

THE EMPLOYEES SUPERANNUATION FUND ACT 1954

Act 28/1954

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1. Short title

This Act may be cited as the Employees Superannuation Fund Act.

2. Interpretation

In this Act -

“committee” means the committee of management entrusted with the management of the affairs of the fund;

“employer” means an employer a group of employers, a company, a body corporate, a société governed by the provisions of the Code Napoléon or the Code de Commerce relating to such sociétés or an association en participation or a société du fait or association;

“fund” means any scheme which has for its object the payment on behalf of an employer, to a director or an employee himself or to his spouse, children or dependents, of any pension, annuity, lump sum, gratuity or other like benefit on the death or retirement from service of such director or employee, whether he contributed to such fund or not, and includes pension fund or scheme;

"Registrar" means the Registrar of Associations appointed under the Registration of Associations Act;

"secretary", in relation to a fund, includes any officer of the fund or other person performing the duties of secretary;

"treasurer", in relation to a fund, includes any officer of the fund or other person performing the duties of treasurer.

3. Constitution of fund

- (1) Any employer may constitute a fund and pay over to its treasurer such sums as are proper and necessary for assuring the payment of pensions or other benefits to a director or an employee himself or his spouse, children or dependents in respect of the services of such director or employee, including his past services.
- (2) The pensions or other benefits referred to in subsection (1) shall be such pensions or benefits as an employer may have agreed to provide for his employees under such employer's pension scheme.

4. Incorporation and registration

- (1) (a) Subject to subsection (2), a fund shall be a body corporate.
(b) Service of process on the secretary of a fund shall be deemed to be service on the fund.
- (2) No fund shall be a body corporate unless its secretary causes it to be registered under this Act.

5. Application for registration

- (1) The secretary of a fund seeking registration under this Act shall make application in writing to the Registrar in that behalf and shall furnish to the Registrar the following items of information certified true under his hand -
 - (a) the name, place of office and objects of the fund;
 - (b) the names, occupations and addresses of the members of the committee;
 - (c) the respective resolution of the employers and of the employees nominating the members of the committee;
 - (d) the rules of the fund.
- (2) The Registrar after considering the application furnished by the secretary may-

- (a) register the fund by entering its name in a register to be known as the Register of Superannuation Funds (in this Act referred to as the Register) and deliver to the applicant a certificate in the form set out in the First Schedule;
 - (b) request as a condition precedent to registration that the books of the fund be kept in English or in French and that any alteration be made to the rules of the fund so that they should conform to the Second Schedule; or
 - (c) refuse registration.
- (3) The Registrar shall advise the applicant of his decision by registered letter in every case.
- (4) Within 2 months of the date of the receipt by the applicant of the Registrar's letter under subsection (3), an appeal shall lie to the Minister against a decision of the Registrar under subsection (2) (b) or (c).

6. Rules

- (1) The rules of every fund seeking registration under this Act shall contain provision in respect of the several matters mentioned in the Second Schedule and shall, on the fund being registered, become the rules of the fund.
- (2) A copy of the rules shall be filed with the Registrar and such rules shall be binding on the fund as well as on the employer and his employees.
- (3) Any amendment to such rules shall be submitted to the Registrar, and shall, on receiving his approval, become binding on the fund, as well as' on the employer and his employees.

7. Management

- (1) The management of the affairs of the fund shall be vested in a committee composed of not less than 5 persons, nominated by the employer and by the employees.
- (2)
 - (a) The members of the committee shall annually appoint from among themselves a chairman and a vice-chairman.
 - (b) They shall also appoint any person to act as treasurer and as secretary on such terms and conditions as they may decide.
- (3) Every year the employer and employees shall appoint representatives to sit on the committee.

8. Limitation of liability

No member of the committee shall be liable for any loss arising from, or contingent upon, any investment made in accordance with section 9 (1) unless such loss has been occasioned by his wilful negligence or fraud.

9. Use of money of the fund

- (1) (a) All money paid into or accruing to the fund shall be deposited in a bank by the treasurer and shall be applied -
 - (i) to the payment of pensions or other benefits as provided for in the rules of the fund;
 - (ii) to the payment of expenses of the fund.
- (b) Any surplus in excess of the amounts required for the purposes enumerated in paragraph (A) shall be invested in such manner or in such securities as the committee may decide.
- (2) The money of the fund shall be used for no other purposes than those set out in subsection (1).

10. Payments to a fund to be irrevocable

All sums paid into the fund by an employer, or by an employee, in the case where the employee under the rules of a pension fund or scheme has to contribute to the fund, shall be irrevocably charged for the benefit of the fund or scheme.

11. Secretary to make returns

- (1) (a) The secretary of every fund shall within 3 months after the end of each financial year, or whenever so requested by the Registrar, furnish to the Registrar a return of the names of the officers of the fund, and an audited account of the yearly revenue and expenditure and of the assets and liabilities of the fund, in such form as the Registrar may require.
- (b) Any change occurring in the place of office or among the officers of a fund shall be notified to the Registrar within 14 days of such change.
- (2) Any secretary who fails to comply with subsection (1) shall commit an offence, and, shall, on conviction, be liable to a fine not exceeding 15 rupees for every day during which the default continues.

12. Accounts and audits

- (1) There shall be prepared every year a statement of income and expenditure and a balance sheet of every fund in respect of each financial year.
- (2) The income and expenditure statement and the balance sheet shall be audited by 2 auditors, one of them being nominated by the employer and the other by the employees.

- (3) A copy of the audited statement and balance sheet shall be sent to the Registrar and copies shall be sent to the employer and the employees respectively.

13. Power of Registrar

- (1) The Registrar may, where he has reasonable grounds to believe that the registration of a fund under this Act has been obtained by fraud or mistake or that a fund exists for an illegal purpose or has wilfully infringed any of its rules or this Act, or has in any way misapplied its funds, call for all accounts, books and documents relating to such fund and institute an inquiry into the affairs and conduct of such fund and may hear evidence on oath in connection with such inquiry.
- (2) Sections 10 to 13 of the Commissions of Inquiry Act shall, with such adaptations and modifications as may be necessary, apply to any inquiry under subsection (1).
- (3) The Registrar shall thereafter draw up and forward a report of his findings, together with his recommendations, to the President who may make such order in the matter as he thinks fit.
- (4) Without prejudice to subsection (3), the Registrar may, at any reasonable time, either by himself or through an officer deputed by him in that behalf, check the books of any fund and its bank and cash balances.

Amended by [\[Act No. 48 of 1991\]](#)

14. Removal of name and fund from Register

- (1) Where the Registrar is satisfied, as the result of any investigation into the affairs and conduct of a -fund, that such fund should be struck off the Register, he shall, with the approval of the President, cause a notice to be served upon the secretary of the fund informing him that he intends to strike the fund off the Register for reasons to be set out in the notice.
- (2) The committee may, within 2 months after receipt by its secretary of such notice from the Registrar, appeal to the Supreme Court against the decision to order the striking of the fund off the Register and show cause why the name of the fund should not be struck off the Register, and on any such appeal the Supreme Court may make such order as thinks fit.
- (3) Where within 2 months of the receipt by the secretary of a fund of notice from the Registrar under subsection (1), the fund has not appealed to the Supreme Court, or where any appeal made by the fund under subsection (2) has been dismissed, the Registrar shall strike the fund off the Register.

Amended by [\[Act No. 48 of 1991\]](#)

15. Winding up of affairs of fund

- (1) On the striking of a fund off the Register, all the property of that fund shall become vested in the Registrar who shall use such property towards meeting, as far as possible, all the debts and liabilities of the fund other than benefits to beneficiaries and then apply any remaining property to the payment, firstly of amounts due to pensioners in respect of their incumbent pensions, and then of amounts due to employees in active service at the date of striking off the fund or accrued benefits for which they had qualified under the employer's pension fund or scheme in respect of their period of service up to that date.
- (2) For the purposes of this section, the amount due to a pensioner or to a employee shall be such capital sum as represents, on the day of striking off, the present value of benefits as above, as determined by an actuary.
- (3) Any amount remaining after making the above payments shall be divided among the pensioners and the employees in proportion to the capital amounts due to each.

16. Contribution payable by fund

- (1) To meet the expenses incurred in carrying out the purposes of this Act, every fund shall pay to the Accountant-General not later than 4 months after the end of its financial year such percentage of the annual investment income of the fund for the preceding year not exceeding one quarter per cent as shall be fixed by the Registrar.
- (2) The Registrar may exempt any fund from payment of such contribution if, in his opinion, undue hardship would result from such payment.
- (3) Any contribution due by a fund may be sued for or recovered by the Registrar in the same manner as a small State debt is sued for and recovered by the Accountant-General under the Recovery of State Debts Act.
- (4) Where a fund fails to pay its contribution on or before the expiry of the period specified in subsection (3), it shall be liable to pay to the Accountant General, in addition to the contribution, a penalty representing 10 percent of the unpaid contribution for each month during which the contribution remains unpaid up to a maximum of 100 percent of the unpaid contribution.

Amended by [\[Act No. 48 of 1991\]](#); [\[Act No. 22 of 2000\]](#)

17. Registrar's certificate to be evidence

A certificate under the hand of the Registrar as to the names of the officers of a fund and as to any other fact required by this Act to be registered shall be prima facie evidence of the facts stated in it.

18. Exemption from tax and duties

- (1) Any payment or transfer of money or of securities to a superannuation fund shall be exempt from all taxes and duties notwithstanding any other enactment.
- (2) Any payment made in accordance with the rules of a superannuation fund to the legal personal representative of an employee on the death of such employee shall be free from succession duty.

FIRST SCHEDULE
(section 5)

I hereby certify that the ... Fund has this day been registered under the Employees Superannuation Fund Act.

Dated this ... day of ...

Registrar

SECOND SCHEDULE
(section 6)

Matters to be provided for by the rules of superannuation funds registered under the Employees Superannuation Fund Act.

- 1 The corporate name and place of business of the fund.
- 2 The objects of the fund.
- 3 The manner of making, altering, amending and rescinding the rules.
- 4 The rates of contribution of the employer and if employees also contribute their rate of contribution.
- 5 The rates of benefit accruing to the employees and the method of the calculating such benefits.
- 6 The conditions of membership.
- 7 The appointment by employers and employees of their respective representatives to serve on the committee of management and the number of such representatives.
- 8 The mode of holding meetings of the committee of management.

- 9 The keeping of records, the keeping of accounts and the audit of such accounts at least once a year.
- 10 The security to be provided by officers whose office is connected with the collection, receipt, and management of money on behalf of the fund.
- 11 The appointment of auditors.
- 12 The duties of the chairman or other officers of the fund.
- 13 The circulation of information relative to the fund to the employer and his employees, including the rules of the fund and the balance sheets and reports.
- 14 The dissolution of the fund and disposal of the assets of the fund including amalgamation with any other fund.