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LEGAL NOTICE NO. 349 OF 2021

RETIREMENT FUNDS ACT, 2005
(Act No. 5 of 2005)

THE RETIREMENT FUNDS REGULATIONS, 2008
(Under section 69)

THE DISCLOSURE BY RETIREMENT FUNDS RULES, 2021
(Under Regulation 16)

In the exercise of the powers conferred by Regulation 16 of the Retirement Funds Regulations, 2008 the Registrar of Retirement Funds, with the approval of the Minister of Finance issues the following Rules-

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PART I PRELIMINARY PROVISIONS

Citation and Commencement

1. (1) These Rules may be cited as the Disclosure by Retirement Funds Rules, 2021.
(2) These Rules shall come into force on the date of publication in the Gazette.

Interpretation

2. In this Rules, unless the context otherwise requires-

“Act” means the Retirement Funds Act, 2005;

“beneficiary” means a nominee or dependant of a member who is entitled to receive a benefit as provided for in the rules of a fund;

“defined contribution” means a contribution made to a retirement fund either by an employer, or an employee where the employee carries the investment risk and the benefits are paid based on the total contributions made plus interest;

“deferred pensioner” means a member who has not yet retired but has left the service of the employer concerned prior to normal retirement date, as defined in the rules, leaving in the fund the member’s rights to such benefits as may be defined in the rules;

“Fund “ means-

- (a) any plan, fund or programme established for the purpose of providing an arrangement established with the purpose of providing annuities or lump sum benefits for its members on their retirement or for the dependants of such members on the death of such members;
- (b) any plan, fund or programme that includes but is not limited to an umbrella fund as defined in this Act and any pension fund, provident fund or retirement annuity fund, as defined in the Income Tax Act, as amended from time to time; or
- (c) a business carried on with the purpose of providing annuities and or lump sum benefits for its members on their retirement or to the dependants of such members on the death of such members;

“insurer” means a person licensed under section 6 of the Insurance Act, 2005;

“member” means any person whose membership of the fund has been established in terms of the rules of the fund and has not yet been terminated in terms of the provisions of the rules and shall include a person entitled to or receiving a benefit under the rules of the fund;

“premiums” means a consideration given or to be given in return for an undertaking to be paid a policy benefit under a policy;

“trustee” means a member of a Board of Trustees.

Objectives of Rules

3. The objectives of these Rules are to-

- (a) describe the information that should be disclosed to a member and a beneficiary of a retirement fund to meet the responsibilities of a trustee as provided for under section 9 (d) of the Act;
- (b) assist a trustee in ensuring that a member is provided with sufficient information in a timely, accurate and understandable manner; and
- (c) enable a member’s beneficiary and a guardian of a minor beneficiary to a retirement fund to make sound decisions on the basis of information about-
 - (i) how their retirement fund works;
 - (ii) what their benefit entitlements and options under the retirement funds are;
 - (iii) what are their rights and obligations;
 - (iv) the performance of the retirement fund; and
 - (v) those responsible for the management of the retirement fund.

Application

4. (1) The Rules shall apply to trustees, members, beneficiaries and any person to whom the trustees have delegated their functions in the extent relevant to the nature of their involvement.

(2) The provisions of these Rules shall not be construed as in any way affecting the duty of any person to comply with any applicable provisions of the Retirement Fund Act, 2005.

General Principles

5. (1) The trustees shall at all times render services honestly, fairly, with the degree of care, diligence and good faith that a reasonable person would exercise in similar circumstances.

General Criteria for Information

6. (1) A disclosure of information by a retirement fund shall be in writing, clear, unambiguous and in plain language.

(2) The disclosure of information shall be made in one or both of the official languages of Eswatini taking regard of the composition of the membership and the needs of the members.

(3) The trustees shall hold meetings with the members and beneficiaries on an on-going basis, annually or on an occurrence of a particular event at which meeting the members and beneficiaries may express concerns, ask questions and participate in the governance of the fund.

Rules of a fund

7. (1) The business of a retirement fund shall be governed by a set of rules which shall comply with Circular Retirement Directive Practice (RDP) I.

(2) Every member of a retirement fund shall be entitled upon request to inspect a copy of the rules.

(3) Within three (3) months of an establishment of a fund or when a new employee has been employed, a fund shall provide each employee who is eligible to join a fund with a copy of the rules of the fund.

(4) Where a membership is voluntary, employees shall be given at least thirty (30) days, from then on exercise their option of joining a fund.

(5) Any proposed amendment to the rules of a fund must be adequately communicated and properly adopted by the Management Board of a Fund in accordance with the Retirement Fund Act No.5 of 2005 and the rules of the fund.

(6) The members and affected beneficiaries shall be given a written summary and explanation of any amendment made and the effects of the amendment on their entitlements and obligations within sixty (60) days of the coming into effect of the amendment.

PART III DISCLOSURES

Disclosure to persons eligible to become members

8. A fund shall provide to an employed person, no later than the date the employee becomes an eligible member of the fund the following information-

(a) the full legal name of the fund;

(b) the registration, certificate number issued by the Registrar of Insurance and Retirement Funds;

(c) the type of the fund;

- (d) the registered address of the fund;
- (e) the name and contact information of the principal officer;
- (f) the name and contact information of the administrator, if applicable;
- (g) the name of trustees;
- (h) explanation of eligibility (whether voluntary or mandatory; and the waiting period if applicable);
- (i) when and how to join the fund;
- (j) whether membership is a condition of employment or not;
- (k) the formula for members' required contributions as well as the required contributions of the employer;
- (l) the investment policy of the fund and a description of the fund's assets;
- (m) whether members have investment options and if so, an explanation of the options;
- (n) a statement advising the eligible employee to consider seeking the advice of an independent financial planner before making a decision about joining the fund and selecting investment options, if applicable;
- (o) a request that a nomination in respect of beneficiaries be made; and
- (p) a request to notify the contact person, in writing of any changes in name, address, banking details, or circumstances that are likely to affect a member's or beneficiaries membership to the fund, taking into considerations, fees, charges or brokerages which may be payable to an insurer, insurance agent, insurance broker or intermediary by a policy-holder in respect of a policy.

Disclosures to new members

9. The new members of a fund, shall within sixty (60) days of joining, be provided with the following information by an insurer-

- (a) the contact information for purposes of enquiries;
- (b) information on how to lodge a complaint and the relevant officer designated to handle complaints;
- (c) a statement that if a complaint is not resolved within the fund's structures, it may be referred to the Ombudsman in terms of the Adjudicator's ruling as provided for in the Retirement Funds Act;
- (d) an overview of the expenses of the fund, including premiums paid for ancillary

Annual disclosures by a fund to active members

10. The following information shall be provided annually, within three (3) months of the end of a fund's financial year-

- (a) annual benefit statements;
- (b) information on any changes in fees, premium or contribution rates;
- (c) a request to update beneficiary nominations, where applicable;
- (d) a request to update registered dependants, where applicable;
- (e) a request to update contact details, where necessary;
- (f) annual investment performance results;
- (g) a statement that the annual financial statement of the fund is available, on request, for inspection by the members;
- (h) a statement that the valuator's report, where applicable, is available, on request, for inspection by members;
- (i) changes, if any, in the administration of a fund, including changes in trustees, Principal Officer, address of a fund, or service providers; or
- (j) changes, if any, in the calculation of contributions or of ancillary benefits.

Annual benefit statements

11. (1) An active member of a fund shall receive benefit statements within three (3) months of the fund's year end.

(2) The statement shall provide the following information-

- (a) the name of the member;
- (b) the date of the statement;
- (c) the period to which the statement applies;
- (d) the date of birth of the member;
- (e) the date on which the member joined the fund and the years (full and partial) of service that have been credited to the member to date;
- (f) the normal retirement date of the member;
- (g) the date on which the member is entitled to an early retirement benefit;

- (h) a list of the member's registered dependants;
- (i) the required contributions made by the member during the period and, for a defined contribution fund, those made by the employer in respect of the member;
- (j) the accumulated contributions of the member at the end of the period and, for defined contribution fund, the accumulated contributions of the employer in respect of the employer in respect of the member;
- (k) the rate of return earned during the year and, for a defined contribution fund, the amount of return credited to the member's accumulations;
- (l) any amounts transferred to the fund in respect of the member; and
- (m) the amount of benefit payable to the member.

Disclosures to terminating members

12. (1) The following information shall be provided by a fund to a terminating member within thirty (30) days of termination of employment –

- (a) Details of the fund
 - (i) name of the retirement fund;
 - (ii) registration number;
 - (iii) complaints procedures;
 - (iv) contact information of the Principal Officer and Administrator;
 - (v) period of service credited to the member;
 - (vi) member required contributions for the year;
 - (vii) employer contributions for the year (defined contribution);
 - (viii) accumulated employer contributions (defined contributions);
 - (ix) transfers in and voluntary contributions for the year;
 - (x) accumulated transfers and voluntary contributions, if applicable;
 - (xi) accrued pensions (defined benefit);
 - (xii) indication of any benefits that have not yet vested; and

- (iii) date of birth of member;
- (iv) date member joined the fund;
- (v) date member ceased active service;
- (vi) normal retirement date;
- (vii) earliest possible retirement date;
- (viii) accumulated member required contributions;
- (ix) names of beneficiaries; and
- (x) request to update beneficiaries (and changes in their eligibility).

(c) Other requirements, which include-

- (i) options available at termination (cash, transfer, deferred pension);
- (ii) options available to deferred pensioners (cash, transfer, early retirement);
- (iii) amount of termination benefit under each available option;
- (iv) explanation of benefit calculation;
- (v) options for method of payment (cheque, electronic transfer, transfer to another fund);
- (vi) policy of the fund on increasing monthly pensions;
- (vii) death benefits available in future;
- (viii) ancillary benefits available in future;
- (ix) taxes to be withheld;
- (x) deductions to be withheld in respect of future ancillary benefits, if any;
- (xi) deadline for choosing options; and
- (xii) claim procedures and evidence requirements.

(2) A member shall be given not less than thirty (30) days to exercise any options available, failing which, the termination benefits shall be processed in accordance with any default provisions specified in the rules of the fund.

Confirmation of cash or transfer

13. (1) A terminating member who shall, be receiving benefits in the form of cash or a transfer to another fund shall be given a statement confirming the benefits.

(2) The confirmation shall include the following information-

- (a) name of retirement fund;
- (b) registration number;
- (c) name of member;
- (d) date of birth of member;
- (e) date member ceased active service;
- (f) allowable loans in terms of the Retirement Funds Act;
- (g) amount of lump sum benefits;
- (h) taxes to be withheld; and
- (i) method of payment or details of the transfer.

Confirmation of deferred pension

14. (1) Where a terminating member has requested to defer the payment of pension benefits or having become applicable as a default under the rules of the fund, that member shall be given a statement confirming the deferred pension with thirty (30) days of the request.

(2) The confirmation of the deferred pension shall include the following information, to the extent applicable-

- (a) name of the retirement fund;
- (b) registration number;
- (c) name of member;
- (d) date of birth of member;
- (e) date member ceased active service;
- (f) normal retirement date;
- (g) earliest possible retirement date;
- (h) accumulated member required contributions;

- (m) names of beneficiaries;
- (n) request to update beneficiaries (and changes in their eligibility);
- (o) amount of deferred monthly benefit;
- (p) source of monthly benefits (annuity or from fund);
- (q) policy of the fund on increasing monthly pensions;
- (r) death benefits available in future;
- (s) ancillary benefits available in future;
- (t) taxes to be withheld;
- (u) deductions to be withheld in respect of future ancillary benefits, if any;
- (v) annuity policy; and
- (w) request to update contact information.

Periodic disclosures to deferred pensioners

15. (1) A deferred pensioner shall be provided with a statement at least once every year.
- (2) The statement shall include the following-
 - (a) name of retirement fund;
 - (b) registration number;
 - (c) contact information for principal officer and administrator;
 - (d) name of member;
 - (e) date of birth of member;
 - (f) date member ceased active service;
 - (g) normal retirement date;
 - (h) earliest possible retirement date;
 - (i) accumulated member required contributions;
 - (j) accumulated employer contributions (Defined Contribution);
 - (k) accumulated transfers and voluntary contributions;

- (l) accrued pension and explanation of any increase in the amount (Defined Benefit);
- (m) allowable loans in terms of the Retirement Funds Act;
- (n) names of beneficiaries;
- (o) request to update beneficiaries (and changes in their eligibility);
- (p) options available to deferred pensioners (cash, transfer, early retirement);
- (q) death benefits available in future;
- (r) ancillary benefits available in future;
- (s) deductions to be withheld in respect of future ancillary benefits, if any;
- (t) request to confirm survival; and
- (u) request to update contact information.

Disclosures to retiring members

16. A retiring member shall, within thirty (30) days of retirement, whether at the normal retirement age or otherwise, be provided with the following information-

- (a) Details of the fund, which shall include-
 - (i) name of the retirement fund;
 - (ii) registration number;
 - (iii) complaints procedures;
 - (iv) contact information for Principal Officer and Administrator;
 - (v) employer contributions for the year (Defined Contributions);
 - (vi) accumulated employer contributions (Defined Contributions);
 - (vii) transfers in and voluntary contributions for the year;
 - (viii) accumulated transfers and voluntary contributions;
 - (ix) accrued pension (Defined Benefit);
 - (x) indication of any benefits that have not yet vested; and
 - (xi) allowable loans in terms of the Retirement Funds Act;

- (iv) date of birth of member;
- (v) date member joined the fund;
- (vi) date of member ceased active service;
- (vii) period of service credited to the member;
- (viii) actual retirement date;
- (ix) member required contributions for the year;
- (x) accumulated member required contributions;
- (xi) names of beneficiaries; and
- (xii) request to update beneficiaries and changes in their eligibility.

(c) Other requirements, which include-

- (i) explanation of benefit calculations;
- (ii) options for contributions;
- (iii) options for form of monthly benefit;
- (iv) amount of monthly benefit under each available option;
- (v) options for method of payment whether by cheque, electronic transfer, or transfer to another fund;
- (vi) source of monthly benefits (annuity or from fund);
- (vii) policy of the fund on increasing monthly pensions;
- (viii) death benefit available in future;
- (ix) ancillary benefits available in future;
- (x) taxes to be withheld;
- (xi) deductions to be withheld in respect of future ancillary benefits, if any;
- (xii) deadline for choosing options;
- (xiii) request to update information; and
- (xiv) claim procedures and evidence requirements.

Confirmation of retirement benefits

17. (1) A retiring member shall, within thirty (30) days of options having been chosen by that member or having become applicable as a default under the rules of the fund, be provided with a statement confirming the benefits.

(2) The confirmation shall include the following information, to the extent applicable-

- (a) name of retirement fund;
- (b) registration number;
- (c) name of member;
- (d) date of birth of member;
- (e) actual retirement date;
- (f) names of beneficiaries;
- (g) request to update beneficiaries and any changes in their eligibility;
- (h) confirmation of the option, if any exercised by the member regarding commutation;
- (i) amount of lump sum benefit under option chosen;
- (j) form of monthly benefit under option chosen whether individual, joint with spouse, and the guarantee period applicable;
- (k) amount of monthly benefit under option chose;
- (l) method of payment;
- (m) source of monthly benefits (annuity or from fund);
- (n) conditions that might affect the payment of the pension, such as suspension of the pension or cession of the pension;
- (o) policy of the fund on increasing monthly pensions; where applicable, the fund may stress that the frequency and amount of any increases are not guaranteed and may point out the factors that will influence the increases;
- (p) death benefits available in future;
- (q) ancillary benefits available in future;
- (r) taxes to be withheld;

Periodic disclosures to pensioners

18. At least once every three (3) years, a statement must be provided to a pensioner whose monthly benefits are being paid from the fund, other than by a life insurer under an annuity policy, which information shall include the following -

- (a) name of retirement fund;
- (b) registration number;
- (c) contact information for principal officer and administrator;
- (d) name of member;
- (e) date of birth of member;
- (f) actual retirement date;
- (g) names of beneficiaries;
- (h) request to update beneficiaries (and change in their eligibility);
- (i) form of monthly benefit (whether individual, joint with spouse, and the guarantee period applicable);
- (j) amount of monthly benefit and explanation of any increase in its amount;
- (k) method of payment;
- (l) policy of the fund on increasing monthly pensions;
- (m) death benefits available in future;
- (n) ancillary benefits available in future;
- (o) allowable loans in terms of the Retirement Funds Act;
- (p) taxes being withheld;
- (q) deductions being withheld in respect of ancillary benefits, if any;
- (r) timing of monthly payments;
- (s) request to confirm survival; and
- (t) request to update contact information.

Disclosures to beneficiaries on death of a member

19. Where upon the death of a member the fund becomes aware, the fund shall, within thirty (30) days, to the extent applicable, provide to the beneficiaries, or to the guardians of minor beneficiaries-

(a) Details of the fund, which shall include-

- (i) name of retirement fund;
- (ii) registration number;
- (iii) complaints procedures;
- (iv) contact information for principal officer and administrator;
- (v) employer contributions for the year (Defined Contributions for active members);
- (vi) accumulated transfers and voluntary contributions (active and deferred members);
- (vii) accrued pension (Defined Benefit); and
- (viii) allowable loans in terms of the Retirement Funds Act.

(b) Member's personal details, which shall be-

- (i) name of member;
- (ii) job title;
- (iii) pensionable salary level;
- (iv) date of birth of member;
- (v) date member joined the fund (active members);
- (vi) date member ceased active service (active and deferred members);
- (vii) period of service credited to the member (active members);
- (viii) actual retirement date (retired members);
- (ix) member required contributions for the year (active members);
- (x) accumulated member required contributions (active and deferred members);
- (xi) names of beneficiaries; and

...income, assets,

- (iii) explanation of benefit calculation;
- (iv) options for method of payment (cheque, electronic transfer, transfer to another fund);
- (v) source of monthly benefits (annuity or from fund);
- (vi) policy of the fund on increasing monthly pensions;
- (vii) ancillary benefits available in future;
- (viii) taxes to be withheld;
- (ix) deductions to be withheld in respect of future ancillary benefits, if any;
- (x) deadline for choosing options; and
- (xi) claim procedures and evidence requirements.

Confirmation of death benefits

20. (1) The fund shall, within thirty (30) days after receipt of a proof of death, particulars of chosen beneficiary or guardian, entitlement of the beneficiary and options having been given, the beneficiary or guardian shall be given a statement confirming the benefits.

(2) The confirmation shall include the following information to the extent applicable –

- (a) name of retirement fund;
- (b) registration number;
- (c) name of deceased member;
- (d) date of death of member;
- (e) name of beneficiary or beneficiaries;
- (f) amount of lump sum benefit under option chosen;
- (g) form of monthly benefit under option chosen;
- (h) amount of monthly benefit under option chosen;
- (i) method of payment;
- (j) source of monthly benefits (annuity or from fund);
- (k) policy of the fund on increasing monthly pensions;

- (l) conditions under which any monthly benefit would cease to be paid (age, remarriage, death);
- (m) death benefits available in future;
- (n) ancillary benefits available in future;
- (o) taxes to be withheld;
- (p) deductions to be withheld in respect of future ancillary benefits, if any;
- (q) timing of monthly payments;
- (r) annuity policy; and
- (s) request to update contact information.

Periodic disclosures to beneficiaries

21. At least once every three (3) years, a statement shall be provided to a beneficiary or to the guardian of a minor beneficiary who is receiving monthly benefits from the fund other than from a life insurer under an annuity policy, which information shall include-

- (a) name of retirement fund;
- (b) registration number;
- (c) contact information for principal officer and administrator;
- (d) name of deceased member;
- (e) name of beneficiary or beneficiaries;
- (f) request to update for changes that would affect continued eligibility;
- (g) amount of monthly benefit and explanation of any increase in amount;
- (h) method of payment;
- (i) policy of the fund on increasing monthly pensions;
- (j) conditions under which any monthly benefit would cease to be paid (age, remarriage, death);
- (k) ancillary benefits available in future;
- (l) allowable loans in terms of the Retirement Fund Act;
- (m) taxes being withheld.

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