

CHAPTER 17:04

NATIONAL SOCIAL SECURITY AUTHORITY ACT

Acts 12/1989, 29/1991, 15/1994; 12/1997 (s. 13), 22/2001 (s. 4), 8/2002, 6/2005 (s. 34).

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SCHEDULE: Powers of Authority.

AN ACT to provide for the establishment of social security schemes for the provision of benefits for employees; to establish the National Social Security Authority and to provide for the functions thereof; to provide for the constitution and functions of the National Social Security Board; and to provide for matters connected therewith or incidental thereto.

[Date of commencement: 30th March, 1990.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the National Social Security Authority Act [*Chapter 17:04*].

2 Interpretation

In this Act—

“Authority” means the National Social Security Authority established by section *four*;

“benefit” means a benefit or advantage of any kind whatsoever deriving from any scheme;

“Board” means the National Social Security Board established in terms of section *five*;

“committee” means a committee of the Board established in terms of subsection (1) of section *thirteen*;

“contribution” means a contribution paid, whether directly or indirectly, in terms of any scheme;

“employee” means any person employed by or working for an employer and receiving or entitled to receive any remuneration in respect of such employment or work;

“employer” means any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him, and includes the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed;

“financial year” means the financial year of the Authority referred to in section *thirty-one*;

“general manager” means the general manager of the Authority appointed in terms of section *twenty-six*;

“inspector” means a person appointed as an inspector in terms of section *thirty-nine*;

“member”, subject to section *twelve*, means a member of the Board other than the general manager;

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may from time to time assign the administration of this Act;

“scheme” means a social security scheme established in terms of section *three*.

PART II
SOCIAL SECURITY SCHEMES

3 Establishment of schemes

(1) Subject to subsections (4), (5) and (6), the Minister may, by notice in a statutory instrument, establish one or more schemes for the provision of benefits to or in respect of all employees or such classes of employees as may be specified in the notice, and may in like manner amend or abolish any such scheme.

(2) A notice in terms of subsection (1) may provide for—

- (a) the registration of employers and employees liable to contribute in terms of any scheme;
- (b) the registration of dependants of employees covered by any scheme;
- (c) the compulsory payment of contributions by employers and employees, the rates of such contributions and the deduction of contributions payable by employees from any salary, wages or other moneys payable to them;
- (d) the compulsory submission of any person to any medical or dental examination required for the purposes of a scheme;
- (e) the payment of contributions by persons who were contributing in terms of a scheme but who are unemployed;
- (f) the imposition of surcharges in respect of the late payment of contributions by employers or employees;
- (g) the manner and circumstances in which contributions may be refunded;
- (h) fees that may be charged for medical and dental examinations, services provided and other things done for the purposes of a scheme;
- (i) the nature and amount of benefits to be granted or paid in terms of a scheme, the circumstances in which and the persons to whom such benefits shall be granted or paid and the manner in which they shall be granted or paid;
- (j) the reduction, suspension or withdrawal of any benefit granted or paid in terms of a scheme;
- (k) the maintenance of records by employers in respect of contributions payable by them and by or in respect of their employees;
- (l) the submission of returns by employers regarding their employees and their remuneration and conditions of service;
- (m) any other matter whatsoever for which, in the opinion of the Minister, it is necessary or desirable to make provision in order to give effect to a scheme.

(2a) A notice in terms of subsection (1) which establishes a scheme to compensate employees for injury, disablement or death connected with or arising out of their employment may provide for—

- (a) the abrogation of any remedy at common law whereby damages may be claimed for such injury, disablement or death; and
- (b) the payment of additional compensation where such injury, disablement or death is due to negligence on the part of the employer concerned or an agent of the employer or to any defect in—
 - (i) the premises in which the employee concerned is or was employed; or
 - (ii) any plant or machinery used by the employee concerned in the course of his employment.

[Subsection inserted by s. 13(1) of Act No. 12 of 1997]

(3) Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], a notice in terms of subsection (1) may provide for—

- (a) different levels of contributions to be payable by different classes of persons; and
- (b) different benefits to be granted or paid to different classes of employees and other persons:

Provided that no notice shall discriminate between persons on the ground of race, tribe, place of origin, political opinion, colour, or creed.

(4) Before establishing, amending or abolishing any scheme in terms of this section, the Minister shall consult the Board and the Minister responsible for finance.

(5) No scheme shall come into operation in terms of this section until the Minister has laid it before Parliament and Parliament has by resolution approved it.

(6) A scheme may be established so as to apply to or in respect of employees whose conditions of service are fixed or regulated by any Commission established in terms of the Constitution and, in that event—

- (a) any notice establishing, amending or abolishing the scheme shall be made in conjunction with the Commission concerned; and
- (b) to the extent that the scheme does apply to such employees, it shall bind the State.

3A Duty to comply with scheme

Any person who contravenes any provision of a scheme with which it is his duty to comply shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

PART III

NATIONAL SOCIAL SECURITY AUTHORITY AND NATIONAL SOCIAL SECURITY BOARD

4 Establishment of National Social Security Authority

There is hereby established an authority, to be known as the National Social Security Authority, which shall be a body corporate and, in the name of the National Social Security Authority, shall be capable of suing and being sued and, subject to this Act, of performing all acts that bodies corporate may by law perform.

5 Establishment of National Social Security Board

Subject to this Act, the operations of the Authority shall be controlled by a board, to be known as the National Social Security Board, constituted in terms of this Part.

6 Constitution of Board

(1) The Board shall consist of—

(a) the general manager, *ex officio*; and

(b) not more than—

(i) six members appointed by the Minister from a panel of names submitted to him by organizations representing employers and employees which members shall be appointed in equal numbers from the names submitted by the organizations representing employers and those representing employees; and

(ii) three members appointed by the Minister after consultation with employer and employee organizations;

and chosen for their ability and experience in administration or finance or their professional qualifications or for their suitability otherwise for appointment as members.

(2) If an organization representing employers or employees fails to submit a list of nominations within a reasonable time after being so requested by the Minister for the purposes of subparagraph (i) of paragraph (b) of subsection (1), the Minister may appoint as members such persons as he thinks would best represent the interests of members of such organization, and any person so appointed shall be deemed to have been chosen in accordance with the requirements of the said subparagraph.

(3) The Minister shall appoint one member as chairman of the Board and another member as deputy chairman of the Board, and the deputy chairman shall exercise the functions of the chairman during any period that the chairman is unable to do so.

(4) The Minister may appoint any person to the Board as an alternate to any member referred to in subsection (1), and such member—

(a) shall act as a member only when the member to whom he is alternate is for any reason unable to exercise his functions on the Board;

(b) when acting as a member shall exercise the functions of the member to whom he is alternate:

Provided that an alternate to the chairman or deputy chairman of the Board shall not exercise the functions and powers or perform the duties of the chairman or deputy chairman, as the case may be.

(5) In appointing a person as an alternate to a member in terms of subsection (4), the Minister shall be bound by the same requirements for appointment that are applicable, in terms of subsection (2), to the appointment of members.

7 Conditions of office of members

(1) Subject to this Part, a member shall hold office for such period, not exceeding three years, as the Minister may fix on his appointment and on such conditions as the Minister may fix for members generally.

(2) A retiring member shall be eligible for reappointment as a member.

8 Disqualification for appointment as member

A person shall not be appointed as a member and no person shall be qualified to hold office as a member who—

(a) is not ordinarily resident in Zimbabwe; or

(b) has, or is married to a person who has, a financial interest connected directly or indirectly with the interests of the Authority unless the Minister considers that the financial interest concerned is such that it is not likely to interfere with the impartial performance of his functions as a member; or

(c) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

- (ii) made an assignment to, or arrangement or composition with his creditors which has not been rescinded or set aside;
- or
- (d) has, within the period of five years immediately preceding the date of his proposed appointment, been sentenced in any country to a term of imprisonment of or exceeding six months imposed without the option of a fine and has not received a free pardon.

9 Vacation of office by member

A member shall vacate his office and his office shall become vacant—

- (a) after giving the Minister such period of notice of intention to resign as may be fixed in his conditions of appointment or, if no such period has been fixed, after the expiry of one month after the date he gives such notice or after the expiry of such other period of notice as he and the Minister may agree; or
- (b) on the date he begins to serve a sentence of imprisonment the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine in any country; or
- (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section *eight* to hold office as a member; or
- (d) if he is required in terms of section *ten* to vacate his office; or
- (e) if he is absent without the permission of the Board from three consecutive meetings of the Board, of which he has been given not less than seven days' notice.

10 Minister may require member to vacate office

The Minister may require a member to vacate his office if the member—

- (a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
- (b) has failed to comply with the conditions of his office fixed by the Minister in terms of subsection (1) of section *seven*; or
- (c) is mentally or physically incapable of efficiently exercising his functions as a member.

11 Filling of vacancies

On the death of, or the vacation of office by, a member, the Minister shall appoint a person to fill the vacancy.

12 Meetings and procedure of Board

(1) In this section—

“member” includes the general manager.

(2) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit:

Provided that meetings of the Board shall be held at least once every three months.

(3) The chairman of the Board may himself at any time and shall, at the request in writing of not fewer than two members, convene a special meeting of the Board, which meeting shall be convened for a date not sooner than seven days nor later than thirty days after receipt of such request.

(4) If at a meeting of the Board the chairman and the deputy chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(5) A majority of members shall form a quorum at a meeting of the Board.

(6) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(7) At all meetings of the Board each member present shall, subject to section *sixteen*, have one vote on each question before the Board and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(8) Any proposal circulated among all members and agreed to in writing by a majority of all of them shall be of the same force and effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

13 Committees of Board

(1) For the better exercise of its functions, the Board may establish one or more committees in which may be vested and on which may be imposed such of the functions of the Board as the Board, with the consent of the Minister, may direct:

Provided that—

- (i) the vesting or imposition of any such functions in a committee shall not divest the Board of such functions; and
- (ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions.

(2) The procedure of each committee shall be fixed by the Board.

(3) The chairman of the Board may at any time and place convene a meeting of a committee.

(4) The Board—

(a) shall appoint to every committee at least one member who shall be chairman of the committee;

(b) may appoint as members of any committee, on such terms and conditions as the Board may fix, persons who are not members.

(5) Subsections (4) to (8) of section *twelve* and sections *sixteen*, *seventeen* and *twenty* shall apply to committees and members thereof, *mutatis mutandis*, as they do to the Board and its members.

14 Remuneration and expenses of members of Board and members of committees

A member of the Board or a member of a committee shall be paid from the funds of the Authority—

(a) such remuneration if any, as the Minister, with the approval of the Minister responsible for finance, may fix for members of the Board or members of committees, as the case may be, generally; and

(b) such allowances as the Minister, with the approval of the Minister responsible for finance, may fix to meet any reasonable expenses incurred by him in connection with the business of the Board or that committee, as the case may be.

15 Right of certain officers to attend meetings of Board or committees

Such officers of the Public Service as the Minister may designate shall be entitled to attend meetings and to take part in the proceedings of the Board or of a committee as if they were members thereof, but they shall not have a vote on any question before the Board or committee, as the case may be.

16 Members to declare personal interest

(1) If a member or his spouse—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Authority; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company, co-operative or association of persons applying or negotiating for a contract with the Authority; or

(c) owns immovable property or a right in immovable property or a direct or indirect pecuniary interest in a company, co-operative or association of persons which results in his private interests coming or appearing to come into conflict with his duties as a member; the member shall forthwith disclose the fact to the Board.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in that subsection.

(3) The general manager shall not take any part in the consideration or discussion of any question before the Board which relates to the terms and conditions of his appointment as general manager.

17 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid solely because—

(a) the Board consisted of fewer than the number of persons for which provision is made in subsection (1) of section *six*; or

(b) a disqualified person acted as a member;

at the time the decision was taken or the act was done or authorized, if the duly appointed members who were present when the decision was taken or the act was done or authorized by the Board constituted a quorum in terms of subsection (5) of section *twelve*.

18 Transaction of business of an urgent nature

(1) If it is impracticable to hold a meeting of the Board for the transaction of business of an urgent nature, the chairman of the Board, after consulting such of the other members as is practicable in the circumstances, may deal with the business himself, and his decision or action shall be deemed to be the decision or action of the Board.

(2) As soon as possible after acting in terms of subsection (1), the chairman of the Board shall give the Board full particulars of the nature and extent of the urgency of the business, of the circumstances in which the urgency arose and of the decision or action taken by him in the matter, and the Board may confirm, vary or rescind his decision or action as it thinks appropriate.

19 Execution of contracts and instruments by Board

An agreement contract, or instrument approved by the Board may be entered into or executed by any person or persons generally or specially authorized by the Board for that purpose.

20 Minutes of proceedings of Board

(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

PART IV
FUNCTIONS OF AUTHORITY

21 Functions of Authority

Subject to this Act, the functions of the Authority shall be—

- (a) to administer every scheme and fund established in terms of this Act;
- (b) to advise the Minister on all matters concerning the operation of schemes and on matters relating to social security generally;
- (c) to do all things which by this Act or any other enactment are required or permitted to be done by the Authority.

22 General powers of Authority

Subject to this Act, for the better carrying out of its objects, the Authority shall have the power to do or cause to be done, either by itself or through its employees and agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

23 Principles to be observed by Authority

When performing its functions in terms of this Act, the Authority shall—

- (a) at all times act in such manner as the Authority considers will best promote the efficient provision of social security, taking into account—
 - (i) the national interest of Zimbabwe; and
 - (ii) the interests of every employer and employee who contributes to any scheme; and
- (b) so far as is practicable, act in consultation with persons whose interests are affected by the performance of its functions; and
- (c) keep its expenses as low as is consistent with the provision of efficient services to contributors and beneficiaries of any scheme.

24 Reports of Authority

(1) In addition to any annual report which the Authority is required to submit to the Minister in terms of the Audit and Exchequer Act [*Chapter 22:03*] the Authority—

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Authority may consider advisable;

in regard to the operations undertakings and property of the Authority.

(2) The Authority shall give to the Minister all information relating to the undertakings of the Authority as the Minister may at any time require.

(3) The Minister may lay a report submitted to him by the Authority in terms of subsection (1) before the House of Assembly.

25 Appointment of general manager

(1) The Authority—

- (a) shall appoint, subject to this Act and on such terms and conditions as the Board thinks fit, a person approved by the Minister to be general manager of the Authority in whom, subject to the control of the Board, shall be vested the management of the operations, investments and property of the Authority;
- (b) may, with the approval of the Minister, assign to the general manager such of the functions of the Authority as the Board thinks fit.

(2) Members shall not be eligible to be appointed general manager.

(3) The appointment of the general manager shall be terminated if he would be required in terms of paragraph (b) or (c) of section *nine* to vacate his office had that section and paragraphs (b) and (c) of section *eight* applied to him.

(4) Any assignment of functions in terms of paragraph (b) of subsection (1)—

- (a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;
- (b) may be revoked by the Board at any time;
- (c) shall not preclude the exercise of the functions by the Board itself.

26 Appointment of actuary and review of schemes

(1) The Authority shall appoint an actuary approved by the Minister—

- (a) to review and evaluate actuarially every scheme, including the rates of contributions payable thereunder—
 - (i) at least once every three years, in respect of long-term benefits; and
 - (ii) at least once every year, in respect of short-term benefits;and

(b) to make recommendations in regard to the establishment and maintenance of reserves in terms of section *thirty*.

(2) The Board shall submit to the Minister every report and recommendation made by a person appointed in terms of subsection (1).

27 Minister may give Authority directions in national interest

(1) The Minister, after consultation with the Board, may give to the Authority such directions of a general character relating to the exercise by it of its functions as appear to the Minister to be requisite in the national interest.

(2) The Authority shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

PART V

FINANCIAL PROVISIONS RELATING TO AUTHORITY

28 Funds of Authority

(1) With the approval of the Minister and the Minister responsible for finance, the Authority may establish one or more funds in respect of any scheme, into which shall be paid—

- (a) contributions and other moneys paid in terms of the scheme; and
- (b) any interest from the investment of moneys in the fund concerned; and
- (c) such moneys as the Board, with the approval of the Minister, given after consultation with the Minister responsible for finance, may raise by way of loans; and
- (d) any other moneys to which the Authority may become lawfully entitled, whether in terms of this Act or any other law.

29 Holding of funds of Authority

(1) All moneys received by the Authority shall be paid into a banking account pending transfer to a fund established in terms of section *twenty-eight* or to a reserve established in terms of section *thirty*, and no moneys shall be withdrawn from any such banking account except—

- (a) by means of cheques signed by such persons as the Board may specially authorize in that regard; or
- (b) by such other means as the Board, with the approval of the Minister and the Minister responsible for finance, may approve.

(2) The Board shall hold a proportion of every fund established in terms of section *twenty-eight* in liquid form in a banking account or on deposit with a bank or building society or in Zimbabwe Government Treasury bills, and shall hold the remainder of the fund in investments approved by the Minister and the Minister responsible for finance.

(3) The proportion referred to in subsection (2) shall be determined from time to time by the Minister with the approval of the Minister responsible for finance.

30 Establishment of reserves

(1) The Board, with the approval of the Minister and the Minister responsible for finance, shall establish and maintain such reserves at such levels as may be recommended by an actuary appointed in terms of section *twenty-six*.

(2) Moneys in a reserve established in terms of subsection (1) shall not be reduced below the level fixed in terms of that subsection or used for a purpose other than that for which the reserve was established, unless the Minister and the Minister responsible for finance have approved such reduction or use, as the case may be.

31 Financial year of Authority

The financial year of the Authority shall be the period of twelve months ending on the 30th June in each year or on such other date as the Minister may prescribe.

32 Accounts of Authority

(1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the funds, operations, investments and property of the Authority, including such particular accounts and records as the Minister may direct.

(2) Within six months after the end of the financial year concerned, the Board shall prepare and submit to the Minister a statement of accounts in respect of each financial year or in respect of such other period as the Minister may direct.

33 Audit of accounts of Authority

(1) The Authority shall appoint as auditors one or more persons approved by the Minister who are registered as auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts of the Authority kept in terms of subsection (1) of section *thirty-two* shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2) of section *thirty-two* and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the financial affairs of the Authority.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connexion with the funds, operations, investments and property of the Authority as the Minister may consider expedient.

- (5) If, in the opinion of the auditors appointed in terms of subsection (1)—
- (a) they have not obtained the information and explanations they require: or
 - (b) any accounts and records relating thereto have not been properly kept; or
 - (c) the Authority has not complied with any provision of this Part;

the auditors shall include in the report made in terms of subsection (3) or (4), as the case may be, statements to that effect.

34 Powers of auditors

(1) The auditors appointed in terms of subsection (1) of section *thirty-three* shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating thereto kept by the Authority and to require from the general manager or any member or agent or employee of the Authority such information and explanations as in the auditors' opinion are necessary for the purpose of their audit.

(2) If the general manager or any member or agent or employee of the Authority fails without reasonable cause to comply with a requirement of an auditor in terms of subsection (1), he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

PART VI

APPEALS

35 Appeals to general manager

(1) Any person who is aggrieved by a decision of an employee or agent of the Authority, other than the general manager, may appeal against such decision to the general manager.

(2) An appeal in terms of subsection (1) shall be made within such period and in such form and manner as may be prescribed.

(3) On an appeal in terms of this section, the general manager may confirm, vary or set aside the decision appealed against and may make such other order in the matter as he thinks just.

36 Appeals to Board

(1) Any person who is aggrieved by a decision of the general manager, whether made in an appeal in terms of section *thirty-five* or in the exercise of his functions in terms of any other provision of this Act, may appeal against such decision to the Board.

(2) An appeal in terms of subsection (1) shall be made within such period and in such form and manner as may be prescribed.

(3) At a sitting of the Board to hear an appeal in terms of subsection (1) three members, including the chairman or deputy chairman of the Board, shall form a quorum.

(4) On an appeal in terms of this section, the Board may confirm, vary or set aside the decision appealed against and may make such other order in the matter as it thinks just.

37 Appeals to Administrative Court

(1) Any person who is aggrieved by a decision of the Board, whether made in an appeal in terms of section *thirty-six* or in the exercise of its functions in terms of any other provision of this Act, may appeal against such decision to the Administrative Court.

(2) An appeal in terms of this section shall be lodged with the Registrar of the Administrative Court within twenty-one days of the date of the decision appealed against.

(3) The Administrative Court Act [*Chapter 7:01*], shall apply in relation to the composition, procedure and powers of the Administrative Court on an appeal in terms of this section.

38 General manager may state case for Supreme Court

(1) The general manager may of his own motion or at the request of an interested party to any proceedings under a scheme, state a special case on any question of law in connection with any matter arising in such proceedings, for the decision of the Supreme Court.

(2) In any case stated in terms of subsection (1) the general manager shall set forth—

- (a) the facts which were established; and
- (b) the view of the law which he has adopted in relation to those facts.

PART VII

GENERAL

39 Inspectors

(1) The Minister may appoint persons to be inspectors for the purposes of this Act.

(2) The Minister shall cause every person appointed as an inspector to be issued with a certificate of identity.

(3) An inspector shall produce his certificate of identity upon being requested to do so by any person affected by the performance of the inspector's functions in terms of this Act.

(4) An inspector shall treat as confidential any information obtained by him in the performance of his functions and shall not disclose any such information except when required to do so by a court or in such other circumstances as may be prescribed.

40 Powers of entry and search

If there are reasonable grounds for believing that it is necessary to do so for the prevention, investigation or detection of an offence in terms of this Act, an inspector or a police officer may—

- (a) at all reasonable times enter any business premises;
- (b) require any person to produce for inspection any book, record, statement, pay roll, account or other document relating to employment or the payment of contributions in terms of this Act;
- (c) require any person to prepare and additionally, or alternatively, to produce for inspection a print-out or other reproduction of any information stored in a computer or other information retrieval system;
- (d) take possession of any document or other thing referred to in paragraph (b) or (c) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry;
- (e) require any person reasonably suspected of having committed an offence under this Act or any person who may be able to supply information in connexion with a suspected offence to give his name and address.

40A Estimated assessment of contribution

(1) Where—

- (a) any employer fails to submit a statement of contributions; or
- (b) an inspector is not satisfied with any monthly return of contributions payable by any employer that is required to be submitted by the employer in terms of any scheme; or
- (c) an inspector has reason to believe that an employer who is or was required to register in terms of section *three* would have been liable to pay contributions but for his failure to register;

an inspector may cause a provisional assessment to be made of the amount of contributions which, in his opinion, are payable by the employer.

(2) An employer referred to in subsection (1) may, within seven days of the making of a provisional assessment under that subsection, object in the prescribed form to the assessment and the inspector concerned shall, upon receiving the objection—

- (a) set aside the assessment objected to; or
- (b) confirm or vary the assessment objected to and issue a final assessment in terms of subsection (3).

(3) If—

- (a) an employer agrees with or fails to object to a provisional assessment in terms of subsection (2); or
- (b) an inspector confirms or varies a provisional assessment after receiving an objection in terms of subsection (2);

the inspector shall give the employer a final assessment stating the amount of contributions due and fixing a date on which the contributions shall become payable, and such employer shall be liable to pay contributions accordingly:

Provided that where the contributions or any part thereof payable on an assessment made in terms of subsection (1) is unpaid at the end of the period so fixed, interest calculated at a rate to be prescribed shall be payable on so much of the contributions as from time to time remains unpaid by such person after the end of that period.

(4) Any employer aggrieved—

- (a) by a final assessment in terms of subsection (3) may appeal against such assessment to the general manager within twenty-one days of receiving the assessment;
- (b) by the decision of the general manager in terms of paragraph (a) may appeal against such decision to the Board within twenty-one days of being notified of the decision of the general manager;
- (c) by the decision of the Board in terms of paragraph (b) may appeal against such decision to the Administrative Court within twenty-one days of being notified of the decision of the Board.

(5) An objection or appeal in terms of subsections (2) and (4) shall not have the effect of suspending the determination or decision objected to or appealed against.

(6) The payment by any person of contributions in terms of this section shall not be a bar to the prosecution of that person for any offence he may have committed in terms of this Act.

[Section inserted by section 2 of Act 22 of 2002]

40B Power to appoint agent

(1) Subject to subsection (4) of section *forty A*, an inspector may, if he thinks it is necessary, declare any person to be an agent of an employer and the person so declared as an agent shall be the agent of the employer for the purpose of this Act and, notwithstanding anything to the contrary contained in any other law, may be required to pay any contributions due from monies in any current account, deposit account, fixed deposit account or savings account or from any other monies which may be held by him for, or due by him to, the employer whose agent he has been declared to be.

(2) For the purpose of subsection(1)—

“person” includes—

- (a) a bank, building society or savings bank; and
- (b) a partnership; and
- (c) any person or party holding monies due to an employer;

“contributions” includes any fines, interest or penalty arrears payable under this Act.

[Section inserted by section 2 of Act 22 of 2002]

40C Power to register employers

Where an employer liable to contribute in terms of any scheme fails to register in terms of that scheme, an inspector may, without derogation from any penalty to which such employer is liable in terms of section *forty-eight*, register such employer and any of his employees who are liable to contribute in terms of the scheme.

[Section inserted by section 2 of Act 22 of 2002]

41 Obstruction of inspectors and police officers

Any person who—

- (a) hinders, obstructs or resists an inspector or police officer in the performance of any function in terms of this Act; or
- (b) fails or refuses to produce any document or thing when required to do so by an inspector or police officer in terms of this Act;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section substituted by section 4 of Act 2 of 2001]

41A Disclosure of confidential information

Any inspector or member, employee or agent of the Authority who—

- (a) for personal gain, makes use of any information which he has acquired in the exercise of his functions and which relates to—

- (i) the financial affairs of any person; or
- (ii) any manufacturing process or commercial secret;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;

- (b) discloses any information referred to in paragraph (a) to any person except—

- (i) for the purposes of legal proceedings under this Act or any scheme; or
- (ii) to the extent that it may be necessary to do so for the purposes of this Act or any scheme, to another inspector or member, employee or agent of the Authority;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section substituted by section 4 of Act 2 of 2001]

41B False statements in returns, etc

Any person who, in any claim, report, return or document prepared or submitted in terms of this Act makes a statement which he knows to be false in a material particular or does not believe on reasonable grounds to be true shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section substituted by section 4 of Act 2 of 2001]

42 Exemption from liability of Authority and members

No liability shall attach to the Authority or to any member for any loss or damages sustained by any person as a result of the *bona fide* exercise or performance by the Authority, the Board, a committee of the Board, the general manager or any employee or agent of the Authority of any function of the Authority, the general manager or the Board in terms of this Act or any other law:

Provided that this section shall not be construed so as to prevent any person from recovering, by action in a court of competent jurisdiction, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

43 Indemnity of members and employees of Authority

The Authority shall indemnify every member of the Board or of a committee of the Board and the general manager and every auditor, employee or agent of the Authority against any costs incurred by him in—

- (a) defending any proceedings, whether civil or criminal, which arise out of his duties as member, general manager, auditor, employee or agent of the Authority, as the case may be, and in which judgment is given in his favour or he is acquitted, as the case may be; and
- (b) making any application to court on behalf of the Authority.

44 Investigation into affairs of Authority

(1) The Minister may at any time cause an investigation to be made into the affairs of the Authority by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

45 Benefits not to be pledged or ceded nor to form part of insolvent estate

(1) Subject to the Maintenance Act [*Chapter 5:09*] and to Part VI of the Children's Act [*Chapter 5:06*] no pension, refund of contributions or other benefits payable in terms of this Act, or right thereto, shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall the same or any contributions be liable to be attached or subjected to any form of execution under a judgment or order of a court, and any attempt to assign, transfer, cede, pledge or hypothecate any such benefit or right thereto shall be invalid and of no effect:

Provided that this subsection shall not be construed as precluding a scheme from providing that a contributor may nominate a beneficiary for the purpose of receiving any pension, refund of contributions or other benefit under the scheme.

[Subsection amended by section 34 of Act 6 of 2005]

(2) If the estate of any person who is in receipt of a pension or other benefit under a scheme is or has been sequestrated or assigned, such pension or benefit shall not form part of the assets in his insolvent or assigned estate.

46 Recovery of benefits granted or paid in error

If any person has been granted or paid a benefit which should not have been granted or paid to him in terms of this Act, the Board may recover from that person or his estate, by action in a court of competent jurisdiction, the value or amount of the benefit so granted or paid to him, whether it was granted or paid through error of fact or of law.

47 Reciprocal agreements with other countries

(1) Subject to this section, if the President is satisfied that in any other State or territory there is or will be in operation an arrangement similar to a scheme established in terms of section *three*, he may enter into an agreement with the government of that State or territory providing that, subject to such conditions as may be specified in the agreement—

- (a) contributions paid in terms of this Act by or in respect of citizens or residents of that State or territory shall be credited or transferred to the appropriate authority in that State or territory;
- (b) amounts paid in terms of the arrangement in that State or territory by any person shall be credited or transferred to any fund established in terms of this Act.

(2) An agreement in terms of subsection (1) may provide for the modification or suspension of any provision of a scheme or of this Act for the purpose of facilitating the crediting or transfer of contributions or amounts in accordance with the agreement.

(3) Where the President has entered into an agreement in terms of subsection (1), he shall cause it to be published in a statutory instrument, and it shall have effect from the date on which it is so published or such later date as may be specified therein.

(4) The Minister shall lay any agreement that has been published in terms of subsection (3) before Parliament on one of the thirty days on which Parliament next sits after the date on which the agreement was published.

(5) If Parliament, on one of the thirty days on which it next sits after an agreement has been laid before it in terms of subsection (4), resolves that the agreement should be repealed, the President shall forthwith repeal the notice in which the agreement was published in the *Gazette*, and thereupon the agreement shall cease to have effect within Zimbabwe but without prejudice to the validity of anything done in terms thereof prior to the date of such repeal.

48 Offences and penalties

- (1)
- (2)
- (3)
- (4)
- (5)

[Subsections 1 – 5 repealed by section 4 of Act 22 of 2001]

(6) On the conviction of a person for an offence which consists of—

- (a) a failure to pay any contribution surcharge or other amount in terms of a scheme; or
- (b) receiving any amount, whether by way of benefit or otherwise, to which he was not entitled under a scheme;

the court convicting the person shall, in addition to any penalty which it may impose, give summary judgment in favour of the Authority for the amount which the person failed to pay or unlawfully received, as the case may be.

(7) A judgment given by a court in terms of subsection (6) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted in the court.

49 Regulations

The Minister may make regulations providing for all matters which by or in terms of this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

SCHEDULE (Section 22)

POWERS OF AUTHORITY

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights thereover and concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and, with the approval of the Minister and of the Minister responsible for finance, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To make contracts and enter into suretyships or give guarantees in connexion with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.
8. With the approval of the Minister and the Minister responsible for finance—
 - (a) to raise loans or borrow money, by the issue of debentures or debenture stock or otherwise, in such amounts and for such purposes and under such conditions as may be approved by those Ministers;
 - (b) to establish and administer such funds and reserves not specifically provided for in this Act as the Board may consider appropriate or necessary for the proper exercise of its functions.
9. To employ, upon such terms and conditions as the Board may consider fit, such persons as may be necessary for conducting its affairs and to suspend or discharge any such persons.
10. To pay such remuneration and allowances and grant such leave of absence and, with the approval of the Minister, to make such gifts, bonuses and the like to its employees as it considers fit.
11. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
12. To purchase, take on lease or in exchange or otherwise acquire land or dwelling-houses for use or occupation by its employees.
13. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken on lease or in exchange or otherwise acquired by it.
14. To sell or lease dwelling-houses and land for residential purposes to its employees.
15. To make or guarantee loans made to its employees or their spouses for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees or their spouses.
16. To provide security in respect of loans such are described in paragraph 15 by the deposit of securities, in which the Authority may invest such moneys as the Board may consider necessary for the purpose.
17. To make loans to any employee of the Authority for the purpose of purchasing vehicles or equipment to be used by him in carrying out his duties.
18. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connexion to provide or assist other persons in providing facilities for training, education and research.
19. To provide such services as the Authority with the approval of the Minister, considers could properly be provided by the Authority and to charge for such services such fees as the Board, with the approval of the Minister, may from time to time determine.
20. To do anything which by this Act is required or permitted to be done by the Authority.
21. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Authority in terms of this Act or any other enactment.

