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GOVERNMENT NOTICE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 255

2011

PROMULGATION OF ACT OF PARLIAMENT

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

No. 13 of 2011: Judges' Pensions Act, 2011.

Act No. 13, 2011

JUDGES' PENSIONS ACT, 2011

ACT

To provide for transfer of judges' pensions and gratuities from the State Revenue Fund to the Members of Parliament and other Office-bearers Pension Fund; to repeal the Judges' Pensions Act, 1990; and to provide for incidental matters

(Signed by the President on 25 December 2011)

ARRANGEMENT OF SECTIONS

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PRELIMINARY

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

Definitions

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

“accrued benefits” means accrued benefits as calculated in terms of section 4;

“judge” means any person holding the office of Chief Justice or additional judge of the Supreme Court of Namibia or of Judge-President or additional judge of the High Court of Namibia, but does not include an *ad hoc* judge or acting judge of the Supreme Court or an acting judge of the High Court;

“Minister” means the Minister responsible for finance;

“pension fund” means the Members of Parliament and other Office-bearers Pension Fund established by the Members of Parliament and other Office-bearers Pension Fund Act, 1999 (Act No. 20 of 1999);

“pension scheme” means the pension scheme instituted by the repealed Act;

“pensioner” means a person receiving a pension or other benefit in terms of section 2 or 3 of the repealed Act;

“repealed Act” means the Judges Pension Act, 1990 (Act No. of 1990); and

“transfer date” means the date determined by the Minister in terms of section 2.

Act No. 13, 2011**JUDGES' PENSIONS ACT, 2011****Transfer date**

2. The Minister must by notice in the *Gazette* determine a date to be the transfer date for the purposes of this Act.

Transfer of membership to pension fund

3. (1) On the transfer date -

(a) a judge who, in terms of section 2 of the repealed Act, was entitled to benefit from the pension scheme on retirement or removal from office in terms of the Namibian Constitution, becomes a member of the pension fund; and

(b) a pensioner becomes a pensioner of the pension fund.

(2) A judge who becomes a member of the pension fund in terms of subsection (1) must, as from the transfer date, contribute to the pension fund in such manner and such amounts as determined in terms of the rules of the pension fund.

(3) Any rules of the pension fund or any amendment thereafter which purports to impose in relation to any person referred to in subsection (1), any condition or obligation the effect of which is -

(a) to diminish or otherwise detrimentally affect any right or benefit to which that person was entitled under the pension scheme before the transfer date; or

(b) to introduce any requirement, restriction or qualification in respect of continued participation as a member or pensioner of the pension fund,

and being a condition or obligation which did not apply to that person under the pension scheme is invalid in relation to that person.

Calculation of accrued benefits

4. (1) The accrued benefits of a judge who, before the transfer date, would have been entitled to benefit from the pension scheme or a pensioner under the pension scheme must, with due regard to actuarial principles and practices, be calculated as on the transfer date in accordance with subsection (2).

(2) The accrued benefits of -

(a) a judge contemplated in section 3(1)(a) comprise the value of any benefit, as represented by the State's Revenue Fund's actuarial liability towards that judge, that would have accrued to that judge as a pension and gratuity in terms of section 2 of the repealed Act if the judge had ceased to be a judge as contemplated in that section and as calculated on the transfer date in accordance with that section; and

(b) a pensioner contemplated in section 3(1)(b) comprise the value of that person's interest in the pension scheme on the transfer date, as

Act No. 13, 2011**JUDGES' PENSIONS ACT, 2011**

represented by the State Revenue Account's actuarial liability towards that person as calculated in accordance with section 3 of the repealed Act.

Transfer of accrued benefits to pension fund

5. (1) On the transfer date -

(a) any accrued benefits of a judge as determined in terms of section 4 must be paid from the State Revenue Fund to the pension fund for the benefit of the judge; and

(b) any accrued benefits of a pensioner as calculated in terms of section 4 must be paid from the State Revenue Fund to the pension fund for the benefit of the pensioner and thereafter must be paid out to the pensioner in accordance with the rules of the pension fund.

(2) The amount representing the accrued benefits of a judge or pensioner does, until it is fully paid to the pension fund, bear interest at a rate equal to the average rate payable on Treasury Bills plus such percentage margin as may be determined by the Minister after consultation with the board of trustees of the pension fund which margin may not exceed three percent per annum and which interest and percentage margin must be calculated and credited to the judge's or pensioner's account at the expiry of every six months.

(3) When a judge who is a member of the pension fund dies, retires or is removed from office in terms of the Namibian Constitution the pension fund must, in accordance with the rules of the pension fund, pay out a pension, gratuity or other benefits to the judge or any other person as may be determined in the rules of the pension fund.

Payment of gratuities on transfer date

6. (1) As from the transfer date a judge who joins the pension fund is entitled to an advanced portion of his or her gratuity, not exceeding 75 per cent of the total amount thereof, that would have accrued to him or her as contemplated in subsection 4.

(2) A judge who wishes to be paid an advance must make a written request to the Treasury for such payment and the Treasury must pay out such advance from the State Revenue Fund.

(3) Despite anything to the contrary contained in the Income Tax Act, 1981 (Act 24 of 1981), the portion of the gratuity advanced in terms of subsection (2) is exempt from income tax.

(4) For the purposes of section 16(1)(z) of the Income Tax Act, 1981 it is deemed, despite anything to the contrary in that Act, that the pension scheme is a pension fund contemplated in section 1 of that Act and that the full benefit of a member of the pension scheme was transferred to the pension fund on the fixed date.

(5) When calculating the value of the accrued benefits of a member of the pension scheme, there must be deducted -

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- (a) any amount which the member owes to the State Revenue Fund in respect of any liability relating to the pension scheme; and
- (b) an amount equal to the amount of gratuity advanced to the member under subsection (2).

Disputes

7. Despite anything to the contrary in this Act, if, on the transfer date, a dispute or doubt arises as to whether a person who immediately before that date was entitled to a pension under the pension scheme the accrued benefits in question may not be paid to the pension fund as contemplated in section 5, but must be retained in the State Revenue Fund until the dispute has been settled or the doubt has been resolved between the Minister and the person concerned in which event in relation to the pension in question -

- (a) the repealed Act continues to apply as if this Act had not been passed;
- (b) the date on which the dispute is settled or the doubt is resolved must be taken as the transfer date for the purposes of this Act.

Repeal of law

8. The Judges' Pensions Act, 1990 (Act No. 28 of 1990) is, subject to section 7, repealed.

Short title and commencement

9. (1) This Act is called the Judges' Pensions Act, 2011 and it comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of the different provisions of this Act.
