Report on the development of Long Term Savings Instruments in Ghana

August 2003

Sigma One Corporation

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Improved Policy Reform and Financial Intermediation
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by:

Sigma One Corporation

In fulfillment of the following milestones:

4.12 Review implications and impact of introducing Private Pension Funds as Supplements or substitutes for SSNIT

August 2003 **Sigma One Corporation**

REPORTS OF THE LONG-TERM SAVINGS COMMITTEE

On The Establishment of Long-Term Savings Plans In Ghana

THE PERSONAL RETIREMENT PLANS AT A GLANCE

Promoting Personal Retirement Plans:

- A long term savings programme designated as a second tier Personal Retirement Plan (PRPS) is to promote social protection during old age, and cushion against other future exigencies.
- These Personal Retirement Plans are Supplementary to SSNIT Pension Plan
- The Personal Retirement Plans (PRPs) may either be employer-sponsored and/or individually set up. (IRPs)
- Both PRPS & IRPS are tax exempt.
- Early withdrawals from the plans are to be taxed as income and also subject to premature withdrawal penalty.
- The PRPs & IRPs are not Provident Funds or Pension plans.

Individual Savings

- Additional Personal Retirement Plans are to be established as 3rd tier schemes. These are to be designated as and to cater for:
- Individual Home Ownership Plan
- Individual Educational Savings Plan

Tax Exemption For Personal Retirement Plans

- All Personal Retirement Plans must be tax-exempt. There will be a contribution ceiling of 35% of a contributor's annual income as tax deductible for all Personal Retirement Plans including the existing SSNIT scheme (17½ SSNIT,17½ PRPs).

Benefits of Personal Retirement Plan

1) Provides Security for future social factors like retirement, disability, children's education and housing development.
2) Encourages Individual Financial Discipline and fosters Long Term Planning
3) May serve as collateral for loans

4) Increases the accumulation of funds for long-term investments and expands a vibrant and deep capital market.
5) Mobilizes and channels funds into productive investment activities

Existing Long Term Savings Schemes:
Social Security And National Insurance Scheme (SSNIT)

- SSNIT is regarded as Ghana's national pension scheme or long term saving channel, but it is national in name only, by covering only 850,000 workers out of an estimated 9,000,000 in the workforce.
- SSNIT as it operates today, was established by PNDC law 247 which converted a defunct provident fund dating from 1972 into a pension scheme. Besides pensions, SSNIT also provides invalidity (or disability) Coverage, and Death & Survivors Benefits. Because of its multi-coverage role, SSNIT contributions (12½% employer and 5% employee) cannot be directly compared with a purely retirement oriented savings plan.

Insurance Industry Facilities

- Insurance products are yet to make appreciable impact on long term savings facilities. It is important to emphasize however that, significant strides are being made by the insurance industry to promote long term savings.

Other Retirement Schemes

- There are other retirement schemes such as CAP 30 and end of service benefits (ESBs). However, these are unfounded plans, therefore, they do not form part of the pool of long-term savings.

CAP 30

- The present CAP 30 pension plan is based on, and gets its name from Chapter 30 of the Pension Ordinance of 1946. CAP 30 is not a long term savings plan. It is rather a non-contributory, defined benefit pension scheme for civil servants, and as such is an unfounded liability of the Government of Ghana.

End of Service Benefits (ESB)

- End of service benefits (ESB) were until 1991 payments made from an employer to retiring employees, typically one month of salary for each year of service. Freezing of ESB occurred at the same time as the establishment of SSNIT as a pension scheme, during the period of consolidation of workers compensation components for tax purposes, and privatisation of SOEs. In any case, if ESB, past or future, are not funded, they are not a form of long-term savings that represent a potential pool of long-term investment capital.

Private Savings Plans Or Private Provident Fund Schemes

- These scheme have taken the form of company provident funds, retirement plans, welfare funds, benevolent funds, savings plans etc. Plan sponsors who promote such private provident funds are employing organisations and can be found among Ghana's 13,000 corporate organizations 35 SOEs and numerous government agencies.
- The existing long-term savings plans in Ghana have not produced a pool of long-term funds for investment because of the general factors militating against the establishment of long term savings or private personal retirements schemes enumerated above.

PROPOSED LEGAL AND REGULATORY FRAMEWORK

- A legal and regulatory framework to establish and supervise the operations of the Personal Retirement Plans will be put in place.
- Employers are required to make Private Retirement Plan (PRPs) available to employees ie to inform employees in writing, to make deductions from salaries, transfer contributions to funds managers rapidly and allow funds managers to make presentations to employees; employers are encouraged to contribute to PRPs.

- Employees and employers (if the employer contributes) will be expected to form a committee in each corporate organisation to consider the choice of a funds manager/managers and other issues pertaining to long-term savings.
- Contributions to PRPs are exempt from taxes up to 17½ of the employee's salary. This cap takes into account the total contributions from either employee or employer, or both.
- Income from PRPs and IRPs is tax exempt.
- Funds Managers will be required to offer Individual Retirement Plans at a minimum qualifying amount as determined by SEC.
- Residents abroad will be offered IRPs denominated in foreign currency.
- Contributions to PRPs and IRPs are available to employees only after 10 years or retirement age or certified disability or death.
- Early withdrawals are subject to tax and 10% penalty.
- Related plans for housing and education can be established but tax exemption for contributions to any and all plans is limited to 17% of the employee's salary.
- Employer Contributions not vested to employees are to be returned to the Employer and reported to IRS as taxable income for the period the funds were returned.
- All tax-exempt long-term savings plans will be managed by Professional Funds Managers.
- The Funds Managers are allowed to also manage LTS funds for their own employees PRPs.
- Funds Managers will be approved and monitored by the Regulator (SEC) which in turn will be answerable to an oversight committee of Parliament.
- Funds Managers will be required to maintain systems and procedures that will insure prompt, accurate accounting, recording and reporting of account activity to each participation on a regular basis, at least quarterly.
- Funds Managers will be required to clearly distinguish those funds under management and to segregate those funds from its own assets as reported on its financial statements.

Long Term Savings Committee

Main Report

Chairman's Acknowledgment's

As part of the efforts of the National Development Planning Commission to establish objectives for achieving macroeconomic stability that accommodates growth and poverty reduction, the Long-term Savings Committee was convened by the Minister of Economic Planning and Regional Cooperation.

A reactivated and reconstituted Long-term Savings (LTS) Committee met for a series of seven sessions during the period from 8 to 29 October 2002. The committee's deliberations are recorded in the minutes (available separately)

The purpose of the meetings was to consider and recommend a framework for long-term savings programs and to propose associated legislation. Our point of reference was the 'Review of Long-term Savings Plans in Ghana' prepared by Sigma One Corporation in August 2002 at the request of the Ministry of Economic Planning and Regional Cooperation. The review provided a useful summary of issues for initiating our deliberations.

The Committee explored the background of savings in Ghana in order to determine why there were no long-term funds, and conducted a review of pertinent legislation already on the books. It considered the changes that could be made to allow pools of long-term funds to grow, taking into account similar experiences in other economies.

The Committee's deliberations and conclusions are reflected in this report. **Our consensus is that the social and economic benefits of long-term saving plans for the economy and the individual Ghanaian worker justify the effort required to enable long-term pools of funds to develop.** We believe that these potential benefits can be achieved with little risk to the economy or to individual workers.

While it is not possible at this stage of development to address every detail and eventuality, we think that both the public and the private sector s will be able to build long-term savings plans, much as they have done in other economies. **We believe that what is needed from government is: A favourable tax regime and A clear, effective regulatory environment.**

These conditions are addressed in the committee annex on Guidance for a proposed Legal and Regulatory Framework.

On behalf of the Committee, I want to express gratitude for being selected to deal with the important issues of long-term savings in Ghana, and hope that our recommendations will be acted upon.

I would also like to thank the individuals, and the institutions, who gave their time, experience and dedication to this effort. The commitment and effort of the committee members made the committee work a challenging and professional exchange of ideas.

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for the Committee
Mr. S. Osei Bonsu
Chairman, Long-term Savings Committee
Office Of The Senior Minister

Mr. Wolanyo Amoa	Mr. Jacob Anderson	Mr. Adu Anane
Antwi		
Mr. Kwasi Asamoah Baffour	Mr. E. Asiedu Nyarko	Mr. Francis Badasu
Mr. Jackson Berko	Mr. Smart Chigabatia	Mr. Alex Frimpong
Mr. D. K. Mensah	Ms. Marinna Nyamekye	Mr. Sammy Osei
Bonsu		
Mr. Eddie Safo Kwakye	Mr. Wilson Tei	Mr. Sam Tettey
Mr. I. K. Yanney		

Executive Summary

Summary of decisions on Issues:

Employer required to make Private Retirement Plan (PRP) available to employees i.e., to inform employees, to make deductions from salaries, transfer contributions to Funds Manager rapidly and allow Funds Managers to make presentations to employees; employer encouraged to contribute to PRP.

Employees will be expected to form a committee in each corporate organisation to consider the choice of a Funds Manager and deal with long-term savings issues. Why a committee? why not let individuals chose fund managers if it's the workers funds

Contributions to PRP are voluntary and driven by employees. The employer may or may not choose to provide a contribution.

Contributions to PRPs are exempt from taxes up to 12½% of the employee's salary. This cap takes into account the total contributions from employee and employer.

Income from PRPs and IRPs is tax exempt.

Funds Managers will be required to offer Individual Retirement Plans (IRP).

Residents abroad will be offered IRPs denominated in foreign currency.

Up to 15% of PRPs and IRPs may be converted to foreign currency and invested abroad with restrictions.

Proceeds from PRPs and IRPs are not available to employees before retirement at age 60.

Early withdrawals subject to tax and 10% penalty.

Related plans for housing and education can be established but tax exemption for contributions to any and all plans is limited to 12½% of the employee's salary.

All tax-exempt long-term savings plans will be managed by professional Funds Managers which can also manage LTS funds for its own employees' PRPs.

Funds Managers will be approved and monitored by the Regulator (SEC) which in turn will be answerable to an oversight committee.

Funds Managers will be required to maintain systems and procedures that will insure prompt, accurate accounting, recording and reporting of account activity to each participant on a regular basis, at least quarterly.

Funds Managers will be required to clearly distinguish those funds under management and to separate those funds from its own assets as reported on its financial statements.

I. Introduction and Background

Why is it necessary for a committee to be convened to consider how to create long-term savings in Ghana? Why are there not already long-term pools of funds? These perplexing questions must be answered and the implications of the answers must be fully understood before Ghana can enjoy the benefits of long-term savings programs. To provide answers to these and other pertinent questions, we first look at the social protection implications of long term savings and then proceed to examine why long term savings are absent from Ghana.

Social protection has become mankind's pre-occupation in the immiserizing process of human condition. Contingencies arose due too vagaries of life including sickness, old age, unemployment, feeding a large family and invalidity, to mention a few. Under such distressed conditions, social protection was provided through socio-political structures, and more informally, through kinship and communally based solidarity arrangements. Thus, well before the advent of Europeans and the rise of modern states, traditional African societies realized the need to put in place measures to cater for the major contingencies through collective security and mutual help to one another.

Until recently, the extended family was an institution in Ghanaian communities that provided social and economic support to various family members at the appropriate times of need. Traditionally, the family was the critical focus in the provision of support when members became old and were threatened by economic deprivation, disability, and social isolation.

In fact, it was legend that traditional extended family practices transcended socio-economic protection to offering psychological stability and moral upliftment. Unfortunately, however, there is a gradual shift away from primary reliance on the extended family towards dependence on more semi-formally institutionalized social security systems. The pressures created by the promotion of economic growth, together with the severe resource constraints confronting traditional systems, are all putting strains on the extended family as an effective cohesive unit that provides income security for the aged and the disabled, care for the sick members of the family, the new born child and the mother, the orphan and even the complete stranger..

Consequently, structural adjustment policies have increased the need for social protection both indirectly by their effects, and directly by the withdrawal of social protection measures such as subsidies, and price controls.

Indications are that the current scale of deprivation reflects the fact that the growth impact of economic reforms is inevitably slow. If the past is to reflect the future, efforts have to be made to provide effective social security schemes to a larger number of people than presently exists. Ghana has to evolve suitable social security schemes to protect the people of this nation. It is to this that we now turn to Long Term Savings (LTS) using supplementary Private Retirement Plans as a medium to provide additional security for all incomes. New institutional arrangements would have to be made and for this purpose, labour would need the assistance of Employers and Government. Each of the three social partners plus the self employed needs the other to facilitate this arrangement for providing social security to all Ghanaians.

The Committee proposes that the underlying chronic macro-economic instability in the economy has to e addressed. The characteristics of this condition - erratic and sometimes sharp periods of inflation; steady, sometimes precipitous, loss of value of the cedi; high real interest rates; and high uncertainty about the economic future - perpetuate a short-term economic mentality among citizens.

The resulting consternation among both savers and investors is reflected in a demand pattern that emphasises the short-term:

- Strong demand for high-quality short-term financial instruments e.g., 91 day Treasury Bills and Certificates of Deposit at major banks.
- Low demand for longer-term financial instruments.
- Preference for investment in hard assets rather than cedi-denominated financial instruments.
- Shift to dollars or other hard currency.
- Shift of financial assets outside Ghana.

This kind of economic behaviour does not lead to the formation of long-term pools of capital in a country. Behaviour has to be changed in Ghana if long-term savings plans are to be developed.

It has been said that one reason there is little long-term savings in Ghana is that there are no attractive long-term financial instruments (like government and corporate bonds), but we believe that these issues are two sides of the same coin and that the necessary conditions for one are the same for the other. In other words, the macroeconomic stability required to encourage long-term savers will also promote long-term borrowing.

With no long-term savings there can be no serious and sustained long-term investment. An economy is hobbled if it has to manage without long-term pools of funds available for productive investment and ways have to be found to encourage both activities. The

Recommendations found later in the Report can help to establish a long-term savings pool.

II. Obstacles to Solution

Apart from the danger of government policy and management leading to macroeconomic instability, there are other obstacles to the establishment of long-term savings plans. While moving toward macroeconomic stability is a necessary condition for long-term savings, it is not in itself sufficient to change the behaviour of Ghanaian savers. Relatively recent economic volatility and mismanagement is a fresh memory.

A principal obstacle is the lack of strong incentive to encourage savers to distinguish between short-term and long-term commitments and to choose the latter. The Committee has considered experience in other countries and believes this hurdle can be surmounted only through government intervention in the form of a tax incentive.

Relatively low wages in a low-income country is often put forward as an explanation for the lack of long-term savings. Low wages is no doubt a factor, which works against saving, but the apparent volume in 'provident funds' in Ghana suggests that the motivation to save, even without incentives, is there.

The absence of attractive financial instruments for long-term savings is a serious obstacle but, in many ways, it is a 'chicken and egg' situation. Much work has been done separately on the establishment of a bond market in Ghana, which would provide suitable investment instruments for long-term savings pools. While long-term savers need attractive long-term financial instruments, bond issues need to be able to tap long-term pools of funds; the two requirements go hand-in-hand. Some form of offshore investment could be another avenue that could offer a strong attraction for a long-term saver.

There is in Ghana a memory of past expropriation of financial assets and a lingering distrust of financial institutions that contribute to the short-termism exhibited by

Ghanaian savers. There is also fear among some savers that complicated financial assets touted for long-term investment may be phoney at worst or unduly risky at best. The Committee believes that an effective regulatory and oversight function would go a long way towards allaying savers' reservations for long-term products.
There is at present no formal administrative framework to collect, channel, account for, record and report long-term savings. There are however, various frameworks in corporate organisations to deal with SSNIT contributions, 'provident funds' and insurance products. The Committee believes that existing administrative frameworks could accommodate many of the requirements of new long-term savings plans without unduly burdensome costs and that the details of administrative matters could be handled by competing Funds Managers.

III. Issues

At the onset of its deliberations, the Committee recognised that a tax incentive was crucial to a successful long-term savings program and that an employer-sponsored Private Retirement Plan (PRP) should be the cornerstone upon which other long-term savings plans with shorter objectives but still long-term e.g., home ownership and education, could be structured in Ghana.

The Committee tried to anticipate and consider all the pertinent issues associated with long-term savings, using as its guide the list on page 26 of the 'Review of Long-term Savings Plans in Ghana' (Annex 4). This list groups issues into ten broad categories.

Establishment of Plans. The Committee discussed various elements including participation, individuals, responsibilities, rules, regulations, percentages and caps.

There was a general consensus that the plans should be entirely voluntary and that contributions must not be mandated, required, or imposed by government on employer or employee. It was agreed, however, that corporate organisations should be required to offer the administrative framework to employees i.e., explanation of how the plan works, deductions, accounting, transfers to Funds Manager, and in some cases help with selecting a Funds Manager. The rationale is that all of these organisations have similar requirements with regard to SSNIT deductions, many of them have ‘provident funds’ or insurance schemes and administering a Private Retirement Plan for employees should not be a costly administrative burden on an organisation. [do we need to emphasis that currently such plans are currently under –regulated and their lack of portability is a mayor impediment to employee participation?]

It is of course expected that in many organisations both employees and employers will contribute to a Private Retirement Plan.

The respective participation should be driven by the employee contribution i.e., if the employee does not contribute, the employer will not contribute for that employee.
The rational is that an employee will be highly [highly ? why?] motivated to find a way to contribute, for if he does not, he loses the employer contribution. [we have not talked about mandated matching contributions – have we? This implies a match when there should be no such implication] The relative contribution percentages should be left to the individual corporate organizations to work out. [we need to allow for variable contributions like profit sharing] As with existing ‘provident funds,’ some employers may choose not to contribute at all, some may match employee contributions, some may exceed employee contributions, etc. The for these programs, combined tax-exempt contribution should not exceed 12½% of the employee’s salary. The rationale is that the maximum tax-exempt portion of salary be 30% (17½%, SSNIT; 12½%, long-term savings).

It was agreed that long-term savings plans should be open to all, either through an employer sponsored Private Retirement Plan, or through an Individual Retirement Plan with a Funds Manager. This would include all workers in Ghana whether in the formal or informal sectors as well as residents abroad who might want to hold an Individual Retirement Plan in Ghana.

Because of the tax-exempt feature of the Private Retirement Plan, the tax aspect has to be dealt with in Individual Retirement Plans. The Committee agreed that a satisfactory way to deal with this was with a declaration submitted to the Funds Managers by the saver stating that: "1. I hereby certify that the contributions to my Individual Retirement Plan do not exceed 12½% of my (period?) annual? income in Ghana. 2. I have no other Individual Retirement Plans in Ghana and I am not currently covered under an employer-sponsored Private Retirement Plan."
In order to encourage participation for the informal sector, a Funds Manager should be obliged to accept Individual Retirement Plans with monthly contributions as low as 10,000 cedis, as is the case in the insurance industry.

Residents abroad will make contributions in dollars or other hard currency. Fund Managers should be permitted to invest such contributions abroad with certain restrictions. Also some portion (15% was generally agreed) of cedi contributions can be converted to dollars and invested abroad, with certain restrictions and under close supervision by the Regulator and the Bank of Ghana.

Whatever contribution percentages are agreed with employer-sponsored Private Retirement Plans, they will apply to all grades of employee i.e. the employer will not provide different tax-exempt percentage contributions to different employees.

2. Vesting and ownership of funds. The Committee considered how long an employee had to wait to join a Private Retirement Plan, how long before the employer's contribution belongs to the employee, what happens when the employee leaves the company or dies and various portability matters.

Ownership in an employer-sponsored Private Retirement Plan should take effect, at the employee's option, at the same the SSNIT contribution begins, in the case of a new employee. Veteran employees can join the plan when they like, on providing the necessary information to the employer. One bit of information will be the employee's beneficiary, who would receive the proceeds of the long-term savings plan on the death of the employee. An employee leaving an employer should have three options with his Private Retirement Plan: 1) Transfer the balance in his plan to his new employer's Private Retirement Plan 2) Convert the amount in his Private Retirement Plan to an Individual Retirement Plan with the same Fund Manager or 3) Convert the balance to cash and pay necessary tax and penalty.

3. Tax treatment and revenue implications. The Committee concluded early on that tax incentives were the key to Private Retirement Plans. Contributions of up to 12½% of salaries should be exempt from taxes. This percentage can be shared in any way determined by employees and employers with one or another group contributing all, or nothing, or any combination in between.

Estimates of tax revenue loss are based on actual figures furnished by IRS for 2001. These show a total estimated tax loss of 102 billion cedis or about 1½% of total tax revenue. Calculations assumed a contribution to a long-term savings plan of 6¼% of employees' salaries matched by a 6¼% contribution by employers. In terms of tax revenue loss, this is a worst case example as its calculations are based on all tax paying employees and employers contributing. This 100% participation in long-term savings plans would almost certainly not be the case. The Committee concluded the estimated tax loss is justifiable when set against the considerable benefits of long-term savings i.e., a long-term pool of funds for productive investment and the supplementary retirement aspect for Ghanaian workers.

It is expected that the loss of revenue will be more than offset by the benefits gained by the long-term funds available for investment. Furthermore, this investment pool will create jobs which in turn will pay taxes and generate long-term funds. Funds withdrawn prior to retirement will be taxed and a penalty will be applied. Funds withdrawn after retirement will taxed at the rate appropriate for the individual at the time of withdrawal.

4. Access and restrictions. In effect, the Committee addressed the longevity of the plan by deciding on the name, 'Private Retirement Plan'. The employee has access to his funds at retirement at age 60. This means that to benefit from the tax exemption, funds must remain in the plan for the long-term. Of course, the funds belong to the employee/saver and he can take them whenever he wants if he is willing to forfeit the tax benefit and, suggests the Committee, pay a penalty of 10%.

Recognising that variations on the long-term theme could be attractive for the employee/saver and help to create long-term savings pools, the Committee recommends specialised savings plans for housing and education. These plans would have minimum tenors of ten and five years respectively and could be liquidated only on the presentation of specified
purpose – related certification by the employee/saver.

The Committee expects that a long-term saver would choose from among the three long-term savings objectives, but conceivably a single employee could participate in three separate plans. Likewise an employee/saver could continue to participate in a post-tax 'provident fund' in order to accommodate short-term savings objectives.

The object is not to replace or pre-empt other savings plans with a Private Retirement Plan, but rather to give workers a viable choice and make long-term savings options attractive.

Funds Management. The Committee agreed that Private Retirement Plans must be managed by professional Funds Managers and not by the company sponsoring the Retirement Plan. An exception is the case of a professional Funds Manager managing the Private Retirement Plan of its own employees. Members thought this was not inappropriate as the Fund Manager was a professional manager approved and monitored by the Regulator, the monies in the Private Retirement Plan (its own and others under management) are segregated from the financial statements of the Funds Manager, and the Funds Manager must operate according to Private Retirement Plans rules. The SEC already has regulations in place that could apply.

Funds Managers will be expected to market their services to Plan Sponsors and their employees, and to explain performance expectations, risks, charges and compensation. Regulators will not set compensation levels or percentages but it is expected that competition will establish ranges. In any event, it must be made clear to participants in Private Retirement Plans or Individual Retirement Plans what the charges are.

6. Investment Choices. The Fund Managers will invest proceeds from Private Retirement Plans in a portfolio of assets reflecting their own investment philosophy, expectations communicated to their clients and, what choices are available in the market. The Committee recognises that one of the reasons that long-term savings have not developed is that attractive long-term instruments are few. It is expected that the nascent bond market will go a long way toward providing attractive long-term options.

Since the Individual Retirement Plans will be open to residents abroad (expected to be expatriate Ghanaians), provision will have to be made for investment offshore. The investments from abroad will be made in foreign currency and Funds Managers must be free to invest these proceeds abroad to minimise investment risks.

The Committee considered the possibility of marking some percentage of Plan proceeds raised in Ghana for foreign currency investments as well. While recognising the existing legal obstacles, members concluded that a foreign investment option would provide a useful diversification and a powerful hedge for the cedi portfolio, as long as this option has appropriate limits and restrictions. Foreign investments made by Funds Managers will be limited to 15% of Private Retirement Plans and Individual Retirement Plans under management plus any amounts invested abroad for Individual Retirement Plans funded by foreign currency. Offshore investments will be restricted to debt obligations of the United States government and the European Central Bank along with Certificates of Deposit issued by the top 50 commercial/universal banks in the world provided the Regulator does not prohibit dealing with a bank for supervisory or other risk considerations.

7. Administration. It is expected that much of the burden of administration will naturally fall on private Funds Managers. These companies will receive monies from the Plans, invest and manage the money, record and report on the results and eventually return funds to the participants.

The content and frequency of reports was a topic of much discussion with the Committee noting that administrative and systems costs could possibly be heavy. This item, along with a number of others, was deemed to comprise matters of operational detail that could best be dealt with after enabling legislation established the framework for a long-term savings program. These details could be established and agreed in discussions between Regulators and Operators. A single-purpose Retirement Plan processing company was mooted as a possible option.

8. Oversight and regulation. The Committee concluded that Securities & Exchange Commission should be the Regulator of Private Retirement Plans but noted that coordination with other Regulators i.e., Bank of Ghana and particularly the National Insurance Commission will be a challenge, at least initially. Covering the cost of regulation is also an important challenge to be met after the framework is in place. An appropriate independent oversight committee was strongly recommended.

9. Systems and software. Like administration matters, the Committee determined that systems issues could be best handled after legislation is agreed and Regulators and Operators are identified and have begun work towards the establishment of an LTS program.

10. Insurance and guarantees. While it was expected that Regulators will have reserve funds to cover costs of intervening in the operations of a troubled Funds Manager, the Committee did not think it a viable approach to consider insurance or guarantees for long-term savings under management.

Summary of decisions on Issues:

Employer required to make PRP available to employees i.e., to inform employees, to make deductions from salaries, transfer contributions to Funds Manager rapidly and allow Funds Managers to make presentations to employees; employer encouraged but not required to contribute to PRP.

Employees will be expected to form a committee in each corporate organisation to consider the choice of a Funds Manager and deal with long-term savings issues. Why a committee? why not let individuals chose fund managers if it's the workers funds

Contributions to PRP are voluntary and driven by employees. The employer may or may not choose to provide a contribution.

Contributions to PRPs are exempt from taxes up to 12½% of the employee's salary. This cap takes into account the total contributions from employee and employer.

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Funds Managers will be approved and monitored by the Regulator (SEC) which in turn will be answerable to an oversight committee.

Funds Managers will be required to maintain systems and procedures that will insure prompt, accurate accounting, recording and reporting of account activity to each participant on a regular basis, at least quarterly.

Funds Managers will be required to clearly distinguish those funds under management and to separate those funds from its own assets as reported on its financial statements.

Expectations

It became increasingly clear during the discussions of the Committee that all the issues related to the development of a long-term savings program for Ghana could not be settled in one series of meetings. In its efforts to discuss and decide on the details of various topics, the Committee realised that while it could deal confidently with certain matters, there were numerous details of other topics that it was pointless to try to fix at this early stage of long-term savings deliberation. The Committee concluded that it should focus its efforts and discussion on those topics necessary to establish a framework for a long-term savings program and action steps for carrying it forward. Other topics e.g., qualification of Funds Managers, administrative details at the levels of Plan Sponsor and Funds Managers, exact asset allocation guidelines, reporting requirements, systems needs, exact regulations etc., need to be addressed at a later date and by organisations other than the Long-term Savings Committee.

This realisation caused the Committee to consider the LTS program in two stages: the first currently underway leading up to enabling legislation, and the second following the passing of a LTS law. The second stage will likely deal mainly with organisational and operational matters. It is expected that these matters could require considerable time to accomplish before an active, full scale long-term savings program is a reality in Ghana. During the second stage the Committee expects the need for considerable interaction among numerous groups representing Plan Sponsors, Funds Managers and Regulators. It is further expected than in order to be productive and directed, the activities of these various groupings would have to be coordinated and there will likely be a role for the LTS Committee during this stage. A tentative set of action steps is outlined in the Recommendations section.

Conclusions

The deliberations of the Long-term Savings Committee have caused it to come to the following conclusions:

Economic growth is hampered by the lack of long-term capital.

Reasonable macroeconomic stability favors the development of a long-term savings program.

Current savings in Ghana is short-term.

A tax incentive is required to encourage employees to make long-term savings commitments.

The estimated loss of tax revenue is between one and two percent of total tax revenue for the LTS program recommended.

A long-term savings program requires satisfactory long-term financial investment instruments.

Plans for developing a government and corporate bond market in Ghana should go hand-in-hand with the development of a LTS program.

Diversification of investments for a Private Retirement Plan should include an element of offshore investment.

Operation of a successful long-term savings program requires a capable and vigilent regulator.

There are a series of action steps which must be accomplished if a long-term savings program is to succeed.

Recommendations

The Long-term Savings Committee recommends approval of a long-term savings program for Ghana in the form of Private Retirement Plans that incorporate both a tax incentive and an offshore investment element according to the proposed Legal and Regulatory Framework included in this Report as Annex 6.

In order to promote and encourage the implementation and operation of an effective long-term savings program, the Committee recommends the following sequential action steps to be taken between now and July 2003.

Dissemination of LTS Report to stakeholders and subsequent discussions.
Enactment of enabling legislation.
Reconvening of the Long-term Savings Committee.
Rethinking and adjustment of these action steps.
Constitution of the Regulator.
Development of framework regulations.
Discussions led by Regulator with Plan Sponsors and Funds Managers.
Education of potential Retirement Plan participants.
Coincident development of Ghana Bond Market.
Review of progress and open issues by the Long-term Savings Committee.
New series of action steps.

RECOMMENDATIONS FOR A LEGAL AND REGULATORY FRAMEWORK

FOR LONG-TERM SAVINGS PLANS IN GHANA

1.0 INTRODUCTION

1.1 This Report contains a recommended legal and regulatory framework to provide for the orderly establishment and operation of long-term savings plans in Ghana. The recommended framework is aimed at giving effect to recommendations made by the Long-Term Savings Committee, and is based on internationally accepted standards.

1.2 This Report is primarily the work of the legal adviser to the Long Term Savings Secretariat. This Report represents the professional recommendations of the legal adviser and is dated October 2002.

2.0 RECOMMENDED LEGAL AND REGULATORY FRAMEWORK FOR LONG-TERM SAVINGS PLANS IN GHANA

It is recommended that a new legal and regulatory framework be put in place to govern long-term savings plans. It is recommended that the new framework should have the following parts:

(a) A new Act of Parliament to provide a regulatory framework and tax incentives for long-term savings plans;

(b) Consequential amendments to certain existing legislation to give effect to the recommendations of the LTS Committee;

(c) The promulgation of the current Draft Trust Bill to support the regulation of Trustees who will be involved in the administration of long-term savings plans.

These are discussed in more detail in what follows.

3.0 NEW ACT OF PARLIAMENT

It is recommended that a Long-Term Savings Act be enacted to provide the general framework for regulating long-term savings plans in Ghana. The general outline of the proposed legislation should include the following recommended parts.

OBJECTIVE

We recommend that the stated objective of the new legislation should be to provide for the orderly establishment and operation of tax-incentive-based long-term savings plans in Ghana.

PART I: APPLICATION

The first part of the Act should provide that its provisions are applicable to all long-term savings plans in Ghana as defined in Part II of the Act.

PART II: LONG-TERM SAVINGS PLANS

This section should grant general approval for the establishment and operation of long-term savings plans, subject to meeting laid-down procedures. Long-Term Savings Plans should be defined as follows:

'Any plan established solely for either or all of the following purposes:

(a) The provision of benefits for members of the plan in the event of retirement;

(b) The provision of benefits for members for meeting home ownership and education needs;

(c) The provision of benefits for members in the event of total permanent disability;

(d) The provision of benefits for dependants of members in the event of the death of the member.

And shall include employer-sponsored Private Retirement Plans, Individual retirement Plans offered by fund managers, and Home Ownership and Education Plans offered by fund managers.'

PART III: ESTABLISHMENT OF PLANS

This Part should deal with procedures for the establishment of long-term savings plans.

(a) Rules

Plans should be established pursuant to Rules agreed upon between plan sponsors and plan members. Such Rules should contain certain minimum provisions that will be prescribed by the Commission by subsidiary legislation, from time to time. Each Plan member should be given a copy of the Rules of the Plan on joining.

(b) *Trustee and Trust Deed*

In addition to the Plan Rules, every Plan should have a Trustee appointed pursuant to a Trust Deed. Trustees will hold Plan's assets on behalf of members. The Trust Deed should contain certain minimum provisions that will be prescribed by the Commission by subsidiary legislation, from time to time. Persons who will be eligible to act as trustees should be specified by the law. Persons declared bankrupt or who have a proven record of dishonesty, fraud, or theft should be disqualified from acting as trustees.

(c) *Administrative Framework*

In the case of employer-sponsored plans, an administrative framework should be put in place by each employer to facilitate the choice of fund managers and trustees.

PART IV: TAXATION

This part of the law should provide for tax incentives for long-term savings plans. Specifically the following provisions are recommended:

(i) For the avoidance of doubt, contributions made by an employer to a long-term savings plan on behalf of an employee, are tax-deductible;

(ii) Contributions made by an employer to a long-term savings plan on behalf of an employee, are not to be treated as part of the employee's assessable income for any tax year;

(iii) Contributions made by an employee or a self-employed person to a long-term savings plan are tax-deductible to the extent that such contributions do not exceed 15% of such person's monthly income;

(iv) The income (including investment income) of a long-term savings plan is tax-exempt;

(v) Withdrawals from a PRP or an IRP on or after the statutory retirement age are tax-exempt. Withdrawals after 10 years of contributions and before retirement are subject to tax liability and a penalty. No withdrawals are permitted before 10 years of contributions.

(vi) Withdrawals from a Home-Ownership Plan or an Education Plan on or after 5 years of contributions are tax-exempt. Earlier withdrawals are subject to tax liability and a penalty.

(vii) Early withdrawals from a PRP, IRP, Home-Ownership Plan, or an Education Plan by plan members on account of proven total physical disability should enjoy some level of tax-reliefs to be decided by the Commission in consultation with the IRS.

(viii) Withdrawals from a PRP, IRP, Home-Ownership Plan, or an Education Plan by beneficiaries of plan members on the death of such plan members should be tax-exempt.

(ix) All withdrawals will be subject to criteria set by the Commission.

PART V: MANAGEMENT OF PLAN FUNDS, INVESTMENTS, AND DUTIES OF FUND MANAGERS

(a) Every long-term savings plan shall be managed by a fund manager approved by the Commission. This part of the law should also provide the criteria for licensing such fund managers. Recommended qualifications include:

  (i) Applicant must be an investment adviser licensed by the Commission, an insurance company, a bank or its wholly-owned subsidiary;

  (ii) Applicant must meet such minimum capital requirements as will be prescribed by the Commission from time to time;

(iii) Applicant must meet such accounting, internal control, software, and skills requirements, as will be prescribed by the Commission from time to time.

(b) A specific time frame for rejection of applications for approval of fund managers should be specified, to prevent unnecessary delays on the part of the Commission.

(c) The law should also provide for circumstances under which the Commission could revoke a fund manager's approval.

(d) Every Plan may have one or more funds. Every Plan shall have stated investment objectives, which conform to the provisions of this law.

(e) The law should require fund managers to be bound by the following duties, in addition to any others the fund manager may have agreed to assume under a Funds Management Agreement:

(i) To manage the plan funds in accordance with the stated objectives of the plan;

(ii) Not to make investments prohibited by the Commission;

(iii) Not to pledge or otherwise encumber the Plan assets;

(iv) All investments must be on an arm's length basis;

(v) To ensure solvency of the funds at all times to ensure that enough funds are available for withdrawals as and when they fall due;

(vi) Not to make prohibited expenditures;

(vii) To keep proper books and records, including records of plan membership, contributions, payments, cash and investments;

(viii) To ensure that investment purchases and sales are correctly recorded and settlement made on a timely basis;

(ix) To ensure that proper systems of control are maintained to ensure the existence and the security of Plan assets;

(x) To regularly supply Plan Trustees with all the information and documents they need to monitor the Plan and its investments and to perform their other duties;

(xi) To ensure that members are supplied periodically, and on request, with adequate information, clearly laid out and expressed in plain English, about the Plan, their account status, and the investment performance of the Plan;

(xii) To ensure that the Commission is periodically supplied with returns on the Plan's performance.

(f) Every fund manager is required to offer an IRP to persons in the informal sector. Additionally, fund managers should be mandated to accept contributions from some minimum amount upwards, to be prescribed from time to time by subsidiary legislation, or notice from the Regulator.

PART VI: INTEREST OF PLAN MEMBERS

(a) As a matter of great importance, the law should clearly define the nature of the plan member's interest in the plan, as a distinct traceable right to an account held with the Fund Manager.

(b) A plan member's account should be credited with total contributions standing to the member's credit at any time plus any returns earned on such contributions from investment activities of the Plan, less any approved costs debited to the member's account.

(c) A plan member's interest in the plan should be his/her personal property capable of devolving on his/her estate on his/her death.

(d) The law should also clearly specify that members of employer-sponsored plans will "own" or become vested with the ownership of their employers' matching contributions, within a maximum period of 5 years from the date of participation in the plan.

(e) For employees with "vested" plans, the following options ought to be open to them, on leaving their employers:

(i) Transfer his Private Retirement Plan account to another employer and fund manager

(ii) Convert to an Individual Retirement Plan with the same fund manager

(iii) Withdraw money from account and pay taxes and pay a penalty.

(f) Plan members may convert shorter-term plans into longer-term plans subject to modalities prescribed by Regulations.

(f) Additionally, the law should provide that contributions should not be capable of being used as collateral for borrowing, nor be capable of being attached by creditors of the contributor.

PART VII: DUTIES OF EMPLOYERS, TRUSTEES, AND AUDITORS

(a) Duties of Employers

The law should require employers to be bound by the following duties, in addition to any others the employer may have agreed to assume under the Plan Rules:

(i) To provide the administrative and accounting framework to enable employees to join long-term savings plans of their choice. Neither the employer nor the employee is under an obligation to contribute to such a Plan.

(ii) Where the employer has elected to contribute to a Plan, to make such contributions in accordance with the provisions of the Plan Rules and the requirements of the law;

(iii) Where an employee has elected to contribute to a Plan, to make appropriate payroll deductions from the employee's monthly remuneration and to remit same to an approved fund manager within 14 days of the end of each month[1]. Penalties should apply for late remittance of contributions.

(iv) Not to co-mingle payroll deductions with the employer's funds, prior to being remitted to the fund manager.

(v) To exercise fiduciary duties conferred by the Plan Rules in good faith and in the interest of Plan members; and

These duties, which would be in addition to any separate duties under labour law, ought not to be capable of being excluded by the Plan Rules or by the employment contract.

(b) Duties of Trustees

The law should require Plan trustees to be bound by the following primary duties in addition to any others the Trustees may assume under the Trust Deed:

(i) Ensuring that the fund manager is appointed by agreement between the employer and employee in the case of employer-sponsored plans;

(ii) Ensuring that contributions are remitted to the fund manager in accordance with the provisions of the Plan Rules and the requirements of the law;

(iii) Exercising fiduciary duties conferred by the Trust Deed in good faith and solely in the interest of the Plan members;

(iv) Ensuring that adequate systems of internal control are maintained over the Plan's administration; and

(v) Ensuring that proceeds are paid to plan members in accordance with the Plan Rules and the law.

(c) Role of External Auditors

The law should require every auditor of a plan sponsor or fund manager to include a statement in their Auditors Report on the following, as applicable:

[1] This follows the language of section 22 (3) of the Social Security Law 1991 (PNDCL 247).

(i) The extent of compliance with SEC Regulations;

(ii) The extent of compliance with Plan investment objectives;

(iii) The status of such plans.

PART VIII: PROTECTION OF FUNDS ON LIQUIDATION OF EMPLOYER OR FUND MANAGER

To protect long-term savings funds on liquidation of the employer or the fund manager, the following provisions are recommended.

(a) For the avoidance of doubt, PRP funds should not be available to liquidators of the employer or fund manager;

(b) Unpaid contributions of the employer, and any deductions made from employees' salaries, not remitted to fund managers, should have priority for purposes of settling the employer's liabilities;

(c) On the fund manager's liquidation, Plans should become automatically closed to new contributors. Plans may merge with other plans by transferring assets and liabilities to those other Plans.

PART IX: ADMINISTRATION

(a) Securities and Exchange Commission

The Law should provide that the Securities and Exchange Commission established under the Securities Industry Law 1993 (PNDCL 333) shall be responsible for the administration of the Act and shall have power to regulate all matters relating to Long-Term Savings Plans[2].

(b) Powers of the Commission

This part of the law should confer certain powers on the SEC including the power to:

(i) Make regulations by subsidiary legislation;

(ii) Issue directives, and Notices;

[2] The law ought to have regard to the potential conflicts that could arise between the SEC as regulator of Long-Term savings Plans on the one hand, and the National Insurance Commission and the Bank of Ghana on the other as a result of possible regulatory overlaps should insurance companies and banks manage Long-Term Savings plans. These regulators should be encouraged to collaborate to iron out any jurisdictional overlaps that may arise.

(iii) Intervene to cause the removal of trustees, suspend or revoke the appointment of fund managers, among others;

(iv) Conduct on-site inspections of employers and fund managers, and to conduct other investigations;

(v) Impose fines, and other penalties on wrong doers.

(c) Ministry of Finance

The law should provide that the Ministry of Finance shall be the supervisory Ministry for Long-Term Savings Plans.

(d) Dispute Resolution

An important part of the new law will be dispute resolution. Aggrieved contributors should be able to pursue claims against the offending party through the law courts as the last resort. The SEC's Administrative Hearing Committee should be given power under this law to deal with disputes arising in connection with long-term savings plans[3], provided that an employee aggrieved by any deduction made by his employer from his salary for the purpose of contributing to a long-term savings plan, may present a compliant in writing to the National Labour Commissioner[4].

[3] The Labour Bill proposes to establish the National Labour Commission. Under section 70 (3) of the Labour Bill, an employee aggrieved by any deduction made by his employer from his salary, may present a compliant in writing to the proposed National Labour Commissioner, if he is unable to resolve the dispute with the employer. The Commission is given power to investigate the compliant and its decision on the matter, subject to any other law, is to be final. Under the Labour Bill, the Commission is chaired a nominee of the employers' organization and organized labour, with 6 members two each nominated by Government, employers' organization and organized labour. Members must not hold office in a political party, and must have knowledge and expertise in labour relations and management. The Chairman is required to be knowledgeable in industrial law, in addition to all the other qualifications above. With respect to its proceedings, the Commission is to have the same powers, privileges, and immunities pertaining to High Court Proceedings.

[4] There is no guarantee that the Labour Bill will be passed into law in its current form or at all.

PART X: CONSEQUENTIAL AMENDMENTS

It is recommended that the new law should provide for consequential amendments to certain existing legislation to give effect to the recommendations of the Long-Term Savings Committee. The following are recommended consequential amendments:

Legislation	Relevant Section	Suggested Amendment
Insurance Law 1989 (P.N.D.C.L 227)	Section 26	Allow insurance companies who will act as fund managers to invest those funds in medium-to-long-term securities without the prior approval of the Insurance Commissioner.
Internal Revenue Act 2000 as amended	Section 60	Provide for general provisions relating to tax incentives for long-term savings plans defined to include PRPs, IRPs, Home Ownership Plans, and Educational Plans Employer's contributions to Home Ownership Plans, Educational Plans, and Plans that pay proceeds to members on account of physical disability should enjoy tax-deductibility; Contributions to a long-term savings plan by the employer should not be included in the employee's assessable income; Employees and other individuals who contribute to long-term savings plans should enjoy tax-deductions to the extent that they do not exceed 15% of the person's monthly income, apart from SSNIT contributions; The income of a long-term savings plan should be exempt; Withdrawals made at retirement, and earlier withdrawals made by members on account of

		total physical disability, or by beneficiaries of deceased members, should be tax-exempt.
Labour Decree 1967 (NLCD 157)	Section 55 (1)	Dispense with the requirement for approval to be obtained from the Chief Labour Officer prior to establishing an employer-sponsored plan and prior to effecting payroll deductions.

Conclusion

In conclusion, it is recommended that a new Act of Parliament be enacted to provide for a regulatory framework and tax incentives for long-term savings plans.

The new Act should confer powers on the Regulator to among other things, provide further details for the regulation of long-term savings plans through subsidiary legislation, Directives, and Notices.

It is further recommended that under the proposed law, consequential amendments to various laws be effected, consistent with current drafting practice.

Lastly, it is recommended that the promulgation of the current Trust Bill be expedited to provide the required legal support for fiduciary duties of trustees, and the right of beneficiaries.

BILL

ENTITLED

LONG-TERM SAVINGS PLANS ACT, 2003

AN ACT to establish a Long-Term Savings Scheme; to provide the general framework for the operation and regulation of the Scheme, and to provide for related matters.

BE IT ENACTED by Parliament as follows:

PART I ESTABLISHMENT AND CONTRIBUTION

Establishment

1. There is established by this Act a Long-Term Savings Scheme referred to in this Act as the "Scheme".

Object of the Scheme

2. The object of the Scheme is to provide for the operation of tax-incentive- based Long-Term Savings Plans, which shall provide for persons who contribute to a plan,

(a) retirement savings;

(b) savings for home ownership and educational needs;

(c) lump-sum payment on account of physical and mental disability; and

(d) lump-sum payment to dependants in the event of death.

Operation of Plans

3. (1) A plan consists of contributions by persons into a fund managed by a Funds Manager on terms, conditions and rules agreed on between the Funds Manager and the contributor for one or more of the purposes specified in section 2.

(2) A person becomes a contributor to a fund if that person submits to a Funds Manager a completed form prescribed by the Commission for the purpose, and accepts to abide by the Plan Rules.

(3) A contributor shall receive a copy of the Plan Rules on joining a Plan.

(4) The objectives of a Plan and the benefits to be derived from the Plan shall be clearly stated in the Plan Rules and any information documents issued in relation to the Plan.

(5) The Plan Rules may provide for minimum contributions to a Plan, subject to any minimum contributions that may be prescribed by the Commission from time to time.

(6) The Plan Rules shall, subject to the provisions of this Act, set out the conditions and procedures for withdrawal from a Plan of monies standing to the benefit of a contributor.

Plan contributions

4. (1) Any person may, subject to section 3(2) contribute to a Plan on that persons own behalf or on behalf of a named beneficiary.

(2) An employer may in accordance with an agreement with its employee contribute to a Plan on behalf of that employee.

(3) Any contribution made and any returns earned from investment of the contributions shall, subject to any deductions of fees in accordance with this Act and the Plan Rules, be credited to the account of the contributor.

(4) Contributions may be made to a Plan by or on behalf of a contributor after retirement of the contributor from employment.

(5) A contribution shall not be made to a Plan on behalf of a contributor on or after the death of the contributor.

(6) Subject to subsection (7), an employer's contributions to a Plan on behalf of an employee shall be the personal property of that employee.

(7) Ownership of an employer's contributions shall vest in the contributor at the end of the vesting period.

(8) Notwithstanding subsection (7), in the event of severance by the employer of the employment relation with the contributor, or in the event of liquidation of the employer, an employer's contributions for its employee shall vest in the employee even if the vesting period has not expired.

(9) Subject to subsection (8) a contributor shall forfeit the total amount of the employer's contributions for that contributor if the contributor leaves the employment of the employer before the end of the vesting period.

(10) On the death of a contributor before the expiry of or after expiry of the vesting period, the contributor's portfolio shall devolve on the estate of the contributor.

(11) Subject to the provisions of this Act and Regulations made under this Act, funds standing to the credit of an employee under a Provident Fund sponsored by any employer or employee group on the coming into force of this Act may be contributed to a Plan pursuant to an agreement between the employer and that employee or among an employee group, at any time within the period of 9 months from the coming into force of this Act.

Withdrawal of portfolio

5. Subject to section 6, and to section 26 (4) and (5) a contributor or a beneficiary specified by the contributor may withdraw all or part of the contributor's portfolio

(a) after 10 years from the date of first contribution in the case of a Personal Retirement Plan or an Individual Retirement Plan;

(b) after 5 years from the date of first contribution in the case of a Home Ownership Plan or an Educational Savings Plan, except that a withdrawal shall not be allowed from a Home Ownership Plan or an Educational Savings Plan for any purpose other than home ownership or educational purposes as the case may.

Contributor leaving employment

6. Subject to section 4(7), where a contributor for any reason leaves the employment of an employer who contributes to a Plan on behalf of the contributor

(a) before the expiry of the vesting period,

(i) the contributor may by notice in writing request the Funds Manager to transfer the contributor's portfolio to another Plan operated by that Funds Manager or to a Plan operated by a Funds Manager specified by the contributor, or may, subject to section 26 (4) and (5) withdraw all or part of the contributor's portfolio;

(ii) the Funds Manager shall ensure that the total amount of the employer's contributions together with any returns earned on the contributions are refunded to the employer of the contributor at the same time that the transfer or withdrawal of the contributor's portfolio is made;

(iii) the total amount of the employer's contributions and returns refunded under subparagraph (ii) shall be taxable as income in the hands of the employer in the year of the refund; and

(iv) the Funds Manager shall issue a notice of refund to the Commissioner of the Internal Revenue Service at the same time as the refund is made to the employer's account under subparagraph (ii);

(b) after the vesting period, the contributor may

(i) request the Funds Manager to transfer the contributor's Portfolio to another Plan operated by the Funds Manager;

(ii) request the Funds Manager to transfer the contributor's portfolio to a Plan operated by a Funds Manager specified by the contributor; or

(iii) subject to section 26 (4) and (5) withdraw the portfolio.

(c) a Funds Manager shall not act on a contributor's request for transfer or withdrawal of the contributor's portfolio without notice in writing to that contributor's employer if that employer has contributed to the Plan on behalf of the contributor;

(d) subject to paragraph (c), a Funds Manager shall ensure that on receipt of a notice under this section for a transfer by a contributor or an employer as the case may be, the transfer is effected in accordance with the transfer notice not later than 14 days from the date the transfer notice is received by the Funds Manager.

Right of contributor to convert Plan

7. (1) Subject to subsection (2) and the provisions of the Plan Rules, a

contributor may convert one Plan to another Plan.

(2) A conversion of an Individual Retirement Plan or a Personal Retirement Plan to a Home-Ownership Plan or an Educational Savings Plan shall be treated as a withdrawal of a contributor's portfolio under section 26.

(3) A contributor may at anytime convert a Home-Ownership Plan or an Educational Savings Plan into an Individual Retirement Plan or a Personal Retirement Plan without any tax liability.

Protection against encumbrances

8. (1) Subject to subsection (2), a contributor may pledge or otherwise create a charge in respect of any part or all of that contributor's portfolio.

(2) Where a beneficiary of any pledge or charge created by a contributor under subsection (1) enforces the charge, the beneficiary shall be liable for any tax applicable to withdrawals under section 26.

Duty of employer in respect of Plan

9. Notwithstanding the provisions of any Plan Rules or any agreement to the contrary, an employer shall

(a) provide the administrative and accounting facilities required to enable each employee to join a Plan of the employee's choice and contribute to that Plan;

(b) Without prejudice to subsection (1), an employer shall make appropriate payroll deductions from the monthly remuneration of an employee who wishes to contribute to a Plan and remit the contributions to the Funds Manager of the Plan within fourteen days after the end of the month of deduction;

(c) not co-mingle payroll deductions under this Act with the employer's own funds and where an employer deducts contributions from the salary of an employee under this Act, the contributions shall be deemed to be held by the employer in trust for the purposes of this Act until remitted to the appropriate Funds Manager; and

(d) exercise any other duties conferred by the Plan Rules in good faith.

PART II MANAGEMENT OF PLANS

Management of Plan Funds

10. Plan Funds shall be managed by a Funds Manager approved by the Securities and Exchange Commission established under section 1 of the Securities industry law, 1993 (PNDCL 333) as amended.

Qualification of Funds Manager

11. A person shall not qualify as a Funds Manager for the purposes of this Act unless that person is.

(1) an investment adviser or a wholly owned subsidiary of

(a) an insurance company;
(b) a bank; or
(c) a non-bank financial institution,

licenced by the Commission as an investment adviser under the Securities Industry Law 1993 (PNDCL 333) as amended; and

(2) has obtained approval from the Commission to manage Plan Funds under this Act.

Application for Approval of Funds Manager

12. (1) A person who wishes to operate as a Funds Manager for a Plan shall apply in writing in the prescribed form to the Commission for approval.

(2) The Commission shall within seven days of receiving an application for approval and upon satisfying itself that the applicant has satisfied all pre-conditions including the payment of any fees required for approval, grant approval to the applicant.

(3) Where the Commission is not satisfied with the application, the Commission may, in writing to the applicant, within seven days after receiving the application

(a) request the applicant to rectify any errors in the application or to satisfy any pre-condition for the grant of approval, within fourteen days and grant the approval upon the rectification of the error or satisfaction of the pre-conditions within the specified time; or

(b) refuse to grant the approval.

(4) Where an application for approval is refused, the Commission shall state the reasons for the refusal, in the notice of the refusal to the applicant.

Review of Commissions decision in respect of approval

13. An applicant dissatisfied with the Commission's refusal to grant an approval may apply to High the Court for a review of the Commission's decision.

Revocation and suspension of Funds Manager's approval

14. (1) The Commission

(a) shall revoke an approval granted to a person to operate as a Funds Manager if that person ceases to satisfy any of the qualifications required under section 11 (a); and

(b) may revoke or suspend an approval given to a person to operate as a Funds Manager if that person is in breach of any of the duties imposed under section 15 or is in breach of the Plan Rules.

(2) Where the Commission suspends or revokes an approval under subsection (1), the Commission shall within seven days after the decision to suspend or revoke the approval give notice of the decision to the Funds Manager affected by the decision.

(3) Where the Commission suspends an approval given to a person to operate as a Funds Manager, the Commission shall in the notice under subsection (2) specify the defect, omission or breach which has occasioned the suspension and request the person to remedy the defect within thirty days after the notice.

(4) If under subsection (3) the defect, omission or breach is remedied within the time specified, the Commission shall by notice in writing to that person restore its approval for that person to manage Plan Funds, otherwise the Commission shall revoke the approval granted to that person to operate as a Funds Manager.

(5) Where the Commission revokes an approval granted to a person to operate as a Funds Manager,

(a) the Funds Manager shall within seven days of receipt of notice of the Commission's decision, issue a written notice to every contributor and their employer (where appropriate), requesting them to discontinue any further contributions to the Plan and inform the general public of the Commission's action through publication in the gazette and a newspaper with wide national circulation that may be specified by the Commission;

(b) Subject to paragraph (c), Plan Funds managed by the Funds Manager shall be paid into an account specified by the Commission within 7 days of receipt of the Commission's notice; and

(c) a contributor to a Plan managed by the Funds Manager may request the Funds Manager to transfer that contributor's portfolio to a Plan operated by a Funds Manager specified in the notice or may, subject to section 26 (4) and (5) withdraw the portfolio.

(6) A person who is dissatisfied with the decision of the Commission to revoke or suspend an approval granted to that person by the Commission to operate as a Funds Manager may apply to the High Court for a review of the Commission's decision.

Duties of a Funds Manager

15. A Funds Manager shall

(a) manage the Plan Funds in accordance with the stated objectives of the Plan;

(b) not make investments prohibited by the Commission;

(c) not pledge or otherwise encumber the Plan Assets;

(d) make investments on an arm's length basis;

(e) ensure the solvency of the Plan Funds at all times and ensure that enough funds are available for withdrawals as and when required;

(f) not make expenditures prohibited by the Commission;

(g) submit to each contributor, a periodic account of contributions and returns on contributions as shall be prescribed by the Commission;

(h) submit to such inspections as the Trustee appointed under section 19 may in the performance of the duties of a trustee, require;

(i) submit quarterly reports and accounts of contributions, returns on contributions and withdrawals from the Plan funds to the Trustee;

(j) submit on a date specified by the Trustee such other reports and records as the Trustee in the performance of the duties of a trustee may require;

(k) submit to any technical audits that the Commission may require;

(l) submit such records and reports to the Commission as the Commission may require;

(m) display evidence of the Commission's approval to operate as a Funds Manager in a conspicuous place on its premises and quote its approval number in any advertisement or information document in which it offers its services as a Funds Manager; and

(n) abide by any Rules and Regulations made under this Act or directions given by the Commission and have such other duties as may be imposed by the Plan Rules and Regulations made under this Act.

Permitted investment of Plan Funds

16. (1) A Funds Manager shall invest the Plan Funds in investments allowed by the Commission.

(2) The Commission shall prescribe an appropriate holding of secure interest bearing investments to act as security for the contributors risk so as to ensure the safety and liquidity of plans.

(3) Subject to subsection (1) and the Plan Rules a contributor may specify to a Funds Manager the manner in which that contributor's portfolio should be invested.

Permitted expenditure from Plan

17. A Funds Manager shall not make any expenditures from the Plan Funds other than those prescribed by the Commission or authorized under this Act, from the Plan Funds.

Fees of Funds Manager

18. A Funds Manager shall be paid out of Plan Funds, such fee as the Commission may prescribe.

Appointment of Trustee for Plan

19. (1) A Funds Manager shall appoint for every Plan, a Trustee licensed by the Commission for that purpose.

(2) A person shall not qualify as a Trustee for the purposes of this Act unless that person

(a) is an Investment Adviser, or a wholly-owned subsidiary of either a bank or insurance company or a non-bank financial institution, or is a Trustee of a Unit Trust Scheme or a Custodian of a Mutual

Fund, licensed by the Commission under the Securities Industry Law 1993 (PNDCL 333) as amended;

(b) is independent of the Funds Manager;

(c) has satisfied any capital requirement and paid up any security deposit prescribed by the Commission to be satisfied or to be paid; and

(d) has paid the requisite licence fee prescribed by the Commission to be paid.

(3) An application for a Trustee's licence shall be in a manner prescribed by the Commission and shall be accompanied by a copy of a trust deed drawn up in a form prescribed by the Commission.

(4) A person already licensed by the Commission as a Trustee of a Unit Trust Scheme or a Mutual Fund, who wishes to operate as a Trustee for a Plan shall notify the Commission in writing in the appropriate form prescribed by the Commission.

(5) A person whose application for a license to act as Trustee for a Plan is refused or whose license is suspended or revoked may apply to the High Court for a review of the Commission's decision.

Duties and powers of a Trustee

20. (1) A Trustee of a Plan shall in addition to any other duties imposed by the Trust Deed

(a) hold Fund Assets in its name on behalf of contributors;

(b) where applicable, ensure that contributions are allocated to the Funds Manager in accordance with the Plan Rules and this Act;

(c) exercise fiduciary duties conferred by the trust deed in good faith and in the interest of contributors;

(d) ensure that adequate systems of internal controls are maintained by the Funds Manager;

(e) ensure that at the expiration of the period specified for the maturity of a plan or such earlier period as this Act permits, a contributor's portfolio is liquidated and paid to the contributor in accordance with the Plan Rules and this Act;

(f) conduct such inspections of the accounting systems and records of the Funds Manager as are necessary for the performance of the duties imposed on the Trustee by this Act and under the Plan Rules; and

(g) submit to the Commission on a date specified by the Commission, such records and reports in relation to the performance of the duties of a Trustee as the Commission may require.

(2) A Trustee may with the approval of the Commission request a Funds Manager to submit such periodic accounts and reports of the Plan Funds as the Trustee considers appropriate.

Suspension and revocation of Trustee's licence

21. (1) The Commission may revoke or suspend the licence of a Trustee, if the Trustee ceases to satisfy any of the qualifications required under section 19 (2) or is in breach of any of the duties imposed under section 20.

(2) The Commission shall, not later than seven days after making a decision to suspend or revoke a Trustee's licence, inform the Trustee in writing of the decision and the reasons for the decision and request the Trustee to.

(a) submit its licence to the Commission within fourteen days from the date of the notice; and

(b) inform contributors, their employers (where applicable), Funds Manager and the general public of the suspension or revocation, by publication in the Gazette or a national newspaper to be specified by the Commission.

(3) Where the licence of a Trustee is suspended, the procedures specified under subsections (3), and (4) of section 14, shall apply to the Trustee as appropriate.

PART III MISCELLANEOUS MATTERS

Dispute resolution

22. (1) Where a dispute arises between a contributor and a Funds Manager over a contributor's portfolio, or where a dispute arises between a Trustee and a Funds Manager, the dispute shall first be submitted to the Commission.

(2) A dispute submitted to the Commission under subsection (1), shall be referred to the Commission's Administrative Hearings Committee established under Part 1A of the Securities Industry Law, 1993 (PNDCL 333) as amended.

(3) a dispute arising between a contributor and an employer in relation to deductions from the contributor's salary shall be referred to the [National Labour Commission established under section 70 (3) of the Labour Act, ……….(Act…..)].

Accounts and audit

23. (1) A Funds Manager or a Trustee shall keep an accounting system and records in relation to the Plan in a form that the Commission shall determine.

(2) A Funds Manager shall have an external auditor who shall audit the accounting system and records of the Plan Funds at least once a year, and prepare an audit report, which shall include a statement

(a) on the extent of compliance with the provisions of this Act and Regulations made under this Act;

(b) in the case of a Funds Manager, on the extent of compliance with the Plan's investment objective and other requirements under this Act and under the Plan Rules;

(c) in the case of a Trustee on the extent of compliance with the Trustee's duties;

(d) on the extent of solvency of the Plan; and

(e) on any other matter that the Commission may require under this Act or under Regulations made under this Act.

(3) Without limiting the scope of subsection (2), the Commission may order such technical audits of a Funds Manager's facilities, equipment, resources and accounts to be conducted, as the Commission considers appropriate.

Reports

24. (1) A Funds Manager or a Trustee shall submit an annual report to the Commission within six months after the end of each financial year, detailing its activities in relation to the Scheme in the preceding year.

(2) A report under subsection (1) shall include the audit report referred to in section 23 (2) and a report on any other matter that the Commission may prescribe.

Financial year

25. The financial year of a Funds Manager shall be the same as the financial year of the Commission.

Tax provisions

26. (1) Contributions to a Plan not exceeding seventeen and one half per centum of a Contributor's monthly income shall be tax exempt.

(2) Contributions made by an employer to a Plan on behalf of a contributor, shall not be treated as part of the assessable income of that contributor for any tax year.

(3) The income, including investment income, of a Plan shall be exempt from tax.

(4) A withdrawal of all or part of a contributor's portfolio under a Personal Retirement Plan or an Individual Retirement Plan

(a) on or after retirement shall be tax exempt;

(b) before ten years of contributions and before retirement shall be subject to the appropriate income tax and a penalty of 10% ten per centum of the amount withdrawn.

(5) A withdrawal from a Home-ownership Plan or Educational Savings Plan.

(a) after five years of contributions shall be exempt from tax if used for home ownership or educational purposes, as the case may be;

(b) before five years of contributions shall be subject to the appropriate income tax and a penalty of ten per centum of the amount withdrawn.

(6) Where a contributor withdraws from a Plan before the times specified under subsections (4) (a) and (5) (a) for tax-exempt withdrawals, following a certification by a Medical Board that the contributor is incapable of any normal gainful employment by virtue of a permanent physical or mental disability, the contributor's withdrawals shall be exempt from tax.

(7) A withdrawal from a Plan at any time by the beneficiaries of the estate of a deceased contributor shall be exempt from tax.

Protection of Plan Funds on Liquidation of Employer, Funds Manager or Trustee

27. (1) In the event of a winding up by an employer,

(a) contributions made by that employer on behalf of a contributor before the vesting period shall not be available to a liquidator of the employer; and

(b) unpaid contributions of the employer as agreed with a contributor and any payroll deductions made from the contributor's salary but which have not been remitted to a Funds Manager at the time of liquidation, shall, have priority.

(2) Where a Funds Manager is being liquidated,

(a) a Plan operated by that Funds Manager shall not receive any contributions from the date of the commencement of the winding up process of the Funds Manager; and

(b) any Plan operated by that Funds Manager may on the directions of the Commission be merged with a Plan operated by another Funds Manager by the transfer of the assets and liabilities of the Plan to that other Funds Manager.

(3) Where a Trustee is being liquidated, the Funds Manager of the Plan to which the trust relates shall with the approval of the Commission appoint another Trustee licensed by the Commission.

Duties of the Commission under the Scheme

28. (1) The Commission shall be the supervisory authority for this Act and shall for that purpose

(a) register, license, authorize and regulate Plans, Funds Managers, Trustees, and their agents and control and supervise their activities with a view to maintaining proper standards of conduct and acceptable practices under the scheme;

(b) monitor the solvency of Funds Managers and take measures to protect the interests of contributors where the solvency of any Funds Manager is in doubt;

(c) protect the integrity of the Scheme against any abuses;

(d) impose penalties for the breach of rules or regulations made under this Act;

(e) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act; and

(f) perform other functions specified under this Act.

(2) The Commissioner shall advise the Minister on all matters relating to the Scheme;

(3) The Commission shall as soon as practicable and in any case within eight months after the expiration of each financial year, submit to the Minister an annual report dealing generally with the operations of the Scheme within that financial year.

Offences

29. (1) A person who operates as a Funds Manager for a Plan or as a Trustee for a Plan without approval or a licence, as the case may be, from the Commission commits an offence and is liable on summary conviction to a fine of not less than 2000 penalty units or a term of imprisonment of not of less than 10 years or to both.

(2) A person who operates:

(a) as a Funds Manager to a Plan ; or

(b) as a Trustee to a Plan

when the licence or approval to operate as such has been revoked or suspended, commits a crime and is liable on summary conviction to a fine of not less than 1000 penalty units or imprisonment for a term of not less than 5 years.

(3) An employer who makes deductions from a contributor's salary for the purpose of contribution to a Plan and who fails to pay the sums deducted to a Funds Manager within fourteen days after the end of the month in which the deduction was made, commits an offence and is liable on summary conviction to a fine of not less than 1000 penalty units or a term of imprisonment not less than 5 years.

(4) Where a body corporate commits an offence under this Act, every director of that body corporate shall be deemed to have committed that offence.

Regulations

30. The Commission may by legislative instrument make Regulations to prescribe for

(a) fees to be paid by Funds Managers to the Commission for approval to operate as Funds Managers of a Plan;

(b) fees to be paid by Contributors to a Funds Manager and fees to be paid by a Funds Manager to a trustee;

(c) security deposits to be paid by a Funds Manager to the Commission;

(d) the nature and types of investments that may be made by a Funds Manager;

(e) the nature and type of expenditures that may be made by a Funds Manager;

(f) the form of statements on contribution and returns on contributions that must be submitted to a Contributor by a Funds Manager; and

(g) generally for any other matter that will give effect to this Act.

Interpretation

31. In this Act, unless the context otherwise requires

"Commission" means the Securities and Exchange Commission established under section 1 of the Securities Industry Law, 1993 (PNDCL 333) as amended;

"contributor" means a person who contributes to a Plan on the person's own behalf or on behalf of a named beneficiary and shall include a minor acting through the minor's next friend;

"Educational Savings Plan" means a Plan to which a contributor contributes personally or to which the contributor and the contributor's employer contribute, to provide savings for educational purposes for the contributor or a named beneficiary;

"Home-Ownership Plan" means a Plan to which a contributor contributes personally, or to which a Contributor and the contributor's employer contribute, to provide savings for the housing needs of the contributor;

"Funds Manager" means a person approved by the Commission to operate and manage a Plan under section 12.

"Individual Retirement Plan" means a Plan to which a contributor contributes personally, to provide savings for the contributor's own retirement;

"Personal Retirement Plan" means a Plan to which a contributor contributes personally, or to which a contributor and the contributor's employer contribute, to provide savings for the Contributor on the contributor's retirement;

"Plan" means a Long-Term Savings Plan and unless otherwise specified, shall include a Personal Retirement Plan, an Individual Retirement Plan, a Home-Ownership Plan, and an Educational Savings Plan, or such other Plan as shall be specified by the Minister from time to time;

"Plan Assets" means the total amount of contributions made to a Plan and any returns earned on such contributions as variously invested in accordance with this Act, Regulations made under this Act and the Plan Rules;

"Plan Funds" means contributions to a Plan and income accruing from the investments of the contributions managed by a Funds Manager;

"Plan Rules" means rules made by the Plan operator and accepted as binding by the contributor, for the effective administration of Plans, and include rules relating to the objectives, benefits, duties and obligations of the relevant parties under a Plan;

"portfolio" means the total amount of contributions and any returns earned on the contributions standing to a contributor's credit less any approved fees under this Act and under the Plan Rules and in the case of a Personal Retirement Plan, a portfolio before the end of the vesting period, excludes employer contributions made on behalf of the contributor;

“prescribe” means prescribed by Regulations made under this Act;

“retirement” means the attainment of the statutory retirement age for the time being applicable, or on voluntary retirement;

“Trustee” means a person licensed by the Commission under section 219 to hold Plan Assets on behalf of contributors to a Plan;

“vesting period” means the period not exceeding five (5) years from the first contribution by the employer on behalf of the contributor during which period the contributor remained in the employment of the employer, and which period shall be determined by the employer.