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Members of Parliament and Designated Office Bearers Pension Fund Order, 1993

Kings Order in Council 18 of 1993

Legislation as at 1 December 1998

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Members of Parliament and Designated Office Bearers Pension Fund Order, 1993

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Members of Parliament and Designated Office Bearers Pension Fund Order, 1993

Kings Order in Council 18 of 1993

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Assented to on 17 September 1993

Commenced on 1 November 1993 by Date of Commencement (Members of Parliament and Designated Office Bearers Pension Fund Order) Notice, 1993

[This is the version of this document at 1 December 1998.]

An Order to provide for the establishment of Members of Parliament and Designated Office Bearers Pension Fund.

ENACTED by the King in collaboration with the Council.

1. Short title and commencement

This Order may be cited as the Members of Parliament and Designated Office Bearers Pension Fund Order, 1993 and shall come into operation on such date as the Minister may, appoint by Notice in the *Gazette*.

2. Interpretation

In this Order, unless the context otherwise requires—

“**annual pensionable salary**” means the basic salary of a member of the fund;

“**designated office**” means the office of—

- (a) Indvuna YeTinkhundla;
- (b) Regional Administrator; or
- (c) any other office the appointment to which depends upon the elections or nomination of the holder by proper authority and which has been designated for the purpose of this Act by the Minister by Notice in the *Gazette*.

“**Board**” means the supervisory Board established in terms of [section 7](#);

“**Fund**” means the Members of Parliament and Designated Office Bearers Pension Fund established in terms of [section 3](#) of this Act;

“**Member**” means any person who becomes a member of the Fund in terms of [section 8](#);

“**Member of Parliament**” means a member of either House of Parliament;

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

“**proper authority**” means the King or a person to whom the King has explicitly delegated power to nominate or to elect;

“**retirement**” means—

- (a) in the case of a member of Parliament the termination of his membership of Parliament;
- (b) in the case of a person who is a holder of a designated office, the termination of his appointment to that office;

“**termination**” means ceasing to be a member of Parliament in accordance with sections 21 and 22 of the Establishment of the Parliament Order, 1992.

3. Establishment of Members of Parliament and Designated Office Bearers Pension Fund

- (1) There is hereby established a pension fund to be known as the Members of Parliament and Designated Office Bearers Pension Fund with perpetual succession and common seal which may sue and be sued in its corporate name.
- (2) The Fund may acquire, hold and dispose off any movable or immovable property or enter into such contract as may be necessary for the purposes of the Fund.
- (3) There shall be paid from the Fund the pensions and other benefits for which provision is made in this Order.

4. Powers of the Fund

The Fund may—

- (a) invest any monies not immediately required for the conduct of its business in such manner as may from time to time be determined by the Minister and may realize, alter or re-invest such investment in such manner as may from time to time be determined by the Minister;
- (b) after consultation with the Prime Minister and subject to the approval of the Minister, borrow money and secure the payment in such manner as it may deem fit; and
- (c) do all such other things as are incidental or conducive to the exercise of its powers or the performance of its duties.

5. Monies and audit of the Fund

- (1) The monies of the Fund shall consist of contributions by the Government and members as provided in [section 9](#).
- (2) The monies of the Fund shall be exempt from income tax.
- (3) The Fund shall keep proper records of all its assets and liabilities.
- (4) The books of accounts and other related records of the Fund shall be audited annually by an Auditor appointed by the Board.
- (5) After each audit under sub-section (4), the Supervisory Board shall as soon as possible, but not later than three months, submit to the Minister the audited balance sheets and report of the auditor in respect of such audit.
- (6) At least once in every three years the Board shall cause the financial condition of the Fund to be investigated by a qualified actuary who shall submit to the Board a report on the results of his investigation and his recommendations concerning any matter relating to the Fund which in his opinion needs attention in order to maintain the Fund in a sound financial condition.

6. Administration and management of the Fund

The Minister may enter into any agreement or make any other arrangements with any person for the purpose of administering and managing the Fund.

7. Establishment of a Supervisory Board

- (1) The Minister shall establish a Supervisory Board which shall supervise the operations and management of the Fund and may, subject to any directive given by the Minister on matters of policy, decide on matters relating to—
 - (a) the financial position of the Fund;
 - (b) the financing of the Fund, and
 - (c) any matter from time to time referred to it by the Minister.
- (2) The members of the Board shall be appointed by the Minister, and shall consist of such number not exceeding nine (9), as the Minister may determine.
- (3) A member of the Board shall be appointed for such period and on such conditions including such allowances, as the Minister may determine.
- (4) The Board shall meet at least quarterly and shall submit a quarterly and yearly report to the Minister on the financial position of the Fund.

8. Membership of the Fund

- (1) Any person who on or after the date upon which this Act comes into force becomes—
 - (a) a member of Parliament; or
 - (b) a designated office bearer, shall be a member.
- (2) Subject to sub-section (3), a person's membership shall terminate, in the case of—
 - (a) a member of Parliament, if he ceases to be a member of Parliament;
 - (b) a designated office bearer, if he ceases to be a designated office bearer.
- (3) Where a person ceases to be a Member of Parliament and is appointed a designated office bearer or if he is a designated office bearer, ceases to be a designated office bearer and becomes a Member of Parliament, his membership to the Fund shall not terminate.

9. Pension contributions by members and the Government

- (1) A member shall, from the date on which he becomes a member until the end of the month in which he ceases to be a member, contribute an amount equivalent to ten (10) percent of his annual pensionable salary to the Fund.
- (2) Any amount to be contributed by a member in terms of this section shall be deducted in monthly instalments, or in such other instalments and at such other times as the Accountant-General may approve from the member's salary.
- (3) The Government shall contribute as a one time lump sum payment, nine million, Emalangeni (E9.000.000) plus twenty (20) percent of the total annual pensionable salary of all the members to the Fund.
- (4) The percentage of the total annual pensionable salary of all the members referred to in subsection (3) shall be paid into the Fund at the end of each month.
- (5) The contributions by the Government under this section shall be drawn from the Consolidated Fund.

10. Retirement benefits

- (1) Upon the retirement of a member who, at the date thereof, has been a member for a continuous period of less than five years, there shall be paid to that member an amount equal to the total of all of the contributions made by him in terms of [section 9](#) plus interest on each thereof at the rate prescribed by the Minister after consulting an actuary compounded annually:

Provided that in the case of such a member whose retirement is occasioned by—

- (a) his having become permanently incapable of discharging his duties by reason of infirmity of mind or body; or
- (b) his holding of the office concerned having been terminated by proper authority otherwise than at his own request;

that member shall be paid, in place of that amount, a pension calculated in terms of subsection (2).

- (2) Upon the retirement of a member who, at the date thereof, has been a member for a continuous period of five years or more, or of a member to whom the proviso to subsection (1) applies, there shall, subject to subsection (4)(a), be paid to that member during his lifetime an annual pension (payable in monthly instalments in arrear) equal to the aggregate of the amounts arrived at by the separate application, in respect of each type of appointment (namely as a Member of Parliament, the bearer of a designated office, Minister or Prime Minister) held by him during that continuous period, of the following formula—

$$A = \frac{B}{17} \times C$$

in which formula—

- (a) A is the annual pension to be arrived at in respect of each type of appointment;
 - (b) B is a number, representing the period of years (and including any part of a year, 17 determined according to the proportion which the number of days in that part bears to 365 of 366, as the case may be) during which the member held the type of appointment concerned;
 - (c) C is the annual pensionable salary payable, as at the date of retirement of the member, in respect of the type of appointment concerned.
- (3) Upon the retirement of a member who has, at any time during a continuous period of membership ending on the date of that retirement, held appointments as Prime Minister, there shall be paid to that member, in addition to any other benefit in terms of this section, a gratuity equal to one (1) times his annual pensionable salary.
- (4) If a person, having previously been a member and having received a benefit in terms of this section upon his retirement, again becomes a member, then—
- (a) in the case of a person to whom a payment was made in terms of subsection (1), that person may, if he so elects within 3 months after becoming a member again, have all or any of his previous periods of membership, deemed, for the purpose of sub-sections (1) and (2), to be continuous with his then current membership, in which event that member shall repay to the Fund, in such manner (including such interest) as the Board may approve, the amount of any payment previously made to him in terms of subsection (1) in respect of the previous period of membership concerned; and
 - (b) in the case of a person to whom a pension was being paid in terms of subsection (2), that pension shall cease to be paid upon his again becoming a member and, in the determination of factor B for the purposes of calculating the pension payable to him in terms of subsection

(2) when he again retires, the period of years referred to in that factor shall be deemed to include the period of years during which he previously held the types of appointment concerned.

11. Death before retirement

- (1) A member who dies before retirement shall receive a life assurance benefit equal to one (1) times his annual salary.
- (2) If a member dies before retirement and is survived by a spouse, such spouse shall be paid an annual pension equal to thirty percent (30%) of the members annual salary notwithstanding that the member may have been a member for less than five years at that date.
- (3) Where a member is married to more than one spouse, the pension referred to in sub-section (2) shall be paid into the member's estate and the Master of the High Court shall be responsible for administering the payment of such pension.
- (4) Subject to sub-section (5), if a member dies before retirement and is survived by children, such children, not exceeding five (5) in number, shall be paid a pension equal to twenty (20) percent of the spouse's annual pension payable up to the age of eighteen years.
- (5) Where a child referred to in sub-section (4), is enrolled in an institution of learning and is above the age of eighteen (18) years, the pension shall be paid to such child until he attains the age of twenty five (25).
- (6) Where a member dies before retirement and is survived by more than five (5) children, sub-section (3) shall apply.

12. Death after retirement

- (1) If a member dies after retirement and is survived by a spouse, his spouse shall receive a pension equal to fifty (50) percent of his annual pension.
- (2) sub-section (1) shall apply notwithstanding that the member might have commuted a portion of his pension.
- (3) Where a member is married to more than one spouse, [section 11\(3\)](#) shall apply.

13. Commutation

- (1) Notwithstanding any provisions of this Act, a member may commute such portion, not exceeding one third of his annual pension as he may elect in return for a lump sum the amount of which is arrived at by multiplying the annual amount of the portion so commuted by a factor of 12,5.
- (2) The portion referred to in sub-section (1) shall be commuted at the time the pension is granted.

14. Liability to income tax

Notwithstanding any other law, the amount of any pension payable under this Act shall be liable to tax under the Income Tax Order, 1975.

15. Protection of pension from attachment etc.

- (1) Subject to sub-section (2), no pension payable under this Act or any right thereto shall be capable of being assigned, transferred, ceded, pledged or hypothecated or liable to attachment, sequestration or any other form of execution under any circumstances whatsoever including any judgment or order of a court nor shall such right thereto be deemed to form part of the assets in the insolvent estate of any member.

- (2) A pension payable under this Act or the right thereto may be assigned, transferred, ceded, pledged or hypothecated to the Government in respect of any debt owed to the Government or to a financial institution as defined in the Financial Institutions (Consolidation) Order, 1975 and any such pension or right thereto shall be deemed to form part of the assets in the insolvent estate of a member.

16. Transitional provisions

- (1) A person who has held a designated office during the period 1979 – 1987 shall be entitled to a gratuity at the rate of twenty five (25) percent of the annual salary received in respect of the period served in such office.
- (2) A person who—
- (a) holds or has held a designated office; or
 - (b) is or has been a member of Parliament,
- during the period from 1st December, 1987 to the date of coming into force of this Act, shall receive pension as applicable in the manner stipulated in sections [10](#), [11](#) and [12](#).
- (3) Subject to sub-section (4), a person who has held the office of Prime Minister before the coming into force of this Act, shall receive pension as applicable in the manner stipulated in sections [10](#), [11](#) and [12](#) and such person shall be deemed to have had five (5) years of pensionable years service to his credit and if such a person had already received any gratuity such gratuity shall be set off against any pension payable to him under this section.
- (4) The retirement benefits mentioned in section [10](#), [11](#) and [12](#) shall for purposes of subsection (3), be limited to the spouse of the person mentioned in that sub-section.
- (5) Where the person mentioned in sub-section (3) is married to more than one spouse, [section 11\(3\)](#) shall apply.
- (6) Sub-sections (2) and (3) shall apply notwithstanding that the person or member mentioned in these sub-sections has not contributed to the Fund in the manner stated in [section 9](#).

18. Regulations

- (1) The Minister may, after consulting the Prime Minister, make regulations for the purpose of—
- (a) altering the amount or percentage contributed by a member to the Fund;
 - (b) altering the percentage of the total annual salary of all members contributed by the Government to the Fund;
 - (c) altering the amount or percentage received by a member on normal retirement;
 - (d) altering the portion a member may commute; and
 - (e) generally giving effect to the provisions of this Act.
- (2) Any regulations made under this section shall be subject to Parliamentary approval.

[Please note: numbering as in original.]

19. Repeal

The Members of Parliament (Gratuity) Act, 1980 is repealed.