

PROCLAMATION NO.146/2005

A PROCLAMATION TO DETERMINE THE RIGHTS AND OBLIGATIONS OF EMPLOYEES, BENEFICIARIES AND THE EMPLOYER UNDER THE PUBLIC SECTOR PENSION FUND

PART 1. PRELIMINARY

ARTICLE 1: SHORT TITLE

This Proclamation may be cited as the “Proclamation No.146/2005 to Determine the Rights and Obligations of Employees, Beneficiaries and the Employer under the Public Sector Pension Fund”.

ARTICLE 2: DEFINITIONS

In this Proclamation, unless the context otherwise requires:

- (1) “Pension” means a regular monthly benefit payable during the life time to the member or to his/her beneficiaries in case of his/her death according to benefit entitlement indicated in table 1 of Article 15 of this Proclamation;
- (1) “Employer” means the Government or any autonomous institution or corporation owned by the government;
- (2) “Employee” means any person who performs services for the Employer and who receives remuneration for such services;
- (3) “Member” means an Employee who is required to contribute to the Fund under Article 5 herein and entitled to receive benefits under this Proclamation;
- (4) “Contribution” means the amount paid each month into the Pension Fund by the employer and the employee without prejudice to the provisions of Article 5 hereof;
- (5) “Pensionable Salary” means the basic salary of the member which is the basis for calculation of contributions and benefits, without the deduction of any amounts in respect of income tax, fines or loan repayments and this also excludes bonuses, commissions, living allowances, incentive allowances, hardship allowance, overtime payment, or any other additional emoluments whatsoever;
- (6) “Benefit” means pension benefit or gratuity;

(8) "Beneficiary" means any surviving spouse of the deceased member, a child of the deceased member born in wedlock or out of wedlock or a legally adopted child who has not attained eighteen years (18) of age, and a fully dependent parent of the deceased member;

(9) "Fully Dependent Parent" means a parent who has no source of livelihood other than the support provided by the deceased member;

(10) "Pensionable Service" means the aggregate service rendered by a member in respect of which contributions have been paid;

(11) "Average Salary" means the average of the last sixty (60) monthly salaries paid;

(12) "Gratuity" means a lump sum benefit payable to a member who retires or becomes totally and permanently disabled or to his/her beneficiaries in case of his/her death before contributing for 120 months;

(13) "Fund" means the Public Sector Pension Fund;

(14) "Retirement Age" means the age at which a member attains 65 years of age;

(15) "Medical Board" means a board of medical doctors established by the Ministry of Health;

(16) "Minister" or "Ministry" means the Minister or Ministry of Labor and Human Welfare, respectively;

(17) "Permanent and Total Disability" means a disability certified by the Medical Board which permanently and totally prevents a member from continuing pensionable employment or service; and

(18) "Fund Manager" means the manager of the Fund as defined in Proclamation No. 136/2003.

ARTICLE 3: ELIGIBILITY

Regular employees in the Civil Service, who are 18 to 65 years of age, shall join the scheme. The upper age limit of 65 years shall not apply to political appointees and members of judiciaries and public prosecutors and they shall also join the scheme.

ARTICLE 4: APPLICATION OF FUND

The Fund shall be applied to make:

(a) payments of benefits in accordance with the provisions of this Proclamation;

(b) payment of the expenses incurred in connection with or incidental to the management and administration of the Fund, including the cost of the staff, the audit and actuarial assessment of the Fund; and

(c) any other payments authorized to be made out of the Fund under the provisions of this Proclamation.

PART II. CONTRIBUTIONS

ARTICLE 5: CONTRIBUTIONS

(1) The amount of contributions payable to the Fund, by employers and employees, shall be in the following proportion:

- a) an employee shall pay 5% of his monthly pensionable salary; and
- b) an employer shall pay 7% of the employee's monthly pensionable salary.

(2) In the case of past service, the Employer shall transfer either 7% of salary or convert the severance pay into pension account. Past service shall include:

- a) service from 01/06/1991 until the commencement of pension contribution;
- b) service from 01/01/1994 until the commencement of pension contribution; and
- c) other service for which the member will contribute 7% of determined salary.

ARTICLE 6: PAYMENT OF CONTRIBUTIONS

1. It shall be the responsibility of the employer to pay to the Fund a contribution on behalf of an employee in his employment, consisting of the employer's and the employee's, and such contribution shall be based on the member's monthly pensionable salary as provided in Article 5 hereof.

2. Both the member's and the Employer's contributions shall be remitted by the employer to the Fund within the first fifteen (15) days after the end of the month to which they relate.
3. Payments may be made cash, by negotiable instrument or any other acceptable method.
4. Any amount that is remitted incorrectly or inappropriately to the Fund shall be refunded.

ARTICLE 7: INVESTMENT OF FUNDS

The management of the Pension Fund shall:

- a. ensure that the Fund is invested in secured portfolio;
- b. maintain the value of the investments at any point in time;
- c. maximize the overall return on the assets; and
- d. invest in short and long-term securities to maximize return on investments.

PART III. PRINCIPLES

ARTICLE 8: QUALIFYING PERIOD OF SERVICE

1. Only the period of service in full time employment shall be considered as the qualifying period of service.
2. The period of service of a member shall:
 - a) begin from the date the member joined the civil service; and
 - b) in respect of an ex-fighter, from the date the ex-fighter joined the struggle for independence.
3. In computing the qualifying period of service for pension or gratuity, a fraction of a year in excess of 6 months shall be reckoned as a full year and a fraction of a year less than six months shall be disregarded.

ARTICLE 9: SPECIAL CONDITIONS

1. Service rendered by a member beyond the retirement age may not be considered as pensionable service.
2. Upon the agreement of Employer and employee, a member may be retained in service beyond the retirement age, provided that the member is mentally and physically fit for the job.

3. The period of time spent on National Service or in other legally required public service activity shall be credited towards pension as Employer's contribution.
4. Members of the National Service who draw full-time regular salaries shall contribute to the Pension Fund.
5. A member who is retired and rejoins the public service shall be entitled to both pension payment and salary.

PART IV. BENEFITS

ARTICLE 10: PENSION BENEFIT

- 1) A pension shall be awarded under this Proclamation to a member only under the following circumstances:
 - (a) upon or after attaining the retirement age and after contributing for at least 120 months;
 - (b) upon certification by the Medical Board that a member does not satisfy the medical conditions of service provided that such non-satisfaction of medical conditions of service is not caused by occupational injury or disease and further provided that such member has contributed for at least 120 months, or
 - (c) upon resignation or termination after contributing for at least 120 months provided the member has attained the retirement age; or
 - (d) upon certification of the Medical Board of permanent and total disability pursuant to Article 24 hereof caused by occupational injury or disease.

- 2) A pension shall be awarded under this Proclamation to a beneficiary only upon the death of the member after contributing for at least 120 months according the benefit entitlement indicated in table 1 of Article 15 of this Proclamation.

ARTICLE 11: GRATUITY

- 1) A member who contributes for less than 120 months shall be entitled to gratuity benefit, provided that the member:

- a) retires upon attaining retirement age; or
 - b) is retired for not satisfying the medical conditions of service.
- 2) Upon the death of a member who had contributed for less than 120 months, his/her beneficiary shall be entitled to gratuity benefit of the member.
- 3) The amount of gratuity payable shall be equal to the last month's salary multiplied by the number of years of service and shall be payable in lump sum.

ARTICLE 12: CALCULATION OF AMOUNT OF PENSION

The amount of pension shall be calculated at the rate of 1.5% of the average monthly salary for each completed year of service subject to a maximum of 60% of the average monthly salary.

ARTICLE 13: VERIFICATION OF AGE

Age shall be verified by birth certificate issued by an appropriate authority or other official document submitted by the member. For the purposes of this Proclamation, any changes that may be made to the date of birth thereafter shall be deemed null and void.

ARTICLE 14: RESIGNATION/TERMINATION

- (1) A member who voluntarily resigns prior to completing 60 months of service shall be entitled to no pension or gratuity benefits but may carry credit into another local Pension Fund.
- (2) A member who voluntarily resigns after completing 60 months but prior to completing 120 months of service may be paid an amount equal to the sum of the contributions paid by him and by the Employer or have credit carried over to another local Pension Fund.
- (3) A person whose employment is terminated prior to completing 120 months of service shall be entitled to receive payment equal to the sum of contributions paid by him.

ARTICLE 15: DEATH BENEFITS

(1) Upon the death of a member who has contributed for at least 120 months before retirement or upon the death of a pensioner, pension benefits shall be paid to his/her beneficiaries according to the distribution indicated in table 1 herein below.

TABLE 1

Case No.	Beneficiaries	Spouse's Pension Benefit	Children's Pension Benefit
A	Spouse and one or more Children only	50%	50%
B	Spouse and fully dependent parent only	50%	15% each
C	Children and fully dependent parents only	-	70% 15% each
D	fully dependent Parent only	-	25% each
E	One or more children only	-	100%
F	Spouse only	50%	-

(2) A fully dependent parent may not be entitled to benefits where a member is survived by a spouse and one or more children.

(3) A widow or widower may not be entitled to more than one benefit as a beneficiary due to a subsequent marriage.

(4) A benefit payable to a child shall cease upon the child's attainment of 18 years of age.

(5) The provisions of sub Article (1) hereof shall apply mutatis mutandis to the payment of gratuity benefits.

PART V. GENERAL BENEFIT PROVISIONS

ARTICLE 16: CLAIM OF BENEFITS

1) Persons who have fulfilled the conditions for receiving pension or gratuity benefits specified under Articles 10 and 11 hereof may, as of the date of entry

into force of this Proclamation, claim their right of Pension or Gratuity benefits.

2) Beneficiaries, who fulfill the conditions specified under Articles 10 and 11 hereof, may as of the date of entry into force of this Proclamation, claim their right to survivor's benefits.

ARTICLE 17: COMMENCEMENT AND MODE OF PAYMENT OF BENEFITS

1) Benefits shall be paid beginning with the month following that in which retirement takes place. Survivors' benefits shall be paid beginning with the month following that in which the member or retired member dies.

(2) Benefits may be paid cash, credited to the respective accounts of the retired member or beneficiary, as the case may be, or be paid by cheque whenever convenient.

ARTICLE 18: RELATIONSHIP OF ENTITLEMENTS

(1) Without prejudice to Article 9(2), a pensioner has the right to join any employment other than public sector.

(2) A pensioner who is qualified to receive two or more pensions has the right to draw all of them.

ARTICLE 19: ASSIGNMENT OR ATTACHMENT OF PENSION OR GRATUITY

(1) A pension or gratuity received under this Proclamation may not be assigned or transferred.

(2) A pension or gratuity may not be liable to attachment, in respect of any debt or claim whatsoever.

ARTICLE 20: PENSION OR GRATUITY BENEFIT NOT TAXABLE

No income tax may be payable on pension or gratuity received under this Proclamation.

ARTICLE 21: MINIMUM PENSION

The minimum amount payable as pension shall be prescribed by law.

PART VI. MISCELLANEOUS PROVISIONS

ARTICLE 22: APPEAL

(1) A Pension Appeals Committee comprising five members shall be appointed by the Minister to decide appeals based on this Proclamation.

(2) Grievances or disputes arising over the age, period of service, salary and/or any other issue pertaining to pension or gratuity benefits under this Proclamation may be appealed to the Pension Appeals Committee.

(3) Any applicant shall file the appeal within 60 days after being informed in writing of the decision against which he appeals.

(4) In all cases, the complaints of the member or the beneficiaries shall be heard by all members of the Committee and the decision of the majority of the Committee members shall be the decision of the Committee. The decision of the Committee shall be final.

ARTICLE 23: ACTUARIAL REPORT

The Fund Manager shall, in consultation with Board of Directors, arrange for an actuarial valuation of the Pension Fund at least once every five years.

ARTICLE 24: ASSURANCE

The risks of death and total and permanent disability of members caused by occupational injury or disease shall be assured by a group life assurance scheme effected on their lives for future years of service.

ARTICLE 25: PROOF OF EXISTENCE

Whenever reasonably required by the Fund Manager, proof of existence and identity of a member or beneficiary, as the case may be, shall be furnished before the payment of any pension benefit.

ARTICLE 26: AUDIT

The books of accounts and all financial activities of the Fund shall be audited annually by the Auditor General or an auditor appointed by him/her, and the report thereof shall be submitted to the Minister by the Board of Directors.

ARTICLE 27: POWER TO ISSUE REGULATIONS

The Minister may issue the necessary regulations for the implementation and proper functioning of the provisions of this Proclamation.

ARTICLE 28: REPORT

The Minister shall submit to the Government annual reports on the activities of the scheme, including audited statements of accounts.

ARTICLE 29: SUPPLY OF INFORMATION

All public authorities, public or private agencies and individuals shall without delay furnish, upon request, to the Ministry important information required for the implementation of this Proclamation.

ARTICLE 30: PENALTIES

Any person who violates the provisions of this Proclamation shall be liable under the relevant provisions of the Penal Code of Eritrea.

ARTICLE 31: ENTRY INTO FORCE

This Proclamation shall enter into force as of January 1, 2004, the day on which Public Sector Pension Fund contribution collection commenced.

Done at Asmara, this 26th day of August, 2005.

Government of Eritrea.