

Pension and Provident Funds (Amendment) Regulations, 2017
(No. 24)

IT is hereby notified that the Minister of Finance and Economic Development has, in terms of section 36 of the Pension and Provident Funds Act [*Chapter 24:09*], made the following regulations: —

1. These regulations may be cited as the Pension and Provident Funds (Amendment) Regulations, 2017 (No. 24).

2. The Pension and Provident Funds Regulations, 1991, published in Statutory Instrument 323 of 1991 (hereinafter referred to as “the principal regulations”), are amended by the insertion of the following after section 6—

“Procedure for appointment or election of trustees

6A. (1) Every registered fund shall have at least three and not more than nine trustees, of which one half shall be elected by the members of the fund:

Provided that the Commission, on application by a fund, may if satisfied that three trustees would be impracticable, unduly expensive or is not in the interest of the fund, authorise the fund to have trustees fewer than the three members and may at any time for good cause shown and on due notice to the fund withdraw such authorisation or exemption.

(2) A registered fund may appoint an expert trustee or independent trustee who, in the opinion of the fund, may assist the trustees in exercising their functions:

Provided that a person who is an employee of the fund shall not be eligible for appointment in terms of this subsection.

Qualifications and disqualifications for appointment as trustee

6B. (1) No person shall be appointed, elected or continue to act as a trustee unless he or she possesses such qualifications and additionally, or alternatively, has such experience or expertise as may be required for the proper administration of the fund.

(2) Notwithstanding the generality of subsection (1), every trustee must—

- (a) be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibilities of the office; and
- (b) be conversant with—
 - (i) rules of the scheme; and
 - (ii) any statement of investment principles being maintained; and
 - (iii) the statement of funding principles most recently prepared or revised;and
- (c) have the knowledge and understanding of—
 - (i) the law relating to pensions and trusts;
 - (ii) the principles relating to—
 - A. the financial management of occupational pension funds;
 - B. investment of assets of such schemes;
 - C. risk management of schemes.

(3) Subject to subsections (1) and (2), the degree of knowledge and understanding required for trustees is that appropriate for the purpose of enabling such trustee to properly exercise his or her powers and discharge his or her duties as a trustee of any scheme.

(4) Every fund shall within seven days, after appointing or electing a trustee, forward to the Commissioner the name of the appointed or elected trustee together with the trustee's—

- (a) police clearance issued within a period of six months from the date of his or her appointment or election; and
- (b) in the case of a body corporate, tax clearance certificate; and
- (c) declaration form in the form set out in the Fourth Schedule.

(5) No person shall be qualified for appointment or election or continue acting as trustee if—

- (a) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (b) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (c) within a period of five years preceding his or her application for appointment or election, he or she has been convicted inside or outside Zimbabwe of an offence involving dishonesty; or
- (d) within a period of five years preceding his or her application for appointment or election, he or she has been found guilty of an act involving dishonesty or financial offence in any proceedings of a disciplinary nature; or
- (e) there is a material conflict of interest between the trustee and his or her role as such; or
- (f) he or she has behaved in a manner which, in the opinion of the Commissioner, is of a disgraceful or undesirable nature which may include the following—
 - (i) gross mismanagement of records; or
 - (ii) improper recording of information;or
- (g) he or she has been certified either inside or outside Zimbabwe to be mentally challenged or intellectually handicapped or of unsound mind, and the certification remains in force; or
- (h) he or she does not reside in Zimbabwe.

(6) Subject to subsection (8), the Commissioner may, in the public interest, remove from office any trustee who, in terms of subsection (5), is disqualified to hold office as such.

(7) Any person aggrieved by the decision of the Commissioner in terms of subsection (6) may appeal to the Minister, and in lodging the appeal, section 31 of the Act shall apply, *mutatis mutandis*.

(8) Any person who, at the publication of these regulations, may be disqualified to act as a trustee in terms of subsection (5) may, with the leave of the Commissioner and in the public interest, continue to act as such until his or her term of office expires.

(9) The Commissioner may give a grace period of six months to any trustee who, in the opinion of the Commissioner, may be able to remedy the disqualification grounds set out in subsection (5).

(10) At the expiry of six months referred to in subsection (9), any person who fails to take a remedial action shall automatically be disqualified to hold office as a trustee and any person who shall continue to hold office in such capacity shall be guilty of an offence and liable to a fine not exceeding level six or to an imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Terms of office of trustees

6C. (1) Subject to this Part, a trustee shall hold office for such period not exceeding five years and upon the expiry of his or her period of office he or she shall be eligible for re-appointment or re-election as a trustee for another period not exceeding five years.

(2) On the expiry of the period for which a member has been appointed or elected, he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed:

Provided that a trustee shall not continue to hold office under this subsection for more than three months.

Trainings and assessments

6D. (1) Unless exempted by the Commissioner, every trustee shall undergo training on core skills within six months of appointment or election as a trustee.

(2) Any person who, before the coming into effect of these regulations, was a trustee shall unless exempted by the Commissioner, undergo training on core skills within one year from the date of publication of these regulations.

(3) Any trustee who without good cause shown fails to comply with this section shall be disqualified to act as such until he or she acquires the training on core skills.

(4) The training providers, who provide trainings referred to in subsection (1), and the training curriculum shall be approved by the Commission.

(5) The rules of a fund shall provide—

- (a) for development of policies and procedures meant to ensure that fit and proper standards are met; and
- (b) for the procedures for independent performance assessment of trustee.

(6) The core skills referred to in this section shall be determined by the Commission from time to time.

Powers and duties of trustees

6E. (1) The trustees of every registered fund shall be responsible for directing, controlling and supervising the operations of the fund in accordance with the Act and the rules of the fund, and for that purpose the trustees shall—

- (a) ensure that proper control systems are put in place to ensure that the fund complies with the Act and any other law;
- (b) ensure that members of the fund are adequately informed of their rights, benefits and duties in terms of the rules of the fund;
- (c) ensure that the rules, operations and administration of the fund comply with the Act and any other law;

- (d) take all reasonable steps to ensure that contributions to the fund are paid when they are due;
 - (e) where appropriate, obtains expert advice on matters on which the trustees lack expertise;
 - (f) formulate an investment policy to further the objectives and purposes of the fund;
 - (g) ensure that records of all its proceedings and of the business of the fund are kept.
- (2) Every trustee shall, in the exercise of his or her powers and discharge of his or her duties—
- (a) take reasonable steps to protect the interests of members of the fund, especially in the event of—
 - (i) the amalgamation of or transfer of any business:
or
 - (ii) the division of the fund; or
 - (iii) the withdrawal of a participating employer or the termination or reduction of contributions by a participating employer;and
 - (b) act honestly and in good faith with a view to the best interest of the fund; and
 - (c) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances; and
 - (d) avoid conflict of interest; and
 - (e) act impartially towards all members.”.

3. The principal regulations are amended by the insertion of the following schedule after the Third Schedule—

3. MEMBERSHIP AND EMPLOYMENT:

3.1 Your occupation and employment now and during the last 10 years, including the name of the employer in each case, the nature of the business, the last position held and relevant dates (Please attach a copy of your full curriculum vitae):

Name of employer/organisation	Nature of business	Last position held	Period of service

3.2 Of what bodies corporate are you a board member and since when?

.....

3.3 Do you, your spouse or child have any direct or indirect interest at any body corporate?

.....

4. BUSINESS RELATIONSHIPS:

4.1 Do any of the bodies corporate listed in reply Questions 3.1, 3.2 or 3.3 maintain a business relationship with the fund? If so, give particulars:

.....

Pension and Provident Funds (Amendment) Regulations, 2017
(No. 24)

4.2 Do you carry on or have you ever carried on or applied for a licence or equivalent authorization to carry on any business activity in Zimbabwe or elsewhere? If so, give particulars. If any such application was refused or withdrawn after it was made or any registration revoked, give particulars:

.....
.....
.....
.....
.....
.....
.....
.....

4.3 Do you, in your private capacity, or does any associate of yours undertake business with the fund. If so, give particulars:

.....
.....
.....
.....

5. DISCIPLINARY MATTERS:

5.1 Subject to the exclusions below have you at any time been convicted of any offences?

- any offence committed when you were under 18 years, unless the same was committed within the last 10 years;
- any road traffic offence;

If so, give particulars of the court by which you were convicted, the offence, the penalty imposed and the date of conviction.

.....
.....
.....
.....

5.2 Have you, in Zimbabwe or elsewhere, been censured, disciplined, warned as to future conduct, or made the subject of a court order at the instigation of any regulatory or any professional body to which you belong or belonged, or have you ever held a practicing certificate subject to conditions? If so, give particulars:

.....
.....
.....
.....

5.3 Have you, or has anybody corporate, partnership or unincorporated institution with which you are, or have been, associated as a member been the subject of an investigation, in Zimbabwe or elsewhere, by or at the instigation of a government department or the police, professional association or other regulatory body? If so, give particulars:

.....
.....
.....

5.4 Have you, in Zimbabwe or elsewhere, been dismissed from any office or employment, or been subject to disciplinary proceedings by your employer or barred from entry to any profession or occupation? If so, give particulars:

.....
.....
.....

5.5 Have you failed to satisfy any debt adjudged due and payable by you, as a judgement-debtor under an order of a court in Zimbabwe or elsewhere, or made any compromise arrangement with your creditor within the last 10 years? If so, give particulars:

.....
.....
.....

5.6 Have you ever been declared insolvent (either provisionally and/or finally) by a court in Zimbabwe or elsewhere, or has a bankruptcy petition ever been served on you? If so, give particulars:

.....
.....

5.7 Have you, in connection with the formation or management of anybody corporate, partnership or unincorporated institution, been adjudged by a court in Zimbabwe or elsewhere, civilly liable for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof? If so, give particulars:

Pension and Provident Funds (Amendment) Regulations, 2017
(No. 24)

.....
.....
.....
5.8 Has anybody corporate, partnership or unincorporated institution with which you were associated as a director or member of the executive, in Zimbabwe or elsewhere, been wound up, made subject to an administration order (including curatorship and judicial management), otherwise made any compromise or arrangement with its creditors or ceased trading either while you were associated with it or within one year after you ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction? If so, give particulars:

.....
.....
.....
.....

5.9 Have you been concerned with the management or conduct of the affairs of anybody corporate which, by reason of any matter relating to a time when you were so concerned, has been censured, warned as to future conduct, disciplined or made the subject of a court order at the instigation of any regulatory authority in Zimbabwe or elsewhere? If so, give particulars:

.....
.....
.....

5.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in Zimbabwe or elsewhere? If so, give particulars:

.....
.....
.....

6. SHAREHOLDING:

6.1 How many shares in the sponsoring employer or sponsoring employer's associate are registered in your name or the name of an associate? If applicable, give name(s) in which registered, number and class of shares.

.....
.....
.....

6.2 In how many shares in the sponsoring employer (not being registered in your name or that of an associate), are you or any of your associates beneficially interested?

.....
.....
.....

6.3 Do you, your spouse, child or any associate, hold shares in the sponsoring employer as trustee or nominee? If so, give particulars:

.....
.....
.....

6.4 Are any of the shares in the employer's company mentioned in reply to Questions 6.1, 6.2 and 6.3 equitably or legally charged or pledged to any party? If so, give particulars:

.....
.....
.....
.....

6.5 What proportion of the voting power at any general meeting of the employer's company (or of another body corporate or which it is a subsidiary) are you or any associate entitled to exercise or control the exercise of?

.....
.....
.....
.....

6.6 If the exercise of the voting power at any general meeting of the employer's company or of another body corporate of which it is a subsidiary, is or may be controlled by one or more associates of you, give the proportion of the voting power so controlled in each case and the identity of each associate:

.....
.....
.....

DECLARATION

I, the undersigned,.....

- (a) Certify that, to the best of my knowledge, the information given in answer to the above questions is true, complete and accurate and not misleading in any respect.
- (b) I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading.

Pension and Provident Funds (Amendment) Regulations, 2017
(No. 24)

- (c) I am also aware that provision of false information in this regard may result in rejection of this application by IPEC.
- (d) I undertake that, as long as I continue to be a trustee, I will notify IPEC of any material changes to, or affecting the completeness or accuracy of the answers to the questions above as soon as possible, but in no event later than 21 days from the day that the change come to my attention.
- (e) I hereby irrevocably consent to and authorize IPEC or any of its duly authorised personnel to verify any information supplied by me in this questionnaire and to make any enquiry from any person or organisation for any purposes directly or indirectly associated with this questionnaire.
- (f) I further hereby irrevocably consent to and authorise any such person or organisation to disclose such information to IPEC.
- (g) I also irrevocably consent to IPEC lawfully divulging any information in I have provided in response to the above questions.

Sworn at (place) this (date) day

of (month) (year).

.....
Signature of deponent

Declared by the deponent at (place) this

(date) day of (month) (year).

Before me;

.....
Commissioner for Oath."