

19 March 2024

**Draft Response Document on Pension Funds Amendment
Bill [B3-2024]**

**(Based on hearings by the Standing Committee on
Finance in Parliament held on 12 March 2024)**



1. BACKGROUND

1.1. PROCESS AND PUBLIC COMMENTS

The amendments to the public sector pension laws will be proposed for inclusion in the Pension Funds Amendment Bill [B3—2024] which is currently under consideration of the Standing Committee on Finance.

The amendments provide the necessary legislative amendments required to effectively implement the two-pot retirement system changes in public sector funds and relate to the following public sector pension laws: Government Employees Pension Law, 1996 (Proclamation 21 of 1996) Post and Telecommunications-related Matters Act, 1958 (Act 44 of 1958) Transnet Pension Fund Act, 1990 (Act 62 of 1990).

The proposed amendments insert certain definitions to provide for the introduction of the savings withdrawal benefit; to provide for the appropriate account of a member's interest in the savings, retirement, and vested components and to provide for deductions that may be made by the funds. These amendments seek to align pension laws across all sectors to ensure that pension funds can amend the fund rules and implement the two-pot retirement system on the effective date of 1 September 2024.

SCOF held public hearings on the proposed Bill on 12 March 2024. Written comments were received from ASISA and IRFA as well as Cosatu.

1.2. POLICY ISSUES AND RESPONSES

Below are the responses to the key issues raised by the public in respect of the 2024 Draft Pension Funds Amendment Bill (B3-2024) in the form of written submissions as well as during the public hearings. These comments will be considered in finalising the 2024 Draft Pension Funds Amendment Bill.

1.3. SUMMARY

This response document includes a summary of all the written comments received on Draft Pension Funds Amendment Bill as well as a summary of all the written and oral presentations made during public hearings on the Bill held by the SCOF on 12 March 2024.

2. TWO-POTS RETIREMENT SYSTEM

2.1. Two-pots retirement system

Proposed amendments to the Pension Funds act are necessitated by the Revenue Laws Amendment Bill 2024 proposals to have a two-pot retirement system in South Africa.

Government has proposed a further reform to the retirement saving regime. This reform will see the introduction of a so-called “two-pots” retirement system. As from the proposed date of 1 September 2024, retirement contributions will be split into one-third savings component and two thirds into the retirement component.

What is in the “savings component” will be available for withdrawal before retirement. The ability to ‘unconditionally’ access amounts from the “savings component” will be provided without the member having to cease employment or having to resign or retire from their respective fund. A member will be allowed to make a single withdrawal within a year of assessment.

The minimum withdrawal amount is R2 000. The ability to withdraw from the “savings component” will be applicable on a per fund or per contract basis. Withdrawals from the “savings component” will be added to the individual’s taxable income and will be taxed at their marginal tax rates.

Retirement funds will on or soon after 1 September 2024, be required to create another component known as the “retirement component, which will be housed within the current retirement fund. Individuals will be required to contribute an amount of two-thirds of the total individual retirement fund contributions to the “retirement component”. The assets in the “retirement component” will be required to be preserved until retirement (i.e. withdrawals from this component can only be accessed by the member upon retirement as per the fund rules). Once a member has reached retirement age and retires, the “retirement component” is to be paid in the form of an annuity (including a living annuity).

This Bill is introduced so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide for the appropriate account of a member’s interest in the savings, retirement and vested components; to provide for deductions that may be made; and to provide for matters connected therewith. It therefore also amends the

Government Employees Pension Law, The Post and Telecommunications Related Matters Act, and the Transnet Pension Fund Act.

Broad issues for amendment

Comment:

Request that non-two-pot related clauses not be introduced in the Bill:

An example of a “non-two-pot” related amendment is the proposed section 37D(e)(1A) which includes payment of divorce awards from pension income. This introduces a significant deviation from the current provisions of the Pension Funds Act which provide in section 37D(1)(d) for a splitting of the capital value of a pensioner's pension after retirement.

Response:

It is proposed that the current wording in the Act be retained, i.e. revert to current provision as contained in 37D(1)(d).

Comment:

Contradictions with the Divorce Act:

Both the PFA Bill and the Divorce Act contain prevailing provisions in the definition of pension interest. Request clarity on which law will ultimately be applied by funds, and if it is the PFA Bill a clear override be inserted in the wording of this definition to clearly reflect that it supersedes the definition in the Divorce Act.

Response:

An application clause will be inserted in the Bill to provide that in an event of a conflict between the Divorce Act and the PFA, the PFA will apply. In terms of the general application and interpretation of statutes, the provisions of the latter Act will prevail.

Comment:

Exclusion of retirement component from section 37D deductions:

The drafting in the PFA Bill has implications of excluding the retirement component from loan and guarantee related deductions in terms of 37D, by only allowing the savings component to cover repayment of the loan and guarantee before retirement where there is no vested component.

Response:

The Revenue Laws Amendment Bill already states that Pension Funds Act 37D related deductions will be proportionally deducted from all pots/components. Clarity will be provided in the drafting that seems to suggest that permissible deductions are only from the savings component. Reference to requirements prescribed by regulation will also be removed as the Financial Sector Conduct Authority is already empowered by the Financial Sector Regulation Act to make conduct standards.

Comment:

Special protection of savings component:

The Bill contains provisions that prohibit access to the savings component, if a fund is aware of a pending 37D related deductions that might not be met should a savings withdrawal benefit be allowed. Concern that a similar protection is not afforded to other components, without an interdict being required. Request that an interdict also be required if the fund member is to be prevented from accessing the savings component.

Response:

If a member leaves the services of the employer, a deduction will happen. Prior to exiting the services of the employer or leaving the fund, a member has access to the savings component, which access is being restricted if it will result in insufficient amounts remaining to settle any pending court order.

Comment:

Timing:

Confirmation that changes to be made to the rules and statutes of public sector funds, which do not fall under the ambit of the Pension Funds Act, should not delay implementation of the two-pot system.

Response:

National Treasury envisages no delays, but the legislative process is a Parliamentary process that the department cannot control.

Comment:

Clarity on using the terms *member's share of the value of the fund*, which is not currently defined in the Bill.

Response:

Amendments will be made in the Bill to refer to individual account or minimum individual reserve, as the case may be.

Comment:

Request that the Bill indicates the date from which the new definition of pension interest would be applicable.

Response:

The law will come into effect on date to be determined by the President by proclamation in the Gazette, and by agreement the effective date for the implementation of the two-pot system is 1 September 2024.

Comment:

Proposal that reference to "provisos in item 6B of the Second Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962)" should be removed as it is unnecessary and obvious that all the relevant provisions of the Income Tax Act must be adhered

to.

Response:

Noted, but we are retaining this reference for purposes of certainty.

Comment:

Proposal that definitions of “valuator” and “vested component” be separate clauses and not be substitutions.

Response:

Noted. This is an acceptable drafting style in terms of the drafting conventions.

Comment:

Incorrect reference to Act number in the definition of "vested component". This must be corrected to “Act No. 58 of 1962”.

Response:

Accepted. In addition, Income Tax Act will be defined and as a result the reference to Act numbers will fall away.

Comment:

New inserted section 2(b)(iii) does not provide for the pensionable service to be increased (for example, with surplus allocation), but only for it to be decreased. Meanwhile, the definition of defined contribution funds does both.

Response:

A withdrawal in terms of the two-pot system can ONLY be a reduction from retirement savings and will never represent an increase in either Defined Benefit pensionable service or Defined Contribution individual accounts. The Amendment Bill correctly reflects this. The Bill already specifically allows for the reduction in the part of the benefit defined in 14B(2)((a)(ii), so this has in fact been taken into account. The last phrase in the intended 14B(2)(a)(iii) that is being added specifically states that “*the amount referred to in subparagraph (ii) must be reduced by any savings withdrawal benefit previously paid from the savings component*”. Since (ii) relates to contributions, not accrued pension, the deduction must be an amount, not a reduction of pensionable service.

Comment:

Clarity is sought on whether 65% is the net, after-tax value or the gross value and if the provision containing 65% limit change will apply effective date 3 January 2023 or 1 September 2024.

Response:

Intention is to apply the reduced percentage of fair value at the current tax treatment, which is net of income tax. However, the reduced percentage cannot be applied retrospectively.

Comment:

It is proposed that the words “in the member’s interest in the savings, retirement and vested components” not be included in the section 19(5)(c), as these components are already captured in the determination of the member’s individual account or minimum individual reserve. The duplication is likely to cause confusion.

Response:

Not accepted. The intention is to emphasise that the application of this threshold must be across all components.

Comment:

Proposal that paragraph 19(5)(d) be deleted as it appears to restrict the value of a loan or guarantee provided by the employer to the member which is undesirable.

Response:

Not accepted. The discretion by the fund to increase the percentage related to the hypothecated immovable property to 100% has been removed.

Comment:

With a new definition of pension interest inserted in the PFA Bil, it is proposed that the current section 37D(5) and (6) be deleted. Subsection (5) refers to the retirement annuity calculation, while subsection (6) deals with the calculation of pension interest in preservation funds, both subsections are applied despite the provisions of the Divorce Act.

Response:

Subsection 1(e) read with 1(d) replaces the deleted subsection 6 and this is as a result of the new definition of pension interest.

Comment:

Request that National Treasury release a draft of the regulations proposed in the Bill to support understanding of the Bill.

Response:

All reference to “requirements prescribed by regulation” contained in the Bill will be deleted. At this point we do not envisage any regulation, when the need arises the regulations will be prescribed by the Minister in terms of this Act.

Comment:

Reference to “*the amount of the benefit to which a member becomes entitled in terms of the rules of the fund*” in section 37D(1)(a)(ii)(aa) fails to consider circumstances where a member dies and has a beneficiary. This section which caters for deductions related to housing loan amounts, also excludes the retirement component.

Response:

Proposal to include beneficiary in the subsection is accepted. The opening words of section 37D(1) will be changed to ensure that deductions are applied proportionally across all components as envisaged in the Income Tax Act (ITA).

Comment:

Section 37D(1)(a)(ii)(cc) limits the deduction of a home loan to “*the amount the member would have received on termination of the membership of the fund*”. Clarity requested that deduction would be made on termination “*other than retirement or death*” may be included.

Response:

This is the current wording in the PFA and we are not introducing anything new. The provision regulates a deduction by the fund in the case of default, where the membership in the fund is not terminated. In the event of termination of membership by resignation or death, the amount due as a result of the default becomes due and deductible.

Comment:

Request to provide for restriction to accessing savings component in the case of fund-provided home loans or guarantees, as 37(1)(bA) currently only refers to employer-provided home loans and guarantees.

Response:

We agree to include section 19(5) loans and guarantees (loans provided by the fund). Pension Funds Act currently does not have empowering provisions for employer loans or guarantees. Proposal is to amend section 19(5) to provide for an empowering provision for employer provided loans.

Comment:

Repetition of “funds” at the end of the opening paragraph of section 37D(1)(b) must be “funds”.

Response:

Accepted – correction will be made the draft Bill.

Comment:

Proposal that reference to “or the date on which the member ceases to be a member of the fund” be replaced with “or the date on which the member’s employment with a participating employer in a retirement fund is terminated”. Also proposed that

reference to "and requirements prescribed by regulation in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by funds" be deleted.

Response:

We agree to include "or the date on which the member's employment with a participating employer in a retirement fund is terminated". Reference to "and requirements prescribed by regulation in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by funds" will be deleted.

Comment:

Reference to "an amount not exceeding the amount which in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act" in 37D(1)(b)(i) has the effect that no deduction may be made from the retirement component.

Response:

We agree. The bottom flash to this subsection "to an amount not exceeding the amount which in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act;" will be deleted.

Comment:

Using of the phrase "*any benefit payable in respect of the member*" in section 37D(1)(b)(ii) implies that the retirement component would not be included in respect of damages payable to the employer from the member's benefit.

Response:

The proposed changes to the opening words of 37D include the retirement component and apply to 37D(1)(b).

Comment:

Clarity is requested that a loan or guarantee is in terms of section 19(5) and not any other loan or guarantee that might have been granted by the employer to the member. Protection in the Bill is not extended to loans and guarantees provided by the fund.

Response:

Accepted. Loans and guarantees referred to in section 37D are in accordance with section 19(5). Pension Funds Act currently does not have empowering provisions for employer loans or guarantees, as section 19(5) only deals with fund provided loans and guarantees.

Comment:

The Bill should clarify that a member who has a home loan or surety in place, is not permitted to access the savings component, without the consent of the party that

provided the loan or surety.

Response:

Not accepted, request for consent will be an extra burden on the member in a system that has the objective of providing income relief to financially distressed members. The Bill provides that a withdrawal should only be permitted if it will not deplete savings component.

Comment:

The Bill should make provision for a member to not access the savings component when the fund is aware of a pending employer claim.

Response:

The Bill does provide for the suspension of a savings withdrawal benefit where the employer has obtained a judgment, not yet executed. We will include a written admission of liability that has not been executed.

Comment:

Clarity is required that where a member has admitted liability but refused to retire or terminate their membership in the fund, they would only be entitled to access a savings withdrawal benefit to the extent that it would not result in there being insufficient remaining funds to give effect to the employer's claim.

Response:

We do not agree – the written admission of liability suffices for the fund to make a deduction on the date on which the member's employment with a participating employer in a retirement fund is terminated.

Comment:

Concern that 12 months may be too short a period to withhold member's benefits given the time it takes for both criminal and civil matters to be finalised. It is requested that a longer period be considered.

Response:

Noted. An extended period may unfairly prevent the member from accessing the withdrawal benefit.

Comment:

Correction of drafting errors in Section 37D(1)(c) - "savings withdrawal benefit" in the fourth line should be "savings withdrawal benefits" and "funds" in the fifth line must be "fund".

Response:

Accepted.

Comment:

Correction of drafting error in Section 37D(1)(c)(iii) - "*that member or beneficiary*"

should refer to "the Authority".

Response:

Accepted.

Comment:

Correction of drafting error in 37D(1)(d) - "the funds" in the last line of the opening paragraph should be "funds".

Response:

Accepted.

Comment:

Proposed drafting correction - "interest" must be replaced with "member's individual reserve" as per PFA definition.

Response:

Accepted.

Comment:

Drafting error in section 37D(1)(d)(iB) - "Rules Board of Courts Law Act" must be "Rules Board for Courts of Law Act". "Interest" should be "minimum individual reserve" and numbering should also be corrected.

Response:

Accepted.

Comment:

Drafting error in section 37D(1)(e) - "members" in the first line should be "member's". Proposal that "member's interest" as this term is not defined, be replaced with "member's minimum individual reserve or minimum individual account".

Response:

Accepted.

Comment:

Section 37D(1A): Deduction of divorce and maintenance amounts from an in-fund pensioner's pension should be deleted from the Bill for further consideration when COFI is considered.

Response:

We disagree, provision already included in section 37D(1)(d) of the current Act. Only correction to be made to retain deduction from capital value of pensioner's pension after retirement.

Comment:

New section 37D(1B) Sub-section (1B) is not necessary, and should be deleted, as

this is already contemplated in the definitions of member's minimum individual reserve or a member's individual account.

Response:

Accepted.

Comment:

Section 37D(1C) - the "member's individual reserve" should include the word minimum after the word "member's". Drafting error: "as case may be" should be "as the case may be".

Response:

Accepted.

Comment:

Proposal is made that a fund should only refuse a savings withdrawal benefit, loan or guarantee in the case of pending divorce proceedings, where a court order has been obtained. Another commentator requested that written notification with legal proof that divorce order proceedings have been instituted, be used to withhold a savings withdrawal benefit.

Response:

Accepted. The words *a written notification with proof* that divorce proceedings have been instituted or an application has been made for a court order in respect of the division of assets of a marriage in accordance with the tenets of any religion.

Comment:

Payment of future maintenance is not a change related to the two-pot system. Requiring funds to make payment annually in advance would be a challenge. If the provision is considered for inclusion now, it is proposed that the definition of beneficiary fund be amended to take in future maintenance order allocations.

Response:

Not accepted. Future maintenance court orders are deductions that should be applied across all components.

Comment:

Clarity on the proposed change of submitting the divorce order to the fund that is being shifted from the non-member spouse to the registrar of the court.

Response:

Accepted. Bill to be changed for the current status quo to remain.

Comment:

Proposed drafting correction in section 37D(4)(c)(ii) - reference to subsection (1)(b) is not correct. It is presumed that the reference should in fact be to subsection (a)(ii).

Response:

Accepted: Referencing to be corrected.

Comment:

Clarity is requested on requesting that the non-member spouse be entitled to fund returns from the date of divorce court order as per section 37D(4)(c)(ii). Currently fund returns accrue from date of deduction.

Response:

Accepted. Bill will be corrected for fund return accrual to be from date of deduction as per the current Act.

Comments from Treasury:

- Proposed amendment to section 37A of the Pension Funds Act:

We propose an amendment to section 37A of the Pension Funds Act, in order to provide for the reference to Tax Administration Act, 2011 to provide clarity with regards to the deduction of IT88 tax against the benefit of a member of a retirement fund.

- Proposed amendments to public sector pension laws to provide for two-pot retirement system for inclusion in Pension Fund Amendment Bill [B 3-2024], are as follows:

1. **To amend the Government Employees Pension Law, 1996, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide for the appropriate account of a member's interest in the savings, retirement and vested components, to provide for deductions that may be made; and to provide for matters connected therewith.**

Amendment of section 1 of Proclamation 21 of 1996, as amended by section 1 of Act 35 of 2003, section 1 of Act 21 of 2004, section 1 of Act 19 of 2011, section 53 of Act 11 of 2013 and section 11 of Act 9 of 2023

1. Section 1 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996) (herein referred to as “the Government Employees Pension Law”), is hereby amended—

(a) by the insertion after the definition of “dependent” of the following definition:

“**Divorce Act**’ means the Divorce Act, 1979 (Act No. 70 of 1979);”;

(b) by the insertion after the definition of “member” of the following definitions:

“**Income Tax Act**’ means the Income Tax Act, 1962 (Act No. 58 of 1962);

‘**member’s interest in the retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act;

‘**member’s interest in the savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act;

‘**member’s interest in the vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act;”;

(c) by the substitution for the definition of “pension interest” of the following definition:

“**pension interest**’, in relation to a court order granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, means, in relation to a party who is a member of a fund, that member’s individual account or minimum individual reserve, determined in terms of the rules of that fund, on the date of the court order;”;

(d) by the insertion after the definition of “related fund” of the following definition:

“**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;”;

(e) by the insertion after the definition of “rule” of the following definitions:

“**savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of

the Second Schedule to the Income Tax Act;

'savings withdrawal benefit' has the meaning as defined in section 1(1) of the Income Tax Act);”;

(f) by the substitution for the definition of “this Law” of the following definitions:

“this Law' includes the rules[.]; and

'vested component' has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;”.

Insertion of section 1A in Proclamation 21 of 1996

2. The following section is hereby inserted in the Government Employee Pension Law after section 1:

“Application of Act

1A. In the event of a conflict between the provisions of this Act and the Divorce Act, the provisions of this Act prevail.”.

Substitution of section 21 of Proclamation 21 of 1996, as substituted by section 45 of Act 99 of 1998, section 2 of Act 19 of 2011 and as amended by section 2 of Act 21 of 2004

3. The following section is hereby substituted for section 21 of the Government Employees Pension Law:

“Withdrawals and deductions from member’s pension benefits

21. (1)(a) No benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, except for in terms of a court order in terms of section 26 or 40 of the Maintenance Act, 1998 (Act No. 99 of 1998), section 7(8) of the Divorce Act or a court order granted in respect of the division

of assets of a marriage according to the tenets of a religion.

(b) In the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.

(2) If any member, pensioner or beneficiary attempts to assign or transfer or otherwise cede or to pledge or hypothecate any benefit to which he or she is entitled under this law or any right in respect of such benefit, payment of such benefit to such member, pensioner or beneficiary may be withheld, suspended or discontinued if the Board so directs: Provided that the Board may direct that such benefit or part thereof shall be paid to one or more of the dependants of such member or pensioner or to a trustee for such member or pensioner or his or her dependants during such period as the Board may determine.

(3) Notwithstanding the provisions of subsection (1) or of any other law, the Fund may—

(a) permit a member to take a savings withdrawal benefit where—

(i) a loan or guarantee has been furnished by an employer; or

(ii) there is a judgment contemplated in paragraph (c)(iii)(bb) in favour of the employer that has not yet been executed:

Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment;

(b) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in paragraph (c)(iii)(bb), and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months pending the judgment by any court including a magistrate's court;

(c) deduct any amount due by the member to the member's employer on the date of retirement or the date on which the member ceases to be a member of the Fund, in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) in respect of—

- (i) any amount which is payable to the employer or the Fund by any member in the employment of such employer on the date of his or her retirement or discharge, or which the employer is liable to pay in respect of such member;
- (ii) any amount which has been paid to any member, pensioner or beneficiary in accordance with the provisions of this law and to which such member, pensioner or beneficiary was not entitled;
- (iii) the amount of any loss which has been sustained by the employer through theft, dishonesty, fraud, negligence or any misconduct on the part of any member, pensioner or beneficiary which has been admitted by such member or pensioner in writing or has been proved in a court of law in respect of which—
 - (aa) the member has in writing admitted liability to the employer; or
 - (bb) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (iv) any amount, plus interest at the rate determined by the Board after any other written agreement between the member and the employer in respect of a study bursary from any benefit payable to the member or a beneficiary in terms of the rules of the Fund, and pay such amount to the employer concerned; or
- (v) any amount, plus interest at the rate determined by the Board after consultation with the actuary, due to the Fund in respect of an amount for which the Fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to that member in terms of the rules from—
 - (aa) the amount of the benefit to which a member becomes in terms of the rules of the fund;
 - (bb) in the case of a transfer of the member to another fund,

the amount of the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or guarantee; or

(cc) in the case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of the membership on the date of default, if the deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;

(d) deduct any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998);

or

(e) deduct any amount payable as maintenance in terms of an interim maintenance order granted by the court in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules, made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(4) In respect of a deduction referred to in subsection (3)(d), the Fund must pay the maintenance, as directed by the maintenance order as a lump sum in respect of arrear maintenance or future maintenance from the benefit to which the member becomes entitled upon termination of his or her membership of the Fund or on retirement from the fund.

(5) For the purposes of paragraph (c)(iv)(bb) and (cc) of subsection (3), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled upon termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer or the default.

(6) Where a member dies before the last day of a period in respect of which any salary or allowance was paid to him or her prior to his or her

death, a *pro rata* part of the amount so paid may be recovered in respect of the unexpired portion of that period by deducting it in a lump sum, or in such instalments as the Board may determine, from the benefit payable to the estate or to a beneficiary of the deceased member, as provided in the rules.”.

Substitution of section 24A of Proclamation 21 of 1996, as inserted by section 3 of Act 19 of 2011 and substituted by section 12 of Act 18 of 2019

4. The following section is hereby substituted for section 24A of the Government Employees Pension Law:

“Payment of pension interest upon divorce or dissolution of marriage according to tenets of religion

24A. (1) The Fund must reduce a member’s pension interest by any amount assigned from the member’s pension interest to the member’s former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(2) A pension fund may not, without the consent of the former spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if—

(a) the fund received a written notification with proof that divorce proceedings have been instituted from the former spouse that a divorce has been instituted, as defined in the Divorce Act; or

(b) a written notification with proof that an application has been made for a court order in respect of the division of assets of a marriage in accordance with the tenets of any religion.

(3) The prohibition in terms of subsection (2) applies until a court order is issued.

(4) (a) Subject to paragraph (k), for purposes of section 7(8)(a) of the Divorce Act or in terms of or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion,

the portion of a member's pension interest assigned to the member's former spouse is deemed to accrue to the member on the date on which the decree of divorce or court order is granted.

(b) The amount of the member's pension interest in the Fund must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the Fund in accordance with the rules of the Fund as at the date of the decree of divorce or the date of the court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the rules by any amount of the member's pension interest which, in a previous divorce or a previous court order granted in respect of the division of assets of a marriage according to the tenets of a religion, was paid over or awarded to another party.

(d) (i) The benefit that is subsequently payable to the member shall, as provided in the rules, be decreased by reducing the member's years of pensionable service to take into account the pension interest of the member which was assigned to any former spouse of the member.

(ii) The rules referred to in subparagraph (i) shall be made on the advice of an actuary.

(e) The Fund must, within 45 days of the submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—

(i) paid directly to the former spouse; or

(ii) transferred to an approved retirement fund on behalf of the former spouse.

(f) The former spouse must, within 120 days of being requested to make a choice—

(i) inform the Fund of the manner in which the amount referred to

in paragraph (e) must be dealt with; and

(ii) if the former spouse chooses that the amount must be—

(aa) paid to the former spouse directly, provide the Fund with the details that are necessary to effect the payment; or

(bb) if the former spouse chooses that the amount must be transferred to an approved pension fund on his or her behalf, provide the Fund with the details of that approved retirement fund;

(g) The Fund must pay or transfer the amount in the circumstances contemplated in—

(i) paragraph (f)(ii), within 30 days; or

(ii) paragraph (f)(iii), within 60 days,

in accordance with the former spouse's choice, failing which interest becomes payable on such amount at a rate determined in the rules.

(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount must be transferred within the period referred to in paragraph (f), the Fund must pay the amount directly to the former spouse within 30 days of the expiry of that period, failing which interest becomes payable on such amount at a rate determined in the rules.

(i) Despite paragraph (h), in the event that the Fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the Fund must retain the amount plus interest as determined in the rules of the Fund, until such time as details of the manner in which that payment must be effected is made available to the Fund by the member, the former spouse or any other person whom the Fund is satisfied has the necessary authority and capacity to instruct the Fund in that respect;

(j) A former spouse—

(i) is not a member or beneficiary in relation to the fund; and

(ii) is entitled to the accrual of fund return from the date of the court

order until payment or transfer of the deduction contemplated in this section.

(k) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a court order granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act including, but not limited to, section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (j)."

2. PROPOSED AMENDMENTS TO POST AND TELECOMMUNICATIONS-RELATED MATTERS ACT TO PROVIDE FOR TWO POT RETIREMENT SYSTEMS FOR INCLUSION IN PENSION FUND AMENDMENT BILL [B 3-2024]

To amend the Post and Telecommunications-related Matters Act, 1958, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide the appropriate account of a member's interest in the savings, retirement and vested components in the savings, retirement and vested components; to provide for deductions that may be made; and to provide for matters connected therewith.

Amendment of section 1 of Act 44 of 1958, as amended by section 1 of Act 56 of 1973, section 1 of Act 13 of 1974, section 1 of Act 113 of 1976, section 1 of Act 1 of 1978, section 1 of Act 37 of 1984, section 1 of Act 85 of 1991, section 3 of Act 101 of 1992, section 1 of Act 35 of 1995, section 105 of Act 103 of 1996, section 6 of Act 10 of 1998, section 81 of Act 124 of 1998 and section 31 of Act 22 of 2011

1. Section 1 of the Post and Telecommunication-Related Matters Act, 1958 (Act No. 44 of 1958) (herein referred to as “the Post and Telecommunication-Related Matters Act”), is hereby amended—

- (g) by the insertion after the definition of “Director-General” of the following definition:

“**Divorce Act**’ means the Divorce Act, 1979 (Act No. 70 of 1979);”;

- (h) by the insertion after the definition of “excluded commitments” of the following definitions:

“**Income Tax Act**’ means the Income Tax Act, 1962 (Act No. 58 of 1962);

‘**member’s interest in the retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act;

‘**member’s interest in the savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act;

‘**member’s interest in the vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act;”;

- (i) by the insertion after the definition of “Minister” of the following definition:

“**non-member spouse**’ has the meaning as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);”;

- (j) by the insertion after the definition of “officer” of the following definition:

“**pension interest**’, in relation to a court order granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, means, in relation to a party who is a member of a fund, that member’s individual account or minimum individual reserve, determined in terms of the rules of that fund, on the date of the court order;”;

- (k) by the insertion after the definition of “regulation” of the following definitions:

“**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of

the Second Schedule to the Income Tax Act;

'savings component' has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;

'savings withdrawal benefit' has the meaning as defined in section 1(1) of the Income Tax Act;";

- (l) by the substitution for the definition of "transfer date" of the following definition:

"transfer date'

means a date of transfer contemplated in section 4(1)[.]and"; and

- (m) by the insertion after the definition of "transfer date" of the following definition:

"vested component' has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act."

Insertion of section 1A in Act 44 of 1958

2. The following section is hereby inserted in the Post and Telecommunications-Related Matters Act after section 1:

"Application of Act

1A. In the event of a conflict between the provisions of this Act and the Divorce Act, the provisions of this Act prevail."

Substitution of section 10B of Act 44 of 1958 as inserted by section 7 of Act 85 of 1991, as amended by section 8 of Act 101 of 1992 and as substituted by section 5 of Act 38 of 2013

3. The following section is hereby substituted for section 10B of the Post and Telecommunication-Related Matters Act:

“Withdrawals and deductions from member’s pension benefits

10B. (1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, except in terms of a court order made in accordance with the provisions of section 26 or 40 of the Maintenance Act, 1998 (Act No. 99 of 1998), section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion or and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund concerned in its discretion: Provided that the pension fund concerned may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator for such dependant or dependants.

(2) Notwithstanding the provisions of subsection (1), the pension fund concerned may—

(a) permit a member to take a savings withdrawal benefit where—

(i) a loan or guarantee has been furnished by an employer; or

(ii) there is a judgment contemplated in paragraph (c)(ii)(cc)(BB) in favour of the employer that has not yet been executed:

Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment;

(b) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in subparagraph (ii)(BB) of paragraph (c) and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a

period of 12 months pending the judgment by any court including a magistrate's court;

(c) deduct any amount due by the member to the member's employer on the

date of retirement or the date on which the member ceases to be a member of the fund, in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) in respect of—

(i) any amount due to that fund in respect of a loan granted by that fund in terms of its statutes to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such statutes;

(ii) any amount due by a member to his employer in respect of—

(aa) any loan granted by the employer to such member at his request; or

(bb) any amount for which the employer is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement, maintenance or repair of a dwelling for occupation by the member or a dependent of the member, and in respect of—

(AA) the amount of the benefit to which a member becomes entitled in terms of the statutes of the fund;

(BB) in the case of a transfer of the member to another fund, the amount of the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or guarantee; or

(CC) in the case of default on the repayment of any such loan by the member concerned in

circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of the membership on the date of default, if the deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;

(cc) compensation including the legal costs recoverable from the member in a matter contemplated in this subparagraph in respect of any damage caused to the employer, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member; and in respect of which—

(AA) the member has in writing admitted liability to the employer; or

(BB) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),

from any benefit payable in respect of the member or a beneficiary in terms of the statutes of that fund, and pay that amount to the employer concerned;

(dd) any other written agreement between the member and the employer in respect of a study bursary, training of the member or the military service obligations of the member, from any benefit payable to the member or a beneficiary in terms of the statutes of that fund, and pay such amount to the employer concerned;

(iii) any amount which such fund or the employer has paid or will pay by an arrangement with, or on behalf of, a member or

beneficiary in respect of—

(aa) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

(bb) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 2017 (Act No. 18 of 2017);

from any benefit to which the member or beneficiary is entitled in terms of the statutes of that fund and pay such amount, if due, to such employer, medical scheme or insurer, as the case may be;

(d) deduct any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998);

or

(e) deduct any amount payable as maintenance in terms of an interim maintenance order granted by the court in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules, made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(3) In respect of a deduction referred to in subsection (1)(d), the fund must pay the maintenance, as directed by the maintenance order as a lump sum in respect of arrear maintenance or future maintenance from the benefit to which the member becomes entitled upon termination of his or her membership of the fund or retirement from the fund.

(4) For the purposes of paragraph (c)(ii)(bb) and (cc) of subsection (2), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled upon termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer or the default.”

Substitution of section 10F of Act 44 of 1958, as inserted by section 5 of Act 38 of 2013

4. The following section is hereby substituted for section 10F of the Post and Telecommunication-Related Matters Act:

“Payment of pension interest upon divorce or dissolution of marriage according to tenets of religion

10F. (1) The pension fund concerned must reduce a member’s pension interest by any amount assigned from the member’s pension interest to the member’s former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(2) A pension fund may not, without the consent of the former spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if—

(a) the fund received a written notification with proof that divorce proceedings have been instituted from the former spouse that a divorce has been instituted, as defined in the Divorce Act; or

(b) a written notification with proof that an application has been made for a court order in respect of the division of assets of a marriage in accordance with the tenets of any religion.

(3) The prohibition in terms of subsection (2) applies until a court order is issued.

(4) (a) Subject to paragraph (k), for purposes of section 7(8)(a) of the Divorce Act or in terms of or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, the portion of a member’s pension interest assigned to the member’s former spouse is deemed to accrue to the member on the date on which the decree of divorce or court order is granted.

(b) The amount of the member’s pension interest in the pension fund concerned must be determined and the amount of the member’s pension interest that is assigned to the former spouse must

be calculated by the pension fund concerned in accordance with the statutes as at the date of the decree of divorce or the date of the court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the statutes by any amount of the member's pension interest which, in a previous divorce or a previous court order granted in respect of the division of assets of a marriage according to the tenets of a religion, was paid over or awarded to another party.

(d) The amount of any pension benefit that is subsequently payable to the member in terms of the statutes must be reduced by the equivalent of the amount of the share of the pension interest of the member which was—

- (i) deemed to accrue to the member as a benefit in advance of the benefit ordinarily payable in terms of the statutes; and
- (ii) assigned to the member's former spouse, less the amount of any additional voluntary contributions, if any, paid by the member to the pension fund concerned from time to time, and accumulated over the period from the date on which payment to the former spouse or transfer to the approved retirement fund as referred to in paragraph (e) took place to the date on which the member first became entitled to a part or the whole of the balance of the benefit, with interest as the pension fund concerned from time to time deems appropriate.

(e) The pension fund concerned must, within 45 days of the submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—

- (i) paid directly to the former spouse; or
- (ii) transferred to an approved retirement fund on behalf of the

former spouse.

(f) The former spouse must, within 120 days of being requested to make a choice—

(i) inform the pension fund concerned of the manner in which the amount referred to in paragraph (e) must be dealt with; and

(ii) if the former spouse chooses that the amount must be—

(aa) paid to the former spouse directly, provide the pension fund concerned with the details that are necessary to effect the payment; or

(bb) transferred to an approved pension fund on his or her behalf, provide the pension fund concerned with the details of that approved retirement fund.

(g) The pension fund concerned must pay or transfer the amount in the circumstances contemplated in —

(i) paragraph (f)(ii) within 30 days; or

(ii) paragraph (f)(iii) within 60 days,

in accordance with the former spouse's choice, failing which interest becomes payable on such amount at a rate determined in the statutes.

(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount must be transferred within the period referred to in paragraph (f), the pension fund concerned must pay the amount directly to the former spouse within 30 days of the expiry of that period, failing which interest becomes payable on such amount at a rate determined in the statutes.

(i) Despite paragraph (h), in the event that the pension fund concerned cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the pension fund concerned must retain the amount plus interest as determined in the statutes in the pension fund concerned, until such time as details of the manner in which that payment must be effected is made available to the pension fund concerned by the member, the former spouse or any other person whom the pension fund concerned is satisfied has the necessary

authority and capacity to instruct the pension fund concerned in that respect.

(j) A former spouse—

(i) is not a member or beneficiary in relation to the fund; and

(ii) is entitled to the accrual of fund return from the date of the court order until payment or transfer of the deduction contemplated in this section.

(k) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act including, but not limited to, section 7 (9) (a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (j)."

3. PROPOSED AMENDMENTS TO TRANSNET PENSION FUND ACT TO PROVIDE FOR TWO POT RETIREMENT SYSTEMS FOR INCLUSION IN PENSION FUND AMENDMENT BILL [B 3-2024]

To amend the Transnet Pension Fund Act, 1990, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide for the appropriate account of a member's interest in the savings, retirement and vested components, to provide for deductions that may be made and to provide for matters connected therewith.

Amendment of section 1 of Act 62 of 1990, as amended by section 39 of Act 52 of 1991 and section 1 of Act 41 of 2000

9. Section 1 of the Transnet Pension Fund Act, 1990 (Act No. 62 of 1990) (herein referred to as the Transnet Pension Fund Act), is hereby amended—

(a) by the substitution for the definition of "dependent pensioner" of the

following definition:

“**dependent pensioner**’, in relation to **[the Transport Pension Fund]** a designated retirement fund, means a person who is entitled to a pension paid by that fund as a result of the membership of that fund of a deceased member or a deceased pensioner;”;

(b) by the insertion after the definition of “dependent pensioner” of the following definition:

“**designated retirement fund**’ means any of the Transport Pension Fund, the Transnet Retirement Fund and the Transnet Second Defined Benefit Fund and any other pension fund established in terms of section 14A of this Act;”;

(c) by the insertion after the definition of “designated retirement fund” of the following definition:

“**Divorce Act**’ means the Divorce Act, 1979 (Act No. 70 of 1979);

(d) by the insertion after the definition of “employer” of the following definition:

“**Financial Sector Conduct Authority**’ means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);”;

(e) by the insertion after the definition of “general rules” of the following definitions:

“**Income Tax Act**’ means the Income Tax Act, 1962 (Act No. 58 of 1962;

‘member’s interest in the retirement component’ has the meaning as defined in section 1(1) of the Income Tax Act;

‘member’s interest in the savings component’ has the meaning as defined in section 1(1) of the Income Tax Act;

‘member’s interest in the vested component’ has the meaning as defined in section 1(1) of the Income Tax Act;”;

(f) by the substitution for the definition of “pensioner” of the following definition:

“**pensioner**’, in relation to **[the Transport Pension Fund]** a designated retirement fund, means a person who is entitled to a pension paid by that fund resulting from his or her membership of that fund;”;

(g) by the insertion after the definition of “pensioner” of the following definition:

“**pension interest**’ in relation to a court order granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, means, in relation to a party who is a member of a fund, that member’s individual account or minimum individual reserve, determined in terms of the rules of that fund, on the date of the court order;”;

(h) by the insertion after the definition of “principal employer” of the following definition:

“**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;”;

(i) by the insertion after the definition of “Rules” of the following definitions:

“**savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;

‘**savings withdrawal benefit**’ has the meaning as defined in section 1(1) of the Income Tax Act;”;

(j) by the substitution for the definition of “subsidiary” of the following definition:

“**subsidiary**’ means a subsidiary contemplated in section [1(3)(a)] 3 of the Companies Act, [1973] 2008 (Act No. [6] 71 of [1973] 2008);”;

(k) by the substitution for the definition of “Transnet” of the following definition:

“**Transnet**’ means Transnet SOC Limited, formed and incorporated in terms of section 2 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);”

(l) by the substitution for the definition of “valuator” of the following definitions:

“**valuator**’ means an actuary approved by the [Registrar of Pension Funds] Financial Sector Conduct Authority contemplated in the Pension Funds Act, 1956 (Act No. 24 of 1956), as a valuator for the purposes of the valuation of retirement funds and appointed in terms of section 6(1) [.] and

‘**vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* in item 6B of the Second Schedule to the

Income Tax Act:”.

Insertion of section 1A in Act 62 of 1990

10. The following section is hereby inserted in the Transnet Pension Fund Act after section 1:

“Application of Act

1A. In the event of a conflict between the provisions of this Act and the Divorce Act, the provisions of this Act prevail.”.

Amendment of section 6 of Act 62 of 1990, as amended by section 3 of Act 41 of 2000 and section 7 of Act 6 of 2007

11. Section 6 of the Transnet Pension Fund Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) the **[Registrar of Pension Funds contemplated in section 3 of the Pension Funds Act, 1956]** Financial Sector Conduct Authority; and”.

Substitution of section 7 of Act 6 of 2007 as substituted by section 8 of Act 6 of 2007

12. The following section is hereby substituted for section 7 of the Transnet Pension Fund Act:

“Withdrawals and deductions from member’s pension benefits

7. (1)(a) Subject to this Act and any guarantee, suretyship or pledge in accordance with the rules of the designated retirement fund, in each case as contemplated by section 10A of this Act, no benefit provided for in the rules of the designated retirement fund (including an annuity purchased or to be purchased by the designated retirement fund from an insurer for a member), or right to such a benefit, or right in respect of contributions made by a member or on his or her behalf, shall, subject to the Income Tax Act, be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, or be liable, except for a court order in terms of the Maintenance Act, 1998 (Act No. 99 of 1998).

section 7(8) (a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion or an interim maintenance order granted in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules, to be attached or subjected to any form of execution under a judgment or order of a court of law.

(b) In the event of the member or beneficiary attempting to assign, transfer or otherwise cede or to pledge or hypothecate a benefit or right, payment thereof may be withheld, suspended or entirely discontinued, if the designated retirement fund so determines, provided that the designated retirement fund may make payment of such benefit or of any benefit in pursuance of such contributions, or part thereof, to one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may direct.

(2) Notwithstanding the provisions of subsection (1), the designated retirement fund may—

- (a) permit a member to take a savings withdrawal benefit where a loan, suretyship or guarantee has been furnished by the designated retirement fund or another entity referred to in section 10 or there is a judgment contemplated in section 9(1)(d)(i) in favour of the employer that has not yet been executed: Provided that the withdrawal may not result in there being insufficient funds remaining funds to repay the loan, pay the amount of the suretyship or guarantee or comply with the judgment;
- (b) deduct from the member's interest in the designated retirement fund, the member's account or the member's individual account, any amount payable by the member in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); or
- (c) deduct from the member's interest in the designated retirement fund, the member's account or the member's individual account (as applicable) any amount payable by the member as maintenance in terms of an interim maintenance order granted by the court in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules.

made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(3) In respect of a deduction referred to in subsections (2)(b) or (c), the designated retirement fund must pay the maintenance, as directed by the maintenance order as a lump sum in respect of arrear maintenance or future maintenance from the benefit to which the member becomes entitled upon termination of his or her membership of the designated retirement fund or retirement from the designated retirement fund.”.

Insertion of section 7A in Act 62 of 1990

13. The following section is hereby inserted in the Transnet Pension Fund Act after section 7:

“Payment of pension interest upon divorce or dissolution of marriage according to tenets of religion

7A. (1) The designated retirement fund must deduct from the member’s interest in the designated retirement fund, the member’s account or the member’s individual account, any portion of the member’s pension interest assigned to the member’s former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(2) The designated retirement fund may not, without the consent of the former spouse, advance a loan to a member in respect of a dwelling house that is contemplated by section 10 of the Act or a housing loan scheme that is contemplated by section 10A of the Act, or permit a savings withdrawal benefit to be taken by a member if—

(a) the designated retirement fund and the employer or third party contemplated by section 10 or the financier contemplated by section 10A received a formal notification with proof that divorce proceedings have been instituted from the member or former spouse that a divorce has been instituted, as defined in the Divorce Act; or

(b) the designated retirement fund and the employer or third party contemplated by section 10 or the financier contemplated by section 10A received a formal notification with proof that divorce proceedings have been instituted that an application has been made for a court order in respect of the division of assets of a marriage in accordance with the tenets of any religion.

(3) The prohibition in terms of subsection (2) applies until a court order is issued.

(4) Subject to paragraph (g), for purposes of section 7(8)(a) of the Divorce Act or in terms of or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, the portion of a member's pension interest assigned to the member's former spouse is deemed to accrue to the member on the date on which the decree of divorce or court order is granted.

(5) The amount of the member's pension interest in the designated retirement fund must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the designated retirement fund in accordance with the rules of the applicable fund, as at the date of the decree of divorce or the date of the court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(6)(a) The designated retirement fund must, within 45 days of the submission of the court order by the former spouse of a member to the designated retirement fund, request the former spouse to elect whether the amount to be deducted must be—

- (i) paid directly to the former spouse; or
- (ii) transferred to an approved pension fund on behalf of the former spouse.

(b) The former spouse must, within 120 days of being requested to make a choice—

- (i) inform the designated retirement fund of the manner in which the amount referred to in paragraph (a) must be dealt with; and
- (ii) if the former spouse chooses that the amount must be—

(aa) paid to the former spouse directly, provide the designated retirement fund concerned with the details that are necessary to effect the payment; or

(bb) transferred to an approved pension fund on his or her behalf, provide the designated retirement fund with the details of that approved pension fund;

(c) The designated retirement fund must pay or transfer the amount in the circumstances contemplated in—

(i) paragraph (b)(ii)(aa) within 30 days; or

(ii) paragraph (b)(ii)(bb) within 60 days,

in accordance with the former spouse's choice, failing which interest becomes payable on such amount at a rate determined in the rules of the designated retirement fund.

(d) In the event that the former spouse fails to make a choice or identify the approved pension fund to which the amount must be transferred within the period referred to in paragraph (b), the designated retirement fund must pay the amount directly to the former spouse within 30 days of the expiry of that period, failing which interest becomes payable on such amount at a rate determined in the rules of the designated retirement fund.

(e) Despite paragraph (d), in the event that the designated retirement fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the designated retirement fund must retain the amount plus interest as determined in the rules of the designated retirement fund, until such time as details of the manner in which that payment must be effected, is made available to the designated retirement fund by the member, the former spouse or any other person whom the designated retirement fund concerned is satisfied has the necessary authority and capacity to instruct the designated retirement fund in that respect.

(f) A former spouse—

(i) is not a member or beneficiary in relation to the designated retirement fund; and

(ii) is entitled to the accrual of fund return from the date of the court order until payment or transfer of the deduction contemplated in this

section.

(g) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act, including, but not limited to, section 7(8)(a) of the Divorce Act, be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (e)."

Amendment of section 9 of Act 62 of 1990, as substituted by section 10 of Act 6 of 2007

14. The following section is hereby substituted for section 9 of the Transnet Pension Fund Act:

“Recovery of certain debts owing to the employer from benefits payable to members on their dismissal or retirement and in certain other circumstances

9.(1) If a member of a designated retirement fund-

- (a) _____ is dismissed on account of fraud, misconduct, theft or dishonesty;
- (b) _____ resigns or absconds in order to avoid dismissal on account of fraud, misconduct, theft or dishonesty, or in anticipation of a disciplinary or a criminal charge involving fraud or dishonesty being laid against him or her: Provided that the onus of proving that a member resigned or absconded for any reason mentioned in this paragraph shall be on the employer;
- (c) _____ leaves the employ of an employer for any reason, or dies, before any loan or advance, other than a loan referred to in sections 10 or 10A of this Act made to him or her at his or her specific written request by an employer or from the Benevolent Fund referred to in section 23 of the South African Transport Services Conditions of Service Act, 1988 (Act No. 41 of 1988), has been repaid in full; or
- (d) _____ is liable for compensation in the circumstances contemplated in subparagraph (i) below, the designated retirement fund may deduct any amount owed by the member to the member's employer on the date of retirement, date of

dismissal or date on which the member otherwise ceases to be a member of such fund, in respect of—

(i) compensation, including any legal costs recoverable from the member, in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which (i) the member has in writing admitted liability to the employer, or (ii) judgment has been obtained against the member in any court, including a magistrate’s court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(ii) the amount of any loss, as determined by the employer, which the latter may have sustained by reason of such fraud, misconduct, theft or dishonesty on the part of the member; or

(iii) the unpaid balance of such loan or advance, from any benefit payable in respect of the member or his or her estate or a beneficiary in terms of the rules of the designated retirement fund, and pay that amount to the employer concerned.

(2) The designated retirement fund may request any additional information from the employer which the board of trustees, in its absolute discretion, deems necessary and reasonable for purposes of deducting the benefit.”.

Insertion of section 10A in Act 62 of 1990

15. The following section is hereby inserted in the Transnet Pension Fund Act after section 10:

“Housing loan schemes involving financial support from a designated retirement fund

10A. (1) A designated retirement fund may, in accordance with the rules of the designated retirement fund, provide a loan to a member of the designated retirement fund, or provide a suretyship or guarantee to a financier, in order to enable a member of the designated retirement fund to acquire, improve or refinance residential immovable property.

(2) The member of the designated retirement fund may, in accordance with the rules of the designated retirement fund, secure its obligations in respect of any such transaction by pledging some or all of the rights of the member in respect of the designated retirement fund to the designated retirement fund.”.

Insertion of section 10B in Act 62 of 1990

16. The following section is hereby inserted in the Transnet Pension Fund Act after section 10A:

“Savings withdrawal benefits to be provided by a designated retirement fund

10B. (1) The rules of a designated retirement fund may provide for the designated retirement fund to provide savings withdrawal benefits to members of the designated retirement fund who are not pensioners.

(2) A designated retirement fund may not allow a member to take a savings withdrawal benefit where there is a maintenance order against the designated retirement fund in place, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the order.

(3) The designated retirement fund may, subject to a court order authorising the suspension of a savings withdrawal, suspend a savings withdrawal benefit where it is aware that proceedings relating to a maintenance order against the designated retirement fund are pending, and the withdrawal may result in there being insufficient remaining value to comply with the pending order, if granted.”.

Insertion of section 11A in Act 62 of 1990

17. The following section is hereby inserted in the Transnet Pension Fund Act after section 11:

“Recovery of other amounts due by a member of a designated retirement fund

11A. (1) A designated retirement fund may deduct any amount that such fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of—

(a) the member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

(b) any insurance premium payable by such a member or beneficiary to an insurer licensed in terms of the Insurance Act, 2017 (Act No. 18 of 2017), in respect of a life insurance policy; and

(c) any purpose approved by the Financial Sector Conduct Authority, on the conditions determined by that member or beneficiary, upon a request in writing from the designated retirement fund,

from the benefit to which the member or beneficiary is entitled in terms of the rules of the designated retirement fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be.

(2) The rules of the designated retirement fund may provide for deductions from the benefits and transfer values of a member of the designated retirement fund in accordance with, and for such benefits and transfer values to be reduced, adjusted or otherwise affected by-

(a) the Income Tax Act, the Tax Administration Act, 2011 (Act No. 28 of 2011);

(b) the savings withdrawal benefit provided in terms of the rules of the designated retirement fund;

(c) any loan, suretyship or guarantee provided in accordance with this Act or the rules of the designated retirement fund; and/or

(d) otherwise in accordance with the rules of the designated retirement fund and any applicable law.

(3) Where there is any deduction in terms of this Act, the rules of the designated retirement fund may allocate that deduction to any account or component contemplated by the Income Tax Act.”.

Amendment of section 13 of Act 62 of 1990, as substituted by section 14 of

Act 6 of 2007

18. Section 13 of the Transnet Pension Fund Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) the provisions of sections 7 to 11A of this Act shall cease to be applicable.”

Amendment of section 14A of Act 62 of 1990, as inserted by section 7 of Act 41 of 2000 and substituted by section 16 of Act 6 of 2007

19. Section 14A of the Transnet Pension Fund Act is hereby amended by the substitution for subsections (7) and (8) of the following subsections:

“(7) A pension fund is deemed to be a pension fund as defined in paragraph (a) of the definition of ‘pension fund’ in section 1 of the Income Tax Act.

(8) Sections 6, 7, 7A, 8, 9, 10, 10A, 10B, 11, 11A, 13 and 14 apply with the changes required by the context to a pension fund.”