

REPUBLIC OF SOUTH AFRICA

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# PENSION FUNDS AMENDMENT BILL

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*(As amended by the Standing Committee on Finance (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B 3B—2024]

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

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# BILL

To amend—

- the Pension Funds Act, 1956, 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;
- 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; to provide for deductions that may be made;
- 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;
- 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.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 3 of Act 51 of 1988, section 20 of Act 54 of 1989, section 29 of Act 97 of 1990, section 14 of Act 83 of 1992, section 21 of Act 104 of 1993, sections 1 and 6 of Act 22 of 1996, section 1 of Act 39 of 2001, section 1 of Act 65 of 2001, section 1 of Act 11 of 2007, section 1 of Act 22 of 2008, section 1 of Act 45 of 2013, and section 290 read with Schedule 4 of Act 9 of 2017

1. Section 1 of the Pension Funds Act, 1956, is hereby amended—

- (a) by the insertion after the definition of “disclosure” of the following definition:  
“**Divorce Act**’ means the Divorce Act, 1979 (Act No. 70 of 1979);”;

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- (b) by the insertion after the definition of “fund return” of the following definition:  
 “**Income Tax Act**’ means the Income Tax Act, 1962 (Act No. 58 of 1962);”;
- (c) by the insertion after the definition of “member’s individual account” of the following definitions:  
 “**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;”;
- (d) by the substitution for the definition of “pension fund organisation” of the following definition:  
**“pension fund organisation**’ means—  
 (a) any association of persons established with the object of providing annuities, including living annuities, or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or  
 (b) any business carried on under a scheme or arrangement established with the object of providing annuities, including living annuities, or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons; or  
 (c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits that became payable in terms of the employment of a member on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds[.]; or  
 (d) any association of persons or business carried on under a scheme or arrangement established with the object of making payments in respect of arrear and future maintenance orders payable in terms of a court order issued against the fund on behalf of beneficiaries,  
 and includes any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a), (b) or (c) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or collect contributions from or on behalf, of members;”;
- (e) by the insertion after the definition of “pension fund organisation” 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;”;
- (f) by the insertion after the definition of “retirement annuity 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* to paragraph 6B of the Second Schedule to the Income Tax Act;”;
- (g) 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* to paragraph 6B of the Second Schedule to Income Tax Act;  
**“savings withdrawal benefit**’ has the meaning as defined in section 1(1) of the Income Tax Act;” and

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

“**‘valuator’** means an actuary who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of the Act[.]; and

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

**Amendment of section 2 of Act 24 of 1956, as amended by section 10 of Act 94 of 1977, section 13 of Act 103 of 1979, section 36 of Act 9 of 1989, section 15 of Act 83 of 1992, section 23 of Act 104 of 1993 and section 211 of Act 66 of 1995, as substituted by section 2 of Act 11 of 2007, section 2 of Act 22 of 2008, and substituted by section 2 of Act 45 of 2013**

2. Section 2 of the Pension Funds Act, 1956, is hereby amended by the addition of the following subsection:

“(6) 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 14B of Act 24 of 1956, as inserted by section 3 of Act 39 of 2001, substituted by section 10 of Act 11 of 2007, and amended by section 21 of Act 45 of 2013**

3. Section 14B of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for the definition of “OC” of the following definition:

“OC represents any other amounts lawfully permitted, credited to or debited, deducted or withdrawn from the member’s individual account, in terms of this Act, if any, and includes any savings withdrawal benefit paid from the savings component; and”; and

(b) by the deletion in subsection (2)(a) of the word “and” at the end of subparagraph (i) and the addition of the following subparagraph after subparagraph (ii):

“(iii) when determining the amounts referred to in subparagraphs (i) and (ii), the pensionable service applied in the determination of the accrued deferred pension referred to in subparagraph (i) must be reduced to take into account any savings withdrawal benefit previously paid from the savings component as permitted in terms of the Income Tax Act and the amount referred to in subparagraph (ii) must be reduced by any savings withdrawal benefit previously paid from the savings component; and”.

**Amendment of section 19 of Act 24 of 1956, as amended by section 13 of Act 80 of 1959, section 9 of Act 58 of 1966, section 1 of Act 80 of 1969, section 2 of Act 23 of 1970, section 7 of Act 91 of 1972, section 23 of Act 101 of 1976, section 11 of Act 94 of 1977, section 11 of Act 80 of 1978, section 14 of Act 103 of 1979, section 39 of Act 99 of 1980, section 14 of Act 82 of 1982, section 20 of Act 46 of 1984, section 17 of Act 86 of 1984, section 11 of Act 50 of 1986, section 5 of Act 51 of 1988, section 8 of Act 53 of 1989, section 11 of Act 64 of 1990, section 2 of Act 94 of 1997, section 2 of Act 65 of 2001, section 33 of Act 45 of 2013, and section 290 read with Schedule 4 of Act 9 of 2017**

4. Section 19 of the Pension Funds Act, 1956 is hereby amended—

(a) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

“(c) A loan or guarantee contemplated in paragraph (a) must not exceed, at the time it is granted or furnished, 65 percent of the member’s individual account or minimum individual reserve, as the case may be, in the member’s interest in the savings, retirement and vested components.”;

- (b) by the deletion of paragraph (d) of subsection (5); and  
 (c) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(a) The [registrar] Authority may, on application by a fund and the payment of the prescribed fee, under exceptional circumstances, and [on such] subject to conditions and for [such] the periods [as he] that the Authority may determine, temporarily exempt any fund from compliance with any provision of subsection (5) or (5B)(a).”.

**Amendment of section 37A of Act 24 of 1956, as inserted by section 24 of Act 101 of 1976 and substituted by section 12 of Act 94 of 1977, amended by section 40 of Act 99 of 1980, section 45 of Act 104 of 1993, substituted by section 4 of Act 22 of 1996, and as amended by section 50 of Act 45 of 2013**

5. Section 37A of the Pension Funds Act, 1956 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Save to the extent permitted by this Act, the Income Tax Act, [1962 (Act No. 58 of 1962), and] the Tax Administration Act, 2011 (Act No. 28 of 2011) and [,] the Maintenance Act, 1998, no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor’s financial position in terms of section 65 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any 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 determine.”.

**Substitution of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977, and amended by section 14 of Act 80 of 1978, section 4 of Act 65 of 2001, section 28 of Act 11 of 2007, section 4 of Act 35 of 2007, section 16 of Act 22 of 2008, section 3 of Act 60 of 2008, and section 52 of Act 45 of 2013**

6. The following section is hereby substituted for section 37D of the Pension Funds Act, 1956:

**“Fund may make certain deductions from pension benefits** 40

**37D.** (1) A registered fund may—

- (a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) and any amount due to the fund in respect of— 45
- (i) a loan granted to a member in terms of section 19(5); or
  - (ii) any 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 the member in terms of section 19(5), from— 50
    - (aa) the amount of the benefit to which a member becomes entitled 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 55

- (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; 5
- (b) deduct any amount due by a 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, *or the date on which the member's employment with a participating employer in a retirement fund is terminated* in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), in respect of compensation, including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb), 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— 10
- (i) the member has in writing admitted liability to the employer; or 20
- (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), 25
- from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned;
- (bA) permit a member to take a savings withdrawal benefit where there is a judgment contemplated in paragraph (b)(ii) or a written admission of liability in favour of the employer that has not yet been executed: 30
- 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;
- (bB) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in paragraph (b)(ii), 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; 35
- (c) in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), deduct any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of— 40
- (i) 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); 45
- (ii) 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;
- (iii) any purpose approved by the Authority, on the conditions determined by the Authority, upon a request in writing from the fund, 50
- from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be; 55
- (d) deduct from a member's individual account in the case of a defined contribution category of a fund or, in any other case, from a minimum individual reserve in the fund as determined by the fund rules or as determined in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011)— 60
- (i) any portion of the pension interest assigned to a non-member spouse in the court order;

- (iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); and
- (iB) 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. 1 of 1985); and
- (e) deduct from a member's individual account or minimum individual reserve referred to in subsection (1)(d) or the benefit payable to a pensioner referred to in subsection (1A), as the case may be, employees' tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, as a result of a deduction referred to in this subsection.
- (1A) In respect of a pensioner, deductions referred to in subsection (1)(d) must be made from the capital value of the pensioner's pension after retirement.
- (1B) The aggregate of all amounts deducted in terms of subsection (1) may not exceed the amount of the member's individual account or the member's minimum individual reserve, as the case may be, referred to in subsection (1)(d).
- (2) For the purposes of paragraph (a)(ii)(bb) and (cc) of subsection (1), 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.
- (3)(a) Any amount that may be deducted in terms of subsection (1)(d) may only be deducted after the member's individual account or member's minimum individual reserve, as the case may be, has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where the loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not.
- (aA)(i) A fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse with proof that—
- (i) a divorce has been instituted, as defined in the Divorce Act;
- (ii) 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.
- (ii) The prohibition in terms of subparagraph (i) applies until finalisation of the divorce.
- (aC) In respect of a deduction referred to in subsection (1)(d)(iA) or (iB), the fund must pay the maintenance as a lump sum in respect of arrear or future maintenance or in monthly payments in respect of future maintenance, as directed by the maintenance order.
- (aD) A fund may not allow a member to take a savings withdrawal benefit where there is a maintenance order against the fund in place, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the order.
- (aE) A fund may, subject to a formal written notice from the maintenance investigating officer 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 fund is pending, and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted.
- (b) In the event that more than one of the court orders referred to in subsection (1)(d) provide for deductions at the same time, the court orders must be dealt with in accordance with the following hierarchy:
- (i) Any maintenance order referred to in subsection (1)(d)(iA) or (iB);
- (ii) any court order referred to in the definition of 'non-member spouse'.

- (4)(a) For the deduction referred to in subsection (1)(d)(i), the portion of the interest assigned to the non-member spouse in terms of the court order concerned is deemed to accrue to the member on the date of the court order which—
- (i) must be deducted by—
    - (aa) the fund named in or identifiable from the court order; or
    - (bb) the fund to which the fund referred to in item (aa) transferred the interest referred to in the court order;
  - (ii) must be deducted on the date on which an election is made in accordance with paragraph (b)(i) or, if no election is made within the period referred to in paragraph (b)(ii), the date on which that period expires; and
  - (iii) must, subject to subsection (1A), reduce the member’s individual account or member’s individual reserve, as the case may be, at the date of the court order.
    - (b)(i) The fund must, within 45 days of the submission of the court order by the non-member-spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to the non-member spouse or if it must be transferred to a fund on the non-member spouse’s behalf.
    - (ii) The non-member spouse must within 120 days of being requested to make an election—
      - (aa) inform the fund of how the amount referred to in subparagraph (i) must be dealt with;
      - (bb) if the non-member spouse elects that the amount must be paid to them directly, provide the fund with the details of how that payment must be effected; or
      - (cc) if the non-member spouse elects that the amount must be transferred to a fund on their behalf, provide the fund with the details of that fund.
    - (iii) The fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse’s election.
    - (iv) In the event that the non-member spouse fails to make an election or identify the fund to which the amount should be transferred within the period referred to in subparagraph (ii), the fund must pay the amount directly to the non-member spouse within 30 days after the expiry of that period.
    - (v) Despite subparagraph (iv), in the event that the fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the fund until such time as details of how that payment must be effected is made available to the fund by the member, the non-member spouse or any other person.
  - (c) A non-member 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 deduction until payment or transfer of the deduction contemplated in paragraph (a)(ii).
  - (d) Any portion of the pension interest assigned to the non-member spouse in terms of a court order granted prior to 13 September 2007 is for the purposes of any law other than the Income Tax Act including, but not limited to, section 7(8)(a) of the Divorce Act, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).”.

**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**

7. 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—



- (a) 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);”;
- (b) by the insertion after the definition of “excluded commitments” of the following definitions: 5  
 “**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; 10  
 “**member’s interest in the vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act;”;
- (c) by the insertion after the definition of “Minister” of the following definition: 15  
 “**non-member spouse**’ has the meaning as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);”;
- (d) by the insertion after the definition of “officer” of the following definition: 20  
 “**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;”;
- (e) by the insertion after the definition of “regulation” of the following definitions: 25  
 “**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 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* to paragraph 6B of the Second Schedule to the Income Tax Act; 30  
 “**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 “transfer date” of the following definition: 35  
 “**transfer date**’ means a date of transfer contemplated in section 4(1)[.]; and”;
- (g) by the insertion after the definition of “transfer date” of the following definition: 40  
 “**vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act.”.

#### Insertion of section 1A in Act 44 of 1958

8. The following section is hereby inserted in the Post and Telecommunications-Related Matters Act after section 1: 45

#### “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** 50

9. 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) or written admission of liability 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; 5
- (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— 10
- (AA) the member has in writing admitted liability to the employer; or 15
- (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), 20
- 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 25
- (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— 30
- (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); 35
- (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); 40
- 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; 45
- (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 50
- (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). 55
- (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. 60
- (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.” 60

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

10. 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 5**

**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. 10

(2) A fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse with proof that— 15

- (a) a divorce has been instituted, as defined in the Divorce Act;
- (b) 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. 20

(3) The prohibition in terms of subsection (2) applies until a court order is issued. 20

(3)(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. 25

(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. 30

(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. 35 40

(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 45
- (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. 50

(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— 55

- (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 subsection.
- (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(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)."

**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**

**11.** 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* to paragraph 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* to paragraph 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 (Act No. 61 of 1973)] 2008 (Act No. 71 of 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* to paragraph 6B of the Second Schedule to the Income Tax Act;”.

**Insertion of section 1A in Act 62 of 1990**

12. 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.” 5

**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**

13. Section 6 of the Transnet Pension Fund Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph: 10

“(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 62 of 1990, as substituted by section 8 of Act 6 of 2007**

14. The following section is hereby substituted for section 7 of the Transnet Pension Fund Act: 15

**“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, 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. 20 25 30

(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. 35 40

(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) or written admission of liability, 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; 45 50

(b) deduct from the member’s interest in the designated retirement fund, the member’s account or the member’s individual account, as the case may be 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 the case may be 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.
- (4) A designated retirement fund may not allow a member to take a savings withdrawal benefit where there is a maintenance order or a written notification from the maintenance officer 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.
- (5) 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.
- (6) 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.”.

**Insertion of section 7A in Act 62 of 1990**

15. 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, as the case may be, 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) A fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse that—
- (a) a divorce has been instituted, as defined in the Divorce Act;
- (b) 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 subsection (6)(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 designated retirement 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

(iii) 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 subsection (1).

(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)."

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

16. 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** 5

**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 and/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 section 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 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,
  - (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);
  - (iii) 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
  - (iv) 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**

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

**“Housing loan schemes involving financial support from designated retirement fund** 50

**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. 55

(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.”.

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**Insertion of section 11A in Act 62 of 1990**

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

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

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**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 and the Tax Administration Act, 2011 (Act No. 28 of 2011) and a designated retirement fund;
- (b) any loan, suretyship or guarantee provided in accordance with this Act or the rules of the designated retirement fund; or
- (c) in accordance with the rules of the designated retirement fund.

(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 components 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**

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19. 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**

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20. 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, 11, 11A, 13 and 14 apply the changes required by the context to a pension fund.”.

**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**

21. 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* to paragraph 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* to paragraph 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* to paragraph 6B of the Second Schedule to the Income Tax Act.”.

**Insertion of section 1A in Proclamation 21 of 1996**

22. 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**

23. 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. 5

(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. 10

(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. 15 20

(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— 25
- (i) a loan or guarantee has been furnished by an employer; or
  - (ii) there is a judgment contemplated in paragraph (c)(iii)(bb) or a written admission of liability 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; 30

- (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; 35

- (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; 40

- (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; 45

- (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— 50

(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); 55

- (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 5
- (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— 10
- (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 15
- (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; 20
- (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 25
- (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). 30
- (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. 35
- (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. 40
- (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.”. 45 50

**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**

24. 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 55**

**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 fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse with proof that—

- (a) a divorce has been instituted, as defined in the Divorce Act;
- (b) 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 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 subsection .

(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).”.

#### **Short title and commencement**

**25.** This Act is called the Pension Funds Amendment Act, 2024, and comes into effect on a date determined by the President by proclamation in the *Gazette*.



## MEMORANDUM ON THE OBJECTS OF THE PENSION FUNDS AMENDMENT BILL, 2024

### 1. BACKGROUND OF BILL

- 1.1 South Africa has different retirement fund vehicles available to individuals who wish to save for retirement, namely, pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds. Historically, these funds had differing tax treatments for contributions to the funds, as well as differing rules relating to withdrawals from these funds. To promote retirement savings, the retirement savings regime has, since 2012, undergone some significant reforms. These reforms include, *inter alia*, harmonising the tax treatment of contributions to the different types of funds (which came into effect from 1 March 2016) and increasing preservation at retirement by harmonising the requirement for annuitisation upon retirement across all retirement funds (which came into effect from 1 March 2021).
- 1.2 Government now wishes to focus on pre-retirement preservation. In accordance with the current retirement regime, individuals may make full withdrawals from their pension or provident fund when they cease employment. Further to the above, individuals are also able to make once-off withdrawals from their pension preservation or provident preservation fund(s). What is of concern for Government is the fact that many of the above-mentioned withdrawals are taking place irrespective of the tax rates applied upon withdrawal.

#### *Reasons for change*

- 1.3 Government has two primary concerns with the design of the current retirement regime. The first is the lack of preservation pre-retirement, which Government has highlighted in previous discussion papers. The ability for pension and provident fund members to access their retirement interest when terminating employment can create the incentive for fund members to terminate employment as a means of gaining access to those funds, thus prematurely terminating the ability to preserve these funds until normal retirement age is, per the fund rules, attained.
- 1.4 The second concern is that some households in financial distress have assets within their retirement fund(s) that are not accessible in case of emergencies or financial hardship. This has become more prominent since the onset of the COVID-19 pandemic, with numerous calls for financially distressed individuals to be given access to their retirement funds to alleviate their financial hardship.

### 2. OBJECTIVE OF BILL

- 2.1 The Revenue Laws Amendment Bill, 2023, provides for the amendments to the Income Tax Act, 1962 (Act No. 58 of 1962) (“the ITA”), which gives effect to the policy objectives referred to in paragraph 1, and the detailed legislative proposals to give effect to the policy objectives are set out in the explanatory memorandum on the Revenue Laws Amendment Bill, 2023 (“the RLAB”).
- 2.2 The Pension Funds Amendment Bill, 2024 (“the Bill”) provides for certain amendments to the Pension Funds Act, 1956 (Act No. 24 of 1956) (“the PFA”), the Post and Telecommunications—Related Matters Act, 1958 (Act No. 44 of 1958) (“the PTRMA”), the Transnet Pension Funds Act, 1990 (Act No. 62 of 1990) (“the TPA”) and the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996) (“the GEP Law”) which are necessary to enable retirement funds to be able to appropriately implement the amendments to the ITA which are contained in the RLAB.

### 3. CONTENTS OF BILL

#### 3.1 *Clause 1*

This clause proposes an insertion of new definitions in the PFA to assist in the interpretation of the Bill and includes the introduction of the definition of “pension interest” which is important for the implementation of deductions in terms of section 37D, in alignment with the approach set out in the RLAB.

#### 3.2 *Clause 2*

This clause proposes an insertion of subsection (6) to section 2 of the PFA to provide for the trumping provision in an event of a conflict between the PFA and the Divorce Act, 1979 (Act No.70 Of 1979) (“the Divorce Act”) in respect of pension interest upon divorce or dissolution of a marriage according to the tenets of a religion.

#### 3.3 *Clause 3*

This clause provides for amendments to section 14B of the PFA, in particular, to amend the definition of “OC” in subsection (1), and to insert a new subsection (2)(a)(iii) to align section 14B with the provisions of and the requirements contained in the RLAB. OC represents any other amounts lawfully permitted, credited to or debited from the member’s individual account.

#### 3.4 *Clause 4*

Clause 4 amends section 19(5) of the PFA, which deals with loans and guarantees to members of retirement funds by retirement funds and employers, to align with the provisions and requirements of the RLAB. The amendments propose a cap on the amount of a loan or guarantee, or a loan or guarantee provided by an employer for the purposes of section 19(5), to a maximum of 65% of the member’s benefit available, including the member’s interest in the savings, retirement and vested components. This change also seeks to align section 19(5) to a policy decision taken and already included in regulation 28 of the Regulations made under the PFA published in Government Notice R.98 of 26 January 1962, as amended, to reduce pension benefit exposure to loans and guarantees.

#### 3.5 *Clause 5*

Clause 5 proposes an amendment to section 37A of the PFA to provide for the application of the provisions of the Tax Administration Act, 2011 (Act No. 28 of 2011).

#### 3.6 *Clause 6*

Clause 6 of the Bill proposes—

- (a) the substitution of section 37D of the PFA, to enable retirement funds to effect deductions from retirement fund benefits in accordance with the provisions and requirements of the RLAB;
- (b) the deduction of any amount due by a member to the member’s employer on the date on which the member’s employment with a participating employer in a pension fund is terminated, in accordance with the ITA and the Tax Administration Act, 2011 (Act No. 28 of 2011);
- (c) to permit a member to take a savings withdrawal benefit where a loan or guarantee has been furnished by the employer or a judgment in favour of the employer has yet to be executed provided that the withdrawal does not result in insufficient remaining funds to repay the loan or guarantee or comply with judgment;
- (d) that a pension may not, without consent from a non-member spouse, grant a loan or guarantee or permit withdrawal if the fund is notified by

the non-member spouse that a divorce has been instituted. Further to the above, the fund cannot permit a withdrawal if notified that a maintenance order against the fund is pending and the pension fund is uncertain if withdrawal will result in there being insufficient funds remaining to comply with pending order; and

- (e) other necessary refinements to the section, to enhance the appropriateness and effectiveness of the section.

### 3.7 *Clause 7*

This clause proposes an insertion of new definitions in the PTRMA to assist in the interpretation of the Bill and includes the introduction of the definition of “pension interest” which is important for the implementation of deductions in terms of section 10B and 10F, in alignment with the approach set out in the RLAB.

### 3.8 *Clause 8*

This clause proposes an insertion of section 1A to the PTRMA to provide for the trumping provision in an event of a conflict between the PTRMA and the Divorce Act in respect of pension interest upon divorce or dissolution of a marriage according to the tenets of a religion.

### 3.9 *Clause 9*

Clause 9 of the Bill proposes—

- (a) the substitution of sections 10B and 10F of the PTRMA, to enable retirement funds to effect deductions from retirement fund benefits in accordance with the provisions and requirements of the RLAB;
- (b) the deduction of any amount due by a member to the member’s employer on the date on which the member’s employment with a participating employer in a pension fund is terminated, in accordance with the ITA and the Tax Administration Act, 2011 (Act No. 28 of 2011); and
- (c) to permit a member to take a savings withdrawal benefit where a loan or guarantee has been furnished by the employer or a judgment in favour of the employer has yet to be executed provided that the withdrawal does not result in insufficient remaining funds to repay the loan or guarantee or comply with judgment.

### 3.10 *Clause 10*

Clause 10 of the Bill proposes that a pension may not, without consent from a non-member spouse, grant a loan or guarantee or permit withdrawal if the fund is notified by the non-member spouse that a divorce has been instituted. Further to the above, the fund cannot permit a withdrawal if notified that a maintenance order against the fund is pending and the pension fund is uncertain if withdrawal will result in there being insufficient funds remaining to comply with pending order.

### 3.11 *Clause 11*

This clause proposes an insertion of new definitions and substitution of existing definitions in the TPF to assist in the interpretation of the Bill and includes the introduction of the definition of “pension interest” which is important for the implementation of deductions in terms of sections 7 and 7A in alignment with the approach set out in the RLAB.

### 3.12 *Clause 12*

This clause proposes an insertion of section 1A to the TPF to provide for the trumping provision in an event of a conflict between the TPF and the Divorce Act in respect of pension interest upon divorce or dissolution of a marriage according to the tenets of a religion.

### 3.13 *Clause 13*

Clause 13 proposes a substitution of the words the “Registrar of Pension Funds contemplated in section 3 of the Pension Funds Act, 1956” with the words “Financial Sector Conduct Authority”.

### 3.14 *Clause 14*

Clause 14 of the Bill proposes—

- (a) the substitution of section 7 of the TPF, to enable retirement funds to effect deductions from retirement fund benefits in accordance with the provisions and requirements of the RLAB;
- (b) the deduction of any amount due by a member to the member’s employer on the date on which the member’s employment with a participating employer in a pension fund is terminated, in accordance with the ITA and the Tax Administration Act, 2011 (Act No. 28 of 2011); and
- (c) to permit a member to take a savings withdrawal benefit where a loan or guarantee has been furnished by the employer or a judgment in favour of the employer has yet to be executed provided that the withdrawal does not result in insufficient remaining funds to repay the loan or guarantee or comply with the judgment.

### 3.15 *Clause 15*

Clause 15 of the Bill proposes that a pension may not, without consent from a non-member spouse, grant a loan or guarantee or permit withdrawal if the fund is notified by the non-member spouse that a divorce has been instituted. Further to the above, the fund cannot permit a withdrawal if notified that a maintenance order against the fund is pending and the pension fund is uncertain if withdrawal will result in there being insufficient funds remaining to comply with pending order.

### 3.16 *Clause 16*

Clause 16 proposes that a designated retirement fund may recover certain debts owing to the employer from benefits payable to members on their dismissal or retirement and in certain other circumstances.

### 3.17 *Clause 17*

Clause 17 proposes that a designated retirement fund may provide a loan to a member of the designated retirement fund, housing loan schemes involving financial support from a designated retirement fund.

### 3.18 *Clause 18*

Clause 18 proposes that a designated retirement may recover other amounts due by a member of a designated retirement fund.

### 3.19 *Clause 19*

Clause 19 proposes an amendment to section 13 to extend the application of the new sections proposed in this Bill.

### 3.20 *Clause 20*

Clause 20 proposes an amendment to section 14A to provide for the application of this Act to the ITA and extends the application of new proposed sections proposed in this Bill.

### 3.21 *Clause 21*

This clause proposes an insertion of new definitions in the GEP Law to assist in the interpretation of the Bill and includes the introduction of the definition of “pension interest” which is important for the implementation of deductions in terms of sections 21 and 24A, in alignment with the approach set out in the RLAB.

### 3.22 *Clause 22*

This clause proposes an insertion of section 1A to the GEP Law to provide for the trumping provision in an event of a conflict between the GEP Law and the Divorce Act in respect of pension interest upon divorce or dissolution of a marriage according to the tenets of a religion.

### 2.23 *Clause 23*

Clause 23 of the Bill proposes—

- (a) the substitution of section 21 of the GEP Law, to enable retirement funds to effect deductions from retirement fund benefits in accordance with the provisions and requirements of the RLAB;
- (b) the deduction of any amount due by a member to the member’s employer on the date on which the member’s employment with a participating employer in a pension fund is terminated, in accordance with the ITA and the Tax Administration Act, 2011 (Act No. 28 of 2011); and
- (c) to permit a member to take a savings withdrawal benefit where a loan or guarantee has been furnished by the employer or a judgment in favour of the employer has yet to be executed provided that the withdrawal does not result in insufficient remaining funds to repay the loan or guarantee or comply with the judgment.

### 3.24 *Clause 24*

Clause 24 of the Bill proposes that a pension fund may not, without consent from a non-member spouse, grant a loan or guarantee or permit withdrawal if the fund is notified by the non-member spouse that a divorce has been instituted. Further to the above, the fund cannot permit a withdrawal if notified that a maintenance order against the fund is pending and the pension fund is uncertain if withdrawal will result in there being insufficient funds remaining to comply with a pending order.

### 3.25 *Clause 25*

This clause provides for the short title and commencement of the Bill.

## **4. ORGANISATIONS AND INSTITUTIONS CONSULTED**

- 4.1 The Bill has been published for public comment. The Standing Committee on Finance of the National Assembly also conducted public hearings on the Bill. All stakeholders in the pensions and retirement industry participated and provided comments and their comments were considered in the drafting of the Bill.
- 4.2 A Socio-Economic Impact Assessment System was completed by the Presidency.
- 4.3 The Bill was further considered by Cabinet prior to its introduction in Parliament.

## 5. FINANCIAL IMPLICATIONS OF BILL

### 5.1 Financial implications for the State:

There are no significant financial implications envisaged for the fiscus.

### 5.2 Financial implications for retirement funds:

The financial implications for retirement funds would relate to adjustments to their systems to give effect to the requirements contained in the RLAB as facilitated through the amendments to the pension laws contained in this Bill and effecting necessary amendments to their rules.

## 6. CONSTITUTIONAL IMPLICATIONS

None

## 7. PARLIAMENTARY PROCEDURE

7.1 The Constitution of the Republic of South Africa, 1996 (“the Constitution”) regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution.

7.2 It is necessary to consider the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

7.3 A Bill falling within a functional area listed in Schedule 4 to the Constitution must be dealt with in accordance with the procedure set out in section 76 of the Constitution. Schedule 4 lists the functional areas of concurrent national and provincial legislative competence. Schedule 5 to the Constitution lists the functional areas of exclusive provincial legislative competence. Therefore, those areas not falling within Schedule 4 or Schedule 5, fall within the exclusive national legislative competence.

7.4 The test for the classification of a Bill, as established in the Constitutional Court judgment of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* (“*Tongoane* judgment”), is that any Bill with provisions which, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The *Tongoane* judgment therefore laid down the substantial measures test for the tagging of a Bill, which requires one to determine whether, to a substantial extent, the legislation under consideration actually regulates matters falling within Schedule 4 to the Constitution. If so, the Bill must be tagged in terms of section 76 of the Constitution.

7.5 As the Bill does not deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution, section 44(1)(a)(ii) of the Constitution is applicable with regard to the power of the National Assembly to pass legislation on “any matter”.

7.6 It is therefore submitted that the Bill must be dealt with in accordance with the legislative procedure outlined in section 75 of the Constitution as it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

- 7.7 It is submitted that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions that directly affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities.

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