



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$5,64

WINDHOEK — 6 December 1994

No. 992

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 235

1994

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 34 of 1994: Social Security Act, 1994.

ACT

To provide for the establishment, constitution and powers duties and functions of the Social Security Commission; to provide for the payment of maternity leave benefits, sick leave benefits and death benefits to employees and to establish for that purpose the Maternity Leave, Sick Leave and Death Benefit Fund; to provide for the payment of medical benefits to employees and to establish for that purpose the National Medical Benefit Fund; to provide for the payment of pension benefits to retired employees and to establish for that purpose the National Pension Fund; to provide for the funding of training schemes for disadvantaged, unemployed persons and to establish for that purpose the Development Fund; and to provide for incidental matters.

(Signed by the President on 30 November 1994)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I

Introductory provisions

Definitions.

1. In this Act, unless the context otherwise indicates -

“actuary” means any Fellow of an institute, faculty or society of actuaries approved by the Minister;

“authorized person” means any person authorized under section 38 to exercise or perform the powers, duties and functions contemplated in that section;

“benefit” means any benefit, grant, aid or advantage of any kind derived from any fund in terms of the provisions of this Act;

“Commission” means the Social Security Commission established by section 3;

“committee” means any committee of the Commission established under section 11(1);

“contribution” means an amount paid or payable by an employer or employee to any fund concerned in terms of this Act;

“death benefits” means death benefits payable in terms of section 31;

“dependant”, in relation to a member of any fund, means -

- (a) a person in respect of whom the member is legally liable for maintenance, including the spouse, natural children or adopted children of the member;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person was, in the opinion of the Commission, upon the death of the member in fact dependent on the member for maintenance; or

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- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;

“Development Fund” means the Development Fund established by section 37;

“employee” means any person younger than 65 years, who -

- (a) is employed by or working for any employer; or
- (b) in any manner assists in the carrying on or the conducting of the business of an employer,

for more than two days in any week, and who is receiving or is entitled to receive any remuneration in respect thereof, and includes, in the case of an employer who carries on or conducts business mainly within Namibia, any such natural person so employed by, or working for, such employer outside Namibia or assisting such employer in the carrying on or conducting of such business outside Namibia, if such person is a Namibian citizen or lawfully admitted to Namibia for permanent residence therein, and “employed” and “employment” shall have corresponding meanings;

“Employees’ Compensation Act” means the Employees’ Compensation Act, 1941 (Act 30 of 1941);

“employer” means any person, including the State -

- (a) who employs, or provides work for, any person and who remunerates or expressly or tacitly undertakes to remunerate that person;
- (b) who permits any person to assist him or her in any manner in the carrying on, or conducting of, his or her business,

and “employ” and “employment” shall have corresponding meanings;

“employers’ organization” means an employers’ organization registered under section 54 of the Labour Act;

“executive officer” means the executive officer of the Commission appointed under section 12, or any other employee of the Commission designated to act as executive officer under that section;

“financial institution” means -

- (a) any banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965);
- (b) any building society registered under section 4 of the Building Societies Act, 1986 (Act 2 of 1986);
- (c) any insurer registered under section 4 of the Insurance Act, 1943 (Act 27 of 1943);

“fund” means the Development Fund, Maternity Leave, Sick Leave and Death Benefit Fund, National Medical Benefit Fund or National Pension Fund, as the case may be;

“Labour Act” means the Labour Act, 1992 (Act 6 of 1992);

“maternity leave benefits” means maternity leave benefits payable in terms of section 29;

“Maternity Leave, Sick Leave and Death Benefit Fund” means the Maternity Leave, Sick Leave and Death Benefit Fund established by section 28;

“member” in relation to any fund concerned, means an employee who is a member of such fund by virtue of section 21(1);

“Minister” means the Minister of Labour and Human Resources Development;

“National Medical Benefit Fund” means the National Medical Benefit Fund established by section 32;

“National Pension Fund” means the National Pension Fund established by section 34;

“Permanent Secretary” means the Permanent Secretary: Labour and Human Resources Development;

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“prescribe” or “prescribed” means prescribe or prescribed by regulation;

“regulation” means any regulation made under this Act;

“retirement age” means the age prescribed as such;

“sick leave benefits” means sick leave benefits payable in terms of section 30;

“State” includes -

(a) any body established by or under any law and -

(i) controlling or being entitled to control by virtue of any such law funds accruing or being entitled to accrue to it as a whole or in part from moneys -

(aa) appropriated for the purposes of those funds or of a loan to the credit of those funds or, in the case of a body with a share capital in which the State or Government of Namibia may, under the law in question take up shares, the taking up of such shares;

(bb) loaned by virtue of a guarantee or approval granted in terms of any law by the President or any Minister;

(ii) which may levy fees for services rendered at a rate, tariff or scale approved or determined in terms of any law by the President or any Minister;

(b) any regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);

(c) the council of any area declared or deemed to be declared to be a municipality, town or village under section 3 of the Local Authorities Act, 1992 (Act 23 of 1992);

“this Act” includes the regulations;

“trade union” means a trade union registered under section 54 of the Labour Act.

Application of Act.

2. This Act shall apply in relation to every employer, including the State, and every employee.

PART II

Social Security Commission

Establishment of Social Security Commission.

3. (1) There is hereby established a commission to be known as the Social Security Commission. *Gov. not 200/2002*

(2) The Commission shall be a juristic person.

Constitution of Commission.

4. (1) The Commission shall consist of - *Gov. not. 234/98*

(a) a person designated by the Minister, who shall be the chairperson;

(b) three representatives of the Government, of whom one shall be nominated by the Minister of Finance, one by the Minister of Health and Social Services and one by the Minister and of whom at least one member shall be a female person;

(c) three persons nominated by the trade unions, and of whom at least one member shall be a female person;

(d) three persons nominated by the employers' organisations, and of whom at least one member shall be a female person.

(2) The Minister shall by notice in the *Gazette* invite employers' organizations and trade unions to nominate persons as members of the Commission under paragraphs (c) and (d) of subsection (1), and to submit such nominations to the Minister within the period stipulated in such notice. *Gov. not. 69/95*
" " 79/98
" " 19/2002
" " 104/2005

(3) If the employers' organizations or trade unions fail to submit the nominations within the period contemplated in subsection (2), the Minister may, subject to the provisions of paragraphs (c) and (d) of subsection (1), appoint any person as a member of the Commission and any person so appointed shall be deemed to have been appointed in terms of the relevant paragraph.

(4) A person who -

- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence therein, and resident in Namibia; or
- (b) is an unrehabilitated insolvent,

shall not be appointed as a member of the Commission.

(5) The Minister shall notify the names of the members of the Commission and the dates of commencement of their terms of office in the *Gazette* as soon as possible after the constitution of the Commission or any change in the constitution of the Commission, as the case may be.

(6) The members of the Commission shall from their number elect a deputy chairperson who shall hold office as such during his or her term of office.

(7) The deputy chairperson shall exercise the powers and perform the duties and functions of the chairperson to the extent determined in writing by the Minister and shall, in addition to such powers, duties and functions, exercise such other powers and perform such other duties and functions as may be determined by the Commission from time to time.

Terms of office and conditions of service of members of Commission.

5. (1) Subject to section 6, a member of the Commission shall hold office for a period of three years and shall at the expiration of that period be eligible for re-appointment.

(2) A member of the Commission who is not employed in the public service on a full-time basis shall be paid out of moneys appropriated by law such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the Commission, such subsistence and travelling allowances, as may be determined by the Minister after consultation with the Commission.

(3) The remuneration and allowances determined under subsection (2) may differ according to the office held by the member of the Commission concerned or the functions performed by him or her.

(4) Upon the appointment of the Commission the Minister may, in addition to the remuneration and allowances payable in terms of subsection (2), determine further conditions of service in respect of such member after consultation with the Commission.

Vacation of office by members of Commission.

6. (1) A member of the Commission shall vacate his or her office if such member -

- (a) by writing under his or her hand addressed and delivered to the Permanent Secretary, resigns from his or her office as a member of the Commission;
- (b) is in any country convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) without the leave of the chairperson, absents himself or herself from three consecutive meetings of the Commission;
- (d) becomes subject to any disqualification contemplated in section 4(4);
- (e) is removed from office under subsection (2).

(2) The Minister may remove any member of the Commission from office if the Minister is satisfied that such member -

- (a) is by reason of his or her physical or mental condition or for any other reason incapable of acting as a member of the Commission;
- (b) is guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (c) has failed to comply with any provision of this Act or any condition of service determined under section 5(4).

Filling of vacancies.

7. Any casual vacancy on the Commission caused by the vacation of office by or death of any member of the Commission shall, with due regard to the provisions of section 4, be filled for the unexpired portion of the period of office of such former member.

Meetings and decisions of
Commission.

8. (1) Subject to subsection (2), a meeting of the Commission shall be held not less than once every three months at such time and place as the chairperson may determine.

(2) The Minister may at any time, and the chairperson shall, if instructed by the Minister or requested in writing by the executive officer or by not less than three members of the Commission, convene a special meeting of the Commission.

(3) The majority of the members of the Commission shall form a quorum.

(4) The chairperson shall preside at all meetings of the Commission and in his or her absence, the deputy chairperson shall preside.

(5) If both the chairperson and deputy chairperson are absent from any meeting, the members of the Commission present shall elect one from their number to preside at that meeting and the member so presiding shall have the powers and perform the duties and functions of the chairperson.

(6) The decision of a majority of the members of the Commission present at a meeting of the Commission shall be a decision of the Commission and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) No decision taken by, or act performed under the authority of, the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that any person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or the act was authorized, if the decision was taken or the act authorized by the required majority of the members of the Commission who were present at the meeting and entitled to sit as members.

(8) The Commission shall cause a record to be kept of the proceedings of its meetings.

(9) The Minister may make rules in relation to the holding of and procedure at meetings of the Commission.

Powers, duties and functions of Commission.

9. (1) Subject to the provisions of this Act, the powers, duties and functions of the Commission shall be -

- (a) to administer the funds established by this Act or by or under any other law, the administration of which are assigned to the Commission;
- (b) to make recommendations to the Minister regarding the application of this Act, amendments thereto and the making of regulations;
- (c) to advise the Minister on any power, duty or function which may or is required to be exercised or performed in terms of this Act;
- (d) to inquire into and advise the Minister on matters relating to social security in Namibia including the administration of any fund or scheme, whether established by this Act or any other law, and the determination of contributions and benefits;
- (e) to acquire, hire and improve property required for the exercise and performance of such powers, duties and functions and, with the approval of the Minister and the Minister of Finance, dispose of such property;
- (f) with the approval of the Minister, to borrow money on the security of the assets of the Commission, or accept and administer any trust or donation;
- (g) to exercise such other powers and perform such other duties and functions as may be provided for in this Act or any other law,

and generally, to do all such things as the Commission considers necessary or expedient in order to achieve the objects of this Act.

- (2) (a) The Minister may, until such time as the Commission has been properly constituted under section 4, exercise any power and perform any duty or function conferred or imposed in terms of this Act or any other law upon the Commission.

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- (b) Any power exercised and any duty or function performed by the Minister by virtue of the provisions of this subsection shall be deemed to have been so exercised or performed by the Commission.

Agreements.

10. (1) Subject to subsection (2), the Commission may, subject to such conditions as may be determined by the Commission with the concurrence of the Minister, enter into an agreement with any financial institution or other institution approved by the Minister for the purpose of administering any fund or scheme contemplated in paragraph (a) of subsection (1) of section 9.

(2) The Commission may enter into an agreement with the State, any financial institution, regional council or other council referred to in paragraphs (b) and (c) respectively, of the definition of "state" in section 1 or the employer of the person concerned, providing for, on such terms and conditions as may be agreed upon -

- (a) the disbursement of benefits payable out of any fund referred to in subsection (1) to any person entitled thereto; and
- (b) the collection of contributions payable to any such fund by any person.

(3) The Minister may, with the concurrence of the competent authority, and subject to and on such terms and conditions as may be agreed upon, make State land or land controlled by the State or any facilities thereon or any other movable property available for -

- (a) the performance of the functions of the Commission;
- (b) the conducting of any schemes referred to in paragraph (a) of section 37(4); and
- (c) any such other purposes as may be approved by the Minister.

Committees of
Commission.

11. (1) The Commission may establish such committees as it considers necessary, which shall, subject to the instructions of the Commission, investigate and report to the Commission on any matter falling within the scope of the functions of the Commission.

(2) A committee shall consist of -

- (a) any number of members of the Commission of whom one shall be designated as chairperson of the committee; and
- (b) such number of other persons as the Commission considers necessary,

and the Commission may at any time dissolve or re-establish a committee.

(3) The provisions of section 5(2), (3) and (4) shall apply *mutatis mutandis* to a member of a committee appointed under this section.

Executive officer and other employees.

12. (1) The Commission shall, after consultation with the Minister, appoint an executive officer for the performance of the functions of the Commission who shall hold office for a period of five years and be eligible for re-appointment at the expiration of that period.

(2) The Commission shall determine the remuneration and other conditions of service of the executive officer and his or her service benefits, including the provision or supply of medical aid benefits, housing facilities or benefits and the provision for and payment of gratuities and pensions.

(3) Section 6 shall apply *mutatis mutandis* to the executive officer.

(4) If the executive officer is unable to perform his or her functions, the chairperson of the Commission may designate any other employee in the employment of the Commission to act as executive officer until the executive officer can resume his or her functions.

(5) The Commission may appoint such other employees as it considers necessary to assist the executive officer in the performance of the functions of the Commission.

(6) The Commission may in consultation with the Minister determine the remuneration and other conditions of service of the employees, and their service benefits, including provision or supply of medical aid benefits, housing facilities or benefits and the provision for and payment of gratuities and pensions.

(7) The Commission may, in addition to the employees referred to in subsection (5) and on such conditions as may be agreed upon, obtain the services of any competent person, including, subject to section 17, an actuary, to advise the Commission in connection with or assist it in the performance of its functions.

(8) Any person outside the employment of the Commission may, on such conditions as may be determined by it, be employed for any particular service or for any period of time.

(9) The power to make appointments under this section shall be subject to section 58 of the Employees' Compensation Amendment Act, 1994.

Duty of member to disclose interest.

13. (1) A member or employee of the Commission who or whose spouse in any way has a material interest in an agreement entered into or to be entered into by the Commission, or who or whose spouse acquires such interest after such agreement has been entered into, shall disclose to the Commission full particulars of such interest.

(2) The disclosure of an interest shall be in writing and shall be submitted to the executive officer at or before the meeting of the Commission at which the issue of entering into the particular agreement is considered for the first time, or if the interest is acquired after that agreement has been entered into, at or before the first meeting of the Commission to be held after the acquiring of such interest.

(3) The disclosure of an interest under this section shall be entered in the minutes of the meeting of the Commission at which such disclosure is submitted.

(4) Any member or employee of the Commission who fails to comply with the provisions of this section shall be guilty of an offence.

Limitation of liability.

14. Neither the Commission, nor any person engaged in carrying out any provision of this Act, shall be liable in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or the performance of a duty or function under or by virtue of this Act or in respect of anything that may result therefrom.

Preservation of
secrecy.

15. (1) Every person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon him or her in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody, except in so far as any such communication -

- (a) is made in the ordinary course of the exercise of his or her powers or the performance of his or her duties under this Act or any other law, or is required by an order of a competent court;
- (b) is effected with the prior permission in writing of the person concerned.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

PART III

Administration of funds

Administration of funds.

16. (1) The Commission shall, in accordance with sound business principles, administer every fund referred to in paragraph (a) of subsection (1) of section 9.

- (2) (a) The Commission shall in respect of every such fund, open a current account with a banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965), into which shall be deposited all moneys accruing to the fund concerned.
- (b) No moneys shall be withdrawn from any such account except by means of cheques signed by the executive officer and one other employee of the Commission specifically authorised thereto by the Commission, or by two such employees so authorized.

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(3) The Commission may, after consultation with the Minister, invest such moneys of any fund administered by it which are not required to meet administrative expenses or the payment of benefits under this Act -

- (a) with any financial institution;
- (b) with the Post Office Savings Bank controlled and managed by Namibia Post Limited established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992);
- (c) with such other institution approved by the Minister;
- (d) in any shares, securities, stocks, property or commercial enterprise approved by the Minister.

(4) The Commission shall, in accordance with such equitable principles and accounting principles relating to the allocation of administrative expenses as it may determine after consultation with the Auditor-General, recover such expenses from every such fund.

(5) The Commission shall not apply any moneys accruing to a particular fund for the payment of benefits which are payable out of moneys accruing to another fund.

(6) For the purposes of this section, "administrative expenses" means all expenses incurred in the administration of any fund and includes -

- (a) the payment of remuneration, allowances or fees due to members of the Commission and of any committee, the executive officer and other employees of the Commission and persons contemplated in section 12(7);
- (b) the cost of property acquired and all other expenses incurred which are necessary and incidental to the exercise and performance of the powers, duties and functions of the Commission.

Valuation of funds.

17. The assets of every fund shall be valued and its liabilities be determined -

- (a) during the first three financial years after the commencement of this Act, once in every such financial year;
- (b) thereafter at such times as may be considered necessary by the Commission, but not less than once every three years,

by an actuary appointed by the Minister in order to determine the sufficiency of such fund.

Accounting responsibility.

18. (1) The executive officer shall be the accounting officer of the Commission, and as such shall be charged with the responsibility of accounting for all moneys received, the utilization thereof and the use and care of the property of the Commission.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the Commission and any fund, and to explain the transactions and financial position of the Commission and such fund.

Auditing, furnishing of information and reports.

19. (1) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the Commission and every fund and shall submit a copy of his or her report on such audit to the Commission.

(2) The Commission shall furnish the Minister with such information as the Minister may call for from time to time in connection with the activities and financial position of the Commission and any fund and shall as soon as practicable after the end of each financial year contemplated in subsection (4), submit to the Minister in respect of the financial year concerned, copies of -

- (a) the audited balance sheet and profit and loss accounts and the report of the Auditor-General; and
- (b) a report by the Commission on its activities during that financial year.

(3) The financial statements and reports submitted to the Minister in terms of subsection (1), shall be tabled in the National Assembly by the Minister within 30 days after

receipt thereof, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

(4) The financial year of the Commission shall end on the last day of February in each year.

PART IV

Registration and membership of funds

Registration.

20. (1) Subject to subsection (3), every employer shall, in the prescribed manner and within the prescribed period, register -

- (a) himself or herself with the Commission as an employer; and
- (b) every employee employed by him or her, as an employee,

for the purposes of this Act.

(2) Notwithstanding subsection (1), a self-employed person who does not employ any other person may, in the prescribed manner, voluntarily register himself or herself under that subsection as an employer and employee for the purposes of this Act.

(3) The name and such other prescribed particulars of every employer and employee registered under this section shall be recorded in a prescribed register to be kept by the Commission, and a prescribed certificate of registration, which shall, in the case of an employee, be known as a social security card, shall be issued to every employer and employee so registered.

(4) Any person who fails to comply with subsection (1) shall be guilty of an offence.

Membership of funds and payment of contributions.

21. (1) Every employee registered under section 20 shall be a member of -

- (a) the Maternity Leave, Sick Leave and Death Benefit Fund;

- (b) the National Medical Benefit Fund, except if he or she is a member of any other medical fund or scheme approved by the Minister on recommendation of the Commission;
- (c) the National Pension Fund, except if he or she is a member of any other pension fund or scheme approved by the Minister on recommendation of the Commission.

(2) Subject to the provisions of this section, every employer and employee contemplated in subsection (1) shall be liable in respect of the prescribed contributions payable by every such employer and employee to every fund of which the employee is a member.

(3) Different contributions contemplated in subsection (2) may be prescribed in respect of different categories of employers or employees.

(4) An employer shall, subject to the regulations contemplated in subsection (2), deduct the contributions payable by his or her employee from such employee's remuneration and pay it, together with the contributions payable by him or her as employer, over to the Commission within the prescribed period.

(5) A self-employed person registered as an employee in terms of section 20 shall pay both the contributions payable by an employer and an employee as contemplated in subsection (2).

(6) Subject to the provisions of this section, no claim for any benefit payable under this Act shall be considered by the Commission unless -

- (a) the person to whom such claim relates has been a member of the fund concerned for a continuous period of at least six months before the date on which such claim arose; and
- (b) all contributions payable in respect of his or her membership of such fund have been paid in full.

(7) The Commission shall, notwithstanding anything to the contrary in any law contained -

(a) where paragraph (a) of subsection (6) had been complied with in respect of the employee concerned, not refuse any claim referred to in that subsection if, in the case of -

(i) an employee who, subsequent to his or her dismissal from his or her employment or his or her subjection to disciplinary action, was reinstated or re-employed by his or her employer, whether by virtue of an order contemplated in section 46(1) of the Labour Act, or by virtue of a settlement agreed between such employee and his or her employer, the contributions contemplated in paragraph (b) of that subsection were not paid over because of his or her dismissal or of disciplinary action taken against him or her prior to the reinstatement or re-employment by such employer or the issue of such order, as the case may be;

(ii) an employer who failed to pay over the full amount of such contributions, the employee concerned submits proof to the satisfaction of the Commission that the contributions deductible from his or her remuneration were in fact so deducted;

(b) where the said subsection (6) had not been complied with in respect of any female person concerned, not refuse any claim for maternity benefits if the failure to so comply was due to the termination of her employment by her employer within a period of three months before the actual date of confinement;

(c) not refuse any claim which arose within the period of six months following immediately upon the date of commencement of this Act, if -

(i) such claim is submitted within the period of 12 months following immediately upon such date of commencement; and

- (ii) all contributions payable in respect of the membership of the employee concerned have been paid in full in respect of the continuous period of six months preceding the date on which such claim for such benefits is submitted.

(8) Notwithstanding subsection (6) and without prejudice to subsection (7)(b), the Commission shall accept a claim for any benefit under this Act submitted by any person who, by reason of the termination of his or her employment, has ceased to be a member of the fund and to pay the contributions contemplated in paragraph (b) of the said subsection (6): Provided that -

- (a) such person, at the time when he or she ceased to be such a member, complied with the said subsection (6); and
- (b) such claim is submitted within the period prescribed for the purposes of this subsection following the cessation of his or her membership.

(9) Any person who ceases to be a member by reason of the termination of his or her employment and who, at the time that he or she so ceases to be a member, complied with subsection (6), shall, if he or she resumes his or her membership of the fund concerned within the period prescribed for the purposes of this subsection, be deemed, for the purposes of the said subsection (6), not to have ceased to be such a member or to have paid the contributions contemplated in that subsection.

(10) Different periods may be prescribed under subsections (8) and (9) in respect of different periods of employment served before the cessation of membership contemplated in those subsections.

(11) An employer who recovers from an employee any contribution or any portion thereof which is payable by the employer in respect of that employee, shall be guilty of an offence.

(12) An employer who deducts any contribution from the remuneration of an employee and fails to pay over such contribution to the Commission within the prescribed period, shall be guilty of an offence.

Keeping of records and
furnishing of returns by
employer.

22. (1) An employer shall, in addition to the records to be kept under section 4 of the Labour Act, keep in respect of every employee employed by him or her, whether or not such employee has been registered in terms of section 20, records in the prescribed form of the contributions deducted from the employee's remuneration and which have been paid over to the Commission in terms of section 21(4) and such other particulars as may be prescribed.

(2) An employer shall retain the records referred to in subsection (1) and any other prescribed documents relating to the payment of contributions at his or her place of business in Namibia for a period of five years, and shall keep such records or documents available for inspection on demand by an authorized person or the employee concerned.

(3) An employer shall, when paying over contributions to the Commission, submit to the Commission a return in the prescribed form containing the prescribed particulars in respect of the period for which such payment is being made.

(4) Any person who fails to comply with any provision of this section shall be guilty of an offence.

Offences relating to con-
tributions, records and
returns.

23. (1) Any -

(a) employer who fails to pay the contributions referred to in, and within the period prescribed under section 21;

(b) person who, with intent to evade the payment of contributions referred to in section 21 or to reduce the amount of such contributions or to assist any other person in avoiding such payment or in reducing such amount -

(i) makes or causes or allows to be made any false statement or false entry in a return referred to in section 22, or signs any such return without reasonable grounds for believing the contents or any part thereof to be true;

- (ii) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or authorizes the falsification of any books of account or other records;
- (iii) gives any false answer, whether orally or in writing, to any request for information made under this Act by the Commission, any committee thereof or any authorized person; or
- (iv) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of such fraud, art or contrivance,

shall be guilty of an offence.

(2) Any person found guilty of an offence referred to in subsection (1) shall on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Interest levied on late payment of contributions.

24. If an employer fails to pay the contributions referred to in, and within the period prescribed under, section 21, interest shall be payable on such arrear contributions at such rate, calculated from such date and at such intervals as may be prescribed.

Failure to pay, and recovery of, contributions.

25. (1) Any contribution or interest payable in terms of section 21 or 24, respectively, shall, when such contribution or interest becomes due or is payable, be a debt due and payable to the Commission.

- (2) (a) If an employer fails to pay any contribution or interest when it becomes due or is payable, the executive officer may, irrespective of whether any criminal proceedings contemplated in section 21(12) have been instituted against such employer, file with the clerk or registrar, as the case may be, of any competent court a statement in the prescribed form certified by the executive officer as correct and setting forth the amount of the contributions or interest so due or payable by such employer, and the statement shall thereupon have the effect of, and any proceedings may be

taken thereon as if it were, a civil judgement granted by the court concerned in favour of the Commission for a liquid debt in the amount specified in the statement.

(b) The executive officer shall not file any statement referred to in paragraph (a), unless -

(i) he or she has, *mutatis mutandis* in the manner prescribed by section 39(4), (5) and (6), caused to be served upon the employer concerned a notice in the prescribed form claiming payment of such contributions or interest within 21 days from the date of such service; and

(ii) the said period of 21 days has expired.

(3) The executive officer may, by written notice addressed and delivered to the said clerk or registrar, withdraw any statement referred to in subsection (2) whereupon that statement shall, subject to subsection (4), cease to have any effect.

(4) The executive officer may, notwithstanding the withdrawal of a statement by him or her under subsection (3), at any time institute proceedings afresh under subsection (2) in respect of any contribution or interest referred to in the withdrawn statement.

(5) Notwithstanding section 46 of the Magistrate's Courts Act, 1944 (Act 32 of 1944), the amount of any contributions or interest due or payable by an employer may, for the purposes of filing a statement under subsection (2), exceed the amount provided for in that section.

(6) Subject to the Insolvency Act, 1936 (Act 24 of 1936), and the Companies Act, 1973 (Act 61 of 1973), the executive officer may institute proceedings for the sequestration of the estate or the winding-up, as the case may be, of any employer in respect of whom a statement has been filed in terms of subsection (2), and for such purpose the executive officer shall be deemed to be the creditor in respect of any contributions or interest due or payable by that employer.

Discharge from liability.

26. (1) No person shall be discharged from liability in respect of any moneys due to any fund without the authorization of the Commission.

(2) The Commission shall in every report referred to in paragraph (b) of subsection (2) of section 19 include particulars of any liability discharged under subsection (1) and its reasons therefor.

Principals and contractors.

27. (1) If any person (in this section referred to as the principal) in the course of or for the purposes of his or her business operations enters into an agreement with any other person (in this section referred to as the contractor) for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the principal, any employee engaged in such work shall be deemed to be the employee of the principal unless and until the employee has been registered under section 20(1) as the employee of that contractor and all contributions payable in respect of the employee have been paid.

(2) A principal who is held liable to pay any contributions by virtue of subsection (1) for which an employer is liable under this Act, may recover the amount thereof from the contractor concerned.

(3) A principal shall, after the registration of the employee of a contractor contemplated in subsection (1), ensure that any contribution payable by the contractor is duly paid, failing which the principal shall be personally liable in respect of such contribution.

(4) The Commission may upon the request of the principal, issue the principal with a prescribed certificate in which shall be stated whether the contractor -

(a) has been registered as an employer;

(b) has paid all contributions due by him or her,

in respect of the work contemplated in subsection (1) and any employee concerned.

PART V**Maternity Leave, Sick Leave and
Death Benefit Fund**

Establishment of Maternity Leave, Sick Leave and Death Benefit Fund.

28. (1) There is hereby established a fund to be known as the Maternity Leave, Sick Leave and Death Benefit Fund.

(2) The Fund shall be a juristic person.

(3) There shall be paid into the Fund -

(a) the prescribed contributions payable to the Fund;

(b) moneys appropriated by Parliament for the purposes of the Fund;

(c) any interest or dividend earned in terms of section 16;

(d) any fines paid by virtue of penalties imposed under this Act in respect of an offence involving the Fund;

(e) any other moneys which may accrue to the Fund from any other source.

(4) The Fund shall, subject to the provisions of this Act, be applied to provide -

(a) maternity leave benefits to every female employee;

(b) sick leave benefits to every employee; and

(c) death benefits to the dependants of every employee,

who is a member of the Fund by virtue of subsection (1)(a) of section 21 and who has complied with the other provisions of that section.

