



REPUBLIC OF NAMIBIA

LAW REFORM AND DEVELOPMENT COMMISSION

**GOVERNMENT INSTITUTIONS PENSION FUND
(GIPF) LEGAL FRAMEWORK**

DISCUSSION PAPER

LRDC 26

Windhoek, Namibia

December 2013

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LAW REFORM AND DEVELOPMENT COMMISSION

The Namibian Law Reform and Development Commission (the LRDC) is a creature of statute established by **Section 2** of the **Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991)**.

The core mandate of the Commission is to undertake research in connection with all branches of law and to make recommendations for the reform and development thereof.

The current Commission members are–

Mr S Shanghala, Chairperson
Adv J Walters, Ombudsman

Under section 3 of the Law Reform and Development Commission Act, 1991, Commissioners are appointed by the President. Previous Commissioners ceased to hold their office when their term of office for three (3) years lapsed on November 8, 2013. They were –

Ms Dianne Hubbard;
Mr Nixon Marcus;
Ms Damoline Muroko; and
Mr Raywood Rukoro

The Secretary to the Commission is Mr J.T. Namiseb who heads the Directorate of Law Reform, an organizational component in the Ministry of Justice. The Directorate of Law Reform serves as Secretariat to the Commission, assisting the Commission in the exercise of its powers and the performance of its duties and functions under the Law Reform and Development Commission Act, 1991. The Commission and Secretariat are housed on the 1st Floor, Mutual Platz Building, Post Street Mall, Windhoek.

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1. INTRODUCTION

1.1 The Law Reform and Development Commission (LRDC) is empowered under section 6 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) with the object to:

“undertake research in connection with and examine all branches of the law of Namibia and to make recommendations for the reform and development thereof, including –

- (a) the repeal of obsolete or unnecessary enactments;
- (b) the consolidation or the codification of any branch of the law or the introduction of other measures aimed at making the law more readily accessible;
- (c) the integration or harmonization of the customary law with the common and statutory law; and
- (d) new or more effective procedures for the administration of the law and the dispensing of justice;
- (dA) the enactment of laws to enhance respect for human rights as enshrined in the Namibian Constitution or to ensure compliance with international legal obligations;
- (e) to advise the Minister in regard to any matter which the Minister may refer to it.”

1.2 In the attainment of the above statutory objectives, the LRDC prepares work programs, which ought to be approved by the Minister of Justice. The LRDC is empowered under section 7(2) of the Law Reform and Development Commission Act, 1991 to invite and receive suggestions from any person or body.

1.3 The above statutory authority, coupled with the LRDC’s desire to remain as consultative as can be throughout the conduct of its projects, propels the LRDC to engage the Government Institutions Pension Fund (GIPF), the Minister of Finance, the Minister of Justice and the Namibia Financial Institutions Supervisory Authority (NAMFISA) to determine the need for specific law reform relating to the legal framework in which the GIPF functions.

1.4 It is the prerogative of the Minister of Finance, the Minister of Justice as well as NAMFISA, to consult those persons or bodies they deem fit and capable of putting them in a position to render this consultative process fruitful.

1.5 Therefore, this document does not contain postulations that are cast in stone *per se*. It is a mere discussion document, seeking reaction to guide the LRDC and the policy makers on what to do with regard to public service pension reform in Namibia. To set the scene, a brief account is given of the origin of the Government Institutions Pension Fund (GIPF) starting from the pre-independence situation to the present time. It also presents convincing arguments why there is a need to discuss if reform has become necessary.

2. BRIEF ACCOUNT OF THE PRE-INDEPENDENCE SITUATION

2.1 The situation up to 1981

2.1.1 Namibia had, since 1919, been administered by South Africa.¹ The public service employees then in service were originally members of the South African Government Service Pension Fund, but in 1981 a separate pension fund, the “Statutory Institutions Pension Fund”, was established for employees in the then pre-independence Public Service through the Statutory Institutions Pensions Act, 1980 (Act No. 3 of 1980).

2.1.2 Every employee had the option at that stage to transfer, or to remain a member of the South African Fund. The actuarial reserve in the South African Fund was transferred to the new Fund for those members who opted to transfer their benefits to Namibia.

2.2 Statutory Institutions Pensions Fund (1981 to 1989)

¹ Then as the Union of South Africa and subsequently as a Republic.

2.2.1 In April 1980, the Statutory Institutions Pensions Act (SIP Act), 1980 (Act No. 3 of 1980), was passed and came into operation in the same year. This Act provided for pensions and other financial benefits for persons in the service of statutory institutions and for their dependents.

2.2.2 Through the SIP Act, 1980 the Statutory Institutions Pension Fund (SIP Fund) was established in 1981. SIP Fund was a defined benefit pension fund. A *statutory institution* was defined as ‘an institution or body established by or under any law and that was declared as such by notice in the Gazette’ per section 1 (read together with section 3) of the SIP Act, 1980. All persons in the service of a statutory institution were required to become members of the SIP Fund.

2.2.3 The SIP Fund was administered by a Commission (which could consist of one or more appointed persons) and by the Commissioner of Civil Pensions appointed in terms of the SIP Act, 1980. The Commissioner formed part of the Department of Finance (today the Ministry of Finance per Article 140 of the Namibian Constitution).

2.2.4 The SIP Act, 1980 was a short document setting out the basic conditions for the creation and management of the SIP Fund. The detailed rules of the SIP Fund were issued through Regulations. This included contribution ratios between employer and employee, pension benefits, investment of funds, early retirement age, periodic evaluation of assets and liabilities as well as other matters.

2.3 Termination of the Statutory Institutions Pensions Fund and creation of the Government Institutions Pension Fund (1989)

2.3.1 Just before independence, the SIP Act, 1980 was repealed in its entirety by Proclamation AG 6 of 1989 issued by the last Administrator-General Louis Pienaar. This was done out of fear that the new Government at independence may use the pension benefits for other purposes.

2.3.2 Against this background, the SIP Fund was terminated, and all members (and pensioners) were given two options:

- (a) to transfer their full actuarial reserve, plus a share of surplus, to the “to-be-established” Namibian domiciled Government Institutions Pension Fund (GIPF), which was formally established on 1 October 1989. Full service as a member of the SIP Fund was also transferred to the new GIPF for those Members who elected to transfer; or
- (b) to privatise their pension by transferring their actuarial reserve, plus a share of surplus, to a retirement annuity fund. If the member elected this option, “past service” was not transferred to the GIPF, but public servants had to join the GIPF in respect of their future service.

2.3.3 The majority of officials opted to transfer their accumulated benefits to GIPF, but a considerable number of officials transferred their benefits to private retirement annuities.

2.3.4 Those government officials that opted not to join the GIPF and transferred their “part service” benefits to retirement annuity funds caused huge capital outflows to South Africa where all insurance companies were stationed at that stage. This further reduced the size of the GIPF at inception. These transfers had the additional drawback that many officials had tremendous difficulties to repatriate their benefits back to Namibia, while some of their benefits were taxed in the Republic of South Africa. Some of these matters were subjected to the ruling of the South African Pension Funds Adjudicator. The situation today, as far as these retirement annuities are concerned, is still not resolved.

2.3.5 The decision by the Administrator-General, at the time, was tantamount to the liquidation and privatization of a statutory and State-owned institution.

2.3.6 The GIPF was not created by law, but was registered under the Pension Funds Act, 1956 (Act No. 24 of 1956) with the Directorate of Financial Institutions Supervision of the Department of Finance in 1989. Although the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006) classifies the GIPF as an SoE, this is factually and legally not correct.²

2.3.7 It is also worth noting that very few countries have gone the route where public servants belong to a “private” pension fund.

2.3.8 Since its inception, the GIPF’s portfolio grew in leaps and bounds. At 31 May 2013, the total assets stood at N\$75.764 billion and total investments stood at N\$62.334 billion at 31 March 2013.

2.3.9 Initially the GIPF sourced out the administration of membership and pension payments to local insurance companies. At that stage, the staff complement was quite small. At a later stage, the GIPF started to render its own administrative support services. The staff complement thus rose substantially.

3 JUSTIFICATION FOR PUBLIC SERVICE PENSION REFORMS

3.1 There are a number of reasons why reform in the public service pension management in Namibia may have become a necessity. Some of the reasons include the following:

² GIPF is categorized similarly as NASRIA and Meatco, in which Government has an interest, but is neither the majority shareholder nor has it established the institution through enabling laws. GIPF in essence is a private pension fund registered under the Pension Funds Act, 1956 yet under written by the Government.

3.2 The anomalous institutional status of GIPF

- 3.2.1 The decision taken by the pre-independence administration to privatise the SIP Fund was certainly not in the interest of an independent nation. Ownership and control over considerable public resources were simply ceded to private institutions, of which GIPF was the largest beneficiary.
- 3.2.2 Therefore, purely from a constitutional perspective, the reversal of the decision taken by the pre-independence administration can be justified as it will promote and maintain the welfare of the Namibian people as required under Article 95 of the Namibian Constitution. Such an action should, however, not be seen as a nationalisation exercise, but merely as a measure to correct a serious and unintended political irregularity created by the pre-independence administration.

3.3 Lack of Government ownership and control over the management of GIPF

- 3.3.1 Through the “privatisation” of the SIP Fund, the pre-independence administration made sure that the Government of an independent Namibia can neither own and control the GIPF nor use the pension monies for any other public purpose.
- 3.3.2 The lack of Government ownership is directly evident from the Rules of the GIPF relating to the composition of the Board of Trustees. Rule 10.1 indicates that the Board of Trustees shall consist of the following nine persons:
- (a) three appointed by Government;
 - (b) three appointed by organised labour; and
 - (c) three appointed by the PSC (representing the employees, of which one must be a pensioner).

3.3.3 This means that Government's voice on the Board is limited to one-third of the decisions that the Board can take, which range from appointing the principal officer (or CEO), the administrator, the auditors, to taking investment decisions.

3.3.4 This situation stands in stark contrast to the employer/employee contribution ratio, which currently stands at 14:7. Government's contribution to the GIPF, according to Rule 8.2(1), is as follows:

"The EMPLOYER shall contribute to the FUND each month an amount equal to the balance of the cost of providing the benefit in terms of these RULES, after taking into account the MEMBERS' contributions to the FUND in terms of Rule 8.1(1). Such amount shall be determined by the TRUSTEES in consultation with the ACTUARY, after which such increase shall be submitted to the COMMISSION and THE PRIME MINISTER for their recommendation and approval respectively".

3.3.5 In reality, this means that Government is guaranteeing the benefits of GIPF members, but has virtually no control over its contribution to the GIPF.

3.3.6 The only way that the Government can intervene with regard to the fairness of the Rules of the GIPF is to declare a dispute in terms of Rule 9.11, but the dispute is limited to the interpretation of the rules, and not their fairness.

3.3.7 When it comes to investments, the Trustees have the sole power over investment decisions and even have the power under Rule 10.3(e) to *"...delegate their powers to make investments of any nature to any one or more of their members, or to a financial institution...or to a portfolio manager"*.

3.3.8 From this short synopsis of the powers of Government vis-à-vis those of management and control of the GIPF, it is clear that the Government guarantees the solvency of the Fund, and in this regard, the GIPF is a defined benefit fund, yet the Government is sidelined and basically acts as rubberstamp of far-reaching decisions taken by the Trustees.

3.4 Concerns regarding GIPF's management of its affairs

3.4.1 Since 2005, when the GIPF disclosed in its annual report that it had to write off loans in excess of N\$630 million from its Development Capital Portfolio (DCP), strong concerns were expressed publicly and officially on how the GIPF was managing its affairs. Cases of conflict of interest by some Trustees have also been sited and the matters are before the Prosecutor-General for prosecution decision.

3.4.2 It is not the purpose of this section to go into the merits of these concerns, as these have been more than adequately documented elsewhere, but, given these ongoing developments, it is important that Government is at all times assured of the GIPF's ability to:

- (a) ensure that it functions efficiently and cost-effectively;
- (b) adopt and espouse good corporate governance principles;
- (c) take its investment decisions in a responsible and transparent manner; and
- (d) contribute optimally to the development of the Namibian economy and the money and capital market.

3.4.3 To achieve that, the question this document poses, is whether or not it is prudent for the Government to have the ability to control the composition of GIPF's Trustees as well as the top management. Moreover, the rules of the GIPF must be strengthened by enforcing firm fiduciary duties on the Trustees.

3.4.4 Currently, GIPF's Rules make it very difficult to remove and replace the trustees. The rules provide that a trustee can only be removed from office, if, amongst others, he/she is discharged by a competent court from any office of trust on account of misconduct. This is a very tedious process, compared to modern SOE legislation that allows a board member to be removed, if the Minister is satisfied that the member:

- i. is guilty of misconduct which in the opinion of the Minister is sufficiently serious; or
- ii. for whatever valid reason is incapable of effectively and efficiently performing the functions as member.³

3.4.5 One may conclude, therefore, that GIPF's performance can only be strengthened through rigorous legal and institutional reforms that will instil good corporate governance and promote ethical and responsible decision-making, including honesty, transparency, empathy, professionalism and innovation.

3.4.6 The Pensions Funds Act, 1956 is under review. The new FIM Bill lays down clear fit-and-proper criteria for the Trustees and the Principal Officers and even empowers NAMFISA to remove and cause the replacement of Trustees if they fail to meet the requirements. Yet for the largest fund in the country, to which the Government is in a relationship of underwriter, is it not feasible that a specific legislation for the GIPF is crafted to empower the Government to have direct control over the Board of Trustees and not only through a regulator who is seemingly weaker in resources vis-à-vis the GIPF? The role of NAMFISA can be tailored into such a specific law, to the extent required and desirable.

³ An example is what is contained under section 15 of the Statistics Act, 2011 (Act No. 9 of 2011).

4 INITIATING PUBLIC SERVICE PENSION REFORMS IN NAMIBIA

4.1 So far, the above discussion concludes that the incoherent institutional status of GIPF, lack of Government ownership and control over the management of GIPF and demonstrated weak corporate governance at GIPF represent material reasons why public service pension reforms have become absolutely necessary.

4.2 As mentioned before, the public service pension reforms in Namibia need to be gleaned from the perspective that the detrimental decision taken by the pre-independence administration was and still is not in Namibia's public interest. Is the reversal of that decision not fully justified since this will promote and maintain the welfare of the Namibian people as required under Article 95 of the Namibian Constitution?

4.3 In initiating the reform, it should be made clear right from the onset that Government is not contemplating to nationalise the GIPF and compromise the good governance principles of a pension fund. However, for this defined benefit fund which is underwritten by the Government, is it not correct and necessary to create a fair and equitable situation where Government, the board of trustees, active members and pensioners can have a realistic say on key decisions, such as the institutional setup of the fund, pension benefits, investments and other important matters, commensurate to the risks that each of them are assuming towards the solvency of the GIPF?

4.4 The legal reforms would not create a new fund, instead, make provision for its continued existence, doing away with the need to engage in discussions whether or not all pensioners and existing members should be transferred from the GIPF to a new fund as it will still be the GIPF. Departure from this principle of continuity would weaken the GIPF, make administration very cumbersome and is not intended.

4.5 Moreover, existing members should not have the option to transfer their benefits to another fund or retirement annuity. However, should Government decide at a later stage to make alterations to the contributions, benefits and other rules of the GIPF, the benefits of existing members and pension should be ring-fenced from the dispensation applying to new members. In other words, the benefits of the existing members should at all time be guaranteed, while the contribution and benefit structure of new members may be changed in future.

4.6 In particular, the reform should be aimed at redefining the GIPF into an institution that is able to meet the following objectives:

- (a) Ensuring timely and efficient delivery of the benefits (at less cost than what is currently prevailing) provided in the rules, and protecting pensions against inflation to the maximum extent affordable, while maintaining the financial soundness of the Fund;
- (b) Investing responsibly by engaging with organisations in which the Fund invests to encourage good governance, social equity and sound environment practices;
- (c) Empowering the Fund's members, pensioners and other stakeholders through adequate communication;
- (d) Contributing to economic development of Namibia, and
- (e) Championing new retirement industry initiatives.

4.7 Should this discussion document convince the Cabinet of the need for reform, it is envisaged that the reform process will require Government to adopt a comprehensive policy framework reform followed by the crafting of legal statute(s) to achieve the objects of the policy reforms in a transparent and democratic fashion. This should be followed by institutional and structural reforms to ensure a smooth transition process.

4.8 Legal challenges to dissolving the GIPF

- 4.8.1 This discussion document does not articulate the establishment of a new fund separate from the GIPF, instead, it advocates for continuity in existence. Furthermore, there are a number of major legal and practical challenges when transferring the assets and liabilities of the GIPF to a new fund. In terms of Rule 11.8, the GIPF must be liquidated, if Government decides to dissolve the Fund. So, this is not the route to go.
- 4.8.2 Rule 11.10 (attached as Annexure “A”) deals with the creation of a new fund or scheme. In salient part, the latter rule provides that, if the Prime Minister approves the establishment of another Fund for the members employed by Government, the Trustees may apply the assets of the GIPF or the appropriate portion thereof to secure benefits for the employees in the new Fund. The Trustees must decide on the manner in which this is done and must seek the advice of the Actuary with the Registrar’s approval. Once again, it is fantastic that the rules were crafted so that Government has no role to play in this process, except through its representation on the Board of Trustees.
- 4.8.3 It is, therefore, recommended as an act *ex abundanti cautela* (in the abundance of caution) that an early legal opinion is sought from the Attorney-General on whether a specific pension fund legislation for the GIPF can in any way supersede or overrule the GIPF Rules. If necessary, the opinion of the Registrar of Pension Funds may also be sought.

4.9 Position of external participants in GIPF

- 4.9.1 A number of other statutory bodies are currently participants in the GIPF. The question therefore arises whether these statutory bodies, such as the Namibia Airports Company (NAC), Namibia Press Agency

(Nampa), Namibia Tourism Board (NTB) to mention but a few,⁴ as well as Regional Councils and ten (8) village councils⁵ that are currently participating in the GIPF, should be retained in the GIPF or whether they should be given the option to create their own funds. While these bodies should be given an exit option, they should be encouraged to remain with the new Fund. Equally, other small SoEs that have established their own funds could be better off by becoming members of the GIPF. Therefore, SoEs should be encouraged to join the GIPF. The only complication is to convert a number of defined contribution funds into a defined benefit fund.

4.9.2 It may also be alternatively considered that Government will guarantee a fully funded Pension Fund in which SoEs also participate without SoEs Boards assuming a commensurate funding obligation. Hence, this aspect needs to be carefully thought through.

4.10 Actuarial evaluation of the Fund

4.10.1 Since the intention is to transfer the assets and liabilities from GIPF under the current rules to the GIPF under a specific statute, without any benefit reforms at the date of the transfer, it is not envisaged that a full actuarial evaluation of the GIPF be made. However, should certain reforms become necessary at a later stage, the services of an actuary may have to be acquired.

⁴ The following non-government employers participated in the GIPF as at 31 March 2010: Mission Hospitals, Millenium Challenge Account (MCA), Namibian Institute of Public Administration and Management (NIPAM), Tungeni Africa Investments, Trust Fund for Regional Development and Equity Provisions, Namibia Institute of Pathology (NIP), Environmental Investment Fund of Namibia, Namibia Wildlife Resorts (NWR), National Heritage Council (NHC), New Era Corp., Roads Contractor Company (RCC), Small Business Credit Guarantee Trust (SBCGT), Social Security Commission (SSC).

⁵ Berseba, Gibeon, Gochas, Köes, Stampriet, Tses, Witvlei, and Kalkrand Village Councils.

4.11 Policy Framework Reform

4.11.1 The policy reform will require strong political support and buy-in regarding the rationale for reforms and how the reform process should be managed. The entire process should be clearly documented, with clear milestones and deliverables. It should contain a communication strategy for those affected by the reform and also take into account possible resistance from pensioners, members, trade union, political parties, the GIPF itself and how to deal with such resistance.

4.11.2 This Discussion Document is, therefore, the beginning of the process that should ultimately lead to a policy white paper, in which Government makes its statement of policy and may invite the public and stakeholders to comment.

4.12 Law Reforms

4.12.1 Should it be accepted that a specific law for the GIPF be drafted, the law reform to be introduced will take the form of an act of Parliament. The law need not establish a new pension fund, but will have to make provision for the transfer of funds, investments, existing staff members, pensioners, and member information should such be required.

4.12.2 To ensure that the transition is smooth and not disruptive, the current GIPF Fund Rules, where relevant and applicable, can be adopted by way of a Schedule to the new Act and parameterized to the objects of policy as may be determined. The only difference between the GIPF as it exists now, and the GIPF under an Act of Parliament will be – at least at the time of coming into operation of the law – that Government appoints a new Board. Restructuring and reforms of the GIPF staff complement, the Fund Rules/Regulations, investment policies, and benefit structures can follow at a later stage, if and when the need arises.

4.12.3 The structure of the Bill – the Public Service Pension (PSP) Fund Bill – should contain the key provisions discussed hereunder. This outline is largely based on South Africa’s Government Employees Pension Law, 1996 (Act No. 21 of 1996), which established the Government Employees Pension (GEP) Fund. In the paragraphs below, some key legal issues are highlighted.

(a) Establishment and legal personality of Fund

This provision is important to give legal status to the PSP Fund.

(b) Responsible Office/Ministry/Agency

A sensitive question is which Office /Ministry /Agency should be representing the shareholder or portfolio Minister towards the PSP Fund. In the case of South Africa, the Minister of Finance assumes this role, but in Namibia, the Prime Minister – acting through the Public Service Commission – may equally assume that role. Is this feasible?

The oversight roles can also be split between the Prime Minister, being responsible for the appointments and governance of the PSP Fund, and the Minister of Finance with the assistance of NAMFISA, being responsible for the financial performance and management of the Fund.

(c) Members of PSP Fund

This section must indicate that any person, who immediately before the effective date is a member or pensioner of the PSP Fund, shall remain such a member or pensioner. It should also deal with who may become a member and who may not become a member.

(d) Composition of the Board of Trustees

This section describes the size, membership and representation of the Board of Trustees. Government will have to decide how the Board of Trustees should be constituted. Representation by the employer, employees, pensioners and public service trade unions must be decided upon. Government must acknowledge that the assets of the PSP Fund are not the property of the State and that employees and pensioners must have a say in the management of the Fund and investment of assets. However, the composition should roughly reflect the contribution ratio to the Fund, as well as the risks that each party is assuming.

To make the process of representation democratic and transparent, the various stakeholders should nominate possible candidates for the Board of Trustees, but the Prime Minister should have the final say on these appointments. The nomination and appointment process should be clearly described in a Schedule to the PSP Act.

(e) Committee's of the Board of Trustees

The Bill should make provision for the creation of committees for specialized functions, such as Benefits and Administration, Finance and Audit, Governance and Legal, Communication and Education, Remuneration, and Investments. There should be some flexibility to allow external expertise to serve on such Committees. This will prevent the same Trustees serving on Committees approving decisions at Board level.

(f) Chairperson of the PSP Fund

The Authority to appoint the chairperson of the Board of Trustees is another critical issue. There are two options: he/she may be elected by

the Board or appointed by the Prime Minister. The latter option is preferred.

(g) Principal Officer of the PSP Fund

The South African Government Employees Pension Law, 1996 does not make provision for a principal officer of the fund. It provides that the Minister may at the request of the Board make available to the Board the services of officers of his Department and may place at the disposal of the Fund all such facilities under control of that Department as may be necessary for a proper discharge of the activities of the Fund. However, the GEP Fund Board, in terms of the South African Government Employees Pension Law, 1996, has the power to employ personnel or make any other suitable arrangements to administer the Fund and to manage the investments of the Fund. In the meantime, the GEP Fund has appointed a principal officer.

It is, therefore, foreseen that the Board of the PSP Fund will eventually appoint a principal officer. In the Namibian case, that appointment should be subject to the Prime Minister's approval.

(h) Applicability of the Pensions Funds Act, 1995

The aim should be not to deviate too much from the provisions of the Pension Funds Act, 1956 (or FIM Bill, thereafter), as this may be construed that the PSP Fund is treated more lenient than private funds with regard to prudential requirements. Therefore, the Bill should allow the Minister to make certain provisions the latter Act applicable to the PSP Fund. This can be accommodated by having a provision such as:

The Pensions Funds Act, 1956 (Act No. 24 of 1956) [and later on the FIM-Bill], does not apply to the Fund, but the Minister, after consultation with the Board and NAMFISA, may by notice in the Gazette apply any provision of that Act to the Fund in so far as such

*provision is not inconsistent with the provisions of this Act, with such modifications as the Minister may deem fit and may specify in the notice; and may withdraw or amend any such notice.*⁶

The Act can even make provision for NAMFISA to assume certain prudential supervisory functions over the PSP Fund to support the Ministry of Finance's oversight role.

(i) Responsibility of the Board of Trustees of the PSP Fund

The Board must be held accountable for a number of key responsibilities, including:

- i. exercising the duty of utmost care to ensure reasonable protection of the assets and records of the Fund;
- ii. acting with fidelity, honesty, integrity and in the best interests of the Fund in managing its financial affairs and its investments;
- iii. ensuring the effective and efficient administration of the Fund;
- iv. keeping financial, investment and related records;
- v. producing:
 - (a) annual financial statements
 - (b) annual budgets;
 - (c) performance agreements of management staff;
 - (d) business and financial plan;
 - (e) other records that the Minister may require, including investment policies and reports on the state of affairs, business and financial position of Fund;
- vi. appointing auditors and actuaries of the Fund;
- vii. implementing a scheme to restore financial soundness of Fund;
- viii. determining:
 - (a) age of retirement;
 - (b) retirement, resignation and other benefits; and

⁶ A similar provision applies to the Development Bank of Namibia (DBN) in terms of the Development Bank of Namibia Act, 2002 (Act No. 8 of 2002).

(c) other rules.

(j) Responsibility of Government

The Minister must ensure that there is a governance and performance agreement in place with the board and with individual board members, and that the Board is acting strictly according to its investment mandate approved by the Minister.

Regarding the contribution ratio between the employer and the employees, the Act should have clear guidelines. There are two possible approaches: (a) Government could assume sole responsibility for meeting the obligations of the Fund, whether properly funded or not, in favour of its members, pensioners and beneficiaries; or (b) the funding obligation could be shared between employer and employees.

For example, instead of increasing the employer to employee ratio from 14:7 to, say, 16:7, one may argue for a ratio of 15:8. In the case of a defined contribution funding setup, this responsibility falls away.

4.13 Other possible reforms

4.13.1 Once the PSP Fund is firmly established, other reforms that may be considered include the following:

(a) Distinguishing between existing GIPF members and new members

Government may consider treating existing GIPF members and pensioners differently from members joining the new fund from the effective date. This may include having different contribution ratios and benefit structures for new members.

(b) Review PSP Fund's investment policy

A review of the investment policies requires the new Board to review the PSP Fund's investment policies and strategies. This will include determining investment classes, target returns and benchmarks, risk tolerance, and special investment projects.

4.13.2 The review referred to above will depend on the extent to which the pension laws, regulations and standards will be made applicable to the PSP Fund.

4.13.3 It is crucial that the investment policy is approved by Government, as that will determine the risk appetite and tolerance of investments.

(c) Investment Mandate of External Portfolio Managers

As at 31 March 2010, GIPF had appointed the following external service providers:⁷

- i. 1 Investment Advisor;
- ii. 22 Asset and Fund Managers;
- iii. 1 Transition manager;
- iv. 1 Investment Accounting Service Provider;
- v. 2 Custodian and Nominees; and
- vi. 1 Risk Insurer.

4.13.4 Once the PSP Fund is established, the new Board will, subject to the investment policy to be adopted (see par. (b) above), be capable of reviewing the mandates given to investment advisors and managers.

⁷ Per the Annual Financial Statements of the GIPF for the year 01/04/2012 – 31/03/2013

(d) Reconsider whether to outsource the administration of benefits

As mentioned before, GIPF is currently handling its own benefit administration, but this was previously sourced out. Going forward, a proper cost-benefit analysis must be done to determine the most efficient and cost-effective option. In the same vein, one may have to look at the existing staff complement to determine whether the size is optimal or whether right-sizing is required.

(e) Consider special investment vehicles to address socio-economic challenges

The Rules of the PSP Fund should allow for the creation of special funds or investments to be managed and driven so as to address specific development needs. These funds should be separated according to purpose and not be lumped into one huge pool. The GIPF needs to assume its proper role in the socio-economic development of Namibia with the funds at hand and as such it is important, notwithstanding the role of external asset and fund managers in managing and growing the fund, the GIPF should be required to underpin vision 2030 objectives and the millennium development goals as a significant fund in the Namibian economy.

5. CONCLUSION

5.1 This Discussion Document has set out the modus operandi for a total public service pension reform in Namibia. The three convincing arguments that were put forward to justify such reform are the following:

5.1.1 The anomalous institutional status of GIPF;

5.1.2 Lack of Government ownership and control over the management of GIPF;
and

5.1.3 Concerns regarding GIPF's management of its affairs.

- 5.2 This Discussion Document suggests that the reform process must include a clearly documented and comprehensive policy reform framework followed by suitable legal statutes to guide the entire process in a transparent and democratic fashion. This should be followed by institutional and structural reforms to ensure a smooth transition.
- 5.3 The Discussion Document also stresses the importance of strong political support and buy-in regarding the rationale for reforms and how the reform process should be managed. It is pointed out that resistance from various quarters can be expected. The reform should not result in unjustified uncertainty and speculation about the future of pensioners and public servants.
- 5.4 It then deals with some legal challenges to dissolve the GIPF as contained in the existing Rules of the GIPF and it is suggested that an appropriate legal opinion is sought to obtain certainty about Government's rights and obligations. The position of external participants, such as SoEs, in the GIPF is touched upon. While SoEs can contribute to the size and growth of the Fund, it may cause additional financial obligations for the State.
- 5.5 The GIPF must be created through an Act of Parliament. The law must not only establish the GIPF, but will also lay down the rules on how to transfer the funds, investments, existing public servants, pensioners, and member information. It is further suggested that the transfer process should not be disruptive and create panic. Therefore, at least in the interim current pension fund rules and practices should be maintained. The only major change will be the constitution of a new Board. Other reforms, such as the GIPF staff complement, the Fund Rules/Regulations, investment policies, and benefit structures, should follow at a later stage once the GIPF is firmly established and the resistance, if any, has been settled.
- 5.6 The Discussion Document also suggests a few key provisions that should be contained in the Public Service Pension (PSP) Fund Bill, which include the following:

- 5.6.1 Establishment and legal personality of Fund;
- 5.6.2 Responsible Office/Ministry/Agency;
- 5.6.3 Members of PSP Fund;
- 5.6.4 Composition of the Board of Trustees;
- 5.6.5 Committee's of the Board of Trustees;
- 5.6.6 Chairperson of the PSP Fund;
- 5.6.7 Principal Officer of the PSP Fund;
- 5.6.8 Applicability of the Pensions Funds Act, 1995;
- 5.6.9 Responsibility of the Board of Trustees of the PSP Fund; and
- 5.6.10 Responsibility of Government.

5.7 Other possible reforms that may be considered once the Act is passed and the PSP Fund is firmly established include the following:

- 5.7.1 Review PSP Fund's investment policy;
- 5.7.2 Review investment mandate given to external portfolio managers;
- 5.7.3 Reconsider whether to outsource the administration of benefits; and
- 5.7.4 Consider special investment vehicles to address socio-economic challenges.

5.8 This Discussion Document should be regarded as the initiation of a complex process that should ultimately lead to a policy white paper, in which Government makes its statement of policy and may invite the public and stakeholders to comment. Once again, it is important to stress that the reform process should be handled with the utmost care and should not lead to unnecessary distrust amongst existing members and pensioners. Yet it must be underscored, the GIPF is a defined benefit fund underwritten by the Government and the attempts by Government to correct what the apartheid regime created (mistrust in Government) and ensure a better corporate governance framework for the GIPF without compromising the principle of protecting the pensions of members should be welcomed.

End.

EXTRACT FROM THE RULES OF THE GIPF

11.10 NEW FUND OR SCHEME

- (1) If the Prime Minister approves the establishment of another fund for the purpose of providing for retirement benefits for MEMBERS employed by an EMPLOYER or for a specific class of MEMBERS employed by an EMPLOYER, the TRUSTEES may at the request of the EMPLOYER, notwithstanding anything to the contrary in the RULES, apply the assets of the FUND or the appropriate portion thereof (to secure benefits for the MEMBERS concerned in the other fund), in such manner as the TRUSTEES resolve, on the ACTUARY'S advice and with the REGISTRAR'S approval, subject to the provisions of section 14 of the ACT.
- (2) In determining a MEMBER'S benefit amount in the FUND for the purpose of (1) above, the TRUSTEES after consultation with the ACTUARY, shall consider the equity between the groups of MEMBERS participating in the FUND and recommend what portion, if any, of the surplus in the FUND shall be transferred on behalf of such MEMBERS to the new fund or scheme.
- (3) The EMPLOYER shall have the right to request that the PENSIONERS who were employed by it prior to their retirement, be transferred to the new fund or scheme, in which case the TRUSTEES shall transfer the appropriate amount in respect of such PENSIONERS, as determined by the TRUSTEES after consultation with the ACTUARY, to such new fund or scheme.