

**SUGAR INDUSTRY PENSION FUND ACT**

Act 42 of 1955 – 31 December 1955

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**SUGAR INDUSTRY PENSION FUND ACT**

**1. Short title**

This Act may be cited as the Sugar Industry Pension Fund Act.

## **2. Interpretation**

In this Act—

“actuary” means an actuary approved by the Board;

“artisan” includes a skilled workman belonging to a prescribed category;

“Board” means the Sugar Industry Pension Fund Board referred to in section 19;

“Committee” has the same meaning as in the Sugar Industry Labour Welfare Fund Act;

“employee” means a person employed by the month by an employer;

“employer” means—

- (a) a person that is the owner or lessee of a sugar estate;
- (b) a sugar broker;
- (c) the Board;
- (d) the Mauritius Chamber of Agriculture;
- (e) the Mauritius Sugar Syndicate;
- (f) —
- (g) the Mauritius Cane Industry Authority;
- (h) a person that is the owner or lessee of a distillery or of any other plant processing by-products of sugar or sugar cane;
- (ha) the successors and assignees of the persons referred to in paragraphs (a) to (e), (g) and (h);
- (i) a sequestrator appointed by the Supreme Court under section 129 of the Sale of Immovable Property Act for the management and administration of a sugar estate, distillery or concern processing any by-products of sugar or sugar cane;
- (j) such other person directly concerned with the sugar industry as the Board may approve;

“Fund” means the Sugar Industry Pension Fund established under section 3;

“insuring employer” means an employer other than the Sugar Industry Retiring Fund who, at 1 January 1956, had already been operating a pension fund in favour of his employees for 3 years or more;

“labourer” means a workman other than an artisan;

“member” means an employee who is a member of, or is receiving a pension, gratuity or other allowance under, the Fund;

“normal pension age” means the age of 60;

“personal VAC account” means an individual account in the name of an employee who makes voluntary additional contribution;

“Rules” –

- (a) means the Sugar Industry Pension Fund Rules; and
- (b) includes the tables in the First and Second Schedules;

“salary” –

- (a) means the basic monthly salary or wage, as the case may be, payable to an employee, monthly or otherwise; but
- (b) does not include any payment representing cost of living or other allowance, share of profits, commission in lieu of salary or wage, temporary increase of salary or wage, or other occasional receipts, or any fees payable to any person carrying on a professional practice;

“service” means service as an employee;

“specified worker” means a labourer or artisan governed by the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 and the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985, respectively;

“Specified Workers Gratuity Fund” means the fund referred to in section 4B;

“staff employee” means an employee who is neither an artisan nor a labourer;

“sugar estate” means –

- (a) a sugar factory;
- (b) any sugar cane estate with a factory; or
- (c) any sugar cane estate without a factory,

which cultivates at least 100 arpents under sugar cane, any land temporarily under other crops being reckoned as being under sugar cane;

“VAC” means the voluntary additional contribution made by an employee;

“VAC Fund” means the voluntary additional contribution fund referred to in section 4A;

“voluntary additional contribution” means the voluntary contribution made by an employee under section 4A;

“wage” has the same meaning as “salary”.

[S. 2 amended by Act 25 of 2000; s. 28 (a) of Act 20 of 2002 w.e.f. 10 August 2002; s. 53 (a) of Act 18 of 2016 w.e.f. 7 September 2016.]

### 3. Sugar Industry Pension Fund

(1) There is established the Sugar Industry Pension Fund to provide certain financial benefits for employees who are members of the Fund or for the heirs of those employees.

(2) The Fund shall be divided into—

- (a) the staff employees' fund;
- (b) the artisans' fund;
- (c) the labourers' fund;
- (d) the VAC Fund; and
- (e) the Specified Workers Gratuity Fund,

each of which shall be constituted and managed separately as provided for in this Act.

[S. 3 amended by Act 25 of 2000; s. 28 (b) of Act 20 of 2002 w.e.f. 10 August 2002.]

#### **4. Membership of Fund**

(1) Subject to subsection (3), every employee, who, at 1 January 1956 had reached the age of 18, and every employee who, at that date or after that date, reaches the age of 18, shall be a member of the Fund and shall be liable to contribute to it continuously until he reaches normal pension age.

(2) (a) An employee who is over the normal pension age at 1 January 1956, may, with his employer's consent, join the Fund at that date on such special terms of contribution and pension as may be agreed upon between himself and his employer and approved by the Board.

(b) (i) An employee who, after reaching normal pension age, continues in service, may continue to contribute to the Fund, at the rate appropriate to his salary or wage grade, and where he so elects to continue his contribution his employer shall likewise continue his contribution to the Fund in respect of that employee.

(ii) The employer's contributions shall be at the appropriate rate relative to the employee's contribution as if the employee were still of the age of 59.

(3) This section shall not apply to—

- (a) an employee on probation;
- (b) an employee who is a member of a pension fund operated by an insuring employer;
- (c) an employee who is contributing to the National Pensions Fund and whose remuneration does not exceed the ceiling prescribed in the National Pensions Act;
- (d) any employee who is contributing to a pension scheme administered by the State Insurance Company of Mauritius Limited;
- (e) a person receiving a pension from the Fund and re-employed by an employer; and
- (f) an employee on short term agreement, unless and until such employee elects to become a member of the Fund.

[S. 4 amended by s. 53 (b) of Act 18 of 2016 w.e.f. 7 September 2016.]

#### **4A. Voluntary additional contribution**

(1) Notwithstanding section 4, an employee may at any time elect, in such form and in such manner as the Board may approve, to make, in addition to the contribution under section 4, such amount of voluntary contribution as he may specify.

(2) Where an employee has made an election under subsection (1), the additional contribution shall be paid into his personal VAC account.

(3) The Board may invest all sums which may be available from the VAC Fund with such bank, financial institution, fund or in such securities as the Board may approve.

(4) Any income derived from the investments pursuant to subsection (3) shall accrue to the VAC Fund and shall be paid into that Fund.

(5) Where an employee leaves the service of his employer before reaching the normal pension age, but after having completed at least 2 years' service, the balance standing to the credit of his personal VAC account in the VAC Fund shall, at the option of the employee—

- (a) be transferred to a superannuation fund established by his new employer;
- (b) be retained in his account for the payment of a pension as determined under section 33 (2) to him upon reaching the normal pension age; or
- (c) be transferred to a personal pension scheme approved by the Director-General of the Mauritius Revenue Authority under the Income Tax Act.

(6) Where an employee leaves the service of his employer before completing 2 years' service, he shall be entitled to a refund of the balance standing to the credit of his personal VAC account, provided that the actual real value of the accrued retirement benefits of the employee from a previous employment has not been transferred to his personal VAC account.

(7) For the purpose of this section, "superannuation fund" has the same meaning as in the Income Tax Act.

[S. 4A inserted by Act 25 of 2000; amended by s. 43 of Act 14 of 2009 w.e.f. 30 July 2009.]

#### **4B. Specified Workers Gratuity Fund**

(1) Notwithstanding section 4, an employer may at any time elect, in such form and in such manner as the Board may approve, to make, in addition to the contribution under section 4, such amount of contribution as he may, on the advice of the actuary, determine, towards the payment of retirement and death gratuities to a specified worker.

(2) Where an employer has made an election under subsection (1), the additional contribution shall be paid into his own account in the Specified Workers Gratuity Fund.

(3) The Board may invest all sums which may be available from the Specified Workers Gratuity Fund with such bank, financial institution, fund or in such securities as the Board may approve.

(4) Any income derived from the investments pursuant to subsection (3) shall accrue to the Specified Workers Gratuity Fund and shall be paid into that Fund.

[S. 4B inserted by s. 28 (c) of Act 20 of 2002 w.e.f. 10 August 2002.]

**5. —**

## **6. Pensions or gratuities**

(1) The Fund shall be chargeable with all pensions, gratuities or other allowances which may become due to a member in accordance with this Act and the Rules, or to the heirs of the member.

(2) Pensions, gratuities, death gratuities or other allowances shall be paid out of the staff employees' fund, the artisans' fund, the labourers' fund, the VAC Fund or the Specified Workers Gratuity Fund, according to whether the member concerned is a staff employee, an artisan, a labourer, an employee making a voluntary addition contribution or a specified worker, respectively.

[S. 6 amended by Act 25 of 2000; s. 28 (d) of Act 20 of 2002 w.e.f. 10 August 2002.]

### **6A. Pension liability of Fund**

(1) Notwithstanding section 6 but subject to subsections (2) and (3), where the payment of a pension becomes due to a member or is otherwise imposed in respect of the member's employer, the liability of the Fund shall be limited, and the member shall be entitled to have recourse only to the assets attributable to his employer, and that liability shall not extend to, and the member shall not have recourse to, the assets of the Fund or the assets attributable to any other employer.

(2) Where a member institutes proceedings or otherwise makes a claim for pension against the Fund and the Fund is held liable to pay a pension to the member, the Fund shall be entitled to make a claim against the employer of that member for the amount of pension paid.

(3) Any pension liability not attributable to any employer shall remain the liability of the Fund.

[S. 6A inserted by s. 53 (c) of Act 18 of 2016 w.e.f. 7 September 2016.]

### **6B. Recourse to assets of Fund**

Without prejudice to section 6A, the creditors of an employer shall be entitled to have recourse to the assets of the Fund to the extent that the assets are attributable to the employer.

[S. 6B inserted by s. 53 (c) of Act 18 of 2016 w.e.f. 7 September 2016.]

## 7. Constitution of Fund

Subject to this Act and the Rules, the Fund shall consist of—

- (a) contributions by employees and employers;
- (b) all sums specially contributed by employers and by the Committee towards the cost of past service pensions as provided in this Act;
- (c) all sums specially contributed by an employer—
  - (i) for the benefit of the Fund as a whole; or
  - (ii) for the benefit of any employee or group of employees;
- (d) all other money or assets received under this Act or the Rules;
- (e) any donation or legacy made to the Fund; and
- (f) interest received on investments of the Fund.

8. —

## 9. Contributions to Fund

(1) Subject to this section, every member and every employer shall contribute to the Fund in accordance with this Act and the Rules.

(2) Any contribution in respect of a staff employee shall be in accordance with either the Second Schedule or the final salary scheme table as determined by the Board on the advice of the actuary.

(3) Where the final salary scheme table is applied, the level of contributions of the employer may be increased or reduced in accordance with a valuation certificate issued by an actuary, provided that any contribution made by an employer shall not be less than the appropriate rate specified in the Second Schedule.

(4) No insuring employer or employee of an insuring employer contributing to that insuring employer's pension fund shall be liable to contribute to the Fund.

[S. 9 amended by s. 17 (a) of Act 28 of 2004 w.e.f. 26 August 2004.]

## 9A. Keeping of accounts

The Board shall, in respect of every employer, keep or cause to be kept separate and in a manner that is separately identifiable—

- (a) the assets attributable to the employer;
- (b) the contributions received from the employer; and
- (c) the benefits paid out of the contributions of the employer.

[S. 9A inserted by s. 53 (d) of Act 18 of 2016 w.e.f. 7 September 2016.]

## **10. Payment of contributions**

(1) An employer may, where he pays any salary to an employee who is a member of the Fund, deduct from that salary the contribution due by the member.

(2) Every employer shall pay into the Fund by the 15th day of every month a sum representing the total of the contributions for which he and any of his employees who are members were liable in respect of the preceding month.

(3) The sums so paid shall be credited to the staff employees' fund, the artisans' fund, the labourers' fund, the VAC Fund or the Specified Workers Gratuity Fund, as the case may be.

[S. 10 amended by s. 28 (e) of Act 20 of 2002 w.e.f. 10 August 2002.]

## **11. Privilege of Board**

(1) The amount payable by an employer into the Fund under section 10 shall be secured by a privilege ranking concurrently with the privilege for the remuneration of whatever nature due to workers and apprentices (*saliés et apprentis*) established by article 2148 alinéa 6 of the Code Civil Mauricien and shall guarantee all sums due to the Board for the year expired and what may be due for the current year.

(2) The privilege shall extend over all the property of the employer.

(3) No inscription of the privilege at the Mortgage Office shall be required.

[S. 11 amended by s. 53 (e) of Act 18 of 2016 w.e.f. 7 September 2016.]

## **12. Date of payment**

The employers' and employees' contributions shall become payable as from 1 January 1956.

## **13. Special contribution**

(1) Every employer shall make such further contributions to the Fund as may be found by the Board to be necessary for the purpose of meeting—

(a) the cost of providing past service pensions to staff employees in accordance with this Act; and

(b) the cost of providing past service pensions to artisans and labourers in excess of the contributions to be made by the Committee under section 14.

(2) The date on which the special contributions shall be payable shall be prescribed by the Board.

(3) The special contributions shall be placed to the credit of the staff employees' fund, the artisans' fund or the labourers' fund, as the case may be.



#### 14. Labour Welfare Fund Committee

(1) The Committee shall make such contributions to the Fund, as may be agreed between the Committee and the Board, towards financing the cost of providing past service pensions to artisans and labourers in accordance with this Act.

(2) The dates on which such contributions shall be payable shall be determined by agreement.

(3) Such contributions shall be placed to the credit of the artisans' fund or the labourers' fund, as the case may be.

15. – 17. –

#### 18. Costs of management of Fund

(1) All costs, charges and expenses of administering the Fund, including all the expenses incurred by the members of the Board in the discharge of their duties and in attending meetings of the Board, shall be chargeable to the Fund as management expenses and may be paid by the Board.

(2) A proportion of the management expenses, determined by the Board on the advice of the actuary, shall be reimbursed to the Fund by means of a special contribution to be made by all employers for this purpose.

(3) The special contribution under subsection (2) shall be due and payable on the first day of each financial year of the Fund.

[S. 18 amended by s. 35 (10) (a) of Act 20 of 2001 w.e.f. 17 September 2001.]

#### 19. Management of Fund

(1) The control and management of the Fund shall, subject to this Act and the Rules, be vested in a Board of 13 Directors to be known as the Sugar Industry Pension Fund Board.

(2) The Fund may be administered by a service provider licensed under this Act to provide pension scheme administration, advisory, actuarial or related services.

(3) The Board shall appoint the service provider referred to in subsection (2) on such terms and conditions as it may determine.

(4) –

[S. 19 amended by s. 29 (a) of Act 14 of 2005 w.e.f. 21 April 2005; s. 53 (f) of Act 18 of 2016 w.e.f. 7 September 2016.]

#### 20. The Board

(1) The Board shall be a body corporate.

(2) The Board may delegate any of its powers to any person.

**21. Legal proceedings**

The Board shall, in all legal proceedings, be represented by its Chairperson, and the service of any document by or on the Chairperson or on the Secretary shall constitute good and effectual service by or upon the Board, as the case may be.

**22. —**

**23. Investment of Fund**

(1) The Board shall invest the Fund—

- (a) in current or deposit account with any bank or with any financial institution, in any currency, as the Board may approve;
- (b) in Mauritius Government or Mauritius local Government securities;
- (c) in Commonwealth Government or local Government securities quoted on a recognised stock exchange;
- (d) on first rank mortgages inscribed on immovable property in Mauritius or on other mortgages on such property;
- (e) in assurance policies and immediate or deferred annuity bonds;
- (f) in such other securities as the Board thinks fit including preference, ordinary or deferred shares traded on the Stock Exchange of Mauritius or on any other recognised overseas Stock Exchange; and
- (g) in the securities of the management company referred to in section 19 (2).

(2) Such investments shall be made in the name of the Board and no member shall have any claim on such investments.

(3) The Board may, on application being made, grant, on such terms and conditions as the Board may determine, a loan to an employee to be used wholly and exclusively for the purchase of shares in the Sugar Investment Trust or a body controlled by the Trust.

(4) The Board shall take a security in respect of any loan granted under subsection (3) on the shares purchased by the person and on any accompanying option to purchase land.

(5) For the purpose of subsection (3)—

“employee” has the same meaning as in section 9 of the Sugar Industry Efficiency Act;

“Sugar Investment Trust” and “Trust” have the same meaning as in the Sugar Industry Efficiency Act.

[S. 23 amended by Act 25 of 1994; s. 35 (10) (b) of Act 20 of 2001 w.e.f. 17 September 2001; s. 11 of Act 26 of 2001 w.e.f. 5 November 2001; s. 29 (b) of Act 14 of 2005 w.e.f. 21 April 2005.]

**23A. Inscription of mortgage**

Notwithstanding any other enactment, the inscription taken by the Board to secure payment of any loan, together with interest and other liabilities in respect of it, made by the Board under this Act, need not be renewed, but shall continue to have full force and effect without any such renewal until the complete extinction and payment of such loan, interest and liabilities.

**24. Protection of members**

No member of the Board shall be liable for any loss arising from or contingent upon any investment made in accordance with section 23 unless the loss has been occasioned by wilful negligence or fraud.

**25. Protection of individuals**

No member of the Board, and no person acting under the authority of the Board, shall be personally liable to any action or proceeding for or in respect of any act, matter or thing, *bona fide* done or omitted to be done in the exercise or supposed exercise of any of the rights or powers of the Board or of the members of the Board.

**26. Annual reports and accounts**

(1) The Board shall cause true and full accounts of the Fund to be kept and shall, within 3 months after the end of each financial year, issue a report of the Fund together with a balance sheet drawn up as at that date and an income and expenditure account for that financial year.

(2) The Board shall include in the report a list of the investments of the Fund showing the cost price and book value at that date of all such investments.

(3) The financial year of the Fund shall be 1 January to 31 December of each year.

(4) The report and accounts shall be submitted for approval to the annual general meeting of employers and employees to be held as provided in the Rules within 4 months after the end of each financial year.

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(5) In any year in which an actuarial valuation is made under section 46, the periods specified in this section may be extended at the discretion of the Board.

### **27. Audit of accounts**

(1) The annual balance sheet, income and expenditure account and list of investments specified in section 26 shall, before their issue, be submitted to 2 auditors properly appointed annually by the Board, and those auditors shall report to the Board as to whether—

- (a) they have obtained all the information and explanations they required;
- (b) in their opinion, the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the Fund; and
- (c) they have verified the investments held by the Board.

(2) The remuneration of the auditors appointed under this section shall be fixed by the Board.

### **28. Members' records**

(1) A separate record shall be kept for each member showing—

- (a) the amount of his own contributions for each year, together with the total of such contributions up to date with annual accretions in respect of interest calculated at the prescribed rate; and
- (b) the amount of pension accruing in respect of each year's contributions, including any pension in respect of past service.

(2) Once in every year, and not later than 5 months after the last day of each financial year, a summary of his record as at such date shall be sent by the Board to each member.

[S. 28 amended by s. 35 (10) (c) of Act 20 of 2001 w.e.f. 17 September 2001.]

### **29. Changes in wage grades**

Changes in salary or wage grades so far as they affect rates of contribution or amounts of pension shall only become effective on 1 January and 1 July following or coincident with the change in salary or wage grade.

### **30. Non-qualifying service**

No pension, gratuity or other allowance shall be granted to a member in respect of any service while he is—

- (a) on probation; or
- (b) above normal pension age, except in the circumstances mentioned in section 4.

### **31. Grant of pensions**

Subject to sections 37 and 41, no pension shall be granted to a member except on his retirement from service on or after reaching normal pension age.

### **32. Retirement on reaching 60**

(1) On reaching the age of 60, a member may retire from his employer's service and exercise his rights to a pension, gratuity or retirement gratuity, as the case may be.

(2) Where an employee reaches the age of 60, his employer may require him to retire from his service, and the employee shall receive the benefit of a pension, gratuity or retirement gratuity, as the case may be, under this Act.

[S. 32 amended by s. 28 (f) of Act 20 of 2002 w.e.f. 10 August 2002.]

### **33. Rate of pension**

(1) (a) Subject to paragraphs (b) and (c), the rate of pension earned by a member shall be in accordance with—

- (i) the First Schedule;
- (ii) the final salary pension scheme for staff employees; or
- (iii) subparagraphs (i) and (ii),

as may be determined by the Board, as appropriate, on the advice of the actuary, and shall be payable monthly in arrears.

(b) The rate of pension earned by a member under paragraph (a), excluding any pension payable to the member from the VAC Fund or the National Pension Fund, shall not exceed two-thirds of the highest annual salary drawn by the member at any time in the course of his service.

(c) The limitation of two-thirds referred to in paragraph (b) shall not apply to a member who retires after the normal pension age.

(2) The pension payable to a retiring employee from the VAC Fund shall be determined by the Board on the advice of the actuary.

[S. 33 added by Act 25 of 2000; amended by s. 35 (10) (d) of Act 20 of 2001 w.e.f. 17 September 2001; s. 18 (a) of Act 10 of 2010 w.e.f. 24 December 2010.]

### **33A. Retirement gratuity payable to specified workers**

The retirement gratuity payable from the account of the employer in the Specified Workers Gratuity Fund to a retiring specified worker shall be determined by the Board on the advice of the actuary.

[S. 33A inserted by s. 28 (g) of Act 20 of 2002 w.e.f. 10 August 2002.]

### **34. Gratuity and reduced pensions**

(1) A member to whom a pension is granted under this Act may, at his option, when the pension first becomes due and payable, be paid in lieu of such pension, a gratuity not exceeding two thirds of the total amount he would otherwise draw as pension during the first 5 years after retirement, less interest at the rate determined by the Board on the advice of the actuary, together with a pension reduced for the first 5 years by the proportionate part of the amount thus drawn as a gratuity.

(2) At the expiry of the 5 years, the member's pension shall be restored to the full amount to which he would have been entitled had he not exercised the option.

(3) Where, pursuant to subsection (1), the monthly pension payable to a member is less than 1,000 rupees, the member may, at his option, be paid in lieu of such pension, such lump sum as may be determined by the Board on the advice of the actuary.

(4) The Board shall not be required to effect any further payment to any person in respect of a member who has exercised his option under subsection (3).

[S. 34 amended by s. 35 (10) (e) of Act 20 of 2001 w.e.f. 17 September 2001; s. 17 (b) of Act 28 of 2004 w.e.f. 26 August 2004; s. 18 (b) of Act 10 of 2010 w.e.f. 24 December 2010.]

### **35. Past service pensions**

(1) (a) In addition to the pensions provided under section 33, pensions in respect of past service shall be provided for employees, who become members on 1 January 1956, in respect of the number of years by which their age at that date exceeded 30 years or, in the case of members under the age of 30 on 1 January 1956, in respect of their period of membership of the former Sugar Industry Retiring Fund.

(b) No person shall earn any past service pension in respect of more than 30 years past service and, in the case of employees who first took service after having reached the age of 30, the past service pension shall only be granted in respect of the difference between their age on first taking service and their age on 1 January 1956.

(2) (a) Past service pensions shall be paid at half of the pension rate for each salary or wage grade on 1 January 1956, as set out in regulations on the basis of the employee's time of past service, as calculated under subsection (1).

(b) In the case of a member under the age of 30 on 1 January 1956, the past service pension shall be the deferred pension which would accrue from the conversion of the employers' contribution to the former Sugar Industry Retiring Fund on behalf of that member, and the interest on it.

### **36. Conversion of balances of associates**

(1) The balance standing to the credit of every associate of the Sugar Industry Retiring Fund on 1 January 1956 shall, after being transferred to the Fund be dealt with as specified in subsection (2).

(2) (a) That part of each balance which represents the employee's contribution together with its proportionate share of interest, shall, at the employee's option, be payable either monthly as a deferred pension to be added to the other pensions payable to him on retirement, or shall be paid cash to the employee on retirement as a lump sum together with compound interest at the prescribed rate from 1 January 1956.

(b) (i) That part of each balance which represents the employer's contribution, together with its proportionate share of interest, shall be set off against the cost of paying the employee's past service pension under section 35.

(ii) No past pension granted in respect of the period of existence of the Sugar Industry Retiring Fund shall be less than the deferred pension which would have accrued from the conversion of the employer's contribution and interest.

### **37. Resignation before 60**

(1) Where a member resigns or is dismissed for any reason before reaching normal pension age, he shall be entitled to the benefits specified in this section.

(2) Where a member has not reached the age of 40, he shall be entitled to a deferred pension.

(3) The deferred pension under subsection (2) shall be—

- (a) equivalent to the amount of pension for which he has qualified at the end of the last month he has contributed to the Fund and of the pension payable under section 33 (2); and
- (b) payable as from the date the member reaches normal pension age.

(4) Where a member has reached the age of 40 but is under the age of 50, he shall be entitled to a deferred pension under subsection (3) or to a reduced deferred pension payable as from the date the member reaches the age of 50.

(5) The reduced deferred pension payable under subsection (4) (b) shall be determined by the Board on the advice of the actuary.

(6) Where a member has reached the age of 50, he shall be entitled to a deferred pension under subsection (3) or to a reduced immediate pension.

(7) The reduced immediate pension payable under subsection (6) (b) shall be determined by the Board on the advice of the actuary.

(8) Notwithstanding section 4 (3) (e), where a member who has resigned or has been dismissed—

- (a) has not yet reached normal pension age; and
- (b) is re-employed by the month,

he may contribute to the Fund, whether he is receiving or has not yet received the pension to which he is entitled.

(9) The pension for which a member to whom subsection (8) applies shall have qualified during the period of his re-employment shall be added to the pension he is receiving, or has not yet received, as the case may be, and shall be payable when he has reached normal pension age and has retired from service.

(10) Where a member has the option between—

- (a) a deferred pension payable at the age of 60 and a reduced deferred pension payable at the age of 50; and
- (b) a deferred pension payable at the age of 60 and a reduced immediate pension,

the Board shall notify the member, within 4 weeks of the time he ceases to be a contributing member, of his right to exercise his option and such option must be exercised within 3 months of his ceasing to be a contributing member.

(11) Where a member has not exercised his option under subsection (10) the Board may consider that the member has opted for a deferred pension payable at the age of 60.



(12) Where the member dies before receiving a pension, the amount to be paid shall be in accordance with section 42.

(13) Where a member is dismissed for dishonesty in his employment proved in a Court of law, the deferred pension under subsection (3), the reduced deferred pension under subsection (4) (b) and the reduced immediate pension under subsection (6) (b) shall, subject to subsection (14), be reduced by 10 per cent.

(14) Subsection (13) shall not apply to the benefits accruing to the member in the VAC Fund.

[S. 37 amended by Act 25 of 2000; s. 35 (10) (f) of Act 20 of 2001 w.e.f. 1 August 2001.]

### **38. Computation of years of service**

For the purpose of computing the time of service of a member, any intermediate period spent by the member in the armed forces or any other war service, or in studying for a professional or technical degree approved by the Board, shall be considered as service for purposes of the Fund.

### **39. – 40. —**

### **41. Pension in case of ill-health**

(1) Where a member retires before reaching normal pension age through ill health, as certified by medical evidence to the satisfaction of the Board that he is incapable by reason of some infirmity of mind or body of discharging his duties and that such infirmity is likely to be permanent, he shall be entitled to the benefits specified in subsections (2) and (3).

(2) Where the infirmity occurs after the member has been in continuous service for a period of—

(a) less than 15 years; or

(b) 15 years or more but less than 20 years and before he has reached the age of 50,

he shall, on retirement, be entitled to a reduced immediate pension, to be determined by the Board on the advice of the actuary.

(3) Where the infirmity occurs after the member has been in continuous service for a period of—

(a) 20 years or more; or

(b) 15 years or more and after he has reached the age of 50,

he shall, on retirement, be entitled to an immediate pension equivalent to the amount of pension for which he has qualified at the end of the last month he has contributed to the Fund.

(4) On retirement under subsection (2) or (3), the member shall, in addition to the pension referred to in those subsections, be entitled to a pension and a retirement gratuity payable under section 33 (2) and 33A respectively.

[S. 41 inserted by Act 25 of 2000; amended by s. 28 (h) of Act 20 of 2002 w.e.f. 10 August 2002.]

#### **42. Death before retirement**

(1) Where a member dies before retiring from service, there shall be paid out of the Fund the benefits specified in the other provisions of this section.

(2) (a) Where the member has reached normal pension age at the date of his death, the pension for which he had qualified at the date of his death shall be paid—

- (i) to his widow until her death or remarriage;
- (ii) on the death of the widow or where there is no widow, to his legitimate children under the age of 18 until they reach the age of 18.

(b) Any pension payable under paragraph (a) shall, after a period of 5 years, be reduced by the Board on the advice of the actuary.

(c) Where there is no widow and no legitimate child under the age of 18, his legitimate children, if any, shall be entitled to a death gratuity representing 120 times the monthly pension for which he had qualified at the date of his death.

(d) Where there is no widow and no legitimate child, a death gratuity representing 60 times the monthly pension for which he has qualified at the date of his death shall be payable to his estate.

(3) (a) Where the member has not reached normal pension age at the date of his death, a death gratuity calculated in accordance with subsection (2) (c) shall be paid in equal shares to—

- (i) his widow and legitimate children; or
- (ii) his legitimate children in the absence of a widow.

(b) Where there is no widow and no legitimate child, a death gratuity calculated in accordance with subsection (2) (d) shall be paid to his estate.

(4) Where an employee having contributed to the VAC Fund dies before retiring from the service, any amount standing to the credit of his personal VAC account as at the date of his death shall be paid in accordance with subsection (3).

(5) Where a specified worker in respect of whom his employer has contributed to the Specified Workers Gratuity Fund dies before retiring from the employment, an additional gratuity shall be determined by the Board on the advice of the actuary and shall be paid out of the account of the employer in that Fund in accordance with subsection (3).

[S. 42 inserted by Act 25 of 2000; amended by s. 28 (i) of Act 20 of 2002 w.e.f. 10 August 2002.]

#### **43. Death after retirement**

(1) (a) Where a member dies within 5 years after retirement, there shall be paid out of the Fund the benefit specified in this subsection.

(b) There shall be paid—

- (i) to his widow until her death or remarriage;

- (ii) on the death of the widow or where he leaves no widow, to his legitimate children under the age of 18 until they reach the age of 18,

the pension payable to the member for the remainder of the 5 years and as from the commencement of the 6th year a pension to be determined by the Board on the advice of the actuary and being calculated on the basis of the pension which would then have been paid to the member if he were alive.

(c) Where the last legitimate child under the age of 18 dies, there shall be paid to the member's estate—

- (i) where the child dies within 5 years after the retirement of the member, a death gratuity equivalent to the amount of pension payable to the member for the remainder of the 5 years;
- (ii) where the child dies after 5 years from the retirement of the member, the monthly pension which the legitimate child would have received in respect of the month during which he died.

(d) Where the member leaves no widow or any legitimate child under the age of 18, there shall be paid to his estate a death gratuity equivalent to the amount of pension payable to the member for the remainder of the 5 years.

(2) Where a member dies after 5 years from retirement, there shall be paid out of the Fund—

- (a) (i) to his widow until her death or remarriage;
- (ii) on the death of the widow or where the member leaves no widow, to his legitimate children under the age of 18 until they reach the age of 18,

a pension to be determined by the Board on the advice of the actuary and being calculated on basis of the pension which would have been payable or paid to the member on the date of his death;

- (b) where the last legitimate child under the age of 18 dies, to the member's estate, the monthly pension which that child would have received in respect of the month during which he died;
- (c) where the member leaves no widow nor any legitimate child under the age of 18, to the member's estate, the monthly pension which that child would have received in respect of the month during which he died.

(3) Where an employee having contributed to the VAC Fund dies after retirement, any pension otherwise payable to him under section 33 (2) shall be paid as if such pension were a pension for the purposes of subsections (1) and (2).

[S. 43 added by Act 25 of 2000; amended by s. 35 (10) (g) of Act 20 of 2001 w.e.f. 17 September 2001.]

#### **44. Payment to widow**

Notwithstanding any other enactment, where the total amount payable as a lump sum under section 37 or 42 does not exceed 100,000 rupees—

- (a) the Board may consider the widow of a member as being the sole person legally entitled to that amount;
- (b) the payment of that amount to the widow shall constitute a valid and effective discharge in favour of the Board; and
- (c) the Board shall not be required to effect any further payment to any other person in respect of the member.

[S. 44 amended by s. 35 (10) (h) of Act 20 of 2001 w.e.f. 17 September 2001.]

#### **45. Transfers**

(1) (a) Where an employee who is a member of any insuring employer's pension fund leaves the service of that insuring employer and enters that of any employer, the insuring employer shall, within 3 months, pay into the Fund to the employee's credit, an amount to be actuarially assessed, representing the value at the date of leaving the insuring employer's service of the deferred pension payable on his reaching normal retiring age under the insuring employer's pension fund that would be produced by the appropriation at the above-mentioned date of the employee's own contributions and his proportion of the insuring employer's contributions, both calculated with interest up to such date.

(b) The total amount thus paid into the Fund shall be converted into a deferred pension payable to the employee on retirement to be added to any other pension payable to him.

(2) Where a member qualifies for membership of an insuring employer's pension fund, the Board shall, within 3 months, pay into the insuring employer's pension fund an amount to be actuarially assessed, representing the value at the date of such qualification of all benefits accrued in respect of his service up to that date.

(3) Subject to subsection (5), where an employee leaves the service of his employer before reaching the normal pension age but after having completed at least 2 years' service, the accrued benefits of the employee under section 37 shall, at the option of the employee—

- (a) be transferred to any superannuation fund established by his new employer;
- (b) be retained in the Fund for the payment of a pension to him upon reaching the normal pension age; or
- (c) be transferred to a personal pension scheme approved by the Director-General of the Mauritius Revenue Authority under the Income Tax Act.

(4) Where an employee leaves the service of his employer before completing 2 years' service, he shall be entitled to a refund of his accumulated contributions, provided that the actuarial value of the accrued retirement benefits of the employee from a previous employment has not been transferred to the Fund.

(5) The accrued benefits under subsection (3) shall—

- (a) apply in respect of employees in the service of the employer as at 1 July 2000;
- (b) take effect as from the date the employee first contributed to the Fund; and
- (c) be determined by the Board on the advice of the actuary.

[S. 45 amended by Act 25 of 2000; s. 43 of Act 14 of 2009 w.e.f. 30 July 2009.]

#### **46. Actuarial valuation**

(1) The Board shall, at intervals of not more than 5 years, cause an actuarial valuation of the Fund to be made, and shall determine, in the light of that valuation, whether any, and if so, what re-adjustments or modifications of the provisions of the Fund are necessary in the interest of the members.

(2) Any disposable actuarial surplus shall be applied to the increase of benefits to members.

[S. 46 amended by Act 25 of 2000; s. 35 (10) (i) of Act 20 of 2001 w.e.f. 17 September 2001.]

#### **47. Readjustment**

All pensions, gratuities or other allowances to members or to all persons legally entitled whether in possession or reversion, shall be liable to such re-adjustment, according to the financial position of the Fund, as may be found necessary in accordance with section 46.

##### **47A. Funding of pension liabilities**

(1) Where, following an actuarial valuation, the actuary determines that the assets attributable to an employer are insufficient to meet its pension liabilities, the Board shall, after consultation with the actuary, require the employer to pay, within such time as the Board may determine, such amounts as may be necessary to enable the Fund to meet the pension liabilities of that employer.

(2) Where an employer fails to make good any payment under subsection (1), the Board shall be entitled to enforce the privilege extended over all the property of the employer pursuant to section 11 (2).

[S. 47A inserted by s. 53 (g) of Act 18 of 2016 w.e.f. 7 September 2016.]

##### **47B. Pension liabilities on transfer of undertaking, amalgamation, merger, consolidation or cessation of business**

(1) (a) Every employer who intends to transfer his undertaking, amalgamate, merge, consolidate or otherwise cease business in whole or in part, shall give to the Board at least 3 months' prior written notice of his intention to do so.

(b) On receipt of a notice under paragraph (a), the Board shall request an actuary to recalculate the pension liabilities of the employer.

(2) Where, following an actuarial recalculation, the actuary determines that the assets of the employer are insufficient to meet his pension liabilities, the Board shall, after consultation with the actuary, require the employer to pay, within such time as the Board may determine, such amounts as may be necessary to enable the Fund to meet the pension liabilities of the employer.

(3) In the event of a transfer of undertaking, amalgamation, merger or consolidation, the employer's successor or assignee, as the case may be, shall assume all outstanding pension liabilities of the employer and the Board shall be entitled to claim any funding shortfall from that successor or assignee.

(4) Where an employer, its successor or assignee, as the case may be, fails to make good any payment under this section, the Board shall be entitled to enforce the privilege extended over all the property of the employer, its successor or assignee, as the case may be, pursuant to section 11 (2).

[S. 47B inserted by s. 53 (g) of Act 18 of 2016 w.e.f. 7 September 2016.]

#### **48. Protection of Fund money**

No money paid into the Fund, no interest on it, no pension, no gratuity and no other allowance shall be capable of being assigned, transferred, ceded, pledged or delegated, nor shall money, interest, pension, gratuity or other allowance be liable to be attached, arrested or levied on, for or in respect of any debt or claim due by any employee who is a member.

#### **49. Winding up of Fund**

The Fund may be wound up at any time in the event of a general meeting of the employers and employees resolving on such winding up by a three quarter majority.

#### **50. Realisation of Fund and distribution**

Where it is decided to wind up the Fund under section 49, the investments shall be sold, and the whole of the sum available shall be divided among members *pro rata* to their interest in the Fund.

#### **51. Regulations**

The Board may make such regulations as it thinks fit for the purposes of this Act, and may vary or amend the Schedules and the Rules.

#### **52. Exemptions**

(1) Notwithstanding any other enactment, any payment or transfer of money or of securities to the Sugar Industry Pension Fund shall be exempt from all taxes and duties.

(2) Any payment made under this Act to the personal representatives of an employee on the death of such employee shall be free from succession duty.

**FIRST SCHEDULE**

[Sections 2 and 33]

Staff-employees', artisans' and labourers' contributions and pensions shall be in accordance with the following tables—

Salary or wage grade		Monthly basic salary or wage		Member's contribution	Pension per month for each year of service in the salary or wage grade
	Rs		Rs	Rs cs	Rs cs
A .....		less than	25	1 00	0 40
B .....	25	but under	30	1 25	0 50
C .....	30	but under	50	1 50	0 60
D .....	50	but under	75	3 00	1 00
E .....	75	but under	105	4 50	1 50
F .....	105	but under	135	6 00	2 00
G .....	135	but under	165	7 50	2 50
H .....	165	but under	210	9 00	3 00
I .....	210	but under	270	12 00	4 00
J .....	270	but under	330	15 00	5 00
K .....	330	but under	390	18 00	6 00
L .....	390	but under	480	21 00	7 00
M .....	480	but under	600	27 00	9 00
N .....	600	but under	720	33 00	11 00
O .....	720	but under	840	33 00	13 00
P .....	840	but under	960	45 00	15 00
Q .....	960	but under	1080	51 00	17 00
R .....	1080	but under	1260	61 00	20 00
S .....	1260	but under	1440	69 00	23 00
T .....	1440	but under	1620	78 00	26 00
U .....	1620	but under	1860	90 00	30 00
V .....	1860	but under	2100	102 00	34 00

Where an employee passes from one salary or wage grade to another—

- (a) such employee's contribution shall change from the rate appertaining to his previous grade to that appertaining to his new grade; and
- (b) such employee shall qualify for higher pension in respect after such change of salary or wage grade but not in respect of the service previously completed, for which pension shall be computed on the basis of the previous grade.

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**SECOND SCHEDULE**

[Section 2]

Employer's contributions shall be in accordance with the following tables—

(a) Staff-employees' and artisans' pensions funds

Age of member on entry into salary grade	Employer's monthly contribution payable to normal pension age for future service pensions in respect of each one rupee per month of pension i.e. in respect of each 3 rupees per month contributed by the employee
	Rs cs
18	2 64
19	2 74
20	2 84
21	2 94
22	3 84
23	3 15
24	3 26
25	3 37
26	3 48
27	3 60
28	3 72
29	3 84
30	3 96
31	4 07
32	4 19
33	4 31
34	4 43
35	4 55
36	4 68
37	4 81
38	4 94
39	5 07
40	5 20
41	5 33
42	5 46
43	5 60
44	5 74
45	5 88
46	6 02
47	6 16
48	6 30
49	6 45

**SECOND SCHEDULE—continued**

Age of member on entry into salary grade	Employer's monthly contribution payable to normal pension age for future service pensions in respect of each one rupee per month of pension i.e. in respect of each 3 rupees per month contributed by the employee
	Rs cs
50	6 60
51	6 75
52	6 90
53	7 05
54	7 20
55	7 36
56	7 52
57	7 68
58	7 84
59	8 00

(b) Labourers' pension fund

Employers' monthly contribution payable to normal pension age for future service pensions.

Age of member on entry into wage grade	Wage grade A	Wage grade B	Wage grade C	Wage grade D
	Rs cs	Rs cs	Rs cs	Rs cs
18	113	141	169	232
19	117	146	175	242
20	121	151	181	252
21	125	156	187	262
22	129	161	194	272
23	134	167	201	284
24	138	173	207	296
25	142	178	213	306
26	147	184	220	318
27	151	189	227	328
28	156	195	234	340
29	160	200	240	350
30	165	206	247	362
31	169	211	254	372
32	174	217	261	384
33	179	224	269	398
34	184	230	276	410
35	189	236	284	422
36	194	243	291	436

**SECOND SCHEDULE—continued**

Age of member on entry into salary grade	Employer's monthly contribution payable to normal pension age for future service pensions in respect of each one rupee per month of pension i.e. in respect of each 3 rupees per month contributed by the employee			
			Rs	cs
37	199	249	299	448
38	204	255	306	460
39	209	261	313	472
40	214	267	321	484
41	219	274	329	498
42	225	281	337	512
43	230	288	345	526
44	236	295	354	540
45	241	301	362	552
46	247	309	370	568
47	252	316	378	582
48	258	323	387	596
49	264	330	396	610
50	270	337	405	624
51	276	345	414	640
52	282	353	423	656
53	288	360	432	670
54	294	367	441	684
55	300	375	450	700
56	306	383	459	716
57	313	391	469	732
58	319	399	479	748
59	322	403	483	756

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