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## GENERAL NOTICE

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### NOTICE 257 OF 2010

### NATIONAL TREASURY

#### **PENSION FUNDS ACT, 1956: PUBLICATION OF PROPOSED AMENDMENT OF REGULATION 28 OF THE REGULATIONS MADE UNDER SECTION 36 FOR PUBLIC COMMENT**

I, Pravin J Gordhan, Minister of Finance, in accordance with section 40C of the Pension Funds Act, 1956 (Act No. 24 of 1956), hereby publish the proposed amendment of regulation 28 of the Regulations made under section 36 of the Pension Funds Act and published under GNR 98 in *Government Gazette* 162 of 26 January 1962 to be made under section 36(1)(bB) and (c) of the Pension Funds Act, for public comment. An explanatory memorandum explaining the proposed amendment is also published to facilitate comments.

Comments on the proposed amendment may be submitted in writing on or before Friday 16 April 2010 to:

The Chief Director of Financial Services, c/o Linda van Zyl, Private Bag X115, Pretoria, 0001; or per facsimile to (012) 315 5206; or email to [reg28@treasury.gov.za](mailto:reg28@treasury.gov.za).

The draft regulations are also available on the National Treasury and Financial Services Board websites - [www.treasury.gov.za](http://www.treasury.gov.za) and [www.fsb.co.za](http://www.fsb.co.za).

**PRAVIN J GORDHAN**  
**MINISTER OF FINANCE**

## SCHEDULE

### Definitions

1. In this Schedule, "the Regulations" means the Regulations made under section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956) and published under GNR.98 in *Government Gazette* 162 of 26 January 1962, and as amended from time to time.

### 2. Amendment of regulation 28 of the Regulations

Regulation 28 of the Regulations is hereby substituted for the following regulation:

#### "28. Investments and financial management

(1) (a) A fund may, throughout the reporting period, only invest in assets referred to in Column 1 of Table 1, only to the extent to which the credit risk of an asset where applicable is rated by a recognised credit rating agency and such rating lies within a credit rating band, and only to the extent to which the fair value of the investment expressed as a percentage of the aggregate fair value of the total assets of the fund does not exceed, through out the reporting period, the percentage listed in Column 2 of Table 1 in respect of such an asset.

(b) The sum of aggregate exposure to any issuer or entity by a fund, irrespective of limits referred to in Column 1 of Table 1, may not exceed 30% of the aggregate fair value of the total assets.

(c) Foreign investments by a fund, referred to in Column 1 of Table 1, expressed as a percentage, may not exceed 20% of the aggregate fair value of the total assets of the fund.

(d) A fund may, in addition to the 20% limit referred to in paragraph (c), invest an additional 5% of the aggregate fair value of the total assets of the fund in African investments referred to in Column 1 of Table 1.

(e) (i) Despite paragraphs (a), (b), (c) and (d), the limits referred to in those paragraphs may be exceeded where the excess is due to the appreciation or depreciation of the fair value of the investments.

(ii) Where the limits referred to in paragraphs (a), (b), (c) and (d) are exceeded under the circumstances referred to in sub-paragraph (i):

(aa) A fund may not, for as long as the excess continues, make any further investments in the categories of assets in respect of which the excess exists; and

(bb) The Registrar may require a fund to comply with asset limits referred to in Column 1 of Table 1 within a period of 12 months or some other period determined by the Registrar.

(2) A fund may engage in securities lending subject to provisions and conditions as prescribed.

(3) A fund may invest in derivative instruments subject to provisions and conditions as prescribed.

(4) Where a fund provides an individual member with an option to elect his or her underlying investments and that member is directly exposed to the return on the elected underlying investments, the underlying investments in respect of that member must throughout the period comply with this regulation 28 and the distribution of assets referred to in Table 1.

(5) (a) In the application of this regulation with regard to the total assets of a fund -

(i) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), in respect of which a fund obtained a certificate, as prescribed, that the scheme has met, throughout the reporting period, the distribution requirements of assets referred to in Table 1 through out the reporting period;

(ii) a policy issued to a fund by an insurer carrying on a long-term insurance business as contemplated in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), which -

(aa) is not a linked policy, as prescribed; or

(bb) is a linked policy, and the fund has obtained from the insurer a certificate, as prescribed, indicating that the assets held by the insurer in respect of his net liabilities under the said policy meet the distribution requirements of assets referred to in Table 1 throughout the reporting period,

shall be deemed not to be an asset of the fund, except for the purposes of calculating the percentages listed in Column 2 of Table 1 in respect of assets in liquid form.

(b) In the case of a collective investment scheme or a linked policy, in respect of which no certificate as referred to in paragraphs (a)(i) or (a)(ii)(bb) has been obtained, the fund shall obtain a statement in writing containing particulars of the extent to which the value of the assets in the collective investment scheme or benefits under the policy, as appropriate, is determined by the market value of assets referred to in Table 1, and the market value of such assets shall be deemed to be assets of the fund and, in the case of a fund exempted in terms of section 2(5)(a) of the Act, the certificate shall furnish the reasons for not complying with the aforementioned distribution requirements of assets as referred to in Table 1.

(c) The certificate or statement referred to in paragraph (a)(i) and (b) shall be furnished to the fund by the auditor appointed in terms of section 11 of the Collective Investment Schemes Control Act, 2002, at the end of each financial year of the fund and the certificate or statement referred to in paragraphs (a)(ii) and (b) shall also be furnished to the fund at the end of each financial year of the fund or, in the case of a fund which is exempted in terms of section 2(5)(a) of the Act, at the end of the insurer's financial year by the valuator of the insurer concerned or by the valuator's delegate.

(d) Where a fund has invested in a collective investment scheme, a linked insurance policy or any other investment product, the underlying asset or assets of that scheme, policy or investment must be disclosed as investments of the fund, unless a certificate of compliance has been received in accordance with subparagraphs (b) or (c) above.

(e) Any exposure to a foreign investment must be disclosed as a foreign investment.

(6) (a) A fund may not borrow money to make investments and must at all times maintain sufficient liquidity to meet its operating cash requirements.

(b) A fund may not borrow money other than for bridging purposes. The aggregate of any loans for bridging purposes may not through out the reporting period exceed 50% percent of the gross income of the fund from all sources during

the preceding financial year and any loan must be repaid within 12 months of entering into that loan.

(c) A fund may as security for the fund defaulting on a loan referred to in paragraph (b) -

(i) cede a proportionate share of its assets to the lender subject to the condition that the ownership of the assets will only be transferred to the lender; or

(ii) grant an option to the lender to purchase a percentage of its assets equal in value to the outstanding amount of the loan.

(d) A fund may not enter into a loan agreement that provides for an early settlement penalty.

(7) The Registrar may on prior written application by a fund or in general, exempt a fund or different categories, types or kinds of funds, from any of the provisions of this regulation, subject to such conditions that the Registrar may impose.

(8) In this regulation –

(a) **“African investments”** means an investment that is -

(i) domiciled in Africa or its activities are geographically located in Africa; or

(ii) domiciled outside Africa, but the majority of its activities are geographically located in Africa,

where African based activities would generally be determined by employment of assets and/or capital in countries which are part of the African Union;

(b) **“assets in liquid form”** means -

(i) a deposit;

(ii) any other money market instrument that can be converted into cash within seven days without prejudice to a fund, provided that any exposure to an entity created through the inclusion of assets in liquid

form must be added to any other exposure to the same entity for the purposes of calculation any limit prescribed in this Regulation;

- (ii) a positive balance in a margin account with an exchange; and
- (iii) a positive net balance in a settlement account with an exchange, operated for the buying and selling of underlying assets;
- (c) **“auditing pronouncements”** has the meaning assigned to it in section 1 of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
- (d) **“bank”** means a bank or branch as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- (e) **“derivative instrument”** has the meaning assigned to it in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (f) **“exchange”** has the meaning assigned to it in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004) and means an exchange licensed under the Securities Services Act, 2004 (Act No. 36 of 2004), a recognised African exchange or a recognised foreign exchange;
- (g) **“foreign investment”** means foreign currency denominated assets or Rand denominated foreign assets acquired through direct or indirect investment;
- (h) **“foreign bank”** means an entity that is authorised to conduct business similar to the business of a bank in a foreign country;
- (i) **“foreign country”** means any country other than the Republic;
- (j) **“fair value”**, in relation to an asset of a fund, means the fair value of that asset determined in accordance with the auditing standards;
- (k) **“linked policy”** has the meaning assigned to it in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- (l) **“listed securities”** means securities included in the list of securities kept or traded by an exchange;
- (m) **“money market instrument”** must be transferable and acknowledging indebtedness and is defined as:-
  - (i) **“banker’s acceptance”** means a bill as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964), drawn on and accepted by a bank as defined in the Banks Acts, 1990 (Act No. 94 of 1990),

or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);

- (ii) "*bridging bond*" means an acknowledgement of debt in which the issuer thereof undertakes to repay the debt together with interest on the maturity of the debt to the holder of the bridging bond;
- (iii) "*commercial paper*" means any negotiable acknowledgement of debt;
- (iv) "*debenture*" means a debenture as defined in the Companies Act, 2008 (Act No. 71 of 2008);
- (v) "*deposit*" means a deposit as defined in the Banks Act, 1990, or in the Mutual Banks Act, 1993;
- (vi) "*Islamic liquidity management financial instrument*" means a financial instrument that is issued by a bank or a foreign bank –
  - (aa) that is negotiable; and
  - (bb) in respect of which the title to the underlying tangible asset or assets pass from a fund to a third party within seven business days from the date of purchase thereof, and at which purchase date the future sale price of the tangible asset or assets is fixed despite any increase or decrease in the market value thereof;
- (vii) "*land bank bill*" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the Land and Agricultural Bank of South Africa;
- (viii) "*national housing bill*" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the National Housing Board;
- (ix) "*negotiable certificate of deposit*" means a certificate of deposit issued by a bank as defined in the Banks Act, 1990, or a mutual bank as defined in the Mutual Banks Act, 1993, and payable to order or to bearer;
- (x) "*parastatal bill*" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by a parastatal institution;

- (xi) "*promissory note*" means a promissory note as defined in the Bills of Exchange Act, 1964;
- (xii) "*trade bill*" or "*trade note*" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued to provide for the payment for goods;
- (xiii) "*treasury bill*" means a bill drawn by the Government on the Secretary to the Treasury calling on the latter to pay a sum certain in money to a specified person or his order or to bearer, on demand or on a certain specified future date;
- (n) "**Postbank**" means the SA Post Office Limited established pursuant to section 3 the Post Office Act, 1958 (Act No. 44 of 1958).
- (o) "**prescribed**" means as prescribed by the Registrar;
- (p) "**property company**" means a company –
- (i) of which 50% or more of the market value of its assets consists of immovable property, irrespective of whether such property is held directly by the company as registered owner, indirectly through ownership of the shares or the exercise of control over the company that is the registered owner of the property; or
  - (ii) of which 50% or more of its income is derived from investments in immovable property, or from an investment in a company of which 50% or more of the income of that company is derived from investments in immovable property;
- (q) "**recognised credit rating agency**" means a credit rating agency as prescribed;
- (r) "**credit rating band**" means a category of credit ratings, which ratings are issued by a recognised credit rating agency, as prescribed;
- (s) "**recognised African exchange**" means an exchange that is subject to the regulatory environment of a country situated in Africa and which is a full member of the World Federation of Exchanges, or which has been subjected to a due diligence assessment by the Fund, which assessment was conducted in accordance with provisions and conditions as prescribed;
- (t) "**recognised foreign exchange**" means an exchange that is subject to the regulatory environment of a foreign country, other than a country situated in Africa, and which is a full member of the World Federation of Exchanges;



- (u) **“reporting period”** means the financial year determined in the rules of a fund; and
- (v) **“securities”** -
- (i) has the meaning assigned to it in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004); or
  - (ii) means an Islamic investment instrument that is a bond based on the ownership of an underlying immovable property or a tangible asset or portfolio of immovable properties or tangible assets issued by –
    - (aa) the Government of the Republic;
    - (bb) the South African Reserve Bank;
    - (cc) any public entity listed in the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
    - (dd) a bank or a foreign bank;that is negotiable and in respect of which the title to the underlying property or asset or portfolio of properties and assets is vested in a special purpose vehicle that derives its income from commercial activities related to that property, asset or portfolio.

TABLE 1

	Column 1	Column 2
Item	Categories or kinds of assets	Maximum percentage of aggregate fair value of total assets of fund
<b>1.</b>	<b>ASSETS IN LIQUID FORM</b>	
(a)	<b>Inside the Republic -</b> Assets in a liquid form excluding a positive balance in a margin account with an exchange	100%
	(i) Credit Rating Band 1	30% per issuer
	(ii) Credit Rating Band 2	25% per issuer
	(iii) Credit Rating Band 3	20% per issuer
	Assets in a liquid form including only a positive balance in a margin account with an exchange	5%
(b)	<b>Foreign investments -</b>	20% in aggregate 25% in aggregate for African investments
	(i) Credit Rating Band 1	15% per issuer,
	(ii) Credit Rating Band 2	10% per issuer
	(iii) Credit Rating Band 3	10% per issuer
<b>2.</b>	<b>KRUGER RANDS</b>	5%
<b>3.</b>	<b>LISTED SECURITIES AND SECURITIES ISSUED OR GUARANTEED BY A GOVERNMENT</b>	
(a)	<b>Inside the Republic -</b>	
	(i) Listed securities issued or guaranteed by, and loans to the government of the Republic	100%
	(ii) Listed shares on an exchange, licensed under the	

		Securities Services Act No. 36 of 2004	<ul style="list-style-type: none"> <li>• with a market capitalization of R20 billion or more</li> <li>• with a market capitalization of less than R20 billion</li> </ul>	<p>15% per issuer</p> <p>10% per issuer</p> <p>75% in aggregate</p>
	(iii)	Listed bonds, excluding bonds issued by the government of the Republic		
		Credit Rating Band 1		15% per issuer, 25% in aggregate
		Credit Rating Band 2		10% per issuer, 20% in aggregate
		Credit Rating Band 3		10% per issuer, 15% in aggregate
	(b)	<b>Foreign investments -</b>		
	(i)	Listed securities issued or guaranteed by the foreign Government concerned		20%
	(ii)	Securities listed on a recognised foreign exchange	<ul style="list-style-type: none"> <li>• with a market capitalization of R20 billion or more</li> <li>• with a market capitalization of less than R20 billion</li> </ul>	<p>10% per issuer</p> <p>10% per issuer</p> <p>20% in aggregate</p>
	(v)	Securities listed on a recognised African exchange		5% per issuer 25% in aggregate
<b>4.</b>	<b>UNLISTED SECURITIES</b>			<b>5%</b>
	(a)	<b>Inside the Republic -</b>		
	(i)	Credit Rating Band 1 and 2		5%
<b>5.</b>	<b>IMMOVABLE PROPERTY AND CLAIMS SECURED BY MORTGAGE BONDS THEREON, SECURED LOANS TO AND DEBENTURES, BOTH CONVERTIBLE AND NON-CONVERTIBLE IN PROPERTY COMPANIES</b>			<b>25%</b>

	(a) <b>Inside the Republic-</b>  - per single property or issuer	5%
6.	<b>INVESTMENTS IN THE BUSINESS OF A PARTICIPATING EMPLOYER INSIDE THE REPUBLIC IN TERMS OF:</b>	
	(a) section 19 (4) of the Act; or	5%
	(b) to the extent it has been allowed by an exemption in terms of section 19 (4A) of the Act	10%
7.	<b>LOANS GRANTED TO MEMBERS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 19(5)</b>	
	Housing loans granted to members in accordance with the provisions of section 19(5)	95%
8.	<b>ANY OTHER ASSETS NOT REFERRED TO IN THIS ANNEXURE</b>	
	Any other investment not included above	2.5%

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**NATIONAL  
TREASURY**

GOVERNMENT GAZETTE NOTICE FOR PUBLIC COMMENT (formal  
gazetting shortly after tabling of Budget)

**REPUBLIC OF SOUTH AFRICA**

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**EXPLANATORY MEMORANDUM**

**ON THE**

**DRAFT REGULATION 28 THAT GIVES EFFECT TO SECTION 36(1)(BB)  
OF THE PENSION FUNDS ACT 1956, 2010**

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[W.P. -- '10]

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## DRAFT REGULATION 28 THAT GIVES EFFECT TO SECTION 36(1)(BB) OF THE PENSION FUNDS ACT 1956, 2010

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### INTRODUCTION

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The draft Regulation 28 gives effect to Section 36(1)(bB) of the Pension Funds Act 1956, which provides that the Minister of Finance may make regulations limiting the amount and the extent to which a pension fund may invest in particular assets or in particular kinds or categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies.

This draft Regulation is gazetted for public consideration.

Comments on the proposed amendment may be submitted in writing on or before Friday 16 April 2010 to:

The Chief Director of Financial Services, c/o Linda van Zyl, Private Bag X115, Pretoria, 0001; or per facsimile to (012) 315 5206; or per email to [reg28@treasury.gov.za](mailto:reg28@treasury.gov.za).

The draft regulations are also available on the National Treasury and Financial Services Board websites - [www.treasury.gov.za](http://www.treasury.gov.za) and [www.fsb.co.za](http://www.fsb.co.za).

The National Treasury and the Financial Services Board will continue to engage stakeholders over the comment period to ensure broad stakeholder participation in the Regulation 28 review process. Specific issues to be consulted upon include the proposed definitions, investment categories and investment category limits.

All comments submitted will be taken into account when finalising the regulations.

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### BACKGROUND

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Regulation 28 that gives effect to section 36(1)(bB) was promulgated in 1962 and was last amended in 1998. Innovation and other developments since 1998, and the recent financial crisis, necessitates the urgent amendment of Regulation 28, pending a future holistic review of the Regulations made under

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section 36 of the Pension Funds Act and published under GNR. 98, Government gazette No. 162 of 26 January 1962.

The key reasons for the amendments to Regulation 28 are:

Regulation 28 references other Acts and regulations that have been amended or substantially altered since 1998 (reference is made to the Acts directly as well as provisions contained therein).

Definitions, asset categories and the structure of limits applied in Regulation 28 conflict with such definitions, categories and limits applied by relevant regulation across other investment funds. Alignment is therefore required for consistency.

Over recent years the investment channels available to pension funds have significantly changed with the incorporation of derivatives, structured products and foreign investments. These more complicated investments and innovations are not explicitly accommodated within Regulation 28, which exposes the current framework to abuse as certain conduct is not expressly prohibited or undermine potential risk–reward benefits if under-utilised.

The exclusion of insurance policies which incorporate a guarantee from the present Regulation 28 allows insurers to offer retirement savings products enabling trustees to exceed the limits prescribed in Regulation 28. In effect these products allow for the by-passing of prudential limits with impunity.

Existing provisions do not facilitate or comply with an Islamic-compliant pension fund's scope to diversify risk as current regulatory design encourages investment in interest bearing products (that are prohibited under Islam).

The global financial crisis has exposed pension funds to greater risk, and hence the need to update the investment channels that prudent pension funds can invest in.

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### THE CURRENT REGULATION

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Regulation 28 prescribes maxima for various types of investment that may be made by a retirement fund. They are intended to guide funds which invest in their own name. The maxima relate to the fair value of the assets of the fund under the direct control of the trustees, and exclude from consideration insurance policies that provide any form of guarantee, or where performance is linked to the performance of underlying assets and the investment of the underlying assets conforms to the requirements of regulation, and unit trusts which conform to the requirements of Regulation 28.



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The maxima are broadly:

- No more than 75% may be invested in equities
- No more than 25% may be invested in property
- No more than 90% may be invested in a combination of equities and property
- No more than 5% may be invested in the sponsoring employer
- No more than 15% may be invested in a large capitalisation listed equity, and 10% in any single other equity
- No more than 20% may be invested with any single bank
- No more than 15% may be invested off-shore (recent exchange control limit changes upwards have been provided for to portfolios upon their application to the Retirement Fund Registrar i.e. the imposed limit is actually 20%)
- No more than 2,5% may be invested in "other assets".

There are no restrictions on investments into money-market or RSA Government issued fixed-income instruments.

Derivative instruments are not defined, leaving them to fall within the category of "other assets". No guidance is given as to how derivatives may be employed.

No look-through principle is entrenched in Regulation.

There is provision for the Registrar to exempt funds from some or all of these maxima on prior written application. It was on this basis that the Registrar adjusted foreign exposure limits for pension funds in line with revised exchange control limits.

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## EXPLANATION OF MAIN AMENDMENTS

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### DEFINITIONS

#### Current Law

Definitions are outdated and incomplete. This is on account of the proliferation of new products like derivatives, changes to the market that have taken place since 1998, and changes to governing legislation across the financial services sector that impact pension funds and pension fund management.

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## **Proposed amendment**

Definitions are added and amended to clearly specify the meaning of terms used in the Regulation. These terms pertain to changes in the exchange control environment, the enacted Collective Investment Schemes Control Act of 2002, the Securities Services Act of 2004 and the accommodation of Islamic-compliant financial products. Definitions are aligned across the investment management regulatory regime to ensure consistency for investment managers that manage different funds subject to different (and often conflicting) governing regulation.

## **INDIVIDUAL MEMBER CHOICE**

### **Current Law**

Regulation 28 applies only to the fund as a whole and therefore may expose an individual member wholly to a high risk asset category.

### **Proposed Amendment**

Where a fund provides an individual member with an option to elect his or her underlying investments and that member is directly exposed to the return on the elected underlying investments, the underlying investments must now comply with Regulation 28 and its spreading requirements.

## **SCOPE OF REGULATION 28**

### **Current Law**

Retirement annuity policies (that provide a guarantee) are excluded from Regulation 28 limits, and may be excluded from the Long-term Insurance regulation if its value is linked to underlying assets.

### **Proposed Amendment**

This exemption has been removed, hence ensuring all retirement annuity policies invest within Regulation 28 limits.

## **INVESTMENT REQUIREMENTS FOR ASSET CATEGORIES**

### **Current Law**

As indicated, definitions applied in Regulation 28 are inconsistent with definitions of the same terms in other legislation governing investment fund managers. Prescribed asset limits are in categories inconsistent with categories applied for other investment vehicles managed by investment managers, and the level of the limits are outdated and require review.

There is no oversight of credit rating agencies and the application of credit ratings for investment decisions by a pension fund. Within individual

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categories of assets there is no sensitivity given by the Registrar of Retirement Funds to assets with a different credit risk profile. Not all assets within a given asset category necessarily reflect the same credit risk and therefore warrant the same regulatory treatment or restriction.

Islamic-compliant financial services prohibits the use of interest generating investment instruments. While an Islamic pension fund can still comply with Regulation 28 by spreading investments across the categories of non-interest generating investments, the principle of spreading is undermined as the fund is limited to investing in listed and unlisted equities and fixed property. The pension fund members may as a result be prejudiced in terms of poor risk management and returns.

The regulatory treatment of property as an asset class does not distinguish among direct investment in an underlying property, indirect investment through a listed property investment instrument, or exposures to mortgages, although these may have significantly different risk management applications and risk profiles.

### **Proposed Amendment**

Definitions in Regulation 28 are aligned to definitions in the Security Services Act 2004 and Collective Investment Scheme Control Act 2002, and provision for Islamic-compliant instruments are built into these respective definitions. Categories and limits are, to the extent possible, aligned with categories under the Collective Investment Schemes Control Act 2002, but consultation is required to assess whether the proposed categories and limits are appropriate for pension funds as prudential entities (in contrast to collective investment schemes which are not). Specifically, consideration must be given to whether spreading requirements should be split along broad categories of liquid assets (to include bank deposits and certain liquid money market instruments) and listed securities (to include listed equities, corporate bonds and government bonds), with the anomaly asset categories like Kruger Rands and directly held immovable property to follow. This is in contrast to the existing categories of bank deposits, equities, government bonds and fixed-income (also with anomaly categories like Kruger Rands and immovable property).

The Registrar of Retirement Funds may prescribe which credit rating agencies may issue credit ratings for pension fund investment decisions. For asset categories exposed to credit risk, credit rating bands are created. This is consistent with the approach taken for collective investment schemes and therefore harmonises regulatory treatment across these investment fund vehicles. A draft Notice determining the basis for and restrictions regarding credit rating agencies and their credit ratings, and indicating the rating bands applicable, will be released for public comment and stakeholder consultation.

A money market and a bond "equivalent" Islamic investment instrument are defined to create Islamic-compliant long- and short-term fixed-income type investments, to accommodate their use in the pension fund framework and promote improved risk management for Islamic-compliant pension products.

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Regulatory treatment will distinguish direct holding of an underlying property and mortgages/loans from indirect exposure to property through a listed property investment instrument (which it is proposed fits within the listed securities asset category). Consultation is required on the appropriate categories and limits for direct and indirect property investment exposure, in particular to consider whether indirect property investment is appropriately housed as a security or is seen as a distinct asset class along with direct property holdings. Further, if indirectly held property as an asset category is absorbed into listed securities, comments are welcome on whether the current limit of 25% for directly held property is appropriate or should be lowered.

## ADDITIONAL INVESTMENT REQUIREMENTS

### Current Law

Regulation 28 does not accommodate modern investment products, like derivatives, and does not take into account market development over the past decade, particularly with respect to a significantly altered exchange control regime.

### Proposed Amendment

Amendments are not intended to relax restrictions and allow more risky investments but rather to allow for more efficient and effective portfolio management and proper disclosure of investment vehicles in the prudential regulation, and guard against abusive practices like using derivatives to gear the portfolio. Amongst others, some of the proposed amendments are:

*Borrowing:* For regulatory clarity and certainty, provisions previously contained in Pension Fund Circular 21 are inserted to protect the fund against irresponsible borrowing, in particular to ensure that the fund is not exposed to liquidity risk or inappropriate loan covenants.

*Foreign investments:* This is to align with exchange control regulations that allow pension funds to invest up to 20% of their assets in investments outside of the Republic.

*Foreign Investments into Africa:* This is to align with exchange control regulations that allow pension funds to invest an additional 5% to their foreign exposure limit of 20% for investment into African assets.

*Securities lending:* To generate income for the fund and promote capital market liquidity, funds are permitted to engage in securities lending subject to limits and conditions, to be prescribed by the Registrar of Retirement Funds, to protect the solvency and liquidity of the fund and enhance member returns. While securities lending has been in principle allowed by the Registrar, compliance officers may have prevented activity not expressly allowed for by Regulation 28, and securities lending that did take place was not governed by appropriate regulation. A draft Notice governing securities lending by pension

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funds will be released for public comment and form basis for stakeholder consultation.

*Derivative instruments:* Having been defined, the investment into derivatives is permitted subject to provisions and conditions to be prescribed by the Registrar. It is intended that investment into derivative instruments be permitted for purposes of efficient portfolio management and hedging against an investment held by the fund. Derivatives will not be allowed for gearing or leverage. These provisions have to date been applied by the Registrar of Retirement Funds but were not set out in formal regulation and are therefore exposed to abuse. A draft Notice governing investment by pension funds into derivatives will be released for public comment and form basis for stakeholder consultation.

## APPLICATION OF THE “LOOK-THROUGH” PRINCIPLE

### Current Law

Regulation 28 does not provide for the look-through principle, meaning that pension fund investment managers can potentially circumvent prudential limits by investing through layers of investment vehicles to mask the underlying investment exposure.

### Proposed Amendment

The look-through principle will apply for calculating exposures. This speaks specifically to derivative and foreign asset exposures, as well as investments in an underlying asset class through another fund.

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