

THE SWAZILAND NATIONAL PROVIDENT FUND ORDER, 1974

Date of commencement: 1st February, 1975.

Date of Assent: 30th August, 1974.

A King's Order-in-Council to establish the Swaziland National Provident Fund.

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PART I
PRELIMINARY

Short title.

1. This King's Order-in-Council may be cited as The Swaziland National Provident Fund Order, 1974.

Interpretation.

2. (1) In this Order, unless the context otherwise requires —
- “benefit” means benefit payable under this Order;
- “Board” means the Swaziland National Provident Fund Board established under section 4;
- “casual employee” at any time means an employee, other than a domestic servant, engaged on a daily contract of service who at such time has been employed by his employer for a continuous period of less than one month:
- Provided that the continuity of the employee's period of service shall not be deemed to have been broken by reason only that the employee was not employed on Sundays, public holidays or not more than five other days during the period of one month;
- “contributing employer” means an employer who has become a contributing employer by virtue of section 9;
- “contribution” includes statutory contribution, special contribution, and supplementary contribution;
- “contribution period” means, if wages are paid to an employee —
- (a) at intervals of more than a fortnight, the month during which wages are paid;
- (b) at intervals of more than a week but not more than a fortnight, the fortnight ending with the last day of the week in which wages are paid; or
- (c) at intervals of a week or less, the week in which wages are paid;
- “dependant” means one of the family of a member who was wholly or in part dependent upon the earnings of such member at the time of his death or would, but for the illness of the member, have been so dependent:
- Provided that no one shall be deemed to be in part dependent upon the earnings of another person unless he was substantially dependent on assistance from such other person for the provision of the ordinary necessities of life suitable for persons of his station;

“eligible employee” means an eligible employee in terms of section 7;

“employee” means any person who —

- (a) is employed in Swaziland under any contract of service or apprenticeship with an employer, whether the contract is express or implied, oral or in writing, and whether he is employed by way of manual labour, clerical work or otherwise; or
- (b) is ordinarily resident in Swaziland and is employed outside Swaziland under any such contract of service with an employer in Swaziland by whom he is paid;

“employee’s share” means the amount so designated by statutory order of the Minister;

“employer” means, subject to subsection (2), the person with whom an employee has entered into a contract of service or of apprenticeship and who is responsible for the payment of the wages of the employee;

“executive officer” means the chief executive officer of the Board appointed under section 5;

“Fund” means the Swaziland National Provident Fund established under section 3; and to be commonly known as “Lidlelantfongeni”; (Amended K.O-I-C. 27/1976.)

“inspector” means a person appointed under section 6(1);

“investment committee” means the Swaziland National Provident Fund Investment Committee established under section 31;

“member” means a person eligible for registration as a member of the Fund, or for whom the executive officer is required to maintain an account in the Fund;

“Minister” means the Minister responsible for Labour and Public Service; (Amended A.5/1995.)

“minor child” means a person under the age of twenty-one years;

“one of the family” means —

- (a) when used in relation to a person not generally subject to customary law, the wife, husband, father, mother, grand-father, grand-mother, step-father, step-mother, child, grandchild, brother, sister, half-brother, or half-sister of such person; and
- (b) when used in relation to a person generally subject to customary law, any one of such persons as are recognised under customary law as comprising his family;

“paid”, if it has reference to a date of payment, means the date on which the payment was made in cash or, if by means of a bill of exchange, cheque or promissory note the date on which it was met;

“public holiday” means a public holiday named in the Schedule to the Public Holidays Act No. 71 of 1938;

“reserve account” means the reserve account of the Fund;

“special contribution” means the special contribution payable under section 16;

“statutory contribution”, in relation to any employee, means the amount so designated by order of the Minister published in the Gazette;

“supplementary contribution” is the supplementary contribution payable under section 18;

“wages” means any remuneration in money paid to an employee under his contract of service or apprenticeship, as the case may be, and includes any allowance paid by the employer to the employee, either directly or by implication, in respect of the cost of living and any payment of wages in lieu of notice or termination of employment.

(2) If a person enters into a contract whereby some other person is to provide employees for any lawful purpose of the first-mentioned person and it is not clear from the contract which of the two persons is the employer, then, unless the Board otherwise requires, the first-mentioned person shall be deemed to be the employer of those employees for the purpose of this Order.

PART II

SWAZILAND NATIONAL PROVIDENT FUND

Swaziland National Provident Fund established.

3. (1) There is hereby established the Swaziland National Provident Fund into which shall be paid all contributions and other moneys required or permitted by or under this Order to be so paid.

(2) There may from time to time be paid out of the Fund such benefits and other payments, including payments in respect of the expenses of administration, as are authorised by or under this Order.

Establishment of the Board.

4. (1) There is hereby established a Board to be called the Swaziland National Provident Fund Board in which the Fund shall be vested and which shall, subject to this Order, be responsible for administering the Fund and advising the Minister on any matter in connection therewith.

(2) The constitution of the Board and its proceedings shall, subject to this Order, be in accordance with the First Schedule.

(3) The Board shall be a body corporate with perpetual succession, may have a common seal and shall be capable of suing and being sued in its corporate name, and, subject to this Order, of purchasing or otherwise acquiring, holding, charging and alienating movable or immovable property, real or personal or any right thereto, and of doing or performing such acts or things as bodies corporate may by law do or perform.

(4) The Board may, on such terms and conditions as it sees fit, appoint such persons as are in its opinion necessary for the administration of the Fund.

(5) The Board shall render annual reports to the Minister, who shall lay them before the legislative body of Swaziland as soon as practical, and, after it has received the Minister's approval for the publication of any such report, shall cause a copy thereof to be sent to every registered employer:

Provided that the first report to be rendered under this subsection shall cover such period ending not later than two years after the commencement of this Order as the Board, with the approval of the Minister, may determine.

The chief executive officer.

5. (1) There shall be a chief executive officer of the Fund to be appointed by the Board with the approval of the Minister on such terms and conditions of service as may be determined by the Board and approved of by the Minister, and whose remuneration shall be paid from the Fund.

(2) The executive officer shall, subject to this Order and to the general directions of the Board, be responsible for the direction of persons appointed by the Board under this Order and for the management of the Fund and in particular for —

- (a) the assessment of contributions and payments under this Order, their collection, and their payment into the Fund;
- (b) the payment out of the Fund of benefits and claims under this Order and of the expenditure necessary for the administration of the Fund;
- (c) the investment of surplus funds from time to time; and
- (d) accounting for all moneys received paid out or invested under this Order.

Inspectors.

6. (1) The Board may from time to time appoint persons to be inspectors for the purposes of this Order.

(2) The Board shall provide every inspector with a certificate of his appointment, and any inspector, if so required by any person in the course of his duty, shall produce the certificate to such person.

(3) An inspector may for the purposes of this Order —

- (a) at all reasonable times enter any premises or place where he has reasonable cause to believe that persons are being employed in respect of whom contributions are payable under this Order, and there make any examination or inquiry which he considers necessary to satisfy himself that this Order is being complied with, and to that end, without derogating from the generality of the foregoing, interrogate any employer, employee or any other person on any matter relating to the application of this Order; and
- (b) require the production for examination of any book, register, account, receipt or other document relating to contributions or to liability to register or to contribute under this Order and may copy such document or make extracts therefrom.

(4) An inspector shall on the occasion of any visit by him to any premises or place under subsection (3) notify the employer concerned or his representative of his presence and

the purpose thereof unless it is *bona fide* considered by the inspector that such notification may be prejudicial to the proper performance by him of his duties.

PART III

ELIGIBILITY, MEMBERSHIP AND REGISTRATION

Eligible employees.

7. Any person employed under a contract of service shall be an eligible employee for the purposes of this Order:

Provided that a casual employee, or a person who is not a citizen of Swaziland or a person who is an employee in an excepted employment mentioned in the second Schedule shall not be so eligible. (Amended K.O-I-C. 26/1975.)

Registration of employers and employees.

8. (1) The Minister shall by order published in the Gazette specify any class or description of —

- (a) employers who shall be registered as contributing employers;
- (b) eligible employees who shall be registered as members of the Fund; and
- (c) employees who shall be ineligible for membership of the Fund.

(2) Any person to whom an order made by the Minister under subsection (1) applies shall register himself in the prescribed manner.

(3) A registered employer shall ensure that any eligible employee employed by him and required to register under subsection (1)(b) has registered in the prescribed manner.

Contributing employers.

9. (1) The Minister may, for the purpose of the initial registration of any class or description of employers, by order published in the Gazette, declare that such class or description of employers shall not be contributing employers until the date specified therein.

(2) A contributing employer who ceases to be an employer of one or more eligible employees shall thereupon cease to be a contributing employer.

Voluntary membership.

10. Any employer who is not required to register by an order made under section 8(1)(a) may, subject to any prescribed terms and conditions, apply to the executive officer for voluntary registration as a contributing employer and any eligible employee of such employer may thereafter apply for voluntary registration as a member of the Fund.

Religious organisations.

11. A religious organisation which desires to make statutory contributions in respect of any minister of religion may apply to the executive officer in the prescribed manner to register under this Part of the Order, and the executive officer shall thereupon cause the religious organisation to be registered as an employer for the purposes of this Order.

Registered employers to notify executive officer of eligible employees.

12. Any employer who registers or is registered under this Part shall, in the prescribed manner and without delay —

- (a) notify the executive officer of every person who is, or who subsequently becomes, an eligible employee in his service; and
- (b) notify the executive officer of every eligible employee who ceases to be employed by him.

Membership of Fund to continue despite loss of qualification for registration.

13. No person registered as a member of the Fund shall cease to be a member by reason only of the fact that since registration he has —

- (a) ceased to be an employee or to be a person to whom an order made under section 8(1)(b) relates;
- (b) become an employee ineligible for membership of the Fund; or
- (c) become an employee in an excepted employment listed in the Second Schedule.

PART IV

CONTRIBUTIONS AND PAYMENTS TO THE FUND

Statutory contributions.

14. (1) The Minister shall, after consultation with the Minister for Finance and Economic Planning, by order published in the Gazette, prescribe the level of wages on which statutory contributions to the Fund shall be payable by a contributing employer.

(2) Subject to this Part, a contributing employer shall, for every contribution period after the date when he became a contributing employer, pay into the Fund the statutory contribution in respect of each eligible employee employed by him during such period:

Provided that no contribution shall be paid under this section in respect of an employee who dies during the contribution period, unless the employer deducts the employee's share of the contribution from the wages payable in respect of any part of such period to the estate of the deceased employee.

(3) Every contribution due under this section shall be paid to the Fund within twenty-one days after the end of the month in which the last day of the relevant contribution period falls, and shall be credited to the account of the person in respect of whom it is paid.

Minister to prescribe statutory contribution.

15. The Minister may, after consultation with the Minister for Finance and Economic Planning, make regulations prescribing the statutory contribution which a contributing employer shall be required to pay into the Fund for every eligible employee employed by him during any contribution period.

Power to amend Schedules.

15bis. The Minister may, by notice in the Gazette, amend any Schedule made under this Act. (Added A.5/1995.)

Special contributions.

16. (1) The Minister may by order published in the Gazette require a contributing employer to pay into the Fund a special contribution for the first month during which he employs one or more casual employees at a rate to be prescribed by the Minister after consultation with the Minister for Finance and Economic Planning.

(2) Each special contribution under this section shall be paid to the Fund within twenty-one days after the end of the month to which it refers and shall be credited in full to the reserve account.

Employee's share.

17. (1) The Minister shall by order published in the Gazette prescribe the employee's share of any statutory contribution.

(2) A contributing employer who is liable to make or who has made a statutory contribution in respect of any employee may deduct the employee's share of such contribution from the wages due from him to that employee in respect of the contribution period to which that statutory contribution relates, but not otherwise.

(3) If an employer deducts the employee's share of a statutory contribution from an employee's wages under this section in advance of the payment of such contribution to the Fund, the employer shall, until he makes such payment, hold that share in trust for the employees.

(4) If the Board is satisfied that the employer has deducted the employee's share of statutory contribution from an employee's wages but has failed to pay the statutory contribution, or the employee's share thereof, to the Fund, the Board may, whether or not that contribution or share is recovered from the employer, direct that the amount of the employee's share be credited to the employee's account in the Fund and the cost thereof be charged to the general revenue of the Fund.

Supplementary contributions by employers.

18. Subject to this section and in addition to any contributions payable by a contributing employer under section 14, he may make supplementary contributions to the Fund in respect of any part or the whole of any wages paid to an eligible employee for the purpose of providing his eligible employee with an improved benefit:

Provided that the supplementary contribution shall not be less than five per centum of the employee's wages on which the supplementary contribution is assessed.

Capital sum payment by employer.

19. An employer may at any time pay into the Fund a capital sum for the purpose of providing a benefit for his employee or former employee eligible for membership of the Fund or a dependant of such employee or former employee, and if such person is not a member of the Fund, the executive officer shall cause an account to be opened in the name of such person

for such purpose, and administer it in accordance with any conditions agreed to by the employer and the executive officer.

Member contributing on his own behalf.

20. (1) A member who is not employed by an employer liable to make a statutory contribution in respect of him may apply in writing to the executive officer for authority to contribute to the Fund on his own behalf.

(2) If the executive officer approves such application, the member may make consecutive monthly payments to the Fund, each payment to be not less than his share of the contribution last paid by an employer in relation to him, and every such payment shall be credited to the account of the member making it.

(3) If a member who is authorised to make payments under this section or under section 10 enters the employment of an employer who is liable to make a statutory contribution in respect of him, the member shall inform the executive officer forthwith and cease to be so authorised.

Recovery of contributions from employers and penalty.

21. (1) Every contribution due to the Fund shall be a civil debt due to the Board.

(2) If any contribution for which a contributing employer is liable is not paid within the time specified in section 14(3), a sum equal to seven and one half per centum of the amount unpaid shall be added to the contribution for each month or part of a month during which the contribution remains unpaid after the date by which payment was due, unless the Board is satisfied that the employer has not omitted to take all reasonable action to ensure payment within the time specified by this Order, and any such additional amount shall be recoverable as a civil debt due to the Board as if it were a contribution:

Provided that the Board may, if it thinks fit, remit any penalty imposed by this subsection in whole or in part.

Members' accounts.

22. The executive officer shall establish and maintain for every eligible employee in respect of whom a contribution has been made under this Order —

- (a) a main account to which shall be credited all contributions payable by an employer under section 14 and to which shall be charged any benefit granted or refund made in respect of that employee; and
- (b) a savings account to which supplementary contributions made by an employer under section 18 shall be credited to which shall be charged any benefit granted or refund made in respect of that employee.

Protection of members' accounts.

23. The sum standing to the credit of a member's account in the fund shall, until paid out in accordance with this Order, remain the property of the Board and shall not form part of the assets of a member in the event of his becoming an insolvent or bankrupt under the laws of any country, or be liable to attachment in satisfaction of any of his debts; and any security,

pledge, cession or assignment given before or after the commencement of this Order which purports to include any such sum or part thereof shall, to such extent be void.

PART V
BENEFITS

Description of benefits.

24. (1) Benefits shall be of the following descriptions, namely,
- (a) age benefit;
 - (b) invalidity benefit;
 - (c) emigration benefit;
 - (d) survivor's benefit.
- (2) A member of the Fund who qualifies for more than one benefit under this section shall be paid such one benefit as the executive officer may determine.
- (3) Subject to section 29(3), the amounts of benefits described in subsection (1) shall be the balance of the member's account in the Fund at the date of payment.
- (4) A claimant for a benefit shall in support of his claim submit such evidence and documents as the executive officer considers necessary.
- (5) If the date of birth of a member of the Fund is in doubt, and if such date is not proved by any written record kept for official purposes, the executive officer may determine such member's date of birth for the purposes of any claim under this Order.

Age benefit.

25. (1) Subject to section 24, a member of the Fund shall be entitled to claim a benefit on age grounds when he attains the age of —
- (a) 45 years and has retired from regular employment under a contract of service;
or
 - (b) 50 years.
- (Amended K-O-I-C. 27/1976.)
- (2) For the purposes of this section, a member of the Fund may be treated as having retired from regular employment if he has attained the age of 50 years and —
- (a) he has to the executive officer's satisfaction retired from wage earning employment; or
 - (b) he has become a self-employed person.
- (3) A person who has received benefit under this section shall not be entitled to a further payment of benefit thereunder until the expiry of a period of two years from the date on which benefit on grounds of age was last paid, or, if the benefit is paid in instalments, from the date when the first of such instalments was paid.

Invalidity benefit.

26. (1) Subject to section 24, a member of the Fund shall be entitled to invalidity benefit if he is subject to such physical or mental disability as to be suffering from —

- (a) permanent total incapacity; or
- (b) partial incapacity of a permanent nature, and has either attained the age of fifty years, or if unable by reason of such disability to earn a reasonable livelihood.

(2) In this section, "permanent total incapacity" means such incapacity of a permanent nature as incapacitates a person for any employment which he was capable of undertaking before the accident, illness or other occurrence that was the cause of that incapacity.

(3) A person who has received a benefit under this section shall not be entitled to a further payment of benefit thereunder until the expiration of a period of not less than two years from the date on which an invalidity benefit was last paid or deemed payable or if the benefit is paid in instalments, from the date when the first of such instalments was paid or deemed payable:

Provided that if at any time before the expiry of the two years the person becomes unemployed, he may be paid a further benefit under this section. (Added A.5/1995.)

Emigration benefit.

27. Subject to section 24, a member of the Fund who emigrates permanently, or is intending to emigrate with no present intention of returning to Swaziland, shall be entitled to an emigration benefit.

Survivor's benefit.

28. (1) Subject to section 24 and to this section, a survivor's benefit in relation to a member shall be payable on such member's death.

(2) The benefit payable under subsection (1) shall be paid to any members of the deceased member's family in such proportions as he may, by notice in writing delivered to the executive officer, specify:

Provided that the member may in writing at any time revoke or replace such nomination by a later nomination.

(3) The marriage of a member shall be deemed to revoke any prior nomination made by such member under subsection (2).

(4) On the death of a member, the benefit in relation to such member shall not be a part of the estate of such member but shall be paid to any person nominated by the member under subsection (2):

Provided that if such person is found to have died or cannot, with the exercise of due diligence, be found within a period of thirty six months from the date when the death of the member is notified to the executive officer, the nomination shall be deemed to have ceased to be effective immediately prior to the death of the member.

(5) If, on the death of a member, there exists or remains no effective nomination under subsection (2) or (3), the executive officer shall, after such inquiry and upon such evidence as he may think fit —

- (a) pay the benefit to the surviving spouse of such member:

Provided that if there is more than one surviving spouse the executive officer shall divide such benefit amongst them in such proportions as he may, after consultation with the Minister, deem fair and just; or

- (b) if the member dies without leaving a surviving spouse, pay the benefit in such proportions as he may think fit to any persons who were dependants of the member:

Provided that if any such dependant is a minor child, payment shall be made to his guardian for use on his behalf on such conditions, including the provision of adequate security, as the executive officer may require; or

- (c) in any other case, hold the benefit in trust for any person subsequently found to be eligible under this subsection to receive it.

(6) Benefit which is held in trust in accordance with subsection (5)(c) and which remains unpaid on the expiry of a period of five years from the member's death shall be paid into the reserve account.

(7) No action or claim shall lie against the executive officer or the Fund in respect of any benefit paid in accordance with subsection (5).

Actuarial reports on Fund and method of payment of benefit.

29. (1) The Minister shall, not later than five years after the commencement of this Order and at least once during the course of each five years thereafter, cause an actuary to review the operation of this Order and to make a report.

(2) The Board may, at any time, cause an actuary to make a report to the Board on the extent to which and the conditions under which benefit, other than benefit payable on emigration, may be converted into and paid in the form of an annuity.

(3) The Board shall submit to the Minister (who shall as soon as practical submit it to the legislative body of Swaziland) a copy of such report, together with its observations on any recommendations contained therein and, if the Minister is satisfied that it is expedient to do so, he may, by notice published in the Gazette, make regulations to enable the executive officer to convert a member's benefit into an annuity if the member irrevocably exercises an option to acquire an immediate or deferred annuity in lieu of benefit to which he may be entitled.

(4) Benefit from a main account shall be paid in one amount or in instalments at the discretion of the executive officer in any particular case or class of case.

(5) Subject to subsection (6), benefit from a savings account may be claimed by a member on leaving his employer's service and, by agreement with the executive officer, may be paid in one amount or by instalments:

Provided that a member need not, on such claim withdraw or utilise his total credit in the Fund but may, by agreement with the executive officer, withdraw or utilise a proportion of such credit.

(6) The Minister may, by regulations at any time approve one payment of a benefit not exceeding forty per centum of any capital sum paid into the Fund by an employer on behalf of his employee or former employee under section 41(4) if such capital sum represents such person's accrued credits in the employer's private pension or provident scheme.

PART VI
FINANCIAL

Accounts and audit.

30. (1) The Board shall cause to be kept proper books of account, and other books and records in relation thereto, in which shall be recorded all the financial transactions of the Fund.

(2) The financial year of the Board shall be from the 1st July in any one year to the 30th June in the following year.

(3) The accounts of the Fund shall be audited by such person as the Board may, with the approval of the Minister after consultation with the Minister for Finance and Economic Planning, appoint.

(4) The Minister may after consultation with the Minister for Finance and Economic Planning at any time appoint an auditor to inspect the accounts of the Board on his behalf and all the books of the accounts of the Board and other relevant documents or information shall be made available to such auditor for the purpose of such inspection.

Investment committee.

31. (1) There shall for the purposes of this Order be a committee to be known as the Swaziland National Provident Fund Investment Committee.

(2) The membership of the investment committee shall comprise —

(a) the Principal Secretary for Finance or his representative, who shall be chairman thereof; (Amended A.5/1995.)

(b) the Principal Secretary of the Minister's Office or his representative;

(c) two persons experienced in financial matters who shall not be public officers appointed by the Minister responsible for Labour and Public Service in consultation with the Minister for Finance; (Amended A.5/1995.)

(d) the executive officer of the Fund.

(3) The quorum of the investment committee shall be the chairman of the Committee or his representative, the executive officer and any two other members, provided that one shall not be a public officer.

(4) The chairman of the investment committee shall have a casting as well as a deliberative vote.

(5) The Committee shall meet at such times as the chairman may appoint, and shall regulate the procedure at its meetings.

(6) The investment committee shall have power to give general or special directions from time to time on the investment of moneys in the Fund which are surplus to current needs, and the executive officer shall give the investment committee any information required for the proper discharge of its functions.

(7) The investment committee shall submit to the Board through the Chief Executive Officer minutes of its meetings within fourteen days of each meeting. (Added A.5/1995.)

(8) Decisions of the investment committee on a major investment shall not be implemented unless approved by the Board and the Minister as provided for under section 10 (1) of the Public Enterprises (Control and Monitoring) Act, 1989. (Added A.5/1995.)

(9) A member of the investment committee appointed under subsection (2)(c) shall hold office for a period not exceeding three years and on such other terms and conditions as may be specified in his instrument of appointment. (Added A.5/1995.)

Investment of moneys.

32. Investment of moneys in the Fund not otherwise required shall be made by the executive officer in accordance with the directions of the investment committee, provided that the provisions of section 31(8) have been satisfied. (Amended A.5/1995.)

Reserve Account.

33. (1) There shall be a reserve account of the Fund into which shall be paid all fines and penalties authorised by or under this Order, and any other moneys authorised to be so paid under this Order.

(2) Income from the investment of moneys in the reserve account shall be dealt with as general income of the Fund.

(3) There shall be paid to the reserve account any part of the general income of the Fund for any financial year remaining after any allocation for such year in accordance with section 34 to individual accounts and any allocation to special reserves created by the Board to provide for —

- (a) payments to be made to members claiming benefit if the Board is satisfied that deductions were made from the wages of a member but not paid over to the Fund by an employer who was liable to pay the statutory contribution;
- (b) payments to be made to a member claiming benefit if the Board is satisfied that a benefit has not been received by the member due to misappropriation, theft, or personation of such member;
- (c) the equalisation of interest credits to members;
- (d) such additional benefits for the members as may be approved by the Minister; and
- (e) any contingencies deemed expedient by the Board.

(4) The Board may, subject to the general or special directions of the Minister, authorise the expenditure of moneys in the reserve account for the promotion, establishment and support of any organisation or scheme the objects of which consist of or include the maintenance of aged persons and the training, rehabilitation and maintenance of disabled persons.

Interest on accounts.

34. (1) Subject to this section, the Board shall from time to time fix the rate of interest to be paid on the accounts of members after the end of each financial year on the balances outstanding at the beginning of that year, and such interest shall be credited to these accounts.

(2) In determining the rate of interest, the Board shall have regard to the net income of the Fund for the said financial year after allowing for such expenses of administration of the Fund as have been properly incurred under this Order, and the rate shall be fixed so that the total amount allocated by way of interest shall not exceed the net income of the Fund for that financial year.

(3) Notwithstanding subsection (2), a member eligible for benefit under Part V shall be entitled to have interest at the rate of not less than three per centum per annum credited to his account in respect of contributions received by the Fund during the financial year in which he receives any such benefit.

Refund of excess contributions.

35. Moneys paid to the Fund in excess of the amount for which an employer is liable in respect of an employee may be refunded to the employer, or to the employee, or to both, as the case may be, in such manner as the executive officer may approve in each case.

PART VII

LEGAL

Criminal proceedings.

36. (1) Any person shall be guilty of an offence and liable on conviction to a fine not exceeding E1 000 or imprisonment for a term not exceeding twelve months, or both, who —

- (a) for the purpose of evading payment of any contribution by him or some other person knowingly makes any false statement or representation;
- (b) fails to register within the period specified in or under section 8 when required under such section to register;
- (c) when required by or under this Order to furnish any information, without lawful excuse, fails to disclose that information or furnishes information which is false;
- (d) fails to pay to the Fund within the period specified in section 14 or 16 any contribution which he is liable to pay under this Order;
- (e) obstructs any inspector, officer or servant of the Fund in the discharge of his duties as such;
- (f) fails without lawful excuse to produce documents which he has been required under this Order to produce; or
- (g) knowingly deducts from an employee's wages any amount by way of the employee's share which is in excess of the amount due to be deducted under this Order.

(2) The court before which any person is convicted of an offence under this Order may, at the request of the executive officer or any person appointed by him for that purpose, including the public prosecutor at the trial of the convicted person, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any contributions, together with any interest or penalty thereon, certified by the executive officer to be due from such person to the Fund at the date of conviction, and such amount shall be paid into the Fund for the credit, where applicable, of the accounts of the employees concerned.

(3) Proceedings in respect of any offence under this Order may be commenced at any time within the period of twelve months after the commission of the offence has been brought to the notice of the executive officer.

Institution of civil proceedings.

37. Any civil proceedings, including the filing of any claims in an insolvent estate or a company in liquidation, for the recovery of any contribution due by any person under this Order shall be made by, and be instituted in the name of, the Board or any person authorised by it.

Priority of payment.

38. Where an employer becomes insolvent or, if the employer is a company, where the company is wound up, any contribution, penalty or other payment due to the Fund in respect of any employee by such employer, shall be a preferent claim to the same extent as other preferent claims are treated under the Insolvency Act, 1955. (Amended A.5/1995.)

Protection of contributions.

39. Notwithstanding any other law, the messenger of a Magistrate's Court or the Sheriff of the High Court, as the case may be, shall in the case of the sale in execution or under an order of court of any property of an employer, whether movable or immovable, deduct from the proceeds of such sale any amount certified by the executive officer as being due by the employer to the Fund under this Order and pay it to the executive officer, unless the employer or any other person provides adequate security for the immediate payment to the Fund of the amount so certified.

Certificates as evidence.

40. A written extract of an entry in the accounts or records of the Fund shall, when certified by the executive officer, be received in all courts as *prima facie* evidence of the truth of the contents thereof.

PART VIII

MISCELLANEOUS

Existing schemes.

41. (1) The employer of any employee who is a member of, or is entitled to participate in, an existing pension scheme or provident fund of his employer providing benefits for old age shall not thereby be exempt from contribution to the Fund in respect of such employee.

(2) If an employer is liable to make any statutory contribution in respect of any employee or employees, and is by himself or in association with others operating a scheme to provide any benefits of the same class as those payable under this Order for such employee or employees, he or, as the case may be, the governing body of such scheme may, by virtue of this subsection and whether or not the rules of the scheme allow, amend the scheme to take into account contributions made to the Fund and provide for a reduction of the contributions made to the scheme.

(3) Nothing in subsections (1) and (2) shall be construed so as to —

- (a) authorise the amendment of a scheme in such a way that the benefits, excluding annual interest, to an employee under such scheme and this Order are reduced below those to which he would have been entitled if this Order had not been passed; or
- (b) require an employer to contribute to both the scheme and the Fund an amount in excess of that paid by the employer to the scheme for any comparable period before he became a contributing employer.

(4) Subject to subsection (5), an authority responsible for the administration of any existing pension scheme or provident fund may, with the approval of the Board, make a payment of any sum to the Fund in respect of any person who is or has been a member of, or contributor to, such scheme or fund, and the Board shall cause such sum to be credited to the account of such person in the Fund and for this purpose shall, if no such account exists, cause an account to be opened in the name of such person.

(5) An authority making any payment in accordance with subsection (4) shall furnish with such payment a certified copy of its resolution or other authority authorising the payment, and such information as to the identity of the person in respect of whom the payment is made as the executive officer may require.

Exemption from stamp duty.

42. (1) No stamp duty shall be payable on any receipt, contract, instrument or other document given or executed by or on behalf of the Board, or by any person in respect of benefit or refund of contributions under this Order.

(2) Nothing in subsection (1) shall be construed to exempt any person from liability to pay stamp duty in respect of any other document otherwise liable for duty under the Stamp Duties Act, No. 37 of 1970.

Prohibition against misuse of information received.

43. (1) An inspector or other person who in the exercise of any powers conferred or the performance of any duty imposed by, under or in connection with this Order acquires information relating to the personal financial affairs of any other person shall not, save in the performance of his duty, publish or disclose such information to any person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding E100 or imprisonment not exceeding three months, or both.

Regulations.

44. The Minister may make regulations to give effect to the provisions of this Order and, without prejudice to the generality of such power, such regulations may provide for —

- (a) anything which is to be or which may be prescribed under this Order;
- (b) the nature of records to be kept by employers;
- (c) any forms required for the purposes of this Order;
- (d) the level of wages on which statutory contributions shall be payable by a contributing employer;
- (e) the amount of statutory contributions under this Order;

- (f) the amount of any special contributions payable by a contributing employer in respect of his casual employees;
- (g) the employee's share of any statutory contributions payable under this Order;
- (h) the method of collecting contributions under this Order;
- (i) the procedure for making claims, and the method of making payments, under this Order;
- (j) the procedure for the administration of annuities;
- (k) the procedure for dealing with unclaimed moneys in the Fund.

Reciprocal agreements.

45. (1) The Government may enter into a reciprocal agreement with the government of any other country in which a fund or scheme similar to the Fund has been established, and there may be included in the agreement provision that —

- (a) any period of membership of such fund or scheme in the country of such government may be treated as a period of membership of the Fund and *vice versa*, and
- (b) subject to such conditions as may be agreed, any amount standing to the credit of a member who works for any employer in the country of such government may be transferred to his credit in such fund or scheme, and any amount standing to the credit in such fund or scheme of any person who becomes a member may be transferred to his credit in the Fund.

(2) Any reciprocal agreement made under this section may modify, adapt or amend the provisions of this Order to give effect to the agreement.

FIRST SCHEDULE

(Section 4)

THE SWAZILAND NATIONAL PROVIDENT FUND BOARD

1. *Constitution of the Board.*

(1) The Board shall consist of thirteen persons, all of whom shall be appointed by the Minister, of whom —

- (a) two shall be public officers;
- (b) two shall be appointed to represent the Swazi National Council;
- (c) three shall be appointed to represent employers in Swaziland;
- (d) three shall be appointed to represent employees in Swaziland;
- (e) one shall be the executive officer, and whom the Minister shall designate as Secretary to the Board;
- (f) one shall be a person nominated by the Minister for Local Administration;
- (g) one shall be the Labour Commissioner: (Added K.O-I-C. 29/1977.)

Provided that the Minister may appoint one alternate to act in the absence of any representative of the employers and one alternate to act in the absence of any representative of the employees. (Added K.O-I-C. 27/1976; Amended K.O-I-C. 29/1977.)

(2) The Minister shall designate two members of the Board to be the chairman and vice-chairman respectively of the Board.

(3) Members of the Board shall be appointed for any period not exceeding three years, but a retiring member shall be eligible for reappointment.

(4) The office of a member of the Board shall become vacant —

(a) upon his death;

(b) if he is declared insolvent or makes a composition with his creditors;

(c) if he is absent from three consecutive meetings of the Board without special leave of the chairman;

(d) if he gives one month's notice in writing to the Minister of his intention to resign office and his resignation is accepted by the Minister; or

(e) if his appointment is terminated by the Minister.

2. *Procedure of Board.*

(1) The Board may meet for the despatch of business, adjourn and, subject to the Order, regulate its meetings as it thinks fit.

(2) The quorum necessary for the transaction of the business of the Board shall be five members provided that there are included at least one member representing employees and one member representing employers.

(3) In the absence of the chairman and vice-chairman the members present at any meeting shall elect one of their number to act as chairman for such meeting.

(4) Decisions of the Board shall be made according to the majority of votes of the members present and voting at a meeting of the Board at which a quorum is present and, in the event of an equality of votes, the chairman presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(5) The Board shall cause minutes to be kept recording —

(a) all resolutions, proceedings and meetings of the Board; and

(b) the names of the members present at each meeting of the Board.

(6) The Board may co-opt any one or more persons to attend any particular meeting of the Board for the purpose of advising or assisting the Board, but no such co-opted person shall have any right to vote.

(7) The Board may by resolution declare the remuneration and allowances of any co-opted person and such sums shall be paid out of the Fund.

(8) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the executive officer.

(9) The common seal of the Board shall not be affixed to any instrument except by authority of a resolution of the Board, and the sealing of any instrument shall be authenticated by the signature of the executive officer and of such other person as the Board may appoint for the purpose.

(10) If any member of the Board is directly or indirectly interested in any contract or proposed contract or other matter, and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact of his interest and shall not take

part in the consideration or discussion of, or vote upon any question with respect to, that contract or matter.

(11) The members of the Board excluding public officers shall be paid out of the Fund such fees for attendance at meetings of the Board and its sub-committees, and such travelling and subsistence allowances, as the Minister may direct.

SECOND SCHEDULE

(Section 7)

EXCEPTED EMPLOYMENT

1. Persons entitled to exemption from contribution to social security schemes under any International Convention.
2. Employment by virtue of which employees are eligible for pension benefits under the Pensions Act No. 3 of 1968.
3. Persons serving on probation and whose service would, on being confirmed in appointment, qualify as service for pension under the Pensions Act No. 3 of 1968.
4. Employment by virtue of which employees are eligible for benefits under the Unified Teaching Service pension scheme.
5. Employment by a university or college by virtue of which the employee is entitled to receive benefits under any superannuation scheme approved by the Minister in writing.
6. Whole-time students of any university or institution offering further education or vocational training who obtain temporary employment while on vacation from such a university or institution.
7. Persons who, having left school, take temporary employment while waiting to be admitted to such a university or institution for a whole-time course:
Provided that the admission to a university or institution for a whole-time course occurs within two years from the date the person left school and took up such temporary employment. (Added L.N.138/1996.)
8. Domestic servants employed in private households.