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DRAFT AMENDMENTS TO REGULATION 28 IN TERMS OF PENSION FUNDS ACT, 1956: PUBLISHED FOR COMMENT

The Minister of Finance, in terms of section 36(1)(bB) of the Pension Funds Act, 1956 (Act No. 24 of 1956), and as required by section 40C of that Act, publishes for public comment amendments to Regulation 28 of the Regulations made under section 36 of the Pension Funds Act and published under Government Notice R. 98 in *Government Gazette* No. 162 of 26 January 1962, as amended, as set out in the Schedule.

Written comments on the draft amendment to Regulation 28 should be submitted to retirement.reform@treasury.gov.za by close of business on **15 March 2021**.

Any questions of clarity can also be emailed to that address.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing Regulations.
 _____ Words underlined with a solid line indicate insertions in existing Regulations.

Interpretation

1. In this Schedule, "Regulation 28" means Regulation 28 of the Regulations made in terms of section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), published in Government Notice No. R.99 of 26 January 1962, as amended.

Amendment of subregulation (1)

2. Subregulation (1) of Regulation 28 is hereby amended by—

(a) the substitution for the definition of "hedge fund" of the following definition:

"'hedge fund' has the meaning assigned to it in paragraph 2 of the declaration of the business of a hedge fund by the Minister of Finance in Government Notice No. 141 in Gazette No. 38503 of 25 February 2015 to be a collective investment scheme to which the prescribed provisions of the Collective Investment Schemes Control Act, 2000 (Act No. 45 of 2002), apply;"; and

(b) the insertion after the definition of "hedge fund" of the following definition:

"'infrastructure' has the meaning assigned to it section 1 of the Infrastructure Development Act, 2014 (Act No. 23 of 2014);".

Amendment of subregulation (2)

3. Subregulation (2)(c) of Regulation 28 is hereby amended by—

(a) the deletion at the end of subparagraph (viii) of the word "and";

(b) the substitution at the end of subparagraph (ix) for "." of ","; and

(c) the insertion after subparagraph (ix) of the following subparagraph:

"(x) before making an investment in and while invested in an asset, consider any factors which may materially affect the sustainable long-term performance of the asset, including infrastructure investment, taking into account the necessary due diligence and risk adjusted returns in the best interest of the fund and its members and avoiding conflicts of interests."

Amendment of subregulation (3)

4. Subregulation (3) of Regulation 28 is hereby amended by —

(a) the insertion after paragraph (d) of the following paragraph:

"(dA) Subject to paragraph (d), a fund may invest in a hedge fund, subject to conditions as prescribed;"

(b) the substitution in paragraph (f) for item (iv) of the following item:

- (iv) **[Item] items 8 to 10:** Hedge funds, private equity funds and any other asset not referred to in this schedule.”;
- (c) the substitution in paragraph (g) for subparagraph (ii) of the following subparagraph:
- “(ii) item **[8.1(b)] 9:** Private equity funds.”; and
- (d) the insertion after paragraph (j) of the following paragraphs:
- “(k) The aggregate exposure by a fund to an issuer or entity specified in Column B of Table 1 may not exceed 45% in respect of domestic exposure and an additional limit of 10% in respect of the rest of Africa, irrespective of the limits referred to in Column A of Table 1.
- “(l) The aggregate exposure by a fund per issuer/entity as applicable in Table 1, Column A, irrespective of the limits referred to in the table, must not exceed 25% of the aggregate fair value of the total assets of the fund.”.

Amendment of subregulation (4)

5. Subregulation (4) of Regulation 28 is hereby amended by—

- (a) the insertion in paragraph (b) following “Notwithstanding” of “paragraph”; and
- (b) the substitution for paragraph (c) of the following paragraph:

“(c) Notwithstanding paragraphs (a) and (b), any direct or indirect exposure to a hedge fund or private equity fund must be disclosed as an investment into a hedge fund or private equity fund, as the case may be, and the fund need not apply the look through principle in respect of the underlying assets of the hedge fund or private equity fund, except in the case of infrastructure investments.”.

Amendment of subregulation (5)

6. Subregulation (5) of Regulation 28 is hereby amended by the insertion in paragraph (b) following “Notwithstanding” of “paragraph”.

Amendment of subregulation (8)

7. Subregulation (8) of Regulation 28 is hereby amended by—

- (a) the deletion in the words preceding paragraph (a) of the phrase “or exclusions”; and
- (b) the deletion of paragraph (b).

Substitution of Table 1

8. Regulation 28 is hereby amended by the substitution for Table 1 of the following Table:

“TABLE 1

			Column 1	Column A	Column B	Column 2	
Item			Categories of assets	Infrastructure		Limits being the maximum percentage of the aggregate fair value of total assets of the fund	
				Infrastructure per issuer/entity as applicable	Infrastructure for all issuers/entities	Per Issuer/entity as applicable	For all issuers/entities
1			CASH				100%
1.1			Notes and coins; any balance or deposit in an account in a South African bank; Any money market issued by a South African Bank including Islamic liquidity management financial instrument; Any positive net balance in a margin account with an exchange; and Any positive net			25%	100%

			balance in a settlement account with an exchange operated for the buying and selling of assets					
1.2			Any balance or deposit held with a foreign bank; A money market instrument issued by a foreign bank including an Islamic liquidity management instrument			5%		
2			DEBT INSTRUMENTS INCLUDING ISLAMIC DEBT INSTRUMENTS				100% for debt instruments issued by or guaranteed by the Republic, otherwise 75%.	
2.1			Inside the Republic and foreign assets					
	(a)		Debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic	10%	25%		100%	
	(b)		Debt instrument issued or guaranteed by a foreign country			10%		
	(c)		Debt instruments issued or guaranteed by a South African bank against its balance sheet	10%	25%		75%	
		(i)	Listed on an exchange with an issuer market capitalisation of R20 billion or more or an amount or conditions as prescribed	10%	25%	25%		
		(ii)	Listed on an exchange with an issuer market capitalisation of R2 billion and less than R20 billion or an amount or conditions as prescribed	10%	15%	15%		
		(iii)	Listed on an exchange with an issued market capitalisation of less than R2 billion or an amount or conditions as prescribed	5%	10%	10%		

		(iv)	Not listed on an exchange	5%	15%	5%	25%
	(d)		Debt instruments issued or guaranteed by an entity that has equity listed in an exchange or debt instruments issued or guaranteed by a public entity under the Public Finance Management Act 1999 (Act no.1 of 1999) as prescribed	10%	10%	10%	50%
		(i)	Listed on an exchange	10%	10%	10%	50%
		(ii)	Not listed on an exchange	5%	5%	5%	25%
	(e)		Other debt instruments		5%	5%	25%
		(i)	Listed on an exchange	5%	5%	5%	25%
		(ii)	Not listed in an exchange	3%	3%	5%	15%
3			EQUITIES				75%
3.1			Inside the Republic and foreign assets				
	(a)		Preference and ordinary shares in companies, excluding shares in property companies listed on an exchange				75%
		(i)	Issuer market capitalisation of R20 billion or more or an amount or conditions as prescribed	10%	10%	15%	
		(ii)	Issuer market capitalisation of R2 billion and less than R20 billion and or conditions as prescribed	10%	10%	10%	
		(iii)	Issuer market capitalisation of less than R2 billion or an amount or conditions as prescribed	5%	5%	5%	
	(b)		Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange			2.5%	10%
4			IMMOVABLE PROPERTY		15%		25%
4.1			Inside the Republic and foreign assets				
	(a)		Preference shares, ordinary shares and linked units comprising shares linked to debenture in property companies or units in a Collective Investment Scheme in property, listed on an exchange	10%	10%		25%

	(i)	Issuer market capitalisation of R10 billion or more or an amount or conditions as prescribed	5%	5%	15%	
	(ii)	Issuer market capitalisation of R3 billion and less than R10 billion or more or an amount or conditions as prescribed	5%	7%	10%	
	(iii)	Issuer market capitalisation of less than R3 billion or an amount and conditions as prescribed	2%	2%	5%	
	(b)	Immovable property and ordinary shares in property companies, and linked units comprising shares linked to debentures in property companies not listed on an exchange	5%	5%	5%	15%
5		COMMODITIES				10%
5.1		Inside the Republic and foreign assets				
	(a)	Kruger Rands and other commodities listed on an exchange, including exchange traded commodities				10%
	(i)	Gold			10%	
	(ii)	Each other commodity			5%	
6		INVESTMENTS IN THE BUSINESS OF A PARTICIPATING EMPLOYER INSIDE THE REPUBLIC IN TERMS OF				
	(a)	Section 19(4) of the Pension Funds Act		5%		5%
	(b)	To the extent it has been allowed by an exemption in terms of section 19 (4A) of the Pension Funds Act		5%		10%
7		HOUSING LOANS GRANTED TO MEMBERS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 19 (5) OF THE PENSION FUNDS ACT				95%
8		HEDGE FUNDS				10%
8.1		Inside the Republic and foreign assets				
	(a)	Hedge funds				10%
	(i)	Funds of hedge funds	5%	10%	5% per fund of hedge funds	
	(ii)	Hedge funds	2.5%	5%	2.5% per hedge fund	

9			PRIVATE EQUITY FUNDS				15%
9.1			Inside the Republic and foreign assets				
	(a)		Private equity				15%
		(i)	Funds of private equity funds	7.5%	10%	10% per fund of private equity funds	
		(ii)	Private equity funds	5%	5%	5% per private equity fund	
10			ALL OTHER ASSETS NOT REFERRED TO IN THIS SCHEDULE AND EXCLUDING HEDGE FUNDS OR PRIVATE EQUITY	2.5%	2.5%		2.5%
			Overall Limit for infrastructure across all classes		45% domestic and an additional limit of 10% for the rest of Africa		
			Overall limit per entity/issuer (Local and or foreign)			25%".	

Commencement

9. These amendments to Regulation 28 come into effect on the date of publication in the *Gazette*.