. (1) On the appointment of a liquidator to conduct the winding up of an employer sponsored scheme

- (a) the scheme assets shall vest in the liquidator, subject to the beneficial interests of the members with respect to their accrued benefits in the scheme; and
- (b) the approved trustee, and any persons concerned with the administration of the scheme including any service provider appointed or engaged by that trustee for the purposes of the scheme cease to be responsible for the administration of the scheme and, except as directed or authorized by the liquidator shall not perform any function in relation to the scheme.

(2) A liquidator

- (a) shall take reasonably practicable steps to take possession of the scheme assets within thirty days after being appointed;
- (b) may require the approved trustee of the scheme or an employee or agent of the approved trustee;
- (c) any service provider appointed or engaged for the purposes of the scheme;
- (d) any other person who, in the opinion of the liquidator, appears to be with the administration of the scheme, whether directly or indirectly;
- (e) the participating employer, or an employee or agent of the participating employer;

to pay, deliver or transfer to the liquidator, within a reasonable period that the liquidator may specify, any scheme assets in the possession of that person.

(3) A person who, except at the direction or with the authority of the liquidator, purports to exercise or perform a function in relation to the administration of an employer sponsored scheme after the appointment of a liquidator commits an offence and is liable on summary conviction to a fine of not less than one thousand and five hundred penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

(4) A person who, without reasonable excuse, fails to comply with a requirement of a liquidator commits an offence and is liable on summary conviction to a fine of not less than one thousand and five hundred penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

(5) A person who,

(a) makes a statement that that person knows to be false or misleading in a material respect in a document given to the liquidator; or

(b) recklessly makes a statement which is false or misleading in a material respect in a document given to the liquidator

commits an offence and is liable on summary conviction to a fine of not less than one thousand and five hundred penalty units and not more than two thousand, five hundred and fifty penalty units or to a term of imprisonment not more than five years or to both.

### **Powers of liquidator on winding up**

151. (1) A liquidator appointed in respect of the winding up of a scheme may subject to the beneficial interests of the members with respect to their accrued benefits in an employer sponsored scheme exercise any of the following

(a) the power to realise the scheme assets by public auction or private contract, with the power to transfer those assets to any person including the power to sell them in parcels;

(b) the power to bring or defend any legal proceedings in the name of the approved trustee of the scheme and on behalf of the trustee;

- (c) the power to enter into a compromise or arrangement with respect to any debt, claim or liability relating to the scheme assets;
- (d) the power to engage the services of others to assist in the performance of the liquidator's functions; and
- (e) the power to do other things that are necessary for winding up the scheme, including the power to transfer the scheme assets to another registered scheme and, to pay or transfer members' accrued benefits, in accordance with the Act .

(2) The liquidator may request the Authority to give directions to the liquidator with respect to the conduct of the winding up of the scheme concerned.

(3) The Authority shall give directions to the liquidator in response to a request made under sub regulation (2).

### **Duty of liquidator to report to Authority**

152. (1) The Authority may

- (a) require the liquidator to report to the Authority on matters relating to the winding up of the scheme; and
- (b) give directions to the liquidator in respect of the winding up of the scheme.

(2) The liquidator shall comply with a requirement or direction made or given by the Authority.

(3) The Authority may remove from office a liquidator who fails, without reasonable excuse, to comply with a requirement or direction.

(4) The participating employer shall pay the liquidator's fees and expenses incurred in winding up the scheme

## **Disposal of scheme assets on winding up**

153. In a voluntary winding up of an employer sponsored scheme, the scheme assets shall be applied in the following order of priority:

- (a) the payment of amounts owing to general creditors of the approved trustee of the scheme in relation to the scheme at the date of commencement of the winding up;
  - (b) if, at the commencement of the winding up, there are any remaining scheme members whose accrued benefits have not previously been transferred to another registered scheme or paid in accordance with the Act , the transfer or payment of those benefits in accordance with arrangements approved by the Authority.
- (2) Any surplus after satisfying all outstanding liabilities shall be distributed
- (a) in accordance with the governing rules of the scheme; or
  - (b) to the participating employer if the rules of the scheme do not make provision for the distribution of the surplus.

### *Winding up of registered schemes generally*

## **Appointment of liquidator**

154. A person may be appointed as liquidator under section 118 of the Act only if the person

- (a) has consented in writing to the appointment;
- (b) is qualified to be appointed as a liquidator under the Companies Act, 1963(Act 179).
- (c) is not an undischarged bankrupt.

**Notices to be served for purposes of the Act**

155. (1) Unless otherwise provided, a notice or other document to be given, served or lodged for the purposes of the Act shall be given, served or lodged

- (a) in the case of a person other than a body corporate or partnership
  - (i) by delivering it to the person personally; or
  - (ii) by sending it by registered post in a letter addressed to the person at the person's usual place of residence or business or,
  - (iii) if the person's address is unknown, addressed to the person's last known place of residence or business; or
- (b) in the case of a body corporate
  - (i) by delivering it to any place in Ghana at which the body carries on business and giving it to a person concerned with the management of, that body employed by that body, or authorised to receive mails;
  - (ii) by sending it to the body by registered post addressed to the body at its registered office in Ghana or at any place in Ghana at which the body carries on business; or
- (c) in the case of a partnership
  - (i) by delivering it to any place in Ghana at which the partnership carries on business and giving it to a person apparently concerned with the management of, or apparently employed by, the partnership; or

- (ii) by sending it to the partnership by registered post addressed to the partnership at any place in Ghana at which the partnership carries on business.

(2) A notice or document is considered to have been given, served or lodged for the purposes of the Act if

- (a) it is sent to the recipient by facsimile transmission, electronic mail or other similar means of communication at the recipient's facsimile number or electronic mail address last known to the sender; and
- (b) a record, generated by the means of transmission, establishes that the notice or document was so sent.

(3) Sub regulation (2) does not apply in relation to a document given under regulation 37 or 100.

(4) A notice or other document to be given, served or lodged for the purposes of the Act shall, in the absence of evidence to the contrary, be considered to be given, served or lodged if it is sent by registered post to the last known place of business or residence of the person

- (a) to whom the notice or other document is required to be given or served;
- (b) with whom the notice or document is required to be lodged, as the case may be.

## **Interpretation**

156. In these Regulations, unless the context otherwise requires

"accrued benefits", in relation to a registered scheme, means the amount of each scheme member's beneficial interest in the registered scheme at any time, including sums derived from the contributions made by or in respect of that scheme member, together with the income or profits arising from any investments of the contributions, but taking into account any losses in respect of the investments;

“Act” means the National Pensions Act, 2008 (Act 766);

"account number" includes a reference to a combination of numbers, letters or other symbols that identifies a member's account with a registered scheme;

"approved trustee" means a company or an individual person approved by the Authority as a trustee in accordance with this Regulation and, when used in relation to a registered scheme that is administered by two or more approved trustees, it means the trustees jointly and severally;

“Assets held in Ghana” means any of the following assets held in Ghana:

- (a) immovable property, including a leasehold interest in real property, located in Ghana;
- (b) computer equipment, office machinery, furniture, motor vehicles and other equipment located in Ghana;
- (c) deposits (in any currency or monetary unit) held with an authorised financial institution in Ghana;
- (d) debt securities issued in Ghana, but only if they are transferable and registrable in a register in Ghana and, in the case of debt securities that are in the form of certificates or shares in securities depositories, the certificates are kept in Ghana;
- (e) shares of a company incorporated in Ghana, being shares that:
  - (i) are transferable and registrable only in a register kept in Ghana; or
  - (ii) are, in the ordinary course of business, transferable and registrable in a register kept in Ghana and their certificates, if any, are kept in Ghana; or

- (f) an interest in an authorised unit trust that is realizable in Ghana, but only if the governing law of the trust is the law of Ghana.

“Authority” means the National Pensions Regulatory Authority established under Section 5 of the Act;

“authorized financial institution” means a Bank licensed under the Banking Act 2004 (Act 673) or Insurance Company licensed under the Insurance Act, 2006 (Act 724);

"authorized mutual fund" means a mutual fund authorized as a collective investment scheme by the Securities and Exchange Commission under Part IV of the Securities Industry Act, 1993 (P.N.D.C.L 333);

"authorized unit trust" means a unit trust authorized as a collective investment scheme by the Securities and Exchange Commission under Part IV of the Securities Industry Act, 1993 (P.N.D.C.L 333);

"claim" means a claim for the payment of the accrued benefits of a scheme member or a former scheme member in accordance with Section 101 or 110 of the Act ;

"central securities depository" means a depository in Ghana that is approved by the Securities and Exchange Commission;

"constituent fund", in relation to a registered scheme, means the fund that constitutes a registered scheme, or a fund that forms part of the scheme, and complies with the requirements set out in regulation 22;

"contribution account", in relation to a member of a registered scheme, means an account with the scheme into which mandatory contributions and voluntary contributions if any are paid in respect of any current employment or current self-employment of the member;

“contribution period” means the period from the end of each month to the 14th day of the ensuing month;



“controller” in relationship to a company includes, the shareholders, directors and chief executive officer of the company;

"control objectives", in relation to a registered scheme, means the control objectives for the time being applicable to the scheme;

"custodian", in relation to the assets of a registered scheme, includes the approved trustee of the scheme if acting as the custodian of those assets;

"debt security" means

- (a) any debenture or other document issued by a person as evidence of a debt owed by the person or as security for the repayment of a loan whether with or without interest;
- (b) debenture stock and bonds issued by a company whether constituting a charge on the assets of the company or not; or
- (c) convertible loan stock;

“employer sponsored scheme” means a single employer scheme whose membership is limited to the employees of the sponsoring company and only its associated companies;

"encumbrance" includes a charge, pledge, lien and mortgage;

"financial futures contract" means a contract under which

- (a) a party to the contract agrees to deliver to the other party to the contract at an agreed future time a specified security, or an agreed quantity of specified securities, at an agreed price; or
- (b) the parties agree to make an adjustment between themselves at an agreed future time according to whether at that time-

- (i) a specified security, or an agreed quantity of specified securities, is worth more or less than a value agreed at the time when the contract is entered into; or
- (ii) a number of an index of securities stands at a higher or lower level than a level agreed at the time when the contract is entered into;

"financial option contract" means a contract under which a party to the contract acquires from the other party to the contract an option or right, exercisable at or before a specified time, to be paid by that other party an amount of money to be determined by reference to the amount by which a number specified in the contract is more or less than the number of a specified index of securities as at the time when the option or right is exercised;

"financial period", in relation to a registered scheme, has the meaning given under regulation 59;

"financial statements", in relation to a registered scheme, means a balance sheet and statement of account prepared or to be prepared in respect of the scheme;

"governing rules", in relation to a registered scheme, means those rules and provisions contained in a trust instrument or other document relating thereto or that trust instrument and that other document taken together, and governing the establishment and operation of the registered scheme;

"group personal pension scheme" means an arrangement made for members of a particular informal sector group to participate in a personal pension scheme on a grouped basis not a separate scheme; merely a collecting arrangement;

"Insurance Commission" means the National Insurance Commission established under Section 1 of the Insurance Act, 2006 (Act 724);

"market value" in relation to any property, means the price that can reasonably be expected to be paid for the property if it were sold by a willing seller to a willing buyer on the open market, with both parties acting at arm's length;

"master trust scheme" is a multiple-employer scheme whose membership is open to employees of more than one employer, self-employed persons and persons with accrued benefits transferred from other schemes;

"net assets", in relation to a company or corporation, means the amount by which the company's ,as the case may be, total tangible assets exceed its total liabilities;

"ordinarily resident" means a person who has been resident in Ghana for a period of one year or a shorter period that the Authority may in a particular case determine;

"overseas" in relation to Ghana, means outside Ghana;

"participation agreement" in relation to a registered scheme, means an agreement between a

- (a) participating employer and the approved trustee of the scheme for the employer and his employees to participate in the scheme;
- (b) self-employed person and the approved trustee of the scheme for the self-employed person to participate in the scheme; or
- (c) person intending to maintain a preserved account in the scheme and the approved trustee of the scheme;

"participating employer" means the employer of employees who are members;

"pensionable salary" means in the case of a relevant employee the salary on which social security contribution is paid;

"preserved account" in relation to a member of a master trust scheme or a group personal pension scheme, means an account with the scheme in which the accrued benefits (if any) in respect of any former employment or former self-employment of the member are held;

"provident fund scheme" means a fully funded, defined contribution scheme governed by a trust, in which funds are managed privately and benefits paid as lump sum to the employee or his dependant in case of death and in some cases it is possible for the employee to draw income prior to retirement to meet specific needs;

"prescribed capital requirements" means requirements that have to be complied with by a company that applies to an approved trustee if a registered scheme or the prescribed capital requirements are complied with if the company

- (a) has a paid up share capital of at least GH¢1,000,000 or as amended from time to time;
- (b) owns net assets of at least the same amount; and
- (c) owns fixed assets held in Ghana to the value of at least GH¢500,000 or as amended from time to time;

"qualifications of an independent director" means a director is qualified as an independent director in accordance with section 119 (1) of the Act;

"record" means any record of information, however compiled, recorded or stored, and includes

- (a) any book, a register and any other document containing information; and
- (b) any disc, tape or other article from which information is capable of being produced;

"registered scheme" means an occupational pension scheme or a provident fund scheme registered under section 129 of the Act as an employer

sponsored scheme or a master trust scheme or registered under section 135 as a group personal pension scheme;

"relevant employee" means an employee of 15 years of age or over and below retirement age;

"retirement age", in relation to

- a worker in the formal sector, means 60 years of age or, if the regulations prescribe an earlier age, that earlier age; and
- a self-employed person in the informal sector, means the retirement age defined in the governing rules of the registered scheme;

"scheme assets" means securities and other assets acquired and held for the purposes of a registered scheme, and includes

- (a) income derived from the investment of those securities or other assets; and
- (b) money payable to the scheme;

"securities" has the same meaning as in section 142 of the Securities Industry Act, 1993(P.N.D.C.L 333)

"service provider" in relation to an occupational pension scheme, a provident fund scheme or group personal pension scheme, means a pension fund manager, custodian of scheme assets or other person appointed or engaged by the trustee of the scheme to provide services for the purposes of the scheme, but does not include a person appointed or so engaged as an auditor, solicitor or actuary;

"total incapacity" in relation to a scheme member, means permanent unfitness to perform the kind of work that the member was last performing before becoming incapacitated; and

"trustee" means an individual or company appointed to carry-out the purposes of a trust in accordance with the trust instrument and general principles of trust law.

**FIRST SCHEDULE**  
(Regulations 29 and 31)

**INVESTMENT MANAGEMENT CONTRACTS**

- (1) An investment management contract relating to a registered scheme must be in writing and must be governed by the laws of Ghana.
- (2) The contract must also
  - (a) oblige the pension fund manager to disclose to the approved trustee particulars (including the form, method of calculation and amount) of all emoluments and other benefits received or to be received by the manager as a result of being the pension fund manager for the scheme;
  - (b) oblige the pension fund manager to report in writing to the approved trustee at intervals of not more than 3 months the amounts of brokerage and commissions charged in respect of dealings with securities relating to the scheme and to include in the report particulars of the persons who charged those amounts;
  - (c) require that any payment made to the approved trustee or pension fund manager by a third party, either directly or indirectly, will be credited to the scheme if the payment is derived from the acquisition or disposal of scheme assets; and
  - (d) oblige the pension fund manager
    - (i) to include in an annual report to the approved trustee a description of the manager's business practices with respect to the provision of goods and services to the manager by a broker or dealer in consideration of directing to the broker or dealer business relating to transactions involving the acquisition or disposal of scheme assets; and

- (ii) to specify in the report the value of those goods and services; and
- (e) state whether or not the contract restricts the right of the pension fund manager to act as a pension fund manager or in any other capacity for any other person and, if not, specify the capacity in which the pension fund manager may act for another person;
- (f) state what period of notice must be given by any of the parties to the contract in order to terminate the contract;
- (g) provide for the contract to be terminated if the company constituting the pension fund manager is commenced to be wound up or is dissolved without being wound up;
- (h) oblige the pension fund manager to be bound by, and to comply with, the statement of investment policy applicable to the scheme;
- (i) state whether or not the contract allows the pension fund manager to delegate any of the manager's functions in respect of the scheme and, if it does, specify which of those functions may be delegated;
- (j) oblige the pension fund manager to ensure that the investment of the funds are made in accordance with the Act;
- (k) state whether or not, and if so under what conditions, the funds of the scheme may be applied for the purposes of
  - (i) subscribing for debt securities from an underwriter or sub-underwriter; or
  - (ii) purchasing or subscribing for the issue of securities offered to the public by prospectus;

- (l) include provisions that will enable the approved trustee to require the pension fund manager from time to time to give to the trustee
  - (i) appropriate information as to the investment of the funds of the scheme and the return on those investments; and
  - (ii) such information as is necessary to enable the trustee to assess the capacity of the pension fund manager to manage those investments in a proper manner;
- (m) specify whether or not the contract prohibits any of the parties to the contract from entering into any other kinds of contracts and, if so, specify those other kinds of contracts;
- (n) oblige the pension fund manager, and any delegate of that manager, to exercise
  - (i) the duty of care, skill, diligence and prudence reasonably to be expected of a prudent person who is acting in a similar capacity to the manager or delegate and is familiar with the management of the investment of the funds of a provident fund scheme;
  - (ii) the duty to make use of all relevant knowledge and skill that the manager or delegate may be reasonably expected to have because of the business or occupation of the manager or delegate;
  - (iii) the duty to ensure that the funds of the scheme are invested in different investments so as to minimise the risk of losses to those funds, unless in particular circumstances it is prudent not to do so;
  - (iv) the duty to act in the interest of scheme members and not in the interest of the manager or delegate; and
  - (v) the duty to act in accordance with the governing rules of the scheme;
- (o) oblige the pension fund manager, and any delegate of that manager, to do everything within their power to enable the trustee to comply with Regulation 40 of this Regulation;



- (p) oblige the pension fund manager to report to the trustee as soon as is practicable
  - (i) any matter affecting the pension fund manager's qualifications or capacity to perform the manager's functions in relation to the scheme;
  - (ii) material contraventions of the pension fund manager's obligations;
- (q) oblige the pension fund manager to report to the approved trustee
  - (i) any relationship that the pension fund manager has with a service provider appointed or engaged for the purposes of the scheme because either of them is an associate of the other; and
  - (ii) any arrangement whereby fees, commissions or other payments are received from, paid to or shared with any third party to the contract as a result of being appointed as pension fund manager for the scheme, and to disclose to the trustee the amounts of those fees, commissions or payments;
- (r) require the pension fund manager to provide information necessary to enable the approved trustee to perform the trustee's duties with respect to the scheme;
- (s) if the pension fund manager breaches the contract, oblige the manager, within 30 days, to take all practicable steps to rectify the breach;
- (t) if the pension fund manager, or a delegate of the manager, fails to comply with a direction given, guideline issued or requirement made by the approved trustee with respect to the investment of the funds of the scheme, oblige the manager to compensate the scheme for any loss that is attributable to the failure, except where the failure is a result of an event that was not under the control of the pension fund manager or that manager's delegate or could not have been foreseen;

- (u) oblige the pension fund manager to rectify within 30 days any failure to comply with a direction given, guideline issued or requirement made by the approved trustee with respect to the investment of the funds of the scheme; and
- (v) if the pension fund manager contravenes the Act, oblige the pension fund manager to take into account the interests of scheme members before entering into any transaction to rectify the contravention, and to compensate those members for any loss attributable to the contravention.

## SECOND SCHEDULE

(Regulation 52)

### CONTENTS OF CUSTODIAL AGREEMENTS

1. The agreement must require the scheme assets
  - (a) to be recorded and controlled in such manner as may be customary and prudent in the circumstances;
  - (b) to be entrusted to the custodian for safe keeping;
  - (c) entrusted to the custodian
    - (i) where the scheme assets are in registered form, to be
      - (A) registered in the name of the custodian; or
      - (B) administered and dealt with by the custodian in such manner as may be customary and prudent in the relevant market;
    - (ii) where the scheme assets are in bearer form, to be held in the physical possession of the custodian; and
  - (d) to be segregated from the custodian's assets.
2. The agreement must require the scheme assets to be recorded separately from all other assets of the custodian and trustee, including any assets held by the custodian or trustee for the benefit of a participating employer or any other person.
3. The agreement must require that the scheme assets are not to be made subject to any encumbrance.
4. The agreement must require that the scheme assets can be applied only for the purpose of the registered scheme.

5. The agreement must require the scheme to be indemnified by the custodian for any direct losses incurred by scheme members that are attributable to fraudulent, dishonest or negligent acts or omissions committed by the custodian or its employees in connection with the performance of the custodian's obligations under the agreement.
6.
  - (1) The agreement must require the custodian to report to the trustee any of the following events within 30 days after they occur
    - (a) material changes affecting the custodian's eligibility to be a custodian of the scheme assets or its capacity to exercise its functions; and
    - (b) material breaches of the custodian's obligations.
  - (2) The agreement must also require the custodian to lodge with the trustee periodically (but not less than once during each financial period of the scheme concerned) a report stating whether or not any material events have occurred during the period to which the report relates and, if any such events have occurred during that period, specifying details of those events. However, details of a material event do not have to be included in such a report if the event has already been reported under sub regulation (1).
7. The agreement must require the custodian to provide to the trustee within 4 months after the end of each financial year of the custodian a copy of the balance sheet and profit and loss account of the custodian with respect to that financial year, together with a copy of the auditor's report with respect to those documents.
8. The agreement must require the custodian to maintain accurate records of the scheme assets and allow the approved trustee (including its agents and the auditors appointed in respect of the scheme) to have access to those records.
9. The agreement must require the custodian, when exercising its functions in relation to the scheme concerned; to apply the same degree of care, skill, diligence and prudence as may be reasonably expected of a prudent person who has custody of scheme assets.

10. The agreement must be in writing and provide that it is to be governed by the laws of Ghana.
11. For the avoidance of doubt, it is hereby declared that
  - (a) scheme assets
    - (i) comprising cash held by a custodian which is an authorized financial institution may be held by any such custodian in its capacity as a bank; and
    - (ii) may be deposited by the custodian with, and held in, any central securities depository on such terms as such central securities depository customarily operate.

MINISTER RESPONSIBLE FOR PENSIONS

Date: