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REPUBLIC OF MOZAMBIQUE
COUNCIL OF MINISTERS

Decree no. 25/2009,
of of

It being necessary to regulate the establishment and management of pension funds, as a form of complementary social security, in terms of the provisions of line f) of number 1 of article 204 of the Constitution, read together with articles 39, number 5, and 56, both of Law 4/2007, of 7 February, the Council of Ministers decrees:

Single article. The Regulations on the Establishment and Management of Pension Funds as a form of Complementary Social Security, annexed to this decree, and forming an integral part thereof, are approved.

Approved by the Council of Ministers, 2 June 2009.

Let them be published.

The Prime Minister

Luísa Dias Diogo

REGULATIONS ON THE ESTABLISHMENT AND MANAGEMENT OF
PENSION FUNDS,
AS A FORM OF COMPLEMENTARY SOCIAL SECURITY

TITLE I
GENERAL PROVISIONS

CHAPTER I
OBJECT AND DEFINITIONS

Article 1
(Object)

These Regulations set out the legal regime for the establishment and management of pension funds, as a form of complementary social security.

Article 2
(Definitions)

Definitions of the terms used in these Regulations are contained in the annexed glossary.

CHAPTER II
PRIOR AUTHORIZATION

Article 3
(Authorization)

1. The following matters require the prior authorization of the Minister who oversees the area of Finance, following an opinion from the supervising entity, on application by interested parties, in terms of these Regulations:
 - a) The establishment of pension fund management companies;
 - b) The establishment of pension funds and their respective management regulations;
 - c) Amendments to agreements in terms of which pension funds are established, and to their management regulations, as well as the transfer of fund management between managing entities;
 - d) The merger, divestiture of assets (spinoff)¹, and dissolution of managing entities; and
 - e) Amendments to the articles of association of management companies and pension funds, as regards:
 - i) Name, or trade name;
 - ii) Object;
 - iii) Share capital;
 - iv) Creation of share categories, or amendments to existing categories;
 - v) Administration or oversight structures.
2. Any other amendment to the articles of association shall not require prior authorization, but must, however, be communicated to the supervising entity within five days of the date of its occurrence.
3. Amendments to the agreements in terms of which pension funds are established, and to their management regulations, may not reduce the values of the pensions which are being paid, nor the rights acquired up until the date of amendment.

¹ Translator's note: *cisão* is a Portuguese legal term which does not have an exact English equivalent.

Article 4
(Decision)

1. The applications referred to in number 1 of the previous Article shall be decided upon within a period of forty-five days from the date of their receipt, or from the receipt of applications for the authorization of the respective amendments, or of complementary documentation.
2. A decision regarding the matters set out in lines a) and b) of number 1 of the previous article shall be preceded by consultation with the Minister who oversees labor matters, whose pronouncement shall be made within a period of fifteen days following the relevant request, whereafter the dossier shall follow the normal procedures for the taking of a decision.
3. Once the period referred to in number 1 of this Article has expired, applications shall be deemed to have been approved, except when they relate to the situations listed in lines c), d) and e) of number 1 of Article 3, and to the implementation of the investment policy referred to in line c) of number 2 of Article 6 of these Regulations.
4. Having powers delegated to it in terms of number 3 of Article 6, and as soon as the matters underlying the request have been investigated, the supervising entity shall take a decision, also within the period referred to in number 1.
5. Without prejudice to other legal procedures which may be required, an application shall always be rejected if:
 - a. the period set out in the respective notification for the supply of outstanding information has expired, and the relevant application has not been substantiated in accordance with the provisions of these Regulations;
 - b. the application contains inaccurate or false information.

Article 5
(Recourse)

1. Without prejudice to an appeal, on general terms, against the decision referred to in number 1 of Article 3 of these Regulations, recourse may also be had to the Administrative Court.
2. If the decision was taken by the supervising entity, then recourse shall be had to the organ referred to in number 1 of Article 3, within a period of fifteen days.

CHAPTER III
MONITORING AND SUPERVISION

Article 6
(Monitoring)

1. The Minister who oversees the area of Finance shall monitor pension fund management activities.
2. Within the scope of the monitoring referred to in the previous number, the Minister who oversees the area of Finance shall also:
 - a) Establish the criteria for the valuation of assets corresponding to the solvency margin, on the proposal of the supervising entity;
 - b) Approve the accounting plan applicable to pension funds and managing entities, including the definition of those elements which these entities shall be obliged to publish;

- c) Establish regulations to which the investment policies for pension funds shall be subject, determining, for this purpose, and on the proposal of the supervising entity, the nature of the assets which constitute the fund's equity, the respective percentile limits, and general principles regarding the congruence of these assets;
 - d) Make the adjustments which may be necessary to the minimum share capital values of pension fund management companies.
3. The Minister who oversees the area of Finance may delegate the competencies set out in number 2 of this Article.

Article 7
(Supervision)

1. The pension funds established in terms of these Regulations, as well as their respective managing entities, are subject to the supervision of the entity which supervises insurance activities, referred to in these Regulations as "the supervising entity for insurance and pension funds", or simply as "the supervising entity".
2. In the exercise of its functions, the supervising entity shall issue the technical norms necessary for the normal functioning of the pension fund sector, and monitor compliance therewith.
3. The entities to which functions which influence the financial situation of pension funds, or which are in any way relevant for their effective monitoring, are transferred in terms of these Regulations, are equally subject to the supervision of the entity referred to in number 1, and the provisions of the following articles shall be applicable to them, with the necessary adaptations, including the provisions relating to inspections.
4. The entities with which pension funds assets are deposited are equally subject to the supervision of the entity referred to in number 1 as regards compliance with the provisions of this diploma, and this entity may, when necessary for the protection of the interests of pension fund members and beneficiaries of pension plans, restrict or prohibit these institutions from freely making available the pension fund assets deposited on their premises.
5. If the entities referred to in the previous numbers are generically subject to the supervision of another entity, this entity shall collaborate with the supervising entity for insurance and pension funds, and shall provide the information necessary for the exercise of its functions.
6. The entity referred to in number 1 of this Article is also responsible for the supervision of holding companies which hold qualified shares in pension fund management companies and in insurers, on the terms set out in the legislation which sets out the conditions for the licensing of insurers and the practice of insurance activities.
7. The supervising entity shall have the prerogative to request, from a competent judicial institution, a declaration of nullity or annulment of void or voidable negotiations concluded by management entities which prejudice the pension fund members and / or beneficiaries of pension plans.

Article 8
(Supervisory powers)

1. In the exercise of the functions referred to in the previous number, the supervising entity is particularly responsible for:
 - a) Verifying the technical, financial and legal correctness of the activities of pension funds and their respective managing entities;
 - b) Obtaining detailed information regarding the status of pension funds and their respective managing entities, and all of their activities, by means of data collection, the

- requesting of documents relating to the exercise of activities relating to the pension funds, or inspections carried out at the premises of management entities;
- c) Adopting, as regards entities which manage pension funds, their responsible directors or controlling persons, all measures which are adequate and necessary, not only to guarantee that their activities comply with the legal and regulatory provisions applicable to them, but also to avoid or eliminate any irregularities which may prejudice the interests of pension fund members and beneficiaries;
 - d) Guaranteeing the effective application of the measures referred to in the previous number, if necessary, by having recourse to competent judicial entities;
 - e) Carrying out the adjustments deemed necessary as regards the matters subject to registration with the supervising entity, including the terms and deadlines for the submission, by managing entities, of supporting documents relating to the said matters;
 - f) Exercising the further functions and attributes set out in these Regulations and complementary legislation.
2. The entity referred to in number 1 of Article 7 of these Regulations is also responsible for determining the type of information to be sent by the pension fund managing entities periodically, for the purposes of supervision.
 3. In these exercise of its functions, the supervising entity shall issue instructions and recommendations for the remedying of detected irregularities.
 4. Whenever pension fund managing entities do not comply with the instructions and recommendations referred to in the previous number, to the prejudice of the interests of pension fund members and beneficiaries, the supervising entity may, in conformity with the seriousness of the situation, restrict or suspend these entities, in terms of these Regulations, from the exercise of pension fund management activities.

TITLE II PENSION FUNDS

CHAPTER I GENERAL PROVISIONS

Article 9 (Duration)

Pension funds are established for an unlimited duration.

Article 10 (Patrimonial autonomy)

1. Pension funds are patrimonially autonomous in accordance with the legislation in force, and may, in the future, obtain other forms of patrimonial autonomy which come to be permitted by law.
2. Without prejudice to the provisions of number 9 of Article 54 and of Article 83, pension funds may only be executed against for compliance with pension plans, for the payment of management and deposit commissions relating to them, and for the payment of the insurance premiums referred to in Article 18, and may not be executed against for the performance of any other obligations, namely, those of affiliates, pension fund members, managing entities and depositories.
3. Only the assets of the fund, or the respective part quota thereof, the value of which shall constitute the maximum amount available, may be executed against for the carrying out

- of the pension plans referred to in the respective constitutive agreement, management regulations or membership agreement - without prejudice to the responsibility of affiliates, pension fund members and contributors for the payment of contributions, and of the managing entity, for the minimum income guaranteed at that time.
4. The patrimonial value of existing rights of any one pension fund member over the pension fund, is exclusively affected by compliance with the obligations set out in the respective pension plan, and may not be executed against for the fulfillment of any other obligations, including obligations to its creditors.
 5. If the assets of one pension fund, which simultaneously funds distinct pension plans, are jointly managed, then the part quota of the assets allocated to each plan must be clearly identified.

Article 11
(Capitalisation regime)

1. Assets, contributions and pension plans shall, at any given moment, be equilibrated, in accordance with actuarial capitalization systems which allow for the creation of an equivalence between assets and expected pension fund receipts, on the one hand, and, on the other hand, future pensions owed to the beneficiaries, and future charges relating to management and deposit.
2. The financing of the fund by the distribution of hedge funds², is not permitted.

Article 12
(Types of pension funds)

1. Pension funds may be closed or open, in accordance with the relationship existing between their respective affiliates or Members.
2. Closed pension funds may be established on the initiative of a company or groups of companies or of associations of a socio-professional nature, or by agreement between employers' and trade union associations.
3. Open pension funds may be established on the initiative of any legally established pension fund manager, and the total net value of such a fund shall be divided into whole or fractional participation units, which may be represented by certificates.
4. Open pension funds may be joined collectively, or individually.

Article 13
(Acquisition of the right to a pension)

1. Without prejudice to the provisions of number 5 of Article 14, the circumstances which may confer a right to receive a pension, are retirement because of old age or disability, and survival, and these concepts shall be understood on the terms on which they are defined in the respective pension plans.
2. The age from which one may obtain a right to a pre-retirement or anticipated retirement pension, set out in a pension plan, may not be less than 50 years in the case of a man, or 45 years in the case of a woman, unless in terms of other legal provisions, or in terms of a collective agreement, as the case may be.
3. Pension plans may also provide for the payment of death subsidies, when these are complementary and accessory to the payments referred to in the previous number.

² Portuguese technical term, “*repartição de capitais de cobertura*”, which does not translate easily into English

Article 14

(Manner of payment of benefits)

1. Without prejudice to the provisions of number 3 of this Article, at the time at which the payment of the established pension commences, it may be remitted in part, as a lump-sum, or may be transformed into another kind of income, provided that the following conditions are met:
 - a) The possibility thereof is envisaged in the pension plan;
 - b) A written request has been presented to the managing entity, by the future beneficiary.
2. The amount of capital to be remitted, as set out in the previous number, as well as the value, at that time, of the income resulting from the transformation, may not be greater than one third of the value, at that time, of the established pension.
3. By agreement between the managing entity, the affiliate and the beneficiary, the payment of the entire pension, or its transformation into another kind of income, shall also be permissible without this income being subject to the limit set out in the previous number.
4. The value of the pension, for the purposes of determining the lump-sum to be paid or transformed into another type of income, shall be calculated in accordance with the technical indices utilized to determine the solvency minimum.
5. In the case of pension funds which finance contribution plans, beneficiaries shall have the right to the reimbursement of an amount determined as a function of the contributions made by the pension fund members, in any of the circumstances set out in number 1 of Article 13, and also, in the case of long term unemployment.
6. The reimbursement set out in the previous number, may be made in the form of income, lump-sum capital, or any combination of these.
7. Without prejudice to the possibility of the payment of pensions as lump-sums, pensions resulting from defined contribution pension plans are guaranteed by way of insurance concluded in the name and for the account of the beneficiary.

Article 15

(Transferability of benefits)

In the case of contribution plans, as regards own contributions, and in the case of plans with acquired rights, pension fund members who terminate their relationship with the affiliate may transfer the value to which they have a right, to another pension fund.

Article 16

(Individual accounts)

In the case of funds which finance hybrid or defined contribution plans, there shall be an individual account for each pension fund member, as regards his defined contributions, save in exceptional situations based on the characteristics of the plan and accepted by the supervising entity.

Article 17

(Types of pension plans)

1. The pension plans referred to in this Decree may be:
 - a) Defined benefit, defined contribution, or hybrid plans, as regards the type of guarantees provided;
 - b) Contribution or non-contribution plans, depending on the form of financing.
2. Pension plans financed by individual membership of an open pension fund may only be of a defined contribution type.

Article 18

(Transfer of risks)

Pension funds may conclude agreements, with insurance companies, or with reinsurers, to guarantee the covering of death and permanent disability risks foreseen in the pension plan, as well as lifelong income insurance agreements.

Article 19

(Duty to register)

1. Pension funds, as well as managing entities, are obliged to register with the supervising entity, as regards the matters relating to each establishment, amendment and activity, namely:

- a) The establishment of pension fund management companies, and the respective articles of association, and authorization for the exercise of pension fund management activities by the insurer;
 - b) The expiry and the revocation of authorization for the establishment of a management company, or for the exercise of pension fund management activities by the insurer;
 - c) The merger, divestiture of assets³, dissolution and any other amendment to the articles of association of a pension fund management company;
 - d) The acquisition of qualified participations in pension fund management companies, and the transfer thereof;
 - e) The appointment, and the termination of functions, for any cause other than the expiry of a time period, of members of administrative and fiscal bodies of a management company;
 - f) The establishment and amendment of closed pension funds, and their respective agreements;
 - g) The establishment of open pension funds, and their respective regulations, as well as amendments;
 - h) The extinction, for any reason, of a pension fund;
 - i) The contracting of a depository, for the assets which comprise the asset base of a pension fund;
 - j) The appointment, substitution and termination of functions, for any reason other than the expiry of a time period, of the responsible actuary, external auditor and the members of a supervisory committee;
 - k) The annual reports and accounts of the management company, and of the pension fund;
 - l) The informative prospectus relating to individual membership of an open pension fund;
 - m) The adoption by the managing entity of any remedying measure, and other rulings adopted in terms of Article 88 of these Regulations;
 - n) The decision to restrict or prohibit the free use of the assets of a pension fund;
 - o) The appointment of provisional managers, for the management company.
3. The registration referred to in the previous number shall be requested within a period of thirty days, counting from the date of verification of the fact, without prejudice to the cases in which this may be effected officially.
4. The registration provided for in this Article does not dispense with the registration required by the commercial law, in the cases in which this may be applicable.

Article 20

³ *Cisão*- a technical term which does not translate easily into English

(Refusal of registration)

1. In addition to the other cases legally provided for, the registration of any act referred to in number 1 of the previous Article shall be refused, if:
 - a) It becomes apparent that the fact is not evident from the documents presented;
 - b) The fact contained in the documentation has already been registered, or is not subject to registration;
 - c) The fact is null;
 - d) In the case of facts requiring authorization, any condition on which such authorization may be dependent has not been met;
 - e) In the remaining cases, the defect or irregularity detected in the application for registration, or in the fact which is intended to be registered, is not rectified within the established time period.
3. Interested parties, as per the particular case, may appeal against the decision to refuse the registration, in terms of Article 5 of these Regulations.

Article 21

(Obligatory publications)

1. The obligatory publication of an act set out in this Title shall be effected by the managing entity within a period of sixty days from the date of its occurrence, in the *Boletim da República*.
2. The following acts set out in the previous number must be published:
 - a) The articles of association of the management company, and amendments thereto;
 - b) The constitutive agreement of a closed pension fund, and the Regulations relating to the management of open pension funds, as well as their respective amendments;
 - c) The merger, divestiture of assets⁴ and dissolution of a pension fund management company;
 - d) The extinction, for any reason, of a pension fund;
 - e) The annual report and accounts of the management company, and of the pension fund.
3. The managing entity shall send a copy of these publications to the supervising entity, within a period of three days from the last occurring of these.
4. An announcement regarding the establishment or the modification of the constitutive agreement or the management regulations of a pension fund, shall indicate, as per the particular circumstances:
 - a) The place and date of conclusion of the constitutive agreement, or of the respective amendment, and the date from which the same shall be effective;
 - b) Identification of the managing entity and the affiliates;
 - c) Name of the pension fund;
 - d) Management regulations or clauses of the constitutive agreement.
5. An announcement regarding the modification of the constitutive agreement, or the pension fund management regulations, or the extinction of a fund, shall also identify the date of the publication of the initial constitutive agreement or management regulations, and their respective amendments, if the existing versions of these have not been entirely republished in the *Boletim da República*.

CHAPTER II
ESTABLISHMENT OF PENSION FUNDS

⁴ *Cisão*, a technical term which does not translate easily into English

SECTION I
Closed pension funds

Article 22
(Establishment)

1. Closed pension funds are established by written agreement, concluded between the managing entities and the founding affiliates, which agreement must be published.
2. The written agreement shall contain the following matters:
 - a) Identification of the contracting parties;
 - b) Name of the pension fund;
 - c) Name, share capital and head office of the managing entity;
 - d) Identification of the affiliates;
 - e) An indication of the persons who may be pension fund members, contributors and beneficiaries of the fund;
 - f) Initial asset value of the fund, listing those goods which constitute fund assets;
 - g) Object of the fund, and the respective pension plan or plans to be financed;
 - h) Rules for the administration of the fund, and the representation of affiliates;
 - i) Conditions on which the management of the fund may be transferred to another managing entity, or of the deposit of certificates and other fund documents to another depository;
 - j) Rights of pension fund members, namely as regards the transferability of benefits, in terms of Article 15, when they are no longer covered by the fund, and of pension fund members and beneficiaries, when the fund becomes extinct, or when any of the affiliates is dissolved, or abandons the fund, without prejudice to the provisions of Article 33;
 - k) Whether loans may be granted to pension fund members, and in which form;
 - l) Conditions on which the managing entity and the affiliates reserve the right to modify the clauses agreed upon;
 - m) Bases for the extinction of the fund, without prejudice to the provisions of Article 33.

Article 23
(Management agreement)

1. Closed pension funds are managed in terms of the respective management agreement, which shall be concluded between the affiliates and the managing entity.
2. The management agreement shall contain the following matters:
 - a) Name of the pension fund;
 - b) Name, share capital and head office of the fund's managing entity;
 - c) Name and head office of depositories;
 - d) Remuneration to be paid to the managing entity;
 - e) Remuneration to be paid to depositories, provided that the prior agreement of the affiliate is not required for the determination of this remuneration;
 - f) Investment policy of the fund;
 - g) Conditions on which pensions are conferred, if conferred directly by the fund, or by means of insurance agreements;
 - h) Regulations which set out the conditions on which loans may be granted to pension fund members, if this is envisaged;
 - i) Conditions on which the contracting parties reserve the right to modify the management agreement initially concluded;

- j) Establishment of the minimum guaranteed income, and the duration of this guarantee, if the managing entity assumes the investment risk;
 - k) Penalties, in case of the discontinuation of the management of the fund;
 - l) Rights, obligations and functions of the managing entity, in terms of legal and regulatory norms;
 - m) An indication of existing contracts of mandate⁵, relating to the actuarial or administrative management of investments;
 - n) Rules of appointment and representation of affiliates, pension fund members and beneficiaries on the supervisory committee, and the functions of such committee.
4. The management agreement may not derogate from, or alter, the provisions contained in the constitutive agreement.
5. Within a period of eight days, from the conclusion of the management agreement, a copy of the agreement, and existing subsequent amendments, shall be sent to the supervising entity.

Article 24

(Commencement and processing of the authorization procedure)

1. Authorization for closed pension funds is granted following a joint application by the managing entities and the founding affiliates, accompanied by a draft constitutive agreement, and the technical actuarial plan, in the case of defined benefit or hybrid plans.
2. Whenever intended amendments to the constitutive agreement relate to total liabilities, the relevant request for authorization must include, in addition to a draft of the new text, the respective technical actuarial plan, taking into account the provisions of Article 77.

SECTION II

Open pension funds

Article 25

(Establishment)

1. Open pension funds are established on the day on which the first contribution is made in terms of the respective management regulations, which regulations shall equally be subject to obligatory publication.
2. The management regulations must, obligatorily, contain the following matters:
 - a) Name of the pension fund;
 - b) Name, share capital and head office of the managing entity;
 - c) Name and head office of depositories;
 - d) Definition of the concepts necessary for the clarification of contractual conditions;
 - e) Value of the participation unit, on the date of commencement of the fund;
 - f) Manner of calculation of the value of the participation unit;
 - g) Dates set down for the calculation of the value of the participation unit;
 - h) Investment policy of the fund;
 - i) The maximum remuneration of the managing entity;
 - j) Maximum and minimum limits for commissions on the issuing and reimbursement of participation units, clearly explaining how these become due;
 - k) The maximum remuneration payable to depositories;

⁵ *Contratos de mandato* – a technical legal term

- l) Conditions on which the management of the fund may be transferred to another managing entity, or on which the deposit of certificates and other fund documents may be transferred to another depository;
 - m) Establishment of the minimum guaranteed income, and the duration of this guarantee, clearly explaining the form in which the investment policy shall carry out this objective, if the managing entity assumes the investment risk;
 - n) Conditions on which the managing entity reserves the right to modify clauses of the management regulations;
 - o) Valid reasons for the extinction of the fund, without prejudice to the provisions of Article 33;
 - p) The procedures to be adopted, in the case of extinction of the fund;
 - q) Rights, obligations and functions of the managing entity, in terms of legal and regulatory norms;
 - r) An indication of currently existing contracts of mandate⁶ relating to the actuarial or administrative management of investments.
3. Without prejudice to the provisions of the following number, the value of participation units, a detailed list of fund investments, and the number of participation units in circulation, must be published at least once a month, in an appropriately informative manner, on the terms laid down by the supervising entity.
4. The value of participation units in open pension funds shall be published on a daily basis, in the places and methods in which the same are sold, except in the case of funds which only permit collective membership, in which case the value shall be published at least once a month.

Article 26

(Collective membership)

1. The collective joining of an open pension fund takes place by the initial subscription to participation units by the affiliates intending to join the fund.
2. Various affiliates may constitute a single collective membership, provided that there is a business, affiliate, professional or social relationship between these affiliates, and the consent of these shall be required for the inclusion of new affiliates in the collective membership.
3. Whenever a pension plan is financed by more than one collective membership, the affiliate must nominate the managing entity which will be responsible for all of the administrative and actuarial management functions of the pension plan, on the terms set out by the supervising entity.
4. At the time of acquisition of the first participation units, an agreement of membership of the pension fund must be concluded between each affiliate or group of affiliates, and the managing entity, and must contain the following:
 - a) The name of the pension fund,
 - b) The identification of the affiliate(s);
 - c) An indication of the persons who may be pension fund members, contributors and beneficiaries of the fund;
 - d) Pension plan, or plans, to be financed;
 - e) An indication, if it is the case, that the pension plan is financed by more than one collective membership, identifying the managing entity responsible for all of the administrative and actuarial management functions;

⁶ *Contratos de mandato* – a technical legal term

- f) The conditions on which pensions will be conferred, if directly by the fund, or if by means of insurance contracts;
 - g) Rights of pension fund members, when they cease to be covered by the fund;
 - h) Rights of pension fund members and beneficiaries, when the respective collective membership of the fund is extinguished, or any affiliate or affiliates are extinguished, or abandon the fund, without prejudice to the provisions of Article 33;
 - i) Number of participation units acquired;
 - j) Conditions on which the contracting parties reserve the right to modify the membership agreement;
 - k) Conditions for the transfer of the part-quota of an affiliate to another pension fund, specifying existing penalties which may be applicable to it;
 - l) Calculation of fees or commissions to be charged;
 - m) Rules regarding the appointment and representation of affiliates, pension fund members and beneficiaries on the supervisory committee, and the functions of the committee;
 - n) As an annexure, a copy of the management regulations.
5. The matters mentioned in lines c), d), f), g), h), j) and k) of the previous number may be omitted if they are included in the management regulations.
 6. Affiliates shall express their agreement, in writing, to the fund management regulations.
 7. The granting of loans to pension fund members on the basis of the participation units held by them, is prohibited.
 8. Collective membership agreements, as well as their respective amendments, and contracts of extinction flowing from the transfer of collective memberships between pension funds, must be submitted to the supervising entity, along with the technical actuarial plans, if these memberships finance defined benefit or hybrid plans.

Article 27

(Individual membership)

1. The individual joining of an open pension fund shall take place by way of an initial subscription to participation units by contributors.
2. In the case of individual membership of an open pension fund, the participation units are owned by pension fund members.
3. At the moment of acquisition of the first participation units, an individual agreement of membership of the pension fund must be concluded between the contributor and the manager, which must contain:
 - a) The name of the pension fund;
 - b) The conditions on which benefits will become due;
 - c) Conditions for the transfer of participation units of a pension fund member to another pension funds, specifying the penalties which will be applicable;
 - d) A quantification of fees and commissions which will be charged;
 - e) Information regarding the terms and conditions for the exercise of rights of termination and renunciation set out in number 4 and in Article 30;
 - f) Identification of the competent supervising entity;
 - g) A list of information to be sent to the pension fund member by the managing entity during the existence of the agreement, and the regularity thereof;
 - h) As an annexure, a copy of the management regulations.
4. Individual contributors shall confirm, in writing, their agreement with the fund management regulations. In the absence thereof, it shall be presumed that a contributor had no knowledge of these regulations, and he shall have the right to terminate his

individual membership within the time period defined in article 30, and to be reimbursed on the terms set out in article 31.

5. The granting of loans to pension fund members on the basis of the participation units held by them, is prohibited.

Article 28

(Joint marketing)

1. Two or more open pension funds, managed by the same manager, may be marketed jointly, each one with its own investment policy and differentiated from the remaining, so as to allow contributors to choose between the various investment options.
2. Joint membership of the funds set out in the previous number, shall be effected by the conclusion of one membership agreement, which shall indicate the special conditions for the transfer of participation units between funds jointly marketed.

Article 29

(Commencement and processing of the authorization process)

1. Authorization for open pension funds is granted following an application by the managing entity, accompanied by draft management regulations.
2. Members must be individually informed of amendments to the management regulations which result in an increase in commissions, a substantial amendment to the investment policy, or the transfer of the management of the fund to another managing entity, and must be granted the option to transfer their participation units to another pension fund, without charges.

Article 30

(Right of cancellation)

1. An individual contributor may, within a period of thirty days, counting from the date on which he joined the pension fund, cancel the agreement, by sending a registered letter, with proof of receipt, to the head office address of the respective manager.
2. A failure to communicate on the terms set out in the previous article shall result in the inefficacy of the cancellation.

Article 31

(Effects of the exercise of a right of cancellation)

1. The exercise of a right of cancellation results in the termination of the individual membership agreement, and extinguishes all of the obligations flowing from it, with effect from the date of conclusion of the same, and the value of the participation units, or, if the managing entity has assumed the investment risk, the value of the contributions paid, must be reimbursed.
2. The managing entity has the right to an amount equal to the commission on the issuing of the units, and the part of the costs of de-investment which this entity is proven to have funded and which exceed the issuing commission, or the whole of it, should this amount not be fully covered, shall revert to the fund.
3. The exercise of a right of cancellation does not give rise to any compensation other than that provided for in the previous number.

Article 32

(Suspension of subscription or transfer of participation units)

1. In exceptional circumstances, and whenever the interest of the pension fund members and beneficiaries makes it advisable, the subscription to, or transfer of, participation units in open pension funds may be suspended, by decision of the managing entity or the supervising entity.
2. The managing entity shall inform the supervising entity, before the fact, of the suspension referred to in the previous number and the reasons therefor.

CHAPTER III
EXTINCTION AND LIQUIDATION OF PENSION FUNDS

Article 33
(Extinction)

1. Pension funds become extinct in the following circumstances:
 - a) By agreement between their respective affiliates e managing entities, or by unilateral decision of these managing entities, on the terms set out in this diploma;
 - b) Should any of the causes for extinction set out in the constitutive agreement, or in the management regulations, take place, as per line m) of number 2 of Article 22, and line o) of number 2 of Article 25, respectively;
 - c) When the corresponding managing entities, or their affiliates, become extinct, without being substituted, and in this case the provisions of the constitutive agreement or management regulations shall be observed;
 - d) If, without prejudice to the provisions of Article 80, an affiliate does not make the contributions necessary to comply with the minimum financing amounts required by legal provisions in force;
 - e) When there are neither pension fund members nor beneficiaries, and when, for any reason, its object is extinguished;
 - f) When, without prejudice to the prior authorization of the supervising entity, there is insufficient financing for the pension plan, in light of established rules, and if it is concluded, on the basis of documented elements, that it is not possible to obtain the agreement of the affiliate.
2. Having confirmed the situation in line f) of the previous number, the manager must unilaterally terminate the constitutive agreement, or the collective membership agreement.
3. The extinction of a closed or open pension fund, or of a part quota thereof, is effected by a legal declaration of extinction recorded in writing, following the prior authorization of the supervising entity.
4. The legal declaration of extinction of a closed pension fund, or of a part quota thereof, or of an open pension fund, as well as the unilateral termination referred to in number 2, are subject to obligatory publication.
5. A pension fund manager may not be dissolved without having first guaranteed the continuity of effective management of the same fund by another licensed entity, for which purpose the entity shall inform the supervising entity in advance of its intention to dissolve the company.
6. Except in the case referred to in number 8 of Article 26, the termination of a collective open pension fund membership agreement is effected by the conclusion of an extinction agreement between the affiliate and the manager, the drafting of which shall be communicated in advance to the supervising entity, and which may be

concluded forty five days following this communication, if the supervising entity does not make a determination.

Article 34
(Liquidation)

1. The managing entity shall proceed with the liquidation of the assets of a pension fund, or of a quota part thereof, on the terms set out in the legal declaration of extinction, or the unilateral resolution set out in number 4 of the previous Article.
2. In the liquidation of the assets of a pension fund, or of a quota part thereof, the respective assets may be executed against, up until the limit of their financial capacities:
 - a) For costs which may be imputed to them, in terms of lines d), e), f) and i) of Article 69;
 - b) For the amount of the individual account of each pension fund member, in the case of pension funds which finance contribution pension plans, which amount shall be applied in accordance with the rules set out in the constitutive agreement or management regulations;
 - c) For single premiums for life-long income, which assure the pensions which are being paid, in accordance with the amount of the pension at the date of its extinction;
 - d) For single premiums for life-long income, which assure the payment of pensions to pension fund members who are older than, or of an age equal to, the normal retirement age set out in the pension plan;
 - e) For an amount which guarantees the rights acquired by the existing pension fund members at the date of extinction, which shall be applied in accordance with the rules set out in the constitutive agreement, or management regulations;
 - f) As a guarantee for the pensions which are accumulating, for those pension fund members who were not covered by the scope of the previous number;
 - g) For amounts which guarantee the realization of pensions being paid, provided that is contractually provided for.
3. In the case of a financial insufficiency, the assets of the fund, or of its respective quota part, shall be preferentially executable in respect of the liabilities listed, and in the order of the lines of the previous number, with allocation pro rata to the value of the liabilities, if necessary.
4. The final positive net balance realized during the liquidation process, shall be used for the purposes jointly decided upon by the managing entities and the affiliates, with the prior approval of the supervising entity, in accordance with the criteria laid down in number 3 of Article 83.
5. Except in cases duly justified, whenever the positive net balance referred to in the previous number results in a drastic reduction in the number of participations in pension plans without acquired rights, the balance referred to shall be utilized, as a first priority, to guarantee those pensions which are accumulating, as regards those pension fund members affected by that reduction.
6. For the purposes of the previous number, cases in which the drastic reduction of the number of pension fund members was caused by way of agreements for the termination of employment contracts, shall not be considered to be duly justified, unless the express renunciation of the right provided in that number is contained in the same.

TITLE III
PENSION FUND MANAGEMENT AND CONTROL STRUCTURES

CHAPTER I
PENSION FUND MANAGEMENT ENTITIES

SECTION I
GENERAL PROVISIONS

Article 35
(Management entities)

1. Without prejudice to the provisions of number 5 of Article 39 of Law 4/2007, of 7 February, pension funds may be managed by one or a number of the following managing entities:
 - a) Companies incorporated exclusively for this purpose, in terms of these Regulations, and designated as managing entities;
 - b) Insurers authorized to exercise life-insurance activities in the Republic of Mozambique.
2. Without prejudice to the provisions of lines f), g) and h) of number 1 of Article 45 and Article 86, the provisions of the legislation which sets out the conditions for the setting up and conducting of insurance activities, shall apply, for authorization purposes, to insurers who intend to exercise pension fund management activities.
3. Insurers authorized to exercise life-insurance activities in the Republic of Mozambique, and who intend to manage pension funds, shall request the authorization of the Minister who oversees the area of Finance, by way of a duly motivated application.
4. Managing entities shall exercise the functions attributed to them by law, and may also exercise, autonomously, activities which are necessary for, or complementary to, the management of pension funds.
5. Managing entities perform all of their acts in the name of, and for the joint account of, affiliates, pension fund members, contributors and beneficiaries, and, as fund administrators, may negotiate movable or immovable securities, make bank deposits in the name of the fund, and exercise all rights or perform all acts which are directly or indirectly related to the fund assets.
6. When complementary social security is entrusted to the entity which manages obligatory social security, that entity becomes subject to the defined accounting and investment policy rules, in accordance with these Regulations, for pension fund management activities.

Article 36
(Functions)

As the administrator and manager of the fund, and as its legal representative, the managing entity is responsible for the performance of all acts and operations necessary or convenient for the good administration and management of the fund, namely, to:

- a) Valuate fund liabilities;
- b) Select and negotiate movable or immovable securities which shall make up the fund, in accordance with the investment policy;
- c) Represent, without requiring a specific mandate, the affiliates, pension fund members, contributors and beneficiaries of the fund, in the exercise of the rights flowing from their respective participations;
- d) Collect the expected contributions, and guarantee, directly or indirectly, the payments due to beneficiaries;
- e) Register, with the real estate registry, and in the name of the fund, the rights over immovable properties which form part of the fund;
- f) Keep its records, and those of the funds managed by it, in order.

Article 37

(General duties)

1. In the exercise of its functions, the managing entity acts independently, and in the exclusive interest of the affiliates, pension fund members and beneficiaries.
2. The managing entity shall exercise the functions for which it is responsible in accordance with a high standard of diligence and professional competency, and shall act quickly and efficiently in its collaboration with other pension fund governance structures and in the provision of information required in terms of the law.

Article 38

(Conflicts of interest)

1. The interests of the fund shall prevail over all other interests, whether those of the managing entity, or of companies with which it has a relationship of control, or which are in the same group of companies, or those of officers of their corporate bodies, and any action or legal act contrary to the interests of the fund shall be voidable.
2. The managing entity and the officers of its corporate bodies, and the companies in the same domain or group, may not purchase or sell, for itself, fund assets managed by itself, directly, or via an intermediary.
3. The administrative bodies and the employees of the managing entity are prohibited from exercising any functions for another pension fund manager, except if that manager belongs to the same group of companies.
4. Whenever orders are placed jointly for the purchase of assets for various pension funds, the managing entity shall distribute the costs in a manner proportional to the assets acquired for each pension fund.

Article 39

(Prohibited or conditional acts)

1. The managing entity is specifically prohibited, when it acts for its own account, from:
 - a) Acquiring its own shares;
 - b) Granting credit, with the exception of hypothecated credit, to its workers.
2. The managing entity is specifically prohibited, when acting as a pension fund manager, from:
 - a) Standing surety for loans, except for cash flow purposes, or offering the pension fund assets to third parties as a guarantee, irrespective of the legal form taken by such guarantee;
 - b) Acquiring its own shares;
 - c) Granting credit, except in the case of hypothecated credit, or credit to pension fund members, on the terms provided for in the fund's constitutive agreement.

Article 40

(Subcontracting)

1. Managing entities may not transfer, wholly or partially, the powers conferred upon them by law to third parties, without prejudice to the possibility of making use of the services of third parties which may be useful for the exercise of their activities, specifically, services relating to the provision of specialized advice regarding actuarial and investment aspects, and to the execution of acts and operations which are the responsibility of managing entities, subject to their direction and overall liability.
2. Without prejudice to their continued responsibility as regards pension funds, affiliates, pension fund members and beneficiaries, managing entities may delegate the management of a part or all of a pension fund's assets to credit institutions, asset management companies, investment fund managing companies, life-insurance businesses,

- provided that these are legally authorized to exercise their respective authorities in Mozambique, and to other pension fund managing companies.
3. The performance of the services referred to in the previous numbers must be formalized by way of a written agreement concluded between the managing entity and the performer of services, and must comply with the following conditions:
 - a) Continuance of the responsibility of the managing entity for compliance with the provisions governing pension fund management activities;
 - b) The holding, by the performer of services, of the qualifications and capacities necessary for the performance of the subcontracted functions;
 - c) A duty of supervision over the performance of subcontracted functions, by the managing entity, by way of the power to issue additional instructions and to terminate the agreement whenever it may be in the interest of affiliates, pension fund members and beneficiaries;
 - d) Compliance with the legal and regulatory framework to which pension fund management activities are subject, and with the exercise of management in the exclusive interest of affiliates, pension fund members and beneficiaries, and of the non-existence of prejudice to the efficacy of the supervision.
 4. A copy of the agreement referred to in the previous number must be submitted to the supervising entity whenever requested, in Portuguese, or duly translated and legalized.

SECTION II

Conditions for the establishment and operation of management companies

Article 41

(Requirements for establishment)

1. A pension fund management company must be incorporated as a *sociedade anonima*, and must satisfy the following requirements:
 - a) Meet the criteria of opportunity and convenience, fundamentally connected to the economic-financial or market interest for which the setting up of pension funds was intended, for the Republic of Mozambique;
 - b) Have as its exclusive object the management of pension funds;
 - c) Have share capital of at least 3.750.000,00 Mt, except as provided for the in following line;
 - d) Have share capital of at least 1.250.000,00 Mt, if the company object contained in its articles of association is the management of only one closed pension fund;
 - e) Contain, in its name, the expression "Pension Fund Management company";
 - f) Have its head office, and its principal and effective management, in the Republic of Mozambique.
2. The share capital subscribed to must, on the date of establishment of the company, be fully paid up, and represented by registered nominative or bearer shares.
3. The provisions of the legislation which set out the conditions for the setting up and conducting of insurance activities, as regards the supervision of holders of qualified participations, their respective corporate bodies, and the illegal use of their name, apply equally to pension fund management companies.

Article 42

(Commencement and processing of the authorization procedure)

1. An application for the establishment of the company shall be submitted to the supervising entity, indicating the respective share capital and the identity of founding shareholders and their participations, and shall be accompanied by the following:

- a) Draft articles of association;
- b) Police clearance certificate for each of the founding shareholders, when these are individual persons, and of their respective administrators, directors or managers, when these are collective persons;
- c) A declaration that neither the founding shareholders, nor the companies or businesses whose management they have assured, or in which they have been administrators, directors or managers, have been declared to be legally or factually insolvent;
- d) Documents proving the nonexistence of fiscal or social security debts on the part of the founding shareholders;
- e) Detailed information regarding the structure of the group, which permits the verification of the non-existence of interference in the exercise of supervisory functions, whenever there are close relationships between the business and other singular or collective persons.
- f) An economic-financial viability study, based on a programme of activities which must at least include the following:
 - i. Organic structure of the business, with a specification of technical and financial resources, as well as other direct and indirect staff and material resources to be employed;
 - ii. Provision for the costs of installation of administrative services, as well as the necessary financial resources;
 - iii. An indication of the type of pension funds to be managed, the method of marketing, and applicable commissions;
 - iv. Matters which determine solvency margins;
 - v. For each of the first three corporate tax years:
 - i. Balance sheet, and demonstration of provisional results, indicating the capital subscribed to and paid up;
 - ii. Estimate of number of workers, and respective total salaries;
 - iii. Cash flow projection;
 - iv. A forecast of the solvency margin, and of the financial resources necessary to meet this, in compliance with the legal provisions in force.
2. The hypotheses and assumptions on which projections included in the programme referred to in the previous number are based, shall be duly and specifically motivated.
3. Without prejudice to the provisions of the previous numbers, the regime relating to the commencement and processing of applications, and the communication set out in legislation setting the conditions for the licensing of insurers and the practice of insurance activities, apply equally to the process of authorization, with the necessary adaptations.

Article 43

(Compliance with the programme of activities)

1. During the first three corporate tax years, the management company must present a detailed annual report regarding the exercise of the programme of activities, to the supervising entity.
2. If the financial situation of the company appears to be out of equilibrium, the supervising entity shall impose measures to undergird the respective financial guarantees, and non-compliance therewith may result in the revocation of the authorization.
3. Intended amendments of the programme of activities referred to in number 1 of the previous article, are subject to the prior authorization of the Minister who oversees the area of Finance, and the other conditions which are applicable to the programme shall be applicable to these amendments, with the necessary adaptations.

4. In the cases set out in the previous number, the supervising entity shall submit, to the Minister who oversees the area of Finance, a proposal regarding the decision on the requested amendment, within a period of fifteen days from the respective communication.

Article 44

(Expiry of authorization)

1. The authorization expires if:
 - a) The applicants expressly renounce it;
 - b) The management company is not formally established within a period of 6 months, or does not commence its activities within a period of 12 months, counting from the date of notification of authorization, on the terms referred to in number 1 of Article 4;
 - c) The company is dissolved, without prejudice to the provisions of number 5 of Article 33.
2. The supervising entity shall be responsible for the verification of the formal establishment, and the commencement of activities, within the periods referred to in the previous number.

Article 45

(Revocation of authorization)

1. Without prejudice to the provisions regarding the inexistence of insufficiency of minimum financial guarantees, the authorization may be revoked by the Minister who oversees the area of Finance, in any of the following situations:
 - a) If the authorization was obtained by way of false declarations, or other illegal methods, independently of applicable penal sanctions;
 - b) If the managing entity ceases its activities for an uninterrupted period greater than 12 months;
 - c) If the own capital of the company reaches, in its totality, a value less than half of the value indicated in lines c) and d) of number 1 of Article 41 for share capital;
 - d) If the communication is not effected, or if the appointment of any member of the administration or supervisory body is refused, on the terms set out in number 3 of Article 41;
 - e) If the approval of the programme of activities is withdrawn or if the authorization for the amendment of the programme of activities is not granted, or not requested;
 - f) Serious irregularities in the administration, accounting organization or internal auditing of the company, in a way which places at risk the interests of pension fund members or beneficiaries or the normal conditions of market functioning;
 - g) If any one of the conditions for the setting up or conducting of pension fund management activities is not met;
 - h) If the company violates the laws or Regulations which regulate its activities, in such a way as to put at risk the interests of the pension fund members or beneficiaries, or the normal conditions or market functioning.
2. The facts set out in line d) of the previous number do not constitute a basis for revocation if, within a period set down by the supervising entity, the company proceeds to communicate or appoint another director, acceptable to it.
3. The revocation decision shall be motivated, and the management company shall be informed thereof.
4. Following the revocation of authorization, the managing entity shall be liquidated, in terms of legislation in force.

5. Once the legal deadline for an appeal against the decision to revoke the authorization has expired, the supervising entity shall publish the revocation, as a notice, in the *Boletim de República*, without prejudice to the provisions of number 1 of Article 89.

CHAPTER II DEPOSITORIES

Article 46 (Deposit)

Certificates and other documents which are representative of securities which are included in pension funds shall, in terms of these Regulations, be deposited with one or various depositories, namely, credit institutions authorized to take custody of financial instruments for the account of their clients, in terms of the respective legislation, and provided that these are established in Mozambique.

Article 47 (Functions and duties)

1. The following are functions of depositories:
 - a) To receive, as a deposit, or to register, the certificates and documents representative of the assets which make up the fund;
 - b) To keep up to date the chronological report of all operations conducted, and to establish, every three months, an inventory listing the assets which have been entrusted to it.
2. Depositories may also be charged to:
 - a) Perform purchase and sale transactions relating to certificates, and exercise subscription rights;
 - b) Effect the collection of income produced by the fund assets, and collaborate with the managing entity in the performance of operations relating to those goods;
 - c) Attend to the payment of pensions to beneficiaries, in accordance with the instructions of the managing entity.
3. Depositories are subject to the duties and prohibitions set out in numbers 1 and 2 of Article 38, with the necessary adaptations, and shall only perform the operations requested by the pension fund managing entities, in accordance with legal and regulatory provisions.

Article 48

(Formalization of relationships between managing entities and depositories)

1. The regime governing the relationships established between managing entities and depositories, including as regards the commissions to be collected by depositories, shall be set out in a written agreement.
2. A copy of the agreements referred to in the previous number shall be submitted to the supervising entity, as well as subsequent amendments, in compliance with the deadline referred to in number 4 of Article 23.

Article 49 (Subcontracting)

The conservation of pension fund assets may be entrusted to a third party by the depository, without, however, this fact affecting the responsibility of the depository to the managing entity, and the provisions of numbers 3 and 4 of Article 40 shall be applicable, with the necessary adaptations.

CHAPTER III
OTHER ENTITIES

Article 50
(Enumeration)

The following entities may also intervene, in terms of these Regulations, in the governance of Pension Funds:

- a) Marketing entities;
- b) The supervisory committee;
- c) The responsible actuary;
- d) The external auditor.

Article 51
(Marketing entities)

1. Participation units in open pension funds may only be marketed by the respective managing entities, by authorized insurance brokers exercising life insurance activities, and by credit institutions.
2. The regime contained in the legislation which regulates the conditions for the setting up or conducting of insurance brokering activities, applies equally to the pension fund brokering activities, with the necessary adaptations, and the supervising entity may define rules complementary to those set out in this diploma, taking into account the specific nature of pension funds.
3. The legal regime applicable to the marketing of insurance by banks, set out in the legislation which establishes the conditions for the setting up and conducting of insurance activities, applies to the marketing, by credit institutions, of open pension fund participation units.

Article 52
(Supervisory committee)

1. Compliance with the pension plan and the management of the respective pension fund, in the case of closed pension funds and collective memberships of open pension funds which finance contribution plans, or defined contribution plans with more than 50 pension fund members, beneficiaries or both, shall be verified by a pension fund supervisory committee, hereinafter referred to as the supervisory committee.
2. The supervising entity may determine the situations and conditions on which a single supervisory committee may be established for various pension plans and/or funds.

Article 53
(Composition of the supervisory committee)

1. The supervisory committee shall consist of representatives of the affiliate, and the pension fund members and beneficiaries, and these last shall be assured of representation by not less than one third of the members of the committee.
2. The representatives of the pension fund members and beneficiaries shall be nominated by the trade union, or, if this does not exist, by organized election for this purpose, between the pension fund members, the managing entity or by the affiliate, on the terms set out in the management agreement of closed pension funds, or in the collective membership agreement for open pension funds.

3. Whenever, however, the pension plan resulted from a collective negotiation, the representatives of the pension fund members and beneficiaries shall be appointed by the subscribing trade union or unions, on the terms agreed between them, or, in the absence of an agreement, by direct election performed between themselves, for this purpose.
4. If the workers' or trade union does not appoint the relevant representatives within a maximum period of twenty days following their due convening for this purpose, the provisions of the final part of the previous number shall be applicable.
5. If a member of the supervisory committee renounces the mandate for which he was elected, or becomes incapacitated or permanently unable to perform his duties, for any reason, he shall be substituted, up until the expiry of the existing mandate, by an alternate, if this exists, or by another member appointed in the same manner.

Article 54

(Functions of the supervisory committee)

1. The functions of the supervisory committee are the following:
 - a) To verify the observance of provisions applicable to the pension plan, and the management of the respective pension fund, namely, as regards the implementation of the investment policy, and the financing of liabilities, as well as compliance, by the managing entity and by the affiliate, of the duties of information towards pension fund members and beneficiaries;
 - b) To pronounce upon proposals for the transfer of management, and other amendments to the constitutive and management agreements for closed pension funds, or the collective membership agreement of open pension funds, as well as regarding the termination of a pension fund, or a quota part of the same, and also regarding requests for the payment of financing excesses to the affiliate;
 - c) To pronounce upon the amendment of the investment policy of a closed pension fund;
 - d) To formulate proposals regarding the matters referred to in the previous number, or others, whenever considered opportune;
 - e) To pronounce upon the nomination of the actuary responsible for the pension plan, and, in the case of closed pension funds, of the external auditor proposed by the managing entity;
 - f) To exercise the further functions attributed to it in the management agreement of a closed pension fund, or in the collective membership agreement of an open pension fund.
2. The opinions referred to in line b) of the previous number, with mention of the respective votes to the contrary, shall be included in the documents to be sent to the supervising entity by the managing entity in the scope of the respective authorization or notification procedures.
3. The managing entity, and the depository entity, shall provide the supervisory committee with all documentation requested by it and necessary for the exercise of its functions.
4. In particular, the managing entity shall provide the supervisory committee, on an annual basis, with a copy of annual report and accounts of the pension fund, as well as of the reports of the responsible actuary and of the external auditor drafted within the scope of the respective functions.
5. The respective regulations may provide that various matters are delegated to a permanent supervisory group, composed of members of the supervisory committee and nominated by it, with respect for the representativeness of the committee itself.
6. The functioning of the supervisory committee is regulated, as regards everything which is not set out in these Regulations or in the regulations of the supervising entity, by the

management agreement for a closed pension fund, or by the collective membership agreement of an open pension fund.

7. The members of the supervisory committee are subject to a duty of confidentiality as regards all matters of which they may have knowledge as a result of the functions which they exercise, except if the same matters are already within public knowledge.
8. The exercise of the functions of a member of the supervisory committee may be remunerated, and if so, the charges, as well as the costs occasioned by the respective appointment, shall be the responsibility of the nominating party.
9. The supervisory committee's operating costs, including those relating to the participation of each member of the supervisory committee, shall be considered to be joint costs, and covered by the fund.

Article 55

(Meetings of the supervisory committee)

1. Meetings of the supervisory committee are called and directed by its president, appointed from amongst the members of the same committee.
2. Each member shall have one vote, and resolutions shall be taken by simple majority of the votes cast, except if provided otherwise by the Regulations, which may also provide that the president has a casting vote.
3. Decisions of the supervisory committee shall be minuted, with an indication of votes not in favour, and the justification therefor.

Article 56

(Responsible actuary)

1. The managing entity shall nominate a responsible actuary, for each defined benefit or hybrid pension plan.
2. The responsible actuary shall certify:
 - a) The actuarial valuations, and the methods and assumptions used for the purpose of determining contributions;
 - b) The level of financing of the pension fund, and the compliance with the provisions in force, as regards the solvency of pension funds;
 - c) The adequacy of assets which constitute the pension fund equity, as regards the liabilities set out in the pension plan;
 - d) The actual value of total liabilities, for the purpose of determining the existence of excessive financing, in terms of Article 83.
3. The responsible actuary shall also prepare an annual actuarial report regarding the financing situation of each defined benefit or hybrid pension plan, the content of which shall be established by the supervising entity.
4. Pension fund managing entities shall provide the responsible actuary, timeously, with all information necessary for the performance of his functions.
5. Whenever he detects situations of non-compliance or the incorrectness of relevant material, the responsible actuary shall propose measures to the managing entity which will permit the resolution of these situations, and the responsible actuary shall be informed of measures taken as a result of his proposals.
6. The responsible actuary shall communicate, to the supervising entity, any fact or decision of which he becomes aware, in the performance of his functions, and which may:
 - a) Constitute a violation of the legal or regulatory norms which regulate the activity of pension funds;
 - b) Materially affect the financial situation of a pension fund, or the financing of a pension fund.

7. The substitution of the responsible actuary shall take place within a maximum period of forty five days from the date on which the fact resulting in the necessary of his substitution is discovered, and shall be communicated to the supervising entity within fifteen days following the date on which the new responsible actuary assumed his functions.
8. The supervising entity may determine the conditions to be met by the responsible actuary, and the provisions of legislation which set out the conditions for the licensing of insurers and the practice of insurance activities, shall apply supplementarily.

Article 57

(External auditor)

1. The managing entity shall nominate an external auditor for each pension fund.
2. The external auditor shall be responsible to certify the report, accounts and other documentation pertaining to the closure of the financial year, as regards the pension fund.
3. The external auditor shall communicate to the supervising entity any fact or decision of which he becomes aware in the performance of his functions, and which may:
 - a) Constitute a violation of the legal or regulatory norms which govern the activities of pension funds;
 - b) Result in the refusal of certification, or the issuing of an opinion with reservations.
4. The external auditor shall be professionally independent, and qualified, and be certified to exercise his profession within the Republic of Mozambique, and satisfy the further conditions which may be set from time to time by the supervising entity.
5. In exceptional and duly motivated cases, the supervising entity may require an extraordinary audit, conducted by the respective external auditor, the managing entity or another auditor, at the expense of the managing entity.
6. The supervisory committee has the right to solicit an extraordinary audit in specific and duly justified cases, and the charges therefor shall be borne by the managing entity, provided that the request has the approval, by consensus, of the same committee.

TITLE IV

PENSION FUND MANAGEMENT MECHANISMS

CHAPTER I

MANAGEMENT OF RISKS AND INTERNAL AUDITING

Article 58

(Organizational structure)

1. Pension fund managing entities shall have an organizational structure which is adequate for the dimension and complexity of their business, as well as for the characteristics of the pension plans and funds which are managed.
2. The portfolio of responsibilities for each of the different functions shall be objectively defined, responsibilities shall be rationally divided, and workers shall be guaranteed to have the aptitude and the experience required for the performance of their functions.

Article 59

(Identification, evaluation and management of risks)

1. Pension fund managing entities shall implement and maintain policies and procedures which allow them to identify, evaluate and continually manage all of the internal and external risks which may be significant.

2. Policies and procedures shall take into consideration all types of significant risks to the activities of the managing entity, namely, operational and financial risks, on the terms defined by the supervising entity.

Article 60

(Internal auditing)

1. Pension fund managing entities shall implement internal auditing procedures which are adequate for the dimension and complexity of their business, their organisational structure, as well as the characteristics of the pension plans and funds managed by them, on the terms defined by the supervising entity.
2. The internal auditing procedures have, as their object, assuring that the management of pension fund activities is effected in a wise and prudent form, and in the best interests of pension fund members and beneficiaries of the pension funds, and in accordance with the established directives, principles and strategies.
3. Procedures of internal auditing shall be revised, in light of the evolution of the market in which the managing entity operates, its objectives, and its organizational structure.

CHAPTER II

INFORMATION FOR PENSION FUND MEMBERS AND BENEFICIARIES

SECTION I

Closed funds, and collective membership of open funds

Article 61

(Initial information to pension fund members)

1. In the case of closed pension funds, and in the collective joining of open pension funds, the managing entity shall provide the respective pension fund members with a document regarding the pension fund, which shall contain:
 - a) The name of the pension fund;
 - b) The characteristic principles of the fund's financing plan, namely:
 - i. Conditions on which benefits shall become due;
 - ii. Information regarding the existence, of not, of acquired benefits, their respective transferability and associated costs;
 - iii. Rights and obligations of parties;
 - iv. Financial, technical or other risks, associated with the pension plan, its nature and distribution.
 - c) As an annexure, a copy of the pension plan and of a document containing the investment policy, in the case of a closed pension fund, or of the management regulations and of the pension plan, in the case of an open pension fund, or, if a copy of the said documents is not provided, information regarding the form and place in which the same will be at the disposal of pension fund members;
 - d) Details of information to be sent by the managing entity to pension fund members, and to the supervisory committee, and how regularly this will be sent.
3. As regards the funds and memberships which finance contribution plans, the document referred to in the previous number shall also contain information regarding the commissions charged to contributing pension fund members.
4. By prior agreement between the affiliate and the managing entity, the pension fund management agreement or the collective membership agreement may stipulate that the obligation to provide information set down in this Article shall be complied with by the

affiliate, or by the supervisory committee, without prejudice to the maintenance of the responsibility of the managing entity for compliance therewith.

Article 62

(Information during the existence of the agreement)

1. The managing entity shall provide the pension fund members in closed pension funds, and in collective memberships of open pension funds, when requested, with all information needed for the effective understanding of the pension plan, as well as with the documents referred to in line c) of number 1 of the previous Article.
2. The pension fund members referred to in the previous number also have the right to receive, at their request, information regarding the amount to which they will eventually have a right, in the case of the termination of the employment relationship, the manner of transfer of the same, and, in the case of defined contribution plans, regarding the expected amount of their retirement pensions, as well as a copy of the report and annual accounts relating to the pension fund.
3. In the case of an amendment to the rules of a pension plan, and, for contribution plans, in the case of an increase in commissions, and a substantial amendment in the investment policy, as well as whenever a transfer of the management of the pension fund, or of the collective membership, takes place, the managing entity shall inform the pension fund members of these amendments within a maximum period of forty five days, counting from the same.
4. The managing entity shall send to contributors on an annual basis, and to other pension fund members in closed pension funds and in collective pension fund memberships, when requested, information regarding:
 - a) The current situation of accumulating pension fund member rights, considering the type of plan;
 - b) The financial situation of the fund, profitability levels achieved, and current situations of sub-financing;
 - c) The form in which and place where the annual report and accounts relating to the pension fund are available;
 - d) The form in which, and place where, an informative notice regarding amendments to the applicable normative framework, and the documents referred to in line c) of the previous Article, are available.
5. By previous agreement between the affiliate and the managing entity, it may be stipulated, in the pension fund management agreement, or in the collective membership agreement, that the informative obligations set out in this Article shall be complied with by the affiliate, or by the supervisory committees, without prejudice to the continued existence of the responsibility of the managing entity, for compliance therewith.

Article 63

(Information for beneficiaries)

1. Once the conditions on which benefits become due, have been met, the managing entity shall adequately inform the beneficiaries of closed pension funds, and of collective open pension fund memberships, of the benefits to which they have a right, and the corresponding options as regards payment, namely those referred to in Article 14, in accordance with the provisions of the respective pension plan.
2. The managing entity shall inform beneficiaries who receive a pension directly from the fund, of relevant amendments made to the pension plan, as well as of the transfer of management of the fund, or of the collective membership, within a maximum period of thirty days, counting from the same.

3. The managing entity shall provide the beneficiaries referred to in the previous number, on their request, with the fund investment policy, as well as the report and annual accounts relating to the pension fund.

SECTION II

Individual membership of open funds

Article 64

(Information for pension fund members)

1. In order to ensure a better understanding, by the contributors, of the characteristics of the fund, of the risks inherent to membership and of the applicable tax regime, the supervising entity may require that, prior to the conclusion of an individual membership agreement, the relevant information contained in the management regulations and in the membership agreement be made available, by way of an informative prospectus.
2. The managing entity shall provide pension fund members in individual memberships of open pension funds, on their request, with all information necessary for their effective understanding of the individual membership agreement of that pension fund, as well as of the respective management regulations.
3. Without prejudice to the provisions of number 2 of Article 29, the managing entity shall inform the pension fund members in individual open pension fund memberships, of:
 - a) The development and current situation of the pension fund member's individual account;
 - b) The annual rate of return of the fund;
 - c) The form in which, and place where, the report and annual accounts relating to the pension fund shall be made available;
 - d) Alterations relevant to the applicable normative framework, and to the management regulations.
4. The duties to provide information set out in the previous number, may be increased, if it becomes necessary to ensure a better and effective comprehension of the characteristics of the fund, and of the membership agreement concluded, and specific informative duties and the regularity with which the information must be provided, will be set by the supervising entity.

CHAPTER III

OTHER INFORMATION AND ADVERTISING

Article 65

(Accounting norms and other information)

1. The managing entity shall, for each pension fund, present the supervising entity, by the 31st of May, with an annual report, and accounts, certified by an external auditor, relating to the period up until 31 December of each tax year.
2. Pension fund managing companies shall present the management report, balance sheet, indication of results and other accounting documents, certified by an external auditor, to the supervising entity on an annual basis, as regards all of the activities exercised in the previous year, and the provisions of the legislation which set out the conditions for the licensing of insurers and the practice of insurance activities shall be applicable, with the necessary adaptations, for this purpose.
3. The reports, accounts and other informative matters prepared by pension fund managing entities shall reflect, in a truthful and appropriate form, the assets, liabilities and financial

situation of the fund or the management company, and the content thereof shall be coherent, complete and presented in an impartial form.

4. The reports and accounts relating to open pension funds and to managing entities shall be made available to the public, and the applicable norms and other instructions of the supervising entity shall be complied with, for this purpose.

Article 66
(Advertising)

1. Advertising effected by managing entities is subject to general law, without prejudice to that specifically defined by the supervising entity, bearing in mind the protection of the interests of contributors, pension fund members and beneficiaries.
2. The publication of future results, based on estimates of the managing entity, is prohibited, unless a statement that the results are a simulation is printed in characters which stand out from all other typographical characters.
3. Public documents, and supporting publications relating to open pension funds, must clearly indicate that the value of the participation units held varies, in accordance with the development of the value of the assets which make up the pension fund equity, specifying also the existence of a guarantee relating to the payment of minimum income.

TITLE V
PRUDENTIAL REGIME

CHAPTER I
PRUDENTIAL REGIME FOR PENSION FUNDS

SECTION I
General provisions

Article 67
(General principles)

Pension funds must:

- a) Be managed in observance of the prudential methods and criteria which assure the existence of the cash flow necessary for the punctual payment of benefits set out in the respective pension plans;
- b) Reflect, from moment to moment, equilibrium between the assets, contributions and respective pension plans, on the terms set out in number 1 of Article 11.

SECTION II
Assets

Article 68
(Receipts)

The following constitute pension fund receipts:

- a) The contributions in money, or in movable or immovable assets, effected by the affiliates and the contributors;
- b) The income from investments which make up the fund assets;
- c) The products of the sale and reimbursement of the investment of fund assets;
- d) Participation in the results of insurance contracts issued in the name of the fund;
- e) Compensations resulting from the insurances taken out by the fund, in terms of Article 18;

- f) Other receipts flowing from the management of the pension fund.

Article 69
(Expenses)

The following constitute expenses of the pension fund:

- a) The pensions and lump sums paid to beneficiaries of the fund, and/or the single premiums for life-long income, paid to insurance companies;
- b) The lump-sums and incomes foreseen in Article 14;
- c) The premiums for risk insurances paid by the fund;
- d) Fees for management, deposits and asset security;
- e) The values expended in the purchase of investments for the fund;
- f) The charges paid in the purchase, sale and management of fund assets;
- g) The payment, to affiliates, of fund asset excesses in the cases in which this is permissible;
- h) Expenses related to the transfer of rights of pension fund members or affiliates between funds;
- i) Other expenses, provided that these are related to the fund and set out in the constitutive agreement or management regulations.

Article 70
(Liquidity)

Managing entities shall guarantee that pension funds have, at each moment, the cash flow necessary to effect the punctual payment of pensions and lump sums to be remitted to beneficiaries, or the payment of insurance premiums aimed at the satisfaction of guarantees provided for in the established pension plan.

Article 71
(Asset composition)

1. In the composition of pension fund assets, managing entities shall take into account the type of liabilities which are being financed, in order to guarantee the security, income, quality and cash flow of the respective investments, assuring a diversification and prudent dispersion of these investments, always in the best interests of pension fund members and beneficiaries.
2. Bearing in mind the provisions of the previous number, and without prejudice to the limits set out in terms of line c) of number 2 of Article 5, pension funds assets shall be:
 - a) Predominantly invested in regulated markets;
 - b) Sufficiently diversified, so as to avoid the accumulation of risks, as well as the excessive concentration in any asset, issuer or group of businesses, including a concentration in investment in an affiliate, or in the managing entity.

Article 72
(Criteria for asset valuation)

The valuation criteria for the assets which constitute pension fund equity shall be set by the Minister who oversees the area of Finance.

Article 73
(Calculation of the value of participation units)

1. The value of participation units in open pension funds shall be calculated on a daily basis, except in the case of funds which only permit collective memberships, in which case values shall be calculated at least once a month.
2. The value of each participation unit shall be determined by dividing the net global value of the fund, by the number of participation units in circulation.
3. The net global value of the fund is the value of the assets which make up the fund, valued in accordance with legal provisions, net of the value of liabilities already incurred but not paid.

Article 74

(Investment policy)

1. The managing entity must formulate, in writing, and with observance of the respective norms approved in terms of line c) of number 2 of Article 6 of these Regulations, the investment policy of each pension fund, specifying the principles applicable as regards the definition, implementation and supervision of the same.
2. The investment policy shall be revised at least every three years, without prejudice to necessary revision whenever significant alterations occur in the financial markets which affect the investment policy.

Article 75

(Adequacy of assets for the meeting of liabilities)

1. The managing entity shall ensure that the assets which make up the equity of each pension fund are adequate for the meeting of liabilities which flow from the pension fund, and shall, for this purpose, take into account:
 - a) The nature of expected benefits;
 - b) The time frame of liabilities;
 - c) The established investment policy, and the risks to which the financial assets are subject;
 - d) The level of financing of liabilities.
2. In order to ensure the adequacy referred to in the previous number, the managing entity shall utilize the technical and other methods considered to be most consistent with the objective to be guaranteed, with a high standard of reasonableness, so that unfavorable fluctuations in the value of assets do not jeopardize the payment of assumed liabilities, especially as regards pensions already being paid.

SECTION III

Liabilities and solvency

Article 76

(Solvency Regime)

1. The solvency regimes of pension funds should reflect the risks incurred, and be based upon quantitative criteria and on qualitative aspects adequate for the specifications of each pension plan and fund.
2. The regime may provide for the existence of different levels of solvency control, and set standardized methods with approaches based on internal models which are appropriate for each pension fund, on the terms which, for this purpose, shall be defined by the Minister who oversees the area of Finance.

Article 77

(Technical actuarial plan)

1. In the case of defined benefit or hybrid pension plans, a technical actuarial plan must be drafted, which shall serve as a basis for the calculation of contributions to be made by affiliates and contributors, bearing in mind the benefits to be financed and the affected pension fund members and beneficiaries, on terms to be defined by the Minister who oversees the area of Finance.
2. The technical actuarial plan should be revised at least once every three years, and resubmitted to the supervising entity whenever revised.

Article 78

(Principles for the calculation of liabilities)

Without prejudice to the provisions of the following Article, the calculation of liabilities to be financed by defined benefit or hybrid pension plans is effected on the basis of the following principles:

- a) Recognized actuarial methods, which assure that the amount of the fund is adequate for the obligations assumed in the pension plan and for the set out contributions;
- b) Assumptions of prudential valuation, namely, interest rates and mortality and disability tables which are prudent and adequate, and which contain, if appropriate, a reasonable margin for unfavorable fluctuations;
- c) Method and calculation assumptions which are consistent in all financial years, except in the case of relevant legal, demographic or economic amendments.

Article 79

(Minimum solvency amount)

1. The assumptions and methods to be utilised in the calculation of the actual value of liabilities in defined benefit or hybrid plans may not result in the value of a closed pension fund, or of a collective membership, being less than the minimum solvency amount.
2. The minimum solvency amount is calculated in accordance with rules established in a diploma of the Minister who oversees the area of Finance and shall correspond to the sum of the following values, without prejudice to higher amounts required by other legislation in force which may be applicable to the case:
 - a) The actual value of the pensions currently being paid, including existing liabilities for deferred survival pensions;
 - b) The actual value of liabilities relating to services provided to all pension fund members.

Article 80

(Insufficiency in the financing of the pension plan)

1. If the affiliate does not attend to the payment of the contributions necessary to comply with the minimum amount required by legal provisions in force, the managing entity shall take the initiative to request the affiliate to regularize the situation, without prejudice to its duty to communicate the situation to the supervisory committee.
2. If, within a period of one year counting from the date of becoming aware of the situation of insufficiency referred to in the previous number, an adequate financing plan, which takes into account the specific situation of the fund, namely its risk profile and the age profile of pension fund members and beneficiaries, is not established and accepted by the supervising entity, then the managing entity must extinguish the fund or collective membership.
3. The financing plan referred to in the previous number shall be communicated to the supervisory committee prior to its approval by the supervising entity, which shall define,

on a case by case basis, the conditions and regularity with which the managing entity shall inform it, and the supervisory committee, of compliance with the plan, and the pension fund or collective membership shall be extinguished in the case of non-compliance with the plan.

4. Within a period of fifteen days, counting from the date of verification of a situation of insufficiency in the financing of the actual value of the pensions being paid, the managing entity shall advise the affiliate to make such contributions as may be necessary within a period of one hundred and eighty days following the date of communication, and shall inform the supervising entity and the supervisory committee of the same, and shall proceed to extinguish the fund or the collective membership if these contributions are not made.
5. Whenever prejudice may result to the pension fund members and beneficiaries, because of the application of the deadlines set out in numbers 2 and 4, the supervising entity may accept an extension of these deadlines, up until a maximum of three and one year, respectively, by way of a duly motivated request presented by the managing entity and the affiliate.

Article 81

(Payment of new pensions)

The managing entity may only initiate the payment of new pensions in terms of the plan, if the amount of the fund equals or exceeds the actual value of the pensions being paid, and of new pensions which have fallen due, calculated in accordance with the assumptions set out by the norms in force for the determination of the minimum solvency amount, except if a financial plan, approved by the supervising entity, already exists.

Article 82

(Non-availability of assets)

1. Without prejudice to that set out in Articles 80 and 81, when an existing or foreseeable situation of insufficient financing for the liabilities of a pension fund occurs, the supervising entity may restrict or prohibit the free utilization of fund assets, either as a sole measure, or together with other measures, if this is necessary or appropriate for the safeguarding of the interests of pension fund members or beneficiaries.
2. The assets affected by the restriction or non-availability referred to in the previous number:
 - a) If they consist of movable goods, shall be collected at the order of the supervising entity;
 - b) If they are immovable goods, may only be encumbered or alienated with the express authorization of the supervising entity, and the corresponding act of registration may not take place without the said authorization.

Article 83

(Financing excess)

1. If it is proven that, for five consecutive years, and for structural reasons, the value of the quota part of a pension fund which corresponds to the financing of a defined benefit or hybrid plan, in the part applicable to the defined benefit, equals at least 120% of the current value of the total liabilities, then the amount above that percentage may be paid back to the affiliate.
2. The reimbursement to the affiliate of the said amount is subject to the prior approval of the supervising entity, on joint and motivated application by the managing entity and the

affiliate, and the application shall be accompanied by a report from the responsible actuary of the pension plan involved.

3. In making its decision, the supervising entity shall take note of the concrete circumstances in which the financing excess originated, taking into consideration the interest of the pension fund members and beneficiaries, and shall not authorize the reimbursement when it will result, directly or indirectly, in a change to the assumptions or methods of calculation of the existing value of liabilities, in a change to the pension plan, or in a drastic reduction in the number of pension fund members in pension plans without acquired rights.

CHAPTER II PRUDENTIAL REGIME FOR MANAGING ENTITIES

SECTION 1 Solvency margin

Article 84

(Duty to establish a solvency margin)

1. A management company must have a margin of solvency which is adequate for, and compatible with, the activity it exercises.
2. The margin of solvency of a management company corresponds to its equity, free of all and any foreseeable obligations, and with the deduction of incorporeal assets.

Article 85

(Composition)

For managing companies, the matters which determine the margin of solvency, as well as the respective valuation criteria, are set in the same manner as for life-insurance activities.

Article 86

(Determination)

1. Without prejudice to the provisions of number 3, the amount of the solvency margin is determined in the following manner:
 - a) If the management company assumes the investment risk, a value corresponding to 4% of the amount of the respective pension funds;
 - b) If the management company does not assume investment risk, a value corresponding to 1% of the amount of the respective pension funds, provided that the duration of the management agreement exceeds five years, and that the amount set aside to cover management expenses set out in that agreement is fixed, for a period exceeding five years.
2. The value of the solvency margin, as regards individual membership of open pension funds, if the management company does not assume the investment risk, corresponds to 1% of the amount of the quota part of the fund which relates to these memberships.
3. The amount of the solvency margin may not, however, be less than the following percentages of the amount of managed pension funds:
 - a) Up to 600.000.000,00 MT - 1%;
 - b) Amounts over and above this amount – 1%⁷.

Article 87

⁷ Reference to 1% in both cases may be a typing error.

(Insufficiency)

1. Without prejudice to the provisions of number 1 of the following Article, whenever it appears that the margin of solvency of a management company is insufficient, whether circumstantially or temporarily, the management company must, without the time period determined by the supervising entity, submit a short term financing plan for the approval of the supervising entity, on the terms of the following numbers.
2. The short term financing plan to be presented, must be substantiated by an adequate plan of activities, and include provisional accounts.
3. The supervising entity shall define, on a case by case basis, the specific conditions which the financing plan referred to in the previous number shall meet, as well as its monitoring.

SECTION II

Regime of intervention

Article 88

(Management entity remedies and other measures)

1. Without prejudice to the provisions of the previous article, when a situation of insufficiency in the solvency margin of a pension fund management company is confirmed, the supervising entity, if necessary or adequate for the safeguarding of the interests of pension fund members or beneficiaries may, as a single or a cumulative measure:
 - a) Restrict or prohibit the free utilization of the assets of the management company, and the regime set out in number 2 of Article 82 shall be applicable, with the necessary adaptations;
 - b) Appoint provision managers for the management company, on the terms, with the necessary adaptations, of the provisions of the legislation which sets out the conditions for the licensing of insurers and the practice of insurance activities.
2. In addition to the measures referred to in the previous number, and alone, or cumulatively with any of these measures, the supervising entity may, in cases in which the management of the pension fund or funds does not guarantee prudent activity, and with a view to the protection of the interests of pension fund members or beneficiaries, and the safeguarding of the normal conditions of market functioning, determine, in the determined period, and with respect for the principle of proportionality, the application of some or all of the following remedying measures to pension fund managing entities:
 - a) Restrictions on the exercise of the activity of pension fund management, namely on the establishment of new or determined pension funds;
 - b) The prohibition or limitation of the distribution of dividends or results;
 - c) Subjecting certain operations or acts to the prior approval of the supervising entity;
 - d) Suspension or dismissal of office bearers in the company's corporate bodies;
 - e) Closure and sealing of establishments.
3. If it is confirmed that, despite the recovery and remedying measures adopted, it is not possible for the company to recover, the authorization for the exercise of pension fund management activities shall be revoked.

Article 89

(Publication of decisions by the supervising entity)

1. The supervising entity shall publish the decisions set out in the previous articles, which may affect the pre-existing rights of third parties, if not the fund itself, or the pension fund manager, on two consecutive days, in one of the newspapers with the greatest circulation in the national territory.

2. The decisions referred to in the previous articles apply independently of their publication, and are entirely effective as regards creditors.
3. In derogation from the provisions of number 1, when the decisions of the supervising entity exclusively affect the rights of shareholders or employees of the managing entities, when they are businesses, that entity shall notify the same, by registered letter, to be sent to the last known domicile address.

CHAPTER III SANCTIONS

Article 90 (Offences)

1. Non-compliance with the provisions of these Regulations, and all other acts or omissions which disturb or distort the normal conditions for the functioning of pension fund management activities, constitute contraventions punishable in terms of the following Articles.
2. The following are general contraventions:
 - a) The illegal utilisation of the name referred to in line e) of number 1 of Article 41 of these Regulations;
 - b) Non-compliance with the obligations regarding registration and obligatory publications;
 - c) The omission of information and communications owed to the supervising entity;
 - d) A delay in the provision of information or in the obligatory remission of documents⁸ to the supervising entity;
 - e) Non-compliance with the norms relating to the accounting regime applicable to pension fund management activities.
3. The infractions hereinafter referred to, are particularly serious contraventions:
 - a) The paying up of share capital on terms different to those set out in these Regulations;
 - b) The concealing of a situation of financial insufficiency, from the pension fund manager;
 - c) Intentional acts of ruinous management, performed by managers, by other members of the corporate bodies of the pension fund manager, and by entities subcontracted in terms of these Regulations, prejudicing affiliates, pension fund members, beneficiaries, and other creditors;
 - d) The practice, by holders of qualified participations, of acts which impede or hinder the wise and prudent management of the participating entity, or of (funds)⁹ managed by it;
 - e) The exercise of activities not include in the respective company object;
 - f) The unauthorised exercise of pension fund management activities;
 - g) Non-compliance with the prudential rules established for pension fund management entities;
 - h) Non-compliance with the instructions and recommendations of the supervising entity, resulting in prejudice to the interests of pension fund members and beneficiaries.

Article 91 (Sanctions)

4. The contraventions set out in the previous Article are punishable on the following terms:
 - a) Fine;

⁸ *Elementos*, which is broader than documentation

⁹ This sentence is grammatically ambiguous; “funds” has been inferred.

- b) Suspension of the administrative body, or other body with identical functions, for a period from six months to five years, in the cases set out in lines a), b), c), d), e), g) and h) of number 3 of the previous Article;
 - c) Temporary suspension of the authorization for the exercise of pension fund management activities, for a period of up to one year, in the cases set out in lines e), f), g) and h) of number 3 of the previous Article;
 - d) A revocation of the authorization for the exercise of pension fund management activities, in the cases set out in lines a) and b) of number 3 of the previous Article.
3. The sanction set out in line a) of number 1 shall be:
- a) From five thousand Meticaís to fifty thousand Meticaís, or from twenty thousand Meticaís to two hundred thousand Meticaís, depending on whether the fine is applied to an individual or collective person, as regards the infractions set out in number 2 of Article 90 of these Regulations;
 - b) From ten thousand Meticaís to one hundred thousand Meticaís, or from fifty thousand Meticaís to five hundred thousand Meticaís, for the infractions set out in number 3 of Article 90 of these Regulations, depending on whether the person concerned is an individual or a collective person.
4. In the case of re-occurrence, the minimum and maximum limits of the fine shall be doubled.
5. When the economic benefit obtained by the offender is higher than the maximum limit set in number 2 of this Article, the fine shall be increased to double this benefit.
6. The application of the sanctions set out in lines a) and d) of number 1 shall be published, on two consecutive days in one of the newspapers with the largest circulation.

Article 92 (Grading of fines)

- 1. Fines shall be graded, depending on the objective and subjective seriousness of the respective infraction.
- 2. Objective seriousness of the infraction shall be determined in accordance with the following circumstances:
 - a) Danger of damage to pension fund management activities, to the country's economy, or to affiliates, pension fund members and beneficiaries;
 - b) Whether the infraction was committed occasionally, or repeatedly.
- 4. In the determination of the subjective seriousness of the infraction, the following circumstances, amongst others, shall be taken into account:
 - 1. The level of responsibility held by the offender, in the pension fund manager;
 - 2. The economic situation of the offender;
 - 3. Prior conduct of the offender;
 - 4. Amount of economic benefit obtained or intended by the offender;
 - 5. Behaviour which makes the discovery of the truth difficult;
 - 6. Behaviour repairing resultant damage.

Article 93 (Liability for infractions)

- 1. Individual persons and companies, even when irregularly established, as well as associations, with or without juristic personality, may be held liable for the commission of infractions set out in this Chapter, jointly or not.
- 2. The companies and associations referred to in the previous number may be held liable for infractions committed by the members of their respective corporate bodies in the exercise of their functions, as well as for infractions committed by their representatives in acts performed in the name, and for the interest, of the entire collective person.

3. The liability referred to in the previous number subsists, even when the establishment of the relationship of representation was invalid, or ineffective.
4. The liability of the entire collective person does not exclude the individual responsibility of the persons referred to in number 2 of this Article.
5. The fact that the legal nature of the illicit act requires certain personal matters, and that these only exist in the person of the represented person, or that it requires that the agent perform an act in its own interest, while the representative had acted in the interest of the represented party, does not preclude the liability of the individual persons who had acted as representatives.

Article 94

(Joint responsibility for payment)

1. The directors or board members, as the case may be, are jointly liable for the payment of fines issued to the managing entities of pension funds, or to any others responsible for the practice of an infraction, in terms of the previous article, even if, on the date of the notice of penalty, these had already been dissolved, or were in liquidation.
2. The entities in the name of which, and for whose benefit, an infraction was committed, are jointly liable for the payment of fines issued to individual persons.
3. Those who had expressly opposed or disagreed with the practice of the facts which constitute the infraction, may not have the liability therefor, set out in the previous numbers, imputed to them.

Article 95

(Punitive competency)

1. The application of sanctions provided for in this section is within the competency of the Minister who oversees the area of Finance.
2. The competency set out in the previous number may be delegated, totally or partially, by a notice, published in the *Boletim da República* by the supervising entity, regarding the application of fines, in the case of contraventions.

Article 96

(Procedure)

1. The supervising entity is responsible for the institution and processing of the contravention procedures set out in this diploma.
2. Once the investigation or processing has been concluded, the head of the supervising entity shall decide that the process should be archived, if the investigations conducted did not prove the existence of an infraction.
3. If the investigation confirms the existence of an infraction, a charge shall be laid, which shall indicate the offender, the illicit acts imputed to him, and the respective circumstances of time and place, as well as the law which prohibits and punishes the act.
4. The accusation should be communication to the offender and to the entities which, in terms of Article 94 and these regulations, may be held liable for the payment of a fine, and a deadline of twenty days from the respective notification shall be set for the presenting, if desired, of a written defense, and the production of various proofs, provided that no more than five witnesses may be brought in respect of each infraction imputed to him.
5. The notification shall be made by post, with registration and advise of receipt, or by thirty day edicts, published on two consecutive days in one of the newspapers with the highest circulation in the place of the head office or the permanent establishment of the accused, or, if the accused is an individual person, at his place of domicile, whether or not the

offender is found to be there, or if he refuses to receive the notification, or if his address is unknown.

6. Following the conducting of the investigations deemed necessary in consequence of the presentation of a defense, the proceedings shall be presented to the Minister who oversees the area of Finance, for a decision, along with the opinion of the instituting party as regards the infractions which it considers to have been proven, and the sanctions which should be applicable.
7. When the determination of the individual liability of the persons referred to in number 2 of Article 94 of these Regulations is in dispute, the head of the supervising entity may determine the preventive suspension of its respective functions, for a period not exceeding thirty days, whenever it appears necessary for the conducting of the procedure, or for safeguarding the interests of pension fund management activities.

Article 97
(Appeals)

1. Contentious appeals against decisions taken are the responsibility of the Administrative Court, on the terms set out in the Law on Contentious Administrative Procedure.
2. An appeal has suspensive effect when the accused deposits, with a banking institution, and to the order of the fine-issuing body, the amount of the fine imposed, except if seized assets are sufficient for this purpose.

Article 98
(Compliance with an omitted duty)

Whenever an offence results from the omission of a duty, the application of a penalty does not dispense with the duty of the offender to comply with the duty, if it is still possible.

Article 99
(Prescription)

1. The period for the institution of an action set out in this section prescribes three years from the date on which the infraction was committed.
2. The application of the sanctions set out in this section prescribes, equally, three years after the date on which the punitive notice was made an order of court.

TITLE VI
FINAL AND TRANSITIONAL PROVISIONS

Article 100
(Subsidiary law)

Pension funds and their respective management entity are regulated, in the aspects not provided for in these Regulations, by the norms applicable to insurance activities, namely as regards the prevention and combating of money-laundering.

Article 101
(Transitional provisions)

1. Assets which, on the date of publication of the present diploma, have already been established, in an autonomous form, as a guarantee for compliance with pension plans, complementary to obligatory social security, and are intended to be maintained as pension funds, shall submit to the regime set out in these Regulations.
2. For the purposes of the provisions of the previous number, the assets referred to therein must, within a period of two years, regularize their situation, requesting authorization for

the respective establishment as pension funds, in terms of these Regulations, on pain of being dissolved.

3. The provision of the previous numbers shall not prejudice the right to receive the accumulated values of the total contributions effected in favour of each pension fund member, and the income from their investments, on the date of dissolution, as well as the financing of retirement benefits by way of other methods and instruments, which may not be designated as pension funds.

ANNEXURE

GLOSSARY

For the purposes of these Regulations,

1. A "Member" is an individual or collective person who concludes a membership Agreement with an open pension fund.
2. An "Affiliate" is a collective person whose pension plans are financed by a pension fund.
3. A "Beneficiary" is an individual person with a right to the benefits set out in the pension plan, whether or not a pension fund member.
4. "Typographical characters" are letters, numbers or other printed symbols.
5. A "Contributor" is an individual person who contributes to the fund, or a collective person who makes contributions in the name of, and for the benefit of, a pension fund member.
6. "Long term unemployment" is the situation of dependent or independent workers who, being available to work, have been unemployed for more than 12 months, and who are registered at the respective employment centers.
7. "Acquired rights" exist whenever pension fund members maintain the right to conferred benefits in a pension plan, in accordance with the defined rules of the plan, irrespective of the continued existence, or termination, or the relationship existing with the affiliate.
8. A "Pension fund" means the autonomous asset base exclusively reserved for the creation of one or more pension plans.
9. A "Closed pension fund" is a fund which relates only to an affiliate, or, if there are various affiliates, when there is a business, associative, professional or social relationship between the same, and when the consent of these affiliates is required for the inclusion of new affiliates in the fund.
10. An "Open pension fund" is a pension fund in which there is no requirement for the different members of the fund to have an existing relationship, and membership of the fund is only dependent upon acceptance by the managing entity.
11. A "Pension fund member" is an individual person in terms of whose personal and professional circumstances the rights conferred by a pension plan are defined, irrespective of whether or not he contributed to its financing.
12. A "Pension plan" is the program which defines the conditions on which the right to receive an old-age retirement pension, a disability pension, or a survivor's benefit, or any other comparable contingency, in accordance with the provisions of this diploma.
13. "Defined benefit plans" are those in which the benefits have been previously defined, and the contributions are calculated so as to guarantee the payment of those benefits.
14. "Defined contribution plans" are those in which contributions are previously defined, and benefits are those determined as a function of the amount of the contributions paid, and the respective accumulated income.
15. "Hybrid plans" are those which have characteristics of both defined benefit plans and defined contribution plans.
16. "Contribution plans" are those in which there are contributions from pension fund members.
17. "Non-contribution plans" are those plans financed exclusively by the affiliate.
18. "Investment policy" is a compilation of rules, relating to each other, which determine and set out the conditions, without prejudice to legal restrictions, for the asset composition of pension funds and the management of the respective investments.