

REPUBLIC OF SOUTH AFRICA

TRANSNET PENSION FUND AMENDMENT BILL

(As amended by the Portfolio Committee on Public Enterprises (National Assembly))
(The English text is the official text of the Bill)

(MINISTER FOR PUBLIC ENTERPRISES)

[B 57B—2000]

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GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Transnet Pension Funds Act, 1990, so as to insert a definition; to empower the making of rules on the terms and conditions under which members may cede their rights and transfer assets commensurate with those rights from the Fund to the pension fund established by the employer; to provide for the guarantee of the financial obligations of the Second Fund by the employer; to empower the Second Fund to recover from the pensioner money due to Transmed; to deem the obligations of the employer and the State in respect of the new Fund and the Pension Fund to be obligations of the Transnet Pension Fund and the Transnet Second Defined Benefit Fund in proportions determined by the State Actuary; to rectify an error; to provide for the power of the employer to establish a pension fund; to provide for the establishment of the Transnet Second Defined Benefit Fund and to transfer pensioners from the Transnet Pension Fund to the Transnet Second Defined Benefit Fund; to provide for the Rules of the Transnet Second Defined Benefit Fund; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

Amendment of section 1 of Act 62 of 1990, as amended by section 1 of Act 52 of 1991

1. Section 1 of the Transnet Pension Funds Act, 1990 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “Rules” of the following definition: 5

“‘Second Fund’ means the Transnet Second Defined Benefit Fund established in terms of section 14B(1).”

Amendment of section 5 of Act 62 of 1990

2. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) The control and management of the Fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the employer, and the benefits due to pensioners and other beneficiaries, the terms and conditions under which members may elect to have their rights ceded, and assets commensurate with such rights transferred from the Fund to a pension fund established by the Minister in terms of section 14A(2), and the manner in which the Rules may be amended, shall be governed by the Rules of the Fund.” 15

Amendment of section 6 of Act 62 of 1990

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The employer shall guarantee the financial obligations of the Fund and the Second Fund.”.

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Amendment of section 11 of Act 62 of 1990

4. The following section is hereby substituted for section 11 of the principal Act:

“Recovery of amounts in respect of medical scheme

11. The Fund [is] and the Second Fund are hereby empowered to recover money due by a pensioner to Transmed (the medical scheme referred to in section 10(2) of the Legal Succession to the South African Transport Services Act, 1989) in terms of the Transmed Rules and to pay such money to Transmed.”.

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Amendment of section 12 of Act 62 of 1990

5. The following section is hereby substituted for section 12 of the principal Act:

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“Guarantee

12. The obligations of the Company and the State in respect of the New Fund and the Pension Fund in terms of section 3(2) and section 16 of the Legal Succession to the South African Transport Services Act, 1989, shall be deemed to be obligations towards the Fund and the Second Fund in such proportions as determined by the State Actuary in consultation with the actuary appointed by the Fund and the actuary appointed by the Company.”.

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Amendment of section 14 of Act 62 of 1990, as substituted by section 41 of Act 52 of 1991

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6. Section 14 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) any company formed in terms of section 32 of [this Act] the Legal Succession to the South African Transport Services Act, 1989.”.

Insertion of sections 14A and 14B in Act 62 of 1990

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7. The following sections are hereby inserted after section 14 of the principal Act:

“Powers of Company to establish pension fund

14A. (1) In this section, “pension fund” means the pension fund contemplated in subsection (2).

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(2) Notwithstanding the establishment of the Transnet Pension Fund in terms of section 2(1), the Company may, subject to the approval of the Minister, acting with the concurrence of the Minister of Finance, by notice in the *Gazette* establish a pension fund.

(3) The pension fund shall be vested with legal personality and shall be capable of owning assets, incurring liabilities, suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its particular rules.

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(4) The control and management of the pension fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the employer and the benefits due to pensioners and beneficiaries as well as the manner in which the rules of such pension fund may be amended, shall be governed by the particular rules of such pension fund.

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(5) The rules of the pension fund shall, subject to the approval by the Minister, acting with the concurrence of the Minister of Finance, be published in the *Gazette* and shall come into operation on the date of such publication.

(6) The rules of the pension fund, as amended from time to time, shall bind the employer, members, pensioners and beneficiaries of such pension fund.

(7) The 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, 1962 (Act No. 58 of 1962).

(8) All the provisions of this Act, except section 12, apply with the changes required by the context to the pension fund.

Establishment of Second Fund

14B. (1) The Transnet Second Defined Benefit Fund is hereby established.

(2) Pensioner members of the Fund are hereby transferred from the Fund to the Second Fund.

(3) All the assets, liabilities, rights and obligations pertaining to the members referred to in subsection (2), as determined by the State Actuary in consultation with an actuary appointed by the Fund and an actuary appointed by the Company, shall vest in and devolve upon the Second Fund without any formal transfer or cession with effect from the date of publication of such determination in the *Gazette* by the Minister.

(4) The Second Fund shall be vested with legal personality and shall be capable of suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules.

(5) The control and management of the Second Fund, the benefits due to pensioners and the beneficiaries shall be governed by the rules of the Transnet Second Defined Benefit Fund set out in the Schedule to this Act.

(6) The rules set out in the Schedule may be amended by the Minister acting with the concurrence of the Minister of Finance.”

Short title and commencement

8. This Act is called the Transnet Pension Fund Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

General

1. This FUND is established at the commencement date to provide benefits exclusively for pensioners from the Transnet Pension Fund.

Definitions

2. In these Rules, unless the context otherwise indicates—

“actuary” means a fellow of any institute, faculty, society or chapter of actuaries appointed in terms of section 6 of the Act;

“auditor” means an auditor registered under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), appointed by the Board in terms of rule 9(3);

“Board” means the Board of Trustees referred to in rule 5;

“commencement date” means the commencement date to be published by the Minister by notice in the *Gazette*;

“Company” means Transnet Limited;

“dependant”, in relation to a pensioner, means—

- (i) a spouse of a recognised marriage, provided that such person is not living apart from the pensioner, whether by judicial agreement or otherwise;
- (ii) a child, stepchild, legally adopted child or child born out of wedlock, whose age is not more than 18 years, who is unmarried and who, in the discretion of the Board, was dependent on the pensioner at the time of death of the pensioner;
- (iii) a child contemplated in subparagraph (ii) but who is older than 18 years and younger than 26 years and who is studying full time or is physically or mentally handicapped: Provided that the Board may in a particular case extend the maximum age of 26 years, on condition that the employer agrees to contribute to the Fund such additional amounts as deemed necessary, by the actuary, to make provision for such benefit;
- (iv) a child born after the death of a pensioner who would have been regarded as a child in terms of subparagraph (ii); or
- (v) a person, who in the opinion of the Board, was in fact dependent upon the pensioner for maintenance;

“employer” means an employer as defined in section 1 of the Act, read with section 14 thereof;

“interest” means interest compounded monthly;

“Managing Director” means the Managing Director of the Company or the Managing Director’s delegate;

“meeting” includes an adjourned meeting;

“Minister” means the Minister of Public Enterprises;

“pensioner” means a pensioner member transferred from the Transnet Pension Fund in terms of section 14B of the Act and shall include a widow or widower or dependant pensioner member;

“Registrar” means the Registrar of Pension Funds appointed under the Pension Funds Act, 1956 (Act No. 24 of 1956);

“recognised marriage” means a lawful marriage or a customary marriage or a marriage by religious rites, or a cohabitation or any other union between a pensioner and another person which is deemed by the Board to be a recognised marriage: Provided that the Board may include a person from a recognised marriage which has been dissolved where the other person is still financially dependent on the pensioner;

“the Act” means the Transnet Pension Fund Act, 1990 (Act No. 62 of 1990);

“Transnet Pension Fund” means the Fund established in terms of section 2 of the Act.

Fund: Object, Membership, Contributions and Transfers

3. (1) The Fund to which these Rules apply, is the Transnet Second Defined Benefit Fund established by section 14B of the Act.

(2) In terms of section 14B(4) of the Act, the Fund is vested with legal personality and is capable of suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of the rules.

(3) The object of these rules shall be to maintain and regulate a fund, from which benefits to pensioners, or their dependants shall be paid, and for whose benefit this fund is established.

(4) Membership shall commence from the date of transfer of a pensioner from the Transnet Pension Fund in terms of section 14B of the Act.

(5) No pensioner shall contribute to this fund: Provided that the employer, if the Trustees deem this necessary after consultation with the actuary, shall contribute to the Fund.

(6) The Trustees of the fund shall have the power to receive transfer values of pensioners from the Transnet Pension Fund.

Registered Office

4. The registered office of the Fund shall be at 222 Smit Street, Braamfontein, Johannesburg or such other address as the Trustees may decide, notification of which must be given to the Minister.

Board of Trustees

5. (1) The Board of Trustees shall comprise six Trustees and their alternates appointed by the employer, of which two trustees and their alternates shall be nominated from amongst pensioners.

(2) The Board of Trustees shall control the Fund.

(3) The Managing Director shall appoint a Chairperson for the Board.

(4) Subject to there being sufficient members to form a quorum as laid down in rule 7(5), the Board shall be entitled to function notwithstanding the existence of any vacancy.

(5) The duty of the Chairperson, members and alternates towards the Fund shall be of a fiduciary nature and they shall, when acting in such capacities, act only in the interests of the Fund, its pensioners and other beneficiaries, to the exclusion of all other considerations or objectives.

(6) The Trustees shall conduct themselves, at meetings of the Board, in a responsible manner that is in harmony with their status as Trustees. Should a Trustee act in breach of this requirement, the Board may, by a majority vote of at least two thirds of Trustees present at the meeting at which such breach occurs, require the person concerned to leave the meeting or take such other decision or action as may, in the circumstances, be necessary.

Disqualification and tenure of office of Board members

6. (1) Any of the following persons shall be disqualified from being appointed or acting as the Chairperson or a member of the Board:

- (a) a body corporate or a minor or any person who is insane or any other person otherwise incapable of acting as a Trustee;
- (b) an unrehabilitated insolvent;
- (c) any person convicted of theft, fraud, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any other offence involving dishonesty;
- (d) any person sentenced to imprisonment without the option of a fine;
- (e) any person removed by a competent court from any office of trust on account of misconduct.

(2) The Chairperson or a Trustee of the Board shall cease to hold office upon—

- (a) resignation from the Board;
- (b) disqualification in terms of subrule (1); or
- (c) termination of appointment by the Managing Director.

Meetings of Board of Trustees

7. (1) The Board shall meet at least every quarter and at such other times as the Board may decide.

(2) The Board shall at the last meeting of every year determine the dates for the quarterly meetings to be held in the forthcoming year.

(3) A special meeting shall be called at any time on the instruction of the Chairperson or at the written request of any three members of the Board.

(4) The Chairperson, when unable to attend any meeting, shall appoint an Acting Chairperson for that meeting, or failing such appointment, the Board of Trustees shall appoint an Acting Chairperson.

(5) The majority of the members of the Board shall constitute a quorum for a meeting of the Board.

(6) A decision by a majority of the members of the Board present at a meeting of the Board shall constitute a decision of the Board.

(7) Decisions of the Board shall be taken by a show of hands or, if so required by any member of the Board present at the meeting, by ballot.

(8) The Chairperson shall not have a deliberative vote.

(9) The Chairperson shall have a casting vote, which may be exercised in the event of an equality of votes.

(10) If there is no quorum at a meeting of the Board within thirty (30) minutes after the time fixed for its commencement, the meeting shall adjourn for a period of not less than a week.

(11) At such adjourned meeting the members present shall form a quorum.

Minutes

8. (1) The Board shall record the minutes of all its meetings.

(2) Such minutes, if signed by any person purporting to be the Chairperson of the meeting to which it relates, shall be regarded as a true record of the proceedings of that meeting.

Powers of Board of Trustees

9. (1) The Board may prescribe the manner in which the award of benefits shall be considered by the Fund.

(2) The Board may take any action (including the control of the finances and the administration of the Fund) not specifically provided for in these rules that may be necessary to achieve the objects of the Fund.

(3) The Board shall appoint an auditor for the Fund and the contract effecting the appointment may be terminated by notice duly given by either party.

(4) The Board shall appoint—

(a) an Executive Committee which shall consist of—

(i) a chairperson appointed by the Board;

(ii) the manager (Principal officer) of the Fund; and

(iii) one member of the Board and an alternate member, nominated by the members of the Board; and

(b) an Investment Committee which shall consist of—

(i) a Chairperson appointed by the Board;

(ii) a member of the personnel of an employer, engaged in the administration of the Fund and nominated by the Chairperson of the Board; and

(iii) one member of the Board and an alternate member, nominated by the members of the Board.

Executive Committee

10. The Executive Committee shall—

(a) settle all disputes in respect of benefits;

(b) authorise the payment of benefits to a guardian of a minor or to a curator of a person under legal disability; and

(c) perform any other duties prescribed by the Board.

Investment Committee

- 11.** (1) The Investment Committee shall—
- (a) subject to the requirements stipulated in the Pension Funds Act, 1956 (Act No. 24 of 1956), and the regulations promulgated thereunder in connection with the investment of money, invest or cause to be invested the monies of the Fund not immediately required for current expenses, to the best advantage of the Fund;
 - (b) submit reports on the investments to the Board at such intervals and in such form as the Board may prescribe; and
 - (c) keep complete accounts, records and minutes of all actions taken in the performance of its functions and the exercise of its powers.
- (2) The Investment Committee may, for the purpose of subrule (1), make use of the services of portfolio managers not employed by the Fund or an employer.
- (3) Any security belonging to the Fund and held by the Investment Committee or portfolio managers on its behalf shall be kept in safe custody in the safes or strongrooms at the registered office of the Fund or at any bank or building society approved by the Board or in the safe custody of the portfolio managers appointed in terms of subrule (2).

Manager and Principal Officer

- 12.** (1) The Managing Director shall appoint a member of the personnel of the employer to be the Manager (Principal Officer) of the Fund and may, at any stage, terminate such appointment.
- (2) Should the Manager (Principal Officer) be absent from the Republic for more than thirty days or be otherwise unable to fulfil his or her functions, the Managing Director shall appoint another person to act as Manager (Principal Officer) for the period of such absence or inability and shall advise the Board of the appointment.
- (3) The Manager (Principal Officer) shall have power—
- (a) to open and operate a banking account in the name of the Fund;
 - (b) to receive and administer the money of the Fund required for current expenses;
 - (c) with the approval of the Board to borrow money from any source and to obtain an overdraft from a bank or building society;
 - (d) to enter into and sign any contract or document on behalf of the Fund;
 - (e) to institute or defend any legal proceedings by or against the Fund and to instruct a legal representative with regard to such proceedings;
 - (f) to arrange with the Managing Director for the appointment of suitable members of the personnel of an employer to conduct the administration of the Fund;
 - (g) to execute decisions of the Investment Committee; and
 - (h) to execute decisions of the Executive Committee.

Appointment of Secretary

- 13.** (1) The Managing Director shall appoint a member of the personnel of an employer as the Secretary of the Fund and may, at any stage, terminate any such appointment.
- (2) The Manager (Principal Officer) may appoint any person from among those referred to in rule 12(3)(f) to perform the duties of the Secretary, while the Secretary is absent or otherwise not available to perform his or her duties.

Duties of Secretary

- 14.** The Secretary shall—
- (a) keep all documents relating to the business of the Fund in safe custody, except those which are prescribed by law to be kept by any other person;
 - (b) submit to the Board all matters and documents received from an employer;
 - (c) receive notices of matters to be considered by the Board;
 - (d) convene all meetings of the Board, Executive Committee and Investment Committee;
 - (e) record the minutes of the proceedings of all meetings of the Board, Executive Committee and Investment Committee;

- (f) circulate copies of all minutes of the Board to all members of the Board; and
- (g) perform such other duties as the Board may from time to time prescribe.

Confidentiality

15. The Chairperson, members of the Board and their alternates, and all persons engaged in the administration of the Fund, shall treat all matters and information that relate to the Fund as confidential.

Indemnification and insurance

16. (1) The Fund shall indemnify the Chairperson, members of the Board and their alternates, and all persons engaged in the administration of the Fund, against all costs and expenses incurred by reason of any act carried out in good faith in the performance of their duties in connection with the Fund.

(2) The Board shall insure the Fund against losses due to dishonesty or fraud of persons engaged in the administration of the Fund, including members of the Board.

Administration expenses

17. The employer shall pay all expenses in connection with the administration of the Fund.

Accounts, audit and actuarial valuation

18. (1) (a) The Board shall keep such accounts, entries, registers and records which are essential for the proper functioning of the Fund.

(b) The accounts shall be prepared in the format prescribed by regulation in terms of the Pension Fund Act, 1956 (Act No. 24 of 1956), and shall be balanced at the end of each financial year and shall be audited by the auditor.

(c) The Board shall, at the end of the financial year, submit to the employer—

- (i) an annual report on all matters relating to the Fund; and
- (ii) the financial statements pertaining to the Fund.

(d) The auditor shall have access to all books, vouchers, accounts and documents of the Fund.

(e) When an audit report reflects that the Fund's accounts are not managed on a sound financial basis, the Board shall inform the Minister.

(f) The financial year of the Fund shall be from 1 April up to and including 31 March of the following year.

(2) (a) The Board shall cause to be kept records to enable the actuary to make an actuarial valuation at any time.

(b) The Fund shall be valued by the actuary at intervals of not more than three years, in the discretion of the Minister, to determine whether the Fund is in a financial position to pay the benefits provided for in these rules and the actuary shall submit the report of the valuation to the Minister, the Minister of Finance, the employer and the Board.

Unsound financial position

19. (1) When an actuarial report referred to in rule 18(2)(b) indicates that the Fund is not in a financially sound position, the Minister, with the concurrence of the Minister of Finance, may direct the Board to submit a schedule setting out arrangements designed to restore the fund to a financially sound position within three months from the date of receipt of such direction, together with a report thereon by the actuary.

(2) When any audit or actuarial report indicates a deficiency in the Fund, the Board shall, within three months from the date of such report, submit a scheme to the Minister and the Minister of Finance setting out the arrangements which have been made or which it is intended to make to eliminate the deficiency, together with a report thereon by the actuary.

(3) If the Minister and the Minister of Finance are satisfied that the arrangements referred to in subrule (1) or (2) should suffice to accomplish the objects of this rule, the Minister shall approve the scheme.

(4) The Minister, if not satisfied with such arrangements, shall, in concurrence with the Minister of Finance, request the Board to make such amendments to the scheme, or to submit a new scheme, and the Board shall, within a period prescribed by the Minister, which is not less than 30 days from the date of the request, furnish the Minister and the Minister of Finance with a report on such amendments or such new scheme and a report by the actuary, and the provisions of subrule (3) shall apply to any such amended scheme or new scheme which the Board may submit.

(5) The Board shall carry out the terms of any scheme approved by the Minister under this rule: Provided that—

- (a) the Minister may, with the concurrence of the Minister of Finance, permit the Board to amend such scheme from time to time;
- (b) if any information submitted to the Minister during the currency of such scheme indicates, in the opinion of the Minister, that the scheme is unlikely to accomplish the objects of this rule, such approval of the scheme may be withdrawn, and the Board shall, within three months thereafter, prepare a further scheme to which the provisions of this rule shall apply with the changes required by the context; and
- (c) if, in the opinion of the Minister of Finance, the financial condition of the Fund is no longer unsound, the former shall inform the Manager to that effect and, on receipt of such communication, the obligations of the Fund in respect of that scheme shall terminate.

(6) If the Minister, in concurrence with the Minister of Finance, is of the opinion that the Fund is in such an unsound financial condition that any scheme contemplated in this rule would be ineffective, impracticable or unsatisfactory, the Minister may—

- (a) apply to the court for an order directing that the provisions of these rules relating to the appointment, powers, remuneration (if any) and removal from office of the person managing the business of the Fund, or relating to such other matter as he or she may regard appropriate, be altered in a manner to be specified in such application, or directing that the whole or any part of the business of the Fund be wound up; or
- (b) call on a guarantee to be furnished by the employer to place the Fund in a financially sound condition on terms specified by the Minister.

Appeals

20. (1) If a person is dissatisfied with any decision of the Manager, such person shall have a right of appeal to the Executive Committee.

(2) If a person is dissatisfied with a decision of the Executive Committee, including a decision on appeal in terms of subrule (1), such person shall have a right of appeal to the Board.

(3) The decision of the Board on any such appeal shall be final and binding on the parties.

Disposition of pension benefits on death of pensioner

21. (1) Any benefit payable in terms of the rules of the Fund in respect of a deceased pensioner shall be dealt with in the following manner, subject to the provisions of sections 9, 10 and 11 of the Divorce Act, 1979 (Act No. 70 of 1979), and shall not form part of the assets in the estate of such a pensioner:

- (a) If the Fund within 12 months of the death of a pensioner becomes aware of or traces a dependant or dependants of the pensioner, the benefit shall be paid to such dependant or dependants or, in such proportions as may be deemed equitable by the Fund, to such dependants.
- (b) If the Fund does not become aware of or is unable to trace any dependant of the pensioner within 12 months of the death of the pensioner and the pensioner has nominated to the Fund in writing a nominee who is not a dependant of the pensioner to receive such benefit or such portion of the benefit as is specified by the pensioner in writing to the Fund, the Fund may in its discretion authorise such payment: Provided that where the aggregate amount of the debts in the estate of the pensioner exceeds the aggregate amount of the assets in the estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of

the benefit as specified by the pensioner in writing to the Fund shall be paid to the nominee at the discretion of the Fund.

- (c) If a pensioner has a dependant and the pensioner has also nominated in writing a nominee to the Fund to receive the benefits or such portion of the benefits as is specified by the pensioner in writing to the Fund, the Fund shall within 12 months of the death of such pensioner pay at the discretion of the Fund the benefit or such portion thereof to such dependant or nominee in such proportions as the Board may deem equitable.
- (d) If the Fund does not become aware of or is unable to trace any dependant of the pensioner within 12 months of the death of the pensioner and if the pensioner has not designated a nominee or if the pensioner has designated a nominee to receive a portion of the benefit as specified by the pensioner in writing to the Fund and approved of by the Fund, the benefit or the remaining portion of the benefit after payment to the nominee, shall be paid into the estate of the pensioner or, if no inventory in respect of the pensioner has been received by the Master of the High Court in terms of section 9 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), into the Guardians Fund.

(2) For the purpose of this rule a payment by the Fund to a trustee contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), for the benefit of a dependant or nominee contemplated in this rule shall be deemed to be a payment to such dependant or nominee.

Pension benefits

22. The pension equals the pension payable and calculated in terms of the Transnet Pension Fund Rules and all the conditions that apply in terms of the Transnet Pension Fund Rules shall apply to this pension.

Death of pensioner

23. (1) Upon the death of a person who is in receipt of a pension in terms of these rules there shall be paid to the dependant or dependants a benefit, as determined by the Fund and provided for in this subrule in relation to the particular class of dependant.

(2) If the dependant is the deceased pensioner's spouse there shall be paid a pension calculated as follows:

- (a) If the deceased pensioner retired on attaining the age limit, it shall be calculated at 70% of the pension which was payable to the deceased pensioner on the date of death;
- (b) if the deceased pensioner retired before attaining the retirement age, it shall be calculated by multiplying 70% of the pension which was payable at the date of death, by the factor which is arrived at by dividing the sum total of pensionable service and the number of years service that the member could still have rendered from the date of death to the date of statutory retirement, by the pensionable service.
- (c) Where the deceased pensioner marries after the date of retirement there shall be paid a pension calculated as follows:
 - (i) Where the age difference between the pensioner and the spouse is not more than five years, the benefit determined in subrule 2(a) or 2(b) shall be payable.
 - (ii) where the age difference is more than five years, the benefit as determined in subrule (2)(a) or (2)(b) is adjusted by multiplying the benefit with a factor that is arrived at by dividing the age of the spouse by that of the pensioner provided that the pension shall not exceed that as determined in subrule (2)(a) or (2)(b).

(3) If the dependant in subrule (1) is someone other than the spouse of the deceased pensioner, a pension shall be paid to the dependants at the discretion of the Fund and on a basis determined by the Fund, but shall not exceed 80% of the pension calculated in terms of subrule (2)(a) or (2)(b).

(4) Upon the death of a pensioner to whom a pension was paid upon dismissal or on the ground of impossibility of performance or supervening impossibility of performance

after the completion of 20 years service, there shall be paid to the dependant or dependants as determined by the Fund a pension referred to in subrule (2)(a) or subrule (3), as the case may be.

(5) In relation to the death of a pensioner contemplated in subrule (2)(a) who was a female pensioner, no benefit is paid to her spouse or dependants if—

- (a) such member retired before 1 January 1991; and
- (b) such member elected on or before 1 January 1991 to exclude her spouse or dependants from receiving any benefit upon her death.

Annual increase

24. The pension received by a pensioner shall be increased by 2%, compounded annually, for each completed year in respect of which the pension has been or is received: Provided that in the case of a widow or widower or dependant pensioner, the 2% enhancement of the pension shall be calculated from the date on which the pension first became payable to the original pensioner.

Payment to person other than beneficiary

25. The Manager may, if he or she is satisfied, after having considered a report by two medical practitioners, that any beneficiary to whom any amount is payable under these rules is, by reason of a mental condition, unable to manage his or her own affairs, order—

- (a) that such amount be paid to some other person upon such conditions as the Manager may determine as to its administration for the benefit of the beneficiary; or
- (b) that a portion of such amount be paid to the beneficiary, and that the balance be paid, in the order of preference laid down in rule 23, to the persons mentioned in that paragraph who are dependent upon the beneficiary, or to some other person upon such conditions as the Manager may determine as to its administration, in accordance with the said order of preference, for the benefit of any such dependent person, or that the balance be partly so paid to any such dependent person and partly to such other person upon the said conditions: Provided that no such order shall be made in respect of a beneficiary for the administration of whose estate a *curator bonis* has been appointed and that any such order shall lapse if a *curator bonis* for the administration of the estate of the beneficiary concerned is appointed.

Payment to estate

26. When the amounts referred to in rule 23 have been paid to any person mentioned therein other than the person lawfully administering the estate of a deceased pensioner, the employer and the Fund shall be exempt from any further claim under any of those paragraphs, and no such amount shall be deemed to form part of the estate of the deceased.

Provision in case of pensioner who is re-employed

27. If a member of the Fund has been granted a pension under these rules or appropriate provisions that preceded these rules and is thereafter re-employed, such member shall continue to receive the pension being paid.

Payment of pensions

28. (1) The Manager shall arrange for the monthly amount of a pension to be credited to a pensioner's account at a bank to be nominated by the pensioner.

(2)(a) Where exceptional circumstances prevail, the Manager may arrange for the payment of pensions by means of pension warrants, the encashment of which shall be subject to such condition as the Manager may prescribe and which shall be reflected on the warrants.

(b) The payment of a pension by means of warrants shall be made monthly and not earlier than a date to be determined by the Manager, which date shall be reflected on the warrants.

(3) In the case of a pension payable to the Master of the High Court for deposit in the Guardian's Fund on behalf of a pensioner, the Manager may waive compliance with all or any of the requirements prescribed in subrule (2).

MEMORANDUM ON THE OBJECTS OF THE TRANSNET PENSION FUND AMENDMENT BILL, 2000

1. OBJECTS OF BILL

1.1 The objects of the Bill are to provide, by means of various amendments to the Transnet Pension Funds Act, 1990, for the establishment of two statutory pension funds.

1.2 Firstly, the Bill empowers the making of rules on the terms and conditions under which members may cede their rights and transfer assets commensurate with those rights from the fund to the pension fund established by the employer.

1.3 Secondly, the Bill provides for the cession of rights and assets commensurate with those rights.

2. CONTENT OF THE BILL

2.1 Clause 1 provides for the insertion of a definition.

2.2 Clause 2 provides for terms and conditions under which members may elect to have their rights ceded and assets commensurate with such rights transferred from the Fund to the pension fund.

2.3 Clause 3 provides for the guarantee of the financial obligations of the Transnet Second Defined Pension Benefit Fund.

2.4 Clause 4 provides for the recovery of money due by a pensioner to Transmed Medical Scheme to include the Transnet Second Defined Benefit Fund.

2.5 Clause 5 deems obligations of the employer and the State in respect of the New Fund and the Pension Fund to be obligations of the Fund and the Second Fund and the Transnet Second Defined Benefit Fund in proportions determined by the State Actuary.

2.6 Clause 6 provides for a textual amendment.

2.7 Clause 7 provides for the power of Transnet to establish a pension fund, subject to the approval of the Minister acting with the concurrence of the Minister of Finance, and the establishment of the Transnet Second Defined Benefit Fund as well as the transfer of existing pensioner members from the Transnet Pension Fund to the Transnet Second Defined Benefit Fund. This clause also provides for the rules of the Transnet Second Defined Benefit Fund contained in the Schedule to the principal Act.

2.8 Clause 8 provides for the short title of the Bill.

3. CONSULTATIONS

Transnet and SATAWU have been consulted.

4. PARLIAMENTARY PROCEDURE

In the opinion of the Department of Public Enterprises and the State Law Advisers the Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.