

NATIONAL PENSIONS REGULATORY AUTHORITY



NPRA/GD/PFSS/01/12

GUIDELINES FOR PROVIDENT FUND SCHEME AS EMPLOYER SPONSORED SCHEME

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1. INTRODUCTION

- 1.1 The purpose of these Guidelines is to provide the basic rules for managing Provident Fund Schemes as Employer-Sponsored Scheme, pursuant to the provisions of the National Pensions Act, 2008 (Act 766) hereinafter referred to as the Act and the accompanying Regulations (L. I. 1990).
- 1.2 In developing these requirements, the National Pensions Regulatory Authority (NPRA), has provided the minimum standards to assist Approved Trustees manage the Provident Fund Schemes as Employer-Sponsored Scheme in order to achieve the prudential objectives of the Act's requirements.
- 1.3 These Guidelines are subject to change by the NPRA. Reference should be made to the Act or to the Regulations when and where necessary.

2. DEFINITIONS

Unless the context otherwise requires:

- 2.1 "Provident Fund" means a fully funded, defined contribution Scheme in which funds are managed privately and benefits paid as lump sum to the employee or his dependants in case of death. In some cases it is possible for the employee to draw income prior to retirement to meet specific needs.
- 2.2 "Provident Fund Scheme" means a Scheme governed by a trust to which a contributor or the contributor's employer or both contribute to a pension Scheme which provides benefits based on a defined contribution formula
 - 2.2.1 to provide for the payment of lump sum benefits to the members of the Scheme when they reach the retirement age, or any other prescribed event occurs in relation to them; or
 - 2.2.2 in the case of members who die before reaching that age or before the occurrence of such an event, provides for the payment of those benefits to the personal representatives or beneficiaries of the estates of those members.
- 2.3 "Member-nominated Trustees" are Trustees of a Provident Fund Scheme who are:

- 2.3.1 nominated as the result of a process in which the active members of the scheme are eligible to participate, and
- 2.3.2 selected by all or the majority of the members of the Scheme.
- 2.4 " Member-nominated Directors" are directors who are:
 - 2.4.1 nominated as the result of a process in which the active members of the Provident Fund Scheme are eligible to participate in, and
 - 2.4.2 selected by all or majority of the members of the Scheme.
- 2.5 The terms used in these Guidelines for Provident Fund Schemes, have the same meaning as defined in the Act. Appropriate reference to the Act should be made where necessary.

3. SCHEME REGISTRATION AND MANAGEMENT

- 3.1 Application for registration of a Provident Fund Scheme as Employer-Sponsored Scheme hereinafter referred to as "the Scheme" shall be made to the NPRA by completion of the form labeled "Application for Registration of a Provident Fund Scheme as Employer- Sponsored Scheme", (Form: **NPRA/FM/PFSS/01/12**) issued by the NPRA.
- 3.2 An application for the registration of the Scheme may be made to the NPRA only by
 - 3.2.1 a company which has been approved as a Trustee or has applied for approval as a Trustee;
 - 3.2.2 two or more individuals who are approved Trustees, or have applied for approval and at least one is an independent Trustee; or
 - 3.2.3 a company and one or more individuals.
- 3.3 An application for registration of a Provident Fund Scheme as Employer Sponsored Scheme, shall be made to the NPRA and signed
 - 3.3.1 by at least two directors of the company if the applicant is or includes a company; and
 - 3.3.2 by at least two of those Trustees, including the Independent Trustee if the applicant consists wholly of individual Trustees.

- 3.4 Where an application is made by Trustees all of whom are individual Trustees, each of those Trustees who is not an Independent Trustee shall be a member of the scheme.
- 3.5 Where an application is made by Trustees one or more of whom are companies and the others are individual Trustees, each of those individual Trustees shall be members of the scheme.
- 3.6 The Schemes shall only be managed by Trustees approved and licensed by the NPRA.
- 3.7 Application for Registration shall:
 - 3.7.1 Specify particulars of the Scheme to be registered, namely:
 - a. Information relating to the Employer Sponsoring the Scheme, (Form No.: **NPRA/FM/PFSS/01/12**)
 - b. An undertaking regarding compliance with requirements and standards for approved schemes as specified by provisions in the National Pensions Act, 2008 (Act 766), the Regulations on Occupational and Personal Pension Schemes (L. I 1990) and these Guidelines
 - c. Information relating to the Scheme,
 - d. Information relating to Trustees of the Scheme,
 - 3.7.2 Be accompanied by a copy of the following:
 - a. Proposed Rules that govern the Scheme
 - b. The Trust Deed
 - c. Investment Policy of the Scheme.
 - d. Investment Management Contract
 - e. Custodial Agreement
 - 3.7.3 Be accompanied by an Application Fee of **GHS 1,500.00 (One thousand five hundred Ghana Cedis)**, or any sum as determined by the NPRA from time to time.
 - 3.7.4 Be accompanied by any additional information and documents reasonably necessary to enable the NPRA evaluate the application.
- 3.8 On registration of the Scheme, the NPRA shall issue a Certificate of Registration to the Approved Trustees of the Scheme
- 3.9 The Trustees of the Scheme shall ensure that arrangements are put in place to provide for at least one-third of the total number of Trustees

- to be member-nominated Trustees within six-months after the registration of the Scheme, and implement the arrangements.
- 3.10 For Schemes where all the Trustees are individuals, or individuals and companies, the member-nominated Trustees' requirements rather than the member-nominated director's requirements apply.
- 3.11 Where a Trustee body comprises both individuals and companies, each company counts as a single Trustee for the purpose of determining the total number of Trustees.
- 3.12 For Schemes where all the Trustees are companies, the member-nominated director's requirements apply.
- 3.13 Where a company is the sole Trustee of the Scheme then the member-nominated Director's requirements apply to the total number of company directors.
- 3.14 Where a Trustee body has more than one company as Trustee then the member-nominated director's requirements apply separately to each company.
- 3.15 For the purposes of these Guidelines
- (a) "member-nominated Trustee" includes 'member-nominated directors';
 - (b) "requirements" means the requirements for Trustees to put in place and implement arrangements to provide that at least one-third of the Trustees are member-nominated Trustees; and
 - (c) "Trustees" means Trustees of a Provident Fund Scheme registered by the NPRA.

4. STATEMENT OF INVESTMENT POLICY

- 4.1 A statement of investment policy must be prepared and maintained in respect of the Provident Fund Scheme as Employer-Sponsored Scheme.
- 4.2 The statement of investment policy must include sufficient information to enable Scheme members to ascertain in relation to each Constituent Fund of the Scheme:
- 4.2.1 the investment objectives of the fund;

- 4.2.2 the policy as to the kinds of securities and other assets in which the fund may be invested;
- 4.2.3 the policy as to the balance between different kinds of securities and other assets of the fund; and
- 4.2.4 the risks inherent in implementing the policies referred to in paragraphs 4.2.2 and 4.2.3 above and the return expected to result from giving effect to those policies.

5. INVESTMENT STANDARDS (PERMITTED INVESTMENTS)

The Funds of a Provident Fund Scheme as Employer- Sponsored Scheme shall be invested only:

- 5.1 in the investments permitted under Section 176 of the Act; and
- 5.2 in accordance with the restrictions imposed under Sections 178 and 179 of the Act and any additional restrictions that may be imposed by the Board from time to time.

6. PROVISION OF ANNUAL STATEMENTS TO SCHEME MEMBERS

The Approved Trustee of the Scheme must ensure that:

- 6.1 Within three (3) months after each financial period of a registered Scheme, each of the Scheme members is provided with a benefit statement setting out the member's position with respect to the Scheme as at the end of that period, whether or not the auditing of the financial statements of the Scheme for that period has been completed then; and
- 6.2 If there are subsequent audit adjustments made to the benefit statements affecting the members' balances, members are notified in writing within thirty (30) days after the Trustee becomes aware of those audit adjustments.

7. PRESENCE OF INDEPENDENT TRUSTEES (CORPORATE/INDIVIDUAL) AT MEETINGS

The Approved Trustee of a Provident Fund Scheme as Employer-Sponsored Scheme must ensure:

- 7.1 that the Independent Trustee of the Scheme is, as far as reasonably practicable, present at all meetings of the Trustees; and
- 7.2 that any decision taken at a meeting of the Trustees at which the Independent Trustee is absent does not have effect until it is acknowledged in writing by that Trustee.

8. AMENDMENTS TO SCHEME'S GOVERNING RULES

- 8.1 An Approved Trustee of a Provident Fund Scheme as Employer-Sponsored Scheme must notify the NPRA in writing of any amendment proposed to be made to the Scheme Rules and lodge with the NPRA a copy of the proposed amendment.
- 8.2 An amendment to the Scheme Rules does not take effect until the NPRA has given written notice to the Trustee that the NPRA has approved it or after thirty (30) days, whichever is earlier.
- 8.3 In this section, a reference to an amendment to the Scheme rules of a Provident Fund Scheme as Employer-Sponsored Scheme includes a reference to addition of new provisions, or substitution or omission of existing provisions, of those rules.

9. SEPARATION OF SCHEME ASSETS

- 9.1 The Approved Trustee of a Scheme must ensure that the Scheme assets:
 - 9.1.1 are administered and dealt with as trust property; and
 - 9.1.2 are applied ONLY for the purposes of the Scheme.
- 9.2 Subsection 9.1 above has effect irrespective of whether or not the Trustee has appointed a Custodian or Pension Fund Manager to perform functions with respect to the Scheme assets.
- 9.3 The Trustee must also ensure that the Scheme assets are separately recorded in the records required to be kept in respect of the Scheme and, in particular, are distinguished:
 - 9.3.1 from the Trustee's personal assets; and
 - 9.3.2 from any assets held by the Trustee for the benefit of a participating employer or any other person.

10. PROHIBITED TRANSACTIONS

The Approved Trustee of a Provident Fund Scheme as Employer-Sponsored Scheme must ensure that pension funds and Scheme assets are not:

- 10.1 held by the Trustee or Fund Manager appointed for the Scheme or
- 10.2 kept with a Custodian where the Trustee or Fund Manager has a business interest, shares or any other interest in that Custodian
- 10.3 For the purposes of these Guidelines, a Pension Fund Manager is independent of the approved Trustee of the Scheme and of the Custodian of the Scheme assets if:
 - 10.3.1 the Pension Fund Manager is not an associate of the Trustee or Custodian;
 - 10.3.2 a person is not the controller of both the Manager and the Trustee or Custodian or any associate of the Trustee or Custodian; and
 - 10.3.3 the Manager acts independently of the Trustee and Custodian in their dealings with the Scheme.

11. SCHEME ADMINISTRATIVE/OTHER EXPENSES AND CHARGES

Subject to these Guidelines, the Approved Trustee of a Provident Fund Scheme as Employer-Sponsored Scheme may periodically deduct from each Scheme member's account, the Scheme fees for administrative / other expenses, subject to the limits determined by the Authority with reference to Guidelines on Fees and Charges (**NPRA/GD/FCH/01/11**). A Trustee shall not charge any expenditure or make any deductions from the Scheme fund other than those prescribed the NPRA.

12. SCHEME ACCOUNTING RECORDS

- 12.1 The Approved Trustee of a Provident Fund Scheme as Employer-Sponsored Scheme must ensure that:
 - 12.1.1 such accounting records are kept so as to correctly record and explain all transactions concerning the Scheme and the financial position of the Scheme; and
 - 12.1.2 those records are so kept that:

- (a) financial statements showing a true and fair view of the financial transactions of the Scheme during each financial period and of the disposition of its assets and liabilities at the end of each financial period can be prepared from time to time; and
- (b) those financial statements can be conveniently and properly audited in accordance with the Act and the Regulations.

12.2 The Approved Trustee of a Provident Fund Scheme as Employer-Sponsored Scheme must ensure that, at all reasonable times and without charge, the accounting records of the Scheme are made available for inspection by the Authority.

13. OTHER REQUIREMENTS

The Scheme Rules must in addition to the requirements and standards of Provident Fund Schemes, comply with other requirements prescribed by the Act 766, (refer to relevant Sections in the attached appendix)

13.1 Portability (Transfers into and from approved Schemes)

13.2 Income on contributions

13.3 Vesting schedule

13.4 Benefit on leaving service

13.5 Death Benefit

13.6 Withdrawals from Scheme and Tax Implications

13.7 Tax Implications

13.8 Retirement Benefits

13.9 Assignment of Benefits

13.10 Termination of the Trust/Winding-up,

13.11 Accounts and Audit

13.12 Annual Report

15. REVIEW AND ENQUIRIES

These Guidelines shall be subject to review by the NPRA.

All Enquiries regarding these Guidelines shall be directed to the:

***Chief Executive Officer,
National Pensions Regulatory Authority,
PMB, Ministries, Accra.***

Website: www.npra.gov.gh **Email:** info@npra.gov.gh **Telephone:** (302) 968692 / 968693

Location: Onwona House, Kanda Highway, opposite Accra High School

APPENDIX

13.1 Portability – (Section 100)

- 13.1.1 A member of a Provident Fund Scheme who ceases to be an employee shall, elect to have the member's accrued benefits transferred to another Scheme in accordance with the regulations of the Scheme.
- 13.1.2 Subsection 13.1.1 above does not apply if a member exercises an entitlement to have the member's accrued benefit paid to the member on retirement.
- 13.1.3 The accrued benefits of a member of the Scheme may be transferred
- (a) to another registered Scheme to which the member is eligible to belong, or
 - (b) to another account within the same Scheme, if permitted or required by regulations of that Scheme.
- 13.1.4 Where the accrued benefits of a member of a Scheme are to be transferred, the approved Trustees of the respective Schemes shall comply with requirements with respect to the transfer of the benefits.
- 13.1.5 An employer shall comply with requirements or regulations with respect to the transfer of benefits if a member of a Scheme whose accrued benefits are to be transferred under this section ceases to be an employee.
- 13.1.6 The regulations required for the management of a Scheme may include
- (a) notices to be given, and
 - (b) procedure to be followed, in connection with the transfer of accrued benefits.

13.2 Income on contributions – (Section 108(3))

Contributions made and returns earned from investment of the contribution shall, be credited to the account of the contributor subject to any deduction of fees.

13.3 Vesting schedule – (Section 108(4))

Where an employer contributes on behalf of a worker the contribution does not vest in the worker until at the end of the vesting period.

13.4 Benefit on leaving service – (Section 108(6))

Despite subsection 108(4) in the event of severance by the employer of the employment relationship with the worker, or in the event of liquidation of the employer, an employer's contributions for its worker shall vest in the worker even if the vesting period has not expired.

13.5 Death Benefit – (Section 108(8))

On the death of a worker before or after the expiry of the vesting period, any accrued benefit of the worker shall devolve on the worker's nominated beneficiary and in the absence of a nominated beneficiary in accordance with any applicable law.

13.6 Withdrawals from Scheme– (Section 110)

- 13.6.1 A member who has attained the retirement age is entitled to the entire accrued benefits in the Scheme in a lump sum.
- 13.6.2 A member who has not attained the retirement age may withdraw all or part of the member's accrued benefits from a Scheme
 - (a) after ten years from the date of first contribution to the Provident Fund Scheme.
 - (b) following a certification by a medical board that the contributor is incapable of any normal gainful employment by virtue of a permanent physical or mental disability.
- 13.6.3 The beneficiaries of the estate of a deceased contributor may withdraw the accrued benefits of the deceased from the Scheme.

13.7 Tax Implications (Section -112)

- 13.7.1 Subject to this Act, contributions made by an employer to a Provident Fund Scheme on behalf of a contributor shall be treated as part of the deductible income for that employer for a tax year for the purpose of income tax.
- 13.7.2 Contributions not exceeding sixteen and one half per centum of a contributor's monthly income, made by either a contributor or the contributor's employer or both shall, be treated as deductible income, for the purpose of income tax for the contributor and the contributor's employer to the extent of their respective contributions.
- 13.7.3 Investment income including capital gains from the investment of Scheme Funds shall for the purposes of income tax, be treated as deductible income.
- 13.7.4 A withdrawal of all or part of a contributor's accrued benefits under a Provident Fund Scheme

- (a) on or after retirement shall be tax exempt;
 - (b) shall be subject to the appropriate income tax before ten years of contributions and before retirement;
- 13.7.5 A withdrawal from a Scheme at any time after certification by a medical board that the contributor is incapable of normal gainful employment due to a permanent physical or mental disability is tax exempt.
- 13.7.6 A withdrawal from a Provident Fund Scheme at any time by the beneficiaries of the estate of a deceased contributor is tax exempt.

13.8 Retirement Benefits – (Section 111)

A contributor who is not covered under a mandatory pension Scheme or any other pension Scheme is entitled to

- 13.8.1 use a percentage of accrued benefits, prescribed by the NPRA of the Authority to purchase an annuity for life payable monthly or quarterly from a life insurance company licensed by the National Insurance Commission, and
- 13.8.2 a lump sum payment from the balance standing to the credit of the contributor's accrued benefits.

13.9 Assignment of Benefits – (Section 114(Optional)

- 13.9.1 A Scheme shall have rules that prevent the assignment of benefit.
- 13.9.2 Despite Subsection 13.9.1 above, a Scheme may allow a member to use that member's benefit to secure a mortgage for the acquisition of a primary residence but a member is not liable to pay tax on any withdrawal under this section.

13.10 Termination of the Trust / Winding-up –(Section 118)

- 13.10.1 In the event of a winding up of an employer sponsored provident fund Scheme,
 - (a) contributions made by the employer on behalf of a contributor before the vesting period shall not be available to a liquidator of the employer; and
 - (b) unpaid contributions of the employer and payroll deductions made from the contributor's salary which have not been remitted to a Trustee at the time of liquidation shall have priority over any other debt.
- 13.10.2 Where a Scheme is being liquidated

- a) the Trustee shall not receive any contributions from the date of the commencement of the winding-up under a Scheme managed by the Trustee;
 - (b) any Schemes operated by the Trustee may be merged with a Scheme operated by another Trustee with the approval of the contributor and on the directions of the NPRA; and
 - (c) the merger shall be conducted to the other Trustee by the transfer of the assets and liabilities of the Scheme by the Trustee to that Trustee.
- 13.10.3 Where the registration of a Custodian is being withdrawn, the Trustee of the Scheme to which the trust relates shall appoint another Custodian approved by the NPRA with the approval of the contributor.

13.11 Accounts and Audit- (Section166)

- 13.11.1 A Trustee, Pension Fund Manager or Custodian licensed or registered under this Act shall cause proper books of accounts and records to be kept in relation to the Scheme in a form that the NPRA may determine.
- 13.11.2 A Trustee, Pension Fund Manager or Custodian shall, not later than four months after the end of the year cause its accounts to be audited by qualified external auditors and prepare an audit report, which shall include a statement on the extent of compliance with the
- (a) provisions of this Act and Regulations made under it,
 - (b) Trustee's duties under the trust deed and under this Act, and
 - (c) the Scheme's investment objective and other requirements under this Act.
- 13.11.3 Without limiting the scope of Subsection 13.11.2 above, the NPRA may order technical audits of the facilities, equipment, resources and accounts of a Trustee, Pension Fund Manager or Custodian to be conducted as the Board considers appropriate.

13.12 Annual Report Section167

- 13.12.1 A Trustee, Pension Fund Manager or Custodian shall submit an annual report to the NPRA within four months after the end of each financial year to give details of its activities in relation to the Scheme in the preceding year.
- 13.12.2 A report under Subsection 13.12.1 above shall include the audit reports referred to in Section 166 (2) of the Act and any other reports that the NPRA may prescribe.