ACT of 28 June 2005, providing for rules governing Pension Funds and Provident Funds.
(Pension Funds and Provident Funds Act).

Explanatory Memorandum

I. General

Pension schemes and provident fund schemes established for purposes of facilitating payment of one or several benefits during old age provide for the need for social security provision during old age and in the case of disability and death of a breadwinner. The macroeconomic significance of the resources that are available and accumulated to this end cannot be underestimated. The great social need for these regulations justifies in every way the introduction of regulatory measures in this area, without impinging on the customary arrangements agreed between employers and employees relative to the material provisions of the schemes. Because of this justification, pension funds and provident funds were placed under the supervision of the Central Bank of Suriname ('the Bank') in 1986, as an emergency measure, by virtue of the Credit System Supervision Decree (Bulletin of Acts, Orders and Decrees 1986, no. 82).

Pursuant to the above Act, pension funds and provident funds are obliged to register with the Central Bank of Suriname (the regulatory authority) and then they are then placed under the supervision of the Bank.
A number of instructions were issued by the regulatory authority by virtue of the authority conferred on it under the Act.
These instructions relate to the following:

a. annual submission of:
    - reinsurance and investment agreements, where applicable;
    - the balance sheet and the statement of income and expenditure with explanatory notes, in accordance with the applicable rules and models;
    - an actuarial report;
    - a nominative statement of investments in accordance with the prescribed model.
b. requirements with regard to the liquidity position;
c. requirements with regard to the solvency position;
d. the transfer or reinsurance of mortality risks;
e. the sound investment of the funds' assets;
f. restrictions on the 'investment' of the assets of a Fund in the firm of the employer;
g. authorized forms of investment and the spreading of investments;
h. the provision of information to the participants in regard to their pension rights.

Having regard to the specific character of the aforementioned funds and the need to expand the supervision of pension activities, it was considered necessary to introduce specific legislation to deal with pension schemes and provident fund schemes.

The scope of the Act in general is to guarantee as much as possible that when employees have their expectations raised by undertakings from their employers concerning their pensions, or where the same employers have offered them the opportunity of saving for a benefit by way of provision for old age, such expectations should be realized.

This Act aims to achieve this object by obliging employers:

a. who make pension commitments to their employees, to cover the claims ensuing therefrom by:
   - attaching a pension fund to the firm or by participating in an existing pension fund, or by
   - (facilitating) the conclusion of insurances agreements;
b. who facilitate their employees in saving for a benefit by way of provision for old age, to attach a provident fund to the firm.

This Act provides that all employers who make pension commitments to their employees or who facilitate their employees in saving for a benefit by way of provision for old age, are obliged to register with the Bank and to take measures such as described above within 6 months of this registration. The obligation to register applies also to pension funds and provident funds that are not attached to a firm. In addition, the pension funds and provident funds must be foundations, and these foundations too have a registration obligation. For the sake of convenience, the procedure to be followed after the registration is described below in the notes to the Articles, in Article 7 in which this procedure is explained.

This Act lays down rules relative to the appropriate structuring of these funds and for purposes of safeguarding the claims and interests of participants and other interested parties as a group or as individuals. In this context, the Act covers only a few material provisions relating to the content of the claims.

This Act contains further rules pertaining to monitoring of compliance with the Act, for which the Bank is responsible, and in regard to the responsibilities of board members.

Under the rules, a range of instruments are available to enable the Bank to discharge its supervisory tasks in an appropriate manner and where necessary to take regulatory or corrective action where necessary in regard to:

- the content of the chartercharter and regulations;
- prudential policy;
- the expertise and reliability of directors.

For purposes of implementing the supervision, further rules and/or regulations will need to be developed by the regulatory authority, whereas the supervisory policy must be documented and transparent. Under this Act, the Bank has been given the authority to set down guidelines for pension funds and provident funds. Guidelines are standards that must be met on a constant basis, in the opinion of the Bank, in order to advance the development of a robust pension fund and provident fund sector. Prior to its introduction of guidelines, the Bank is obliged to consult on such matters with the pension funds or provident funds under its supervision. The views and objectives of these funds regarding the proposed guideline may be presented to the Bank at these consultations and this enables the Bank to take the views of the sector into account when drafting the guideline. The Bank is responsible for ensuring that the pension funds and provident funds comply with the guidelines it has prepared. In the event of noncompliance with the Bank's regulations or guidelines in this regard, the Bank may impose an administrative penalty.

Monitoring compliance with the provisions of this Act goes further than the supervision of pension funds and provident funds. As part of this task, the Bank is also obliged to monitor compliance with the rules that come into effect where the implementation of a pension scheme takes place pursuant to insurance agreements as referred to above. In that context, the term 'Pension Act' is fully commensurate with the object of this Act, on the basis that provident funds also provide for one or several benefits by means of old-age and surviving relatives schemes.
In this context it should be noted that capital sum insurance does not come under the preconditions of the Pension Act, because capital sum insurance involves the payment of a lump sum, which is not a pension. But when the endowment insurance with annuity clause, it does take on the character of a pension. In that circumstance, the scheme does come under this Act.

This Act may be classified under the following headings:

A. General provisions
B. Obligations of the employer
C. Structure of pension funds and provident funds
D. Benefits
E. Prudential framework of pension funds and provident funds
F. Supervision
G. Penalty provisions
H. Closing provisions and transitional provisions

In the following sections, a summary is provided of the main provisions in the various parts of the Act.

Item A. General provisions (Article 1)

This part deals with the definitions of terms used in the Act.

Item B. Obligations of the employer (Article 2 – 6)

This sets out the obligations of employers who enter into pension commitments of any type.

Central hereto are the segregation of the assets for purposes of meeting the pension commitment of the employer, which is achieved by establishing a fund or an insurance agreement or a financing agreement between the pension administrator and the employer, as well as the registration obligation. The insurance agreements must be in conformity with the applicable rules, so that the position of the claimants is not less favorable than would be the case if the pension commitment were administered by a Fund.

Item C. Structure of pension funds and provident funds (Article 7 – 11)

This part provides that the funds must be institutions under Surinamese law and that the provisions of this Act must be incorporated in their charter and pension scheme rules and regulations. The provisions contain rules governing the composition of the board, and the board's tasks and obligations, also where the regulatory authority is concerned.
It is also provided herein that the day-to-day policy must be determined by at least two board members, that board members both individually and collectively must have the requisite level of professionalism and that the integrity of board members must not be in doubt. A code of conduct is prescribed so as to avoid conflicts of interest as well as misuse and improper use of the information available to the Fund.

In order to enhance matters of purpose and transparency, explicit provision is made in Article 11 in regard to the charter and the regulations of the funds for completion of the formalities referred to in paragraph 1 of that Article and for the board to be tasked with informing participants and other interested parties in regard to their rights and benefits and with respect to any changes therein.

Item D. Benefits (Article 12 – 19)

This part provides that the accrual and financing of the pension entitlements must be prorated at the very least and that in general the accrued and prorated pension entitlements must be retained upon termination of the participation. Provisions are also included for protecting the benefits in respect of surviving dependant's pension in the event of divorce, as well as a ban on commutation, except in circumstances of a voluntary or obligatory transfer of accrued benefits. The rules governing the transfer of accrued benefits may prevent the loss of accrued pension rights when changing jobs or pension schemes.

Under Article 12, paragraph 2 and Article 13, paragraph 4 existing pension funds, which on the date of entry into force of the Act are not in compliance with the condition governing prorated accrual and financing of the benefits, may derogate from these provisions if deemed necessary in view of the financial position of the Fund and/or the financial cost of an immediate adjustment.

Item E. Prudential framework of pension funds and provident funds (Article 20 – 29)

A central issue here is:

- the application of the fully funded methodfully funded method;
- the segregation of the assets of a fund from the employer;
- the soundness of the investments;
- the congruence in currency in respect of commitments and assets of a Fund;
- the obligation to adopt an actuarial and technical business report for pension funds or a technical business report for provident funds, and the regulations governing same;
- the reporting requirements to the regulatory authority.

The prescribed application of the fully funded method requires further explanation.

There are two aspects to the financing of pension schemes in the private sector:

The first aspect concerns the matching over time of the contributions to be provided with the costs of this regulation or, as the case may be, the allocation of the expenses over time.
The second aspect concerns the apportionment of the expenses amongst the employer and the employees. Employers and employees may make their own arrangements in this regard in line with the employment contracts, so that this will not need to be provided for in this draft law.

It is stated emphatically that for each scheme, the expenses arising in connection with the future nominal benefits arising under the scheme may be forecast relative to the sum of the benefits and the dates of these benefits. The projections will be based on assumptions concerning future circumstances and events such as death, disability, salary trends, composition of the family, new entries and early retirements. An exact determination is therefore not possible. If, however, the parameters that influence the flow of benefits can be viewed as a given fact, it will make it possible to determine the flow of benefits more precisely.
If the parameter trends give cause to such, the projections concerning the expenses of the scheme may be adjusted.

The time factor for the financing therefore concerns the determination of the dates on which assets will be segregated for purposes of meeting the future benefit commitments. In regard to the firm's pension schemes, "the financing of the future expenses must take place during the period in which the future benefits claims arise". Financing pursuant to this principle is denoted as financing according to the fully funded method. Under the these system, assets are segregated well in advance of the time that the benefits become due for payment; fund creation is therefore inherent to this system.

The principle formulated above does not involve a determination of the dates within the 'period' in which the financing must take place. In practice there are several variants of fully funded methods that may distinguished, which the main ones being described in summary below.

1. <u>The single premium system</u>

   In the purest form, the annual contributions are considered equivalent to the newly accrued pension entitlements for the year in question. If the scheme is discontinued, there will be sufficient assets in place to meet the accrued commitment with benefits. Significant funds are formed and the allocation of benefits for past employment (back service) will need to be financed by introducing an 'extra' single premium (back service single premium).

2. <u>The average premium system</u>

   The flat-rate premium system could only be used in the event of a self-administered fund. This system allows for the determination of a regular contribution, expressed in a percentage of the wage bill. Although a maximum funding system is aspired to, as in the single premium system, the degree of funding will depend on the manner in which allocated benefits for past service are financed at the introduction of the scheme, as well as the future increase in benefits following increases in salary.

3. The flat-rate premium system

This system allows for the individual level premium to be determined per participant. The total premium in such circumstances is equal to the sum of the individually determined premiums. This form of funding is applied frequently when insuring benefits, whereby each increase in the insured pension is regarded as a new insurance.

The phenomenon whereby a funding backlog arises in circumstances 2 and 3 tends to occur more regularly and can be regarded as a violation of the proportional acquisition of benefits which in turn may lead to financial risks for the employee. If a firm encounters financial problems or even goes bankrupt in circumstances where the prorated benefits are not yet paid up, this will mean that the benefits of participants cannot fully be realized. To prevent such occurrences, Article 12 provides that the accrual and the financing of pension entitlements must take place on a prorated basis.

Article 23 provides that the assets of a pension fund plus the anticipated income must be adequate for purposes of covering the pension commitments. It is also provided in Article 24 that the investments of pension funds and provident funds must be soundly based. The manner in which this is achieved by a Fund must be evident from the actuarial and technical business report (ATBR) which is obligatory for all pension funds pursuant to Article 25 of the Act. The terms of the ATBR may be limited for pension funds that have fully reinsured their commitments under the pension scheme(s). They could for example include mandate regulations, an organization chart which shows who is responsible for policy and who is tasked with implementing same, policies with regard to reinsurance and the like. For funds whose scheme(s) are self-administered, the ATBR must show that the conditions provided for under Article 25 are being met. This means that it must be evident from the ATBR that the financial structure in relation to the support base of the Fund must offer sufficient safeguards in respect of compliance with the obligations arising under the pension scheme.

Provident funds merely require a technical business report under Article 25 because actuarial issues do not arise for such funds. In giving effect to the requirements that must be met by pension funds and provident funds, for which the ATBR functions as an ancillary instrument, the Bank shall lay down assessment criteria and/or general guidelines in regard to the actuarial principles and the investment policy to be followed.

As part of its supervisory role, the Bank will need to evaluate whether the ATBR as a whole is in conformity with the relevant requirements and whether this can be regarded as being in the proper interests of participants, past participants and other interested parties. The Bank may bring any comments and/or reservations it may have to the attention of the Fund's board, if necessary by recourse to the enforcement instruments, recommendations and instructions referred to in Articles 34 and 35.

Item F. Supervision

For purposes of implementing an adequate level of supervision, the regulatory authority has recourse to instruments under the Act enabling it to take regulatory and/or remedial measures in the event of noncompliance with the statutory and ancillary regulations and/or where this is called for in view of the Fund's affairs. These instruments concern:

- The issuing of guidelines;
- the provision of recommendations;
- the issuing of instructions which are mandatory;
- a (partial) guardianship order in respect of the board;
- the appointment of administrators by the judiciary;
- the imposition of administrative penalties.

Item G. Penalty provisions

Under this provision, noncompliance with the relevant Articles or subsections thereof or failure to meet the regulations provided for pursuant to these Articles will be regarded as violations for which a fine of the second or fourth category of the General Fines Act will apply. This Act also provides for the imposition of administrative penalties by the Bank.

Item H. Closing provisions and transitional provisions

As is customary, this draft law may be subject to the introduction of further rules in implementation of the Act by state decree. Under the transitional provisions, employers and pension funds are afforded ample time to meet their obligations under the Act.

There are a number of Articles which also include transitional measures that provide for the following.

In view of the economic developments in recent years and the effects thereof on firms, many pension funds have found themselves facing circumstances in which the firm to which they are attached is notably faced with claims that are way out of proportion. A restructuring aimed at guaranteeing the benefits is much recommended in such circumstances. However the restructuring needs to proceed with great caution. Caution is also necessary when proceeding with other restructuring measures, such as when recovering solvency and spreading investments and making adjustments in line with the rules and regulations of this Act.

Far-reaching measures have thus been legalized by way of a transitional measure in regard to existing company pension funds. Rationalizing a Fund without damaging the firm takes time and sometimes a lot of time. The legislature would regard a maximum of 15 years as a realistic option. This maximum however is subject to the Bank's approval; many funds will suffice with a shorter period.

II Explanatory Notes to the Articles

Article 1

This Article provides definitions of the various pension-related terms used in the Act.

The purpose of a pension or provident fund is to give effect to the pensions and savings schemes committed on behalf of the employees of a firm. The requirement that for a Fund to exist, it must be attached to one or more firms, is based on the fact that there needs to be a certain tie between the Fund and the employer(s).
A Fund that is established and run by the employees alone without any input from the employer is not regarded as a Fund that is attached to a firm, since only the employer may attach a Fund to the firm. The head of a firm need not necessarily be the owner of the firm, merely the person who is entitled by law to bind the firm (paragraph 1).
Paragraph 3 provides that the commitments must be underwritten by an insurer in the event that the ties between the firm and the pension funds or providend fund cease to exist. If the ties between the firm and the pension fund or provident fund are broken, this means that in principle, no company pension fund may exist within the meaning of Article 1, paragraph 1, subparagraph c. Such ties are also deemed to be broken when a firm ceases to exist. Under Article 21, a pension fund is obliged to underwrite this risk with an insurer. An exception is permitted **in the event that** Article 25 is deemed applicable. However in the present case, it is considered appropriate by the legislature not to provide for such an exception but rather to take the provisions of Article 26 as a basis.

Article 2

If an employer makes or has made a pension commitment to its employees, the employer is obliged to give effect to these commitments in accordance with the provisions of the Act. The employees must be given adequate assurance that the pension commitments will in fact be realized.
In view of the fact that a pension fund or provident fund is a separate legal entity, it is intended that the monies lodged with the Fund should no longer be available to the employer and should in fact be allocated for the purpose for which they were designated.
Some employers, particularly the smaller firms, tend to avail of the opportunity to enter into insurance agreements. Such insurance agreements must be in line with the regulations provided for under this Act (paragraph l c).

The provision in paragraph 2 is included because it is difficult at times to prove that pension commitments have in fact been made to a particular employee.
Paragraph 1 of Article 2 does not apply to the group of persons who are regarded by law as employees, but who are regarded for corporate purposes as owners or joint owners of the firm (paragraph 4 b).

Article 3

Under the provisions of this Article, the employer is obliged to ensure that the contributions are in fact received by the pension administrator by a particular date. Any employer who sets preconditions in this regard and who has given advance notice thereof in writing to the implementing authority, shall be entitled in particular circumstances that give rise to a drastic change of circumstances, such as financial incapacity, to be discharged from its financial obligation. The reduction in the contribution from the employers to the Fund may arise where there are demonstrable financial problems which necessitate a reorganization of the firm or where an actuarial statement indicates that the contribution may be reduced because the yields justify same. If the employer wishes to avail of this precondition, it must give prompt notice thereof in writing to the implementing authority, the Bank and any other party whose pension or claim to a pension is affected by this measure.

Article 4

This Article provides that any employer that makes it possible for its employees to save for a benefit by way of provision for old age shall be obliged in the same manner as relates to pension commitments to attach a provident fund to the firm, in order to provide the best possible guarantee that the intended objective is achieved. The provisions of Article 3 are applicable hereto.

Article 5

This Article provides that an employer is obliged to notify the Bank if it makes commitments to persons in its firm in respect of pension and/or other benefits by way of provision for old age. The same obligation pertains to pension funds and provident funds that are no longer attached to a firm. These obligations are distinct from the obligation for pension funds and provident funds to register with the Bank as referred to in Article 7. The regulations enable:

a. the Bank to exercise its supervisory role where Article 2, paragraph 1 c and d are also deemed applicable, and
b. an end to be put to the extremely unhealthy situation whereby the employer functions fully or in part as a pension administrator. An employer will be deemed to be acting (in part) as an administrator of pension commitments where the benefits paid to pensioners under whatever guise or where nonmonetary contributions made on behalf of pensioners are financed directly by the firm.

Article 6

The employer must ensure that all contributions towards the implementation of a pension or savings scheme are remitted to the agency charged with implementing the scheme, particularly to the Fund or the insurer, in the event of an insurance agreement. The employer must agree a payment scheme with the implementing authority in writing, making provision among other things for the amounts to be paid in contributions by the employer and by the employees, where applicable, and the terms of payment (paragraph l). If the employer defaults on its obligation to make payment, the implementing authority is obliged to notify the Bank hereof in writing, whereupon the Bank will be authorized to take action under the options provided for in the Act (paragraph 3). Where in default of its payment obligations, the employer, too, is obliged to provide written notice hereof to the persons whose pension or claim to a pension is affected by the default (paragraph 4).

Article 7

Pension funds and provident funds are obliged to be foundations under Surinamese law. This allows for a segregation of the assets to be achieved and helps to ensure that the monies are allocated as was originally intended. This Article lays down conditions for the incorporation of pension funds and/or provident funds. In order to operate as a pension or provident fund, a certificate of no objection is required from the Bank (paragraph 4). The Bank may refuse to issue this certificate if it has urgent reasons for doing so. The Bank's decision may be appealed. The charter and regulations of pension funds and provident funds must contain provisions which are in conformity with the regulations provided for in this draft law.

Article 8

The provisions governing representation are based on the principle of parity but this may be deviated from in favor of the number of representatives on the employees' side. In paragraph 2, provision is made for circumstances in which the management of a pension fund or provident fund comprises of an equal number of members, which in turn could lead to a tie in voting.
This provision can be construed in two ways. Firstly, in the event of a tie, a second vote must take place within a minimum period of two days. If there is a further tie in voting at the second vote in which all of the board members have again participated, the chairperson at the second vote will have a casting vote, in order to break the impasse. In view of the fact that not all representatives are expected to be entirely familiar with the complexities of pension schemes, provision is made in paragraph 3 for each board member to be authorized to seek advice or representation from an expert. It is also provided herein that the representatives of both groups do not necessarily need to be attached to the firm. Under paragraph 4, each director is individually obliged to comply with the provisions of the Act, the charter and the regulations, and with the adoption of policy in accordance with the ATBR.

Article 9

Paragraph 1 of this Article provides for the so-called 'four eyes principle', which for purposes of ensuring continuity and proper management deems it necessary for at least two directors to be tasked with the day-to-day policy of the pension fund. Paragraph 2 provides the legal basis for an expertise test. Depending on the character of pension funds, the requisite expertise has to do with the interests of the Fund, and this forms the ultimate criteria for assessing the level of professionalism and the reliability (paragraph 3) of the Fund's directors. Paragraph 3 forms the basis for a reliability test. In addition to the requirements governing professionalism and reliability, paragraph 4 requires that there should be no conflict of interest. The balanced representation obligation does not apply merely with regard to the board, but also to other 'policymakers'. For the record it should be noted that the object of these provisions differs to that in Article 8, paragraph 3, which requires the Fund's directors to observe the provisions of the Act, the charter and regulations, subject to imposition of a sanction. Article 9 has to do with the quality requirements to be met by the directors. Paragraphs 5, 6, and 7 make provision for the advance notification of changes in the composition of the board. Paragraph 8 mandates the Bank to formulate policy rules for the purposes of this Article. The Bank is tasked with developing and setting criteria in this regard.

Article 10

This Article requires pension funds to have a code of conduct. Existing developments aimed at formulating measures concerning private transactions and the use of price-sensitive information are also given a legal basis. The object of these measures is to avoid a conflict of interest between a Fund and the private interests of participants in the Fund and to prevent the misuse or improper use of confidential information concerning the Fund. The proposed statutory provision provides that the funds must have a code of conduct in place in this regard but leaves it up to the funds themselves to devise their own enforcement procedures in regard to the broadly defined objectives. This approach is commensurate with the process of self-regulation that is becoming the norm in this area. As part of this process, the Bank may assume a guiding role, if necessary, by virtue of its mandate under paragraph 2, in formulating substantive requirements which must be met under the codes of conduct. Transitional arrangements for existing pension funds governing the obligations that arise under Articles 9 and 10 are provided for in Article 46.

Article 11

This Article provides a summary of a number of items which have to be provided for under the charter and regulations of pension funds and provident funds, as detailed in the general explanatory notes.

Article 12

The purpose of this Article is to ensure that the duration of the participation and the amount of benefits accrued throughout the participation period are equally proportionate to the total duration and amount of the benefits to be achieved and that the financing of accrued benefits is safeguarded. Further reference is made hereto in the general explanatory notes concerning application of the fully funded system.

Article 13

It is provided herein that during the participation period, at least the prorated accrued claims for old-age pension and widows' and widowers' pension shall be retained. This Article outlines in clear detail how the prorated benefits are determined. Paragraph 4 includes a transitory provision which may be applied where required, while paragraph 6 makes provision for the refund of certain personal contributions where the participation has lasted less than one year.

Article 14

Accrued pension entitlements in respect of a widow's or widower's pension will not be relinquished/lost following dissolution of marriage due to divorce or a legal separation. Therefore former spouses retain the benefits accrued on their behalf.
Two scenarios arise in this regard:

1. where a participant's marriage is dissolved:
   The employment has not ended. The past spouse of the participant will receive a benefit proportionate to the period of participation up to the date of the dissolution of the marriage (paragraph 1);
2. where a past participant's marriage is dissolved:
   The employment has ended prior to the dissolution of the marriage. The past spouse of the past participant will receive a benefit proportionate to the period of participation up to the date on which participation ended due to termination of employment (paragraphs 2 and 3).

In paragraph 4, provision is made for the circumstances in which and under which an exemption from the foregoing may be granted.

Article 16

Article 16 provides that there may be no discrimination between pensioners where supplements are granted in respect of payable pensions and other claimants who are not participants.

Article 17

Under paragraphs 1 and 2 of this Article, the entitlement to part of an old-age pension or a widow's or widower's pension may not be reduced specifically for purposes of a pending dissolution of the partnership.

Article 18

Following on the possibility to attach earnings, the attachment of pensions is also permitted. With the exception of attachments levied for purposes of recovering maintenance costs claimed by the attaching party under the law, restrictions are provided to protect the pensionable participant in regard to the size of the attachment (paragraph 1). Where an attachment is levied in respect of a pension that has not yet commenced, the Fund or the insurer shall be obliged to deduct the attachment amount from the pension benefit as soon as the benefit becomes payable. Other means of redress that may be availed of by others to access their rights to the pension of a participant are subject to similar restrictions as pertain to the attachment, likewise for purposes of safeguarding the participant's rights (paragraph 2).

Article 19

This Article provides that pension entitlements in general may not be commuted. The purpose of this measure is to protect claimants and to prevent the erosion of a Fund. An exception may apply if the relevant claims pertain to small amounts, which in any case will apply with respect to a participation of less than five years duration. In addition, a commutation shall be permitted in circumstances concerning a transfer of accrued benefits where the commutation amount is allocated for purposes of purchasing the pension entitlements. The transfer of accrued claims at the request of a participant is generally obligatory where an individual's participation is terminated. In the case of a collective transfer of accrued benefits, the transferring fund is obliged to notify the Bank hereof in writing within three months of the envisaged date of commutation, in order to allow the Bank sufficient time to process objections, if any (paragraph **6**). It is of particular importance to check the consequences for the Fund from which the reserve is being transferred and likewise for the recipient institution, especially when it relates to a collective transfer of accrued benefits, for example following the reorganization of a firm. In such an event the interests of the remaining participants may be jeopardized, as may those of the participants in the acquiring institution.
Paragraphs 8 and 9 make commutation obligatory for an insurer where a pension fund or an employer takes a carefully considered decision to terminate the insurance agreement and to insure the pension entitlements elsewhere or to self-administer same. A situation where one and the same pension scheme is administered by various institutions is not regarded as the best possible solution in the interest of the claimants.

It would be desirable for rules to be laid down by ministerial order concerning the calculation of the commutation amount and in regard to the claims to be purchased with the commutation amount, and to issue rules on the procedures to be followed in this regard.

Article 21

When a pension fund reinsures its risks with or transfers these to an insurer, this may involve the Fund transferring its obligations to the relevant insurer, thus being relieved of its obligations toward the (past) participant in regard to payment of a pension. It may happen that provision is made in the charter and regulations of a Fund for participants to receive their entitlements from the relevant insurer in the event of interim termination of employment or on their retirement. In such circumstances, the legal relationship between the Fund and the participant is thus terminated. This Article is intended to guarantee that the provisions of this Act continue to pertain to pensions or pension claims, even after the insurer with which the Fund has underwritten its risks has directly acquired the obligations towards the entitled party to the pension, since it has now become the debtor with respect to the pension benefits. This also applies with respect to the provisions governing insurances as referred to in Article 2, paragraph 4.

Article 22

This Article enables the Bank to oblige pension funds to reinsure or transfer their risks.

Articles 23 through 26

In view of the fundamental nature of the provisions of **Articles 23 through 26** and their interconnection, these measures are explained in some detail in the General Explanatory Notes. The Bank is entitled to set guidelines in regard to the management of the assets of the pension fund or provident fund.

Article 24, paragraph 3 contains clear requirements for the segregation of the assets of the Fund from the firm to which the pension fund is attached; this is in order to safeguard the accrued benefits in the event of unfavorable developments affecting the firm. Paragraph 4 contains a transitory provision for existing pension funds that require restructuring.
Paragraph 5 provides for an exception to the provisions of paragraph 3 if an employer (voluntarily) assumes new obligations that include back service obligations. This helps to avoid a situation whereby improvements in pension schemes may be hindered by the law.

Article 27

In this Article, provision is made for the various financial reports which pension funds and provident funds are required to furnish annually. For purposes of consolidating the figures of the various funds, the fiscal year is required to coincide with the calendar year. Auditors and actuaries are obliged on request to provide information to the Bank in regard to the tasks performed by them.

Article 28

Under this Article, auditors and actuaries are obliged to notify the Bank without delay if in the performance of their tasks as provided for in that Article they become aware of any inappropriate circumstances that arise or may arise.

Article 29

The Bank must be assured that the experts responsible for preparing the documentation referred to in this Article are capable of performing their tasks and that they will act in good faith. To this end, it is determined that the persons tasked with performing these activities must be experts whose appointment or retention is subject to no reservations on the part of the Bank. The Bank shall object to the appointment or retention if the Bank takes the view that the relevant experts no longer offer the necessary safeguards in regard to the proper performance of their tasks. The Bank's decision may be appealed.

Article 30

In paragraph 5 it is determined that in so far as not contrary to the State Employees' Pensions Act 1972, the Pensioenfonds Suriname shall fall under the prudential supervision of the Bank pursuant to the provisions of this Act. However in the event of a conflict, the provisions of the State Employees' Pensions Act 1972 will have precedence.

Articles 31, 32, and 33

The Bank has been granted powers to facilitate the proper performance of its task. It may investigate the accuracy of the particulars supplied by the funds, it may examine or let examine the books and documentation of both the Fund and firm to which the Fund is attached, and it may arrange for witnesses and experts to be called and heard.

Articles 34, 35 and 36

These Articles offer the Bank a range of instruments for taking effective measures if deemed appropriate by the Bank in view of the state of affairs of a pension fund or a provident fund. The measures are:

a. The making of recommendations, which must be followed, in default of which these may be published;
b. the giving of instructions which must be followed also. If these are not complied with within the requisite deadline, the Bank shall be entitled to place the board in full or in part under guardianship;
c. the appointment of an administrator via the Subdistrict Court in the event of mismanagement or if the board of the Fund ceases to exist.

The measures to be applied in the applicable circumstances are at the discretion of the Bank and will depend on the extent to which the interests of participants, past participants and other interested parties would be damaged had the Bank not intervened. Express provision is made in regard to the measures referred to in paragraphs a and b for the organization representing the interests of the employees and the employer to be notified in regard to the enforcement of these measures.

In Article 34, it is also provided that the Fund's board within 20 days of receipt of the decision concerning publication by the Bank may lodge an appeal in accordance with the provisions of Article 42 (appeal) of this Act. In this Article, the two-month statutory period for lodging an appeal is deviated from for urgent reasons. A period of 20 days applies instead of the two months in view of the fact that an expeditious approach is called for by the Bank in this case in the interest of the participants.

Article 37

Under this Article, the Bank is authorized to impose an administrative fine on the board of the pension funds or provident funds for noncompliance with the regulations referred to in paragraph 1 of this Article. The power of the Bank to impose an administrative fine derives from the fact that the Bank as the regulatory authority is invested with public authority and as such is to be regarded as an administrative authority. In its decisions to impose fines, the Bank shall be required to uphold the general principles of good governance.

Article 38

Though mandatory, the provisions of this Act are meant to be applied with some flexibility. The Bank therefore shall be entitled where it deems appropriate to grant exemptions from its own regulations. However for reasons of legal certainty, it is important that policy rules be published first of all in this regard.

Article 39

It is deemed appropriate that the institutions under the supervision of the Bank pay a contribution towards the costs of the supervision. The regulations governing these expense allowances will be laid down specified by State Decree.

Article 41

The particulars referred to in paragraph 4 need only be of a general nature. It is not intended for the Bank to provide specific information about pension funds and provident funds and persons to the Government and in particular to the Minister for Finance.

Article 43

Provision is made under this Article for a duty of confidentiality concerning matters relating to the Fund. Violation thereof will be regarded as an offence.

Article 45

Under this Article, regulations and implementing orders may be issued where deemed necessary.

Article 46

Given that pension funds and provident funds are already under the supervision of the Bank, many will have registered already (paragraph l).
Provision is made for the funds to be given a period within which they are required to amend their charter and regulations in accordance with the provisions of the Act.

Paramaribo, 28 June 2005,

R. R. Venetiaan