

Government Gazette, No. 21388

19 July 2000

GENERAL NOTICE

Notice 2605 of 2000

DEPARTMENT OF PUBLIC ENTERPRISES

AMENDMENT OF GOVERNMENT NOTICE 2058 OF 2000

PUBLICATION FOR PUBLIC COMMENT: RULES REFERRED TO IN THE TRANSNET PENSION FUND AMENDMENT BILL

Government notice 2058 published in Government Gazette 21214 of 29 May 2000 is hereby amended by the insertion after clause 8 of the Transnet Pension Fund Amendment Bill of the following schedule:

SCHEDULE 1

TO ACT 62 of 1960

TRANSNET SECOND DEFINED BENEFIT FUND RULES

General

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

Definitions

2. (1) In these Rules, which are published in terms of the Transnet Pension Fund Act, 1990 as amended, unless the context otherwise indicates -

"**Act**" means the Transnet Pension Fund Act of 1990 (as amended)

"**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, 1951, appointed by the Board in terms of rule 9(2);

"**Board**" means the Board of Trustees referred to in rule 5;

"**Commencement date**" means the commencement date of Section 1 4B of the Act

"**Company**" means Transnet Limited;

"**Employer**" means an employer as defined in section 1 of the Transnet Pension Fund Act, 1990 read together with section 14 thereof;

"**Interest**" means interest compound monthly;

"**Managing Director**" means the Managing Director of the Company or the Managing Director's delegate;

"Pensioner" shall mean 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 dependent pensioner member.

"Minister" means the Minister of Public Enterprises;

"Registrar" means the Registrar of Pension Funds appointed under the Pension Funds Act, 24 of 1956;

"Dependent", in relation to a pensioner means -

- i. a spouse of a recognised marital union, provided that such person is not living apart from the pensioner, whether by judicial agreement or otherwise; or
- ii. an own child, stepchild, legally adopted child or illegitimate child whose age is 18 years or less and unmarried, who in the discretion of the Board, was dependent on the pensioner at the time of death of the pensioner; or
- iii. a child as defined in (ii) above but who is older than 18 years and younger than 26 years where such child is studying full time or is physically or mentally handicapped. The Board may in a particular case extend the said 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 a further benefit; or
- iv. a child born after the death of a pensioner who would have been regarded as a child in terms of (ii); or
- v. a person who in the opinion of the Board, was in fact dependent upon the pensioner for maintenance.

"Recognised marital union" means a lawful marriage or a customary union by indigenous law and custom or a union recognized as a marriage by the teachings of any Asiatic religion, or a cohabitation or any other union between a pensioner and another person that is deemed by the Board in its sole discretion to be a recognized marital union. At its discretion the Board may include a person from a recognised marital union that has been dissolved where the other person is still to some extent financially dependent on the pensioner.

"Transnet Pension Fund" means the Fund established in terms of Section 2 of the Act.

(2) Unless the context otherwise require -

- a. words importing the singular number shall include the plural number and vice versa; and
- b. the word "meeting" shall include an adjourned meeting.

(3) The headings to these Rules are intended for reference purposes only and shall not be taken into account in the interpretation thereof.

The Fund: (Object, Membership, Contributions and Transfers)

3. (1) The Fund, to which these Rules apply, is the Transnet Second Defined Benefit Fund established in terms of Section 1 4B of the Transnet Pension Fund Act 1990.

(2) In terms of section 14B(6) of the above 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) Object: The object of these rules shall be to maintain and regulate a fund, from which benefits PENSIONERS, or their DEPENDANTS shall be paid, and for whose benefit this fund is established.

(4) Membership: Membership shall commence from the date of transfer of a pensioner from the Transnet Pension Fund in terms of Section 1 4B of the Act.

(5) Contributions: No Pensioner shall contribute to this fund. The employer, if the Trustees deem this necessary after consultation with the Actuary, shall contribute to the Fund.

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

Office

4. The registered office of the Fund shall be at 222 Smit Street, Braamfontein or such other address decided by the Trustees and notified in writing to the Minister.

Board of Trustees

5. The Board of Trustees shall comprise six Trustees and their alternates appointed by the employer of which two trustees and their alternates shall be appointed from amongst Pensioners

- (1) The Board of Trustees shall control the Fund.

- (2) The Managing Director shall appoint a Chairman for the Board.

- (3) 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.

- (4) The duty of the Chairman members and alternates toward the Fund shall be of a fiduciary nature and they shall, when acting in such capacities, seek only the benefit of the Fund, its pensioners and other beneficiaries, to the exclusion of all other considerations or objectives.

- (5) 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, seem desirable.

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 Chairman or a member of the Board:

- a. a body corporate or a minor or any other person who is insane or otherwise incapable of acting as a Trustee
 - b. an unrehabilitated insolvent;
 - c. any person convicted of theft, fraud, perjury, an offence under the Prevention of Corruption Act, 1958, 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 Chairman or a Trustee of the Board shall cease to hold office upon -

- a. resignation from the Board;
 - b. disqualification in terms of paragraph (1); or
 - c. termination of appointment by his or her appointee.

Meetings of the 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 Chairman or at the written request of any three members of the Board.

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

- (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 Chairman shall not have a deliberative vote.

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

(10) If a quorum is not present at any meeting of the Board within thirty 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 minutes of all its meetings.

(2) Such minutes, if signed by any person purporting to be the Chairman of the meeting to which it relates shall be *prima facie* a true record of the proceedings of that meeting.

Powers of the Board of Trustees

9. (1) The Board may, with the approval of the Managing Director and Minister, acting in concurrence with the Minister of Finance amend the rules, provided that every proposed amendment affecting the financial position of the Fund shall be submitted to an actuary for a report before being submitted to the Managing Director and provided further that such amendment shall not be valid unless published in the Gazette.

(2) The Board may prescribe the manner in which the award of benefits shall be considered by the Fund; and

(3) 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.

(4) The Board shall appoint an auditor for the Fund and the contract effecting such appointment shall not be for a fixed period but shall provide for the termination thereof by notice duly given by either party.

(5) The Board shall appoint -

a. an Executive Committee which shall consist of -

- i. a Chairman appointed by the Board;
- ii. the Manager (Principal Officer of the Fund;
- iii. one member of the Board and an alternate, nominated by the Members of the Board, and

b. an Investment Committee which shall consist of -

- i. a Chairman appointed by the Board;
- ii. a member of the personnel of an employer, engaged in the administration of the Fund and nominated by the Chairman of the Board;
- iii. one member of the Board, and alternate, nominated by the members of the Board.

(6) The Board may in its sole discretion terminate the appointment of members or alternates of the Executive Committee and the Investment Committee.

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, 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 paragraph (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, except when in the temporary custody of others for the purpose of the Fund, be kept in safe custody in the safes or strongrooms at the office of the Fund or at any Bank or Building Society approved by the Board.

The Manager and Principal Officer

12.(1) The Managing Director shall appoint a member of the personnel of the employer to be the Manager and the Principal Officer of the Fund

(2) The Managing Director may at any stage terminate such appointment with immediate effect.

(3) Should the Manager/ Principal Officer be absent from the Republic of South Africa for more than thirty days or be otherwise unable to fulfil the managerial function, the Managing Director shall appoint another person to act as Principal Officer for the period of such absence or inability and shall advise the Board of such a person's name.

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.

Secrecy / Confidentiality

15.The Chairman, members of the Board and their alternates, and all persons engaged in the administration of the Fund shall treat all matters and information that may come to their knowledge in the performance of their duties in connection with the Fund as confidential.

Indemnification and Insurance

16.(1) The Fund shall indemnify the Chairman, 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 done *bona fide* in the performance of their duties in connection with the Fund.

(2) The Board shall cause the Fund to be insured against losses due to dishonesty or fraud of persons engaged in the administration of the Fund, including members of the Board, and of persons who receive or handle the money of the

Fund.

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 cause to be kept 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, 24 of 1956, 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 connected with the Fund and shall certify, in writing, the result of each audit.

e. When an audit report reflects that the Fund is not in a sound financial position, the Board shall inform the Minister and the Managing Director.

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 such records as to enable the actuary to make an actuarial valuation at any time.

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

Unsound Financial/ Position

19.(1) When an audit report referred to in rule 18 (1) (b) indicates, in the opinion of the Minister, acting in concurrence with the Minister of Finance, that the Fund is not in a financially sound position, or when an actuarial report referred to in rule 18 (2) (b) does likewise, the Minister, with the concurrence of the Minister of Finance, may direct the Board to submit a scheme 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, in concurrence with the Minister of Finance, is satisfied that the arrangements referred to in paragraph (1) or (2) should suffice to accomplish the objects of this rule, the former 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 such new scheme as will be satisfactory, and the Board shall comply with the request within a period prescribed by the Minister? not being less than 30 days from the date of the request, and shall at the same time furnish the Minister and the Minister of Finance with a report on such amendments or such new scheme by the actuary and the provisions or paragraph (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, if satisfied that none of the objects of this rule would be thereby prejudiced, 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 *mutatis mutandis* ;and

- c. If any such information shows, in the opinion of the Minister of Finance, that 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 immediately.

(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 may regard appropriate, be altered in a manner to be specified in such application, and / or directing that the whole or any part of the business of the Fund be wound up; or
- b. call on the guarantee 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 paragraph (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 Deceits on the Death of a 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, 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 dependent or dependants of the pensioner, the benefit shall be paid to such dependent 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 cannot trace any dependent 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 dependent 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 dependent 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 dependent or nominee in such proportions as the Board may deem equitable.
- d. If the Fund does not become aware of or cannot trace any dependent 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 Supreme 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 dependent or nominee contemplated in this rule shall be deemed to be a payment to such dependent 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 will apply to this pension.

Death of a 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 dependent or dependants, as determined by the Fund, such a benefit as is provided for in this paragraph in relation to the particular class of dependent.

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

- a. Where 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. Where 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 five years and less, the benefit determined in subparagraph 2 (a) or 2 (b) shall be payable.
 - ii. Where the age difference is more than five years the benefit as determined in subparagraph 2 (a) or 2 (b) is adjusted by multiplying the benefit with a factor that is arrived at by dividing the arc of the spouse by that of the pensioner provided that the pension shall not exceed that as determined in subparagraph 2 (a) or 2 (b).

(3) If the dependent in subparagraph (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 subparagraph 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 supervene impossibility of performance after the completion of 20 years service, there shall be paid to the dependent or dependants as determined by the Fund a pension referred to in subparagraph 2(a) or subparagraph (3), as the case may be.

(5) With relation to the death of a pensioner intended in subparagraph (a) who was a female pensioner, no benefit is paid to her spouse or dependants when: -

- a. When 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 receive 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 9% 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 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: -

1. 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

2. that a portion of such amount be so paid or be paid to the beneficiary, and that the balance to be paid, in the order of preference laid down in paragraph (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 conditions aforesaid, provided that no such order shall be made in respect of a beneficiary for the administration of whose estate a curator bonus has been appointed and that any such order shall lapse if a curator bonus for the administration of the estate of the beneficiary concerned is appointed.

Payment to Estate

26. When the amounts referred to in paragraphs (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 a 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 savings account or current account at a commercial 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 Supreme 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 paragraph (2).

(Schedule 1)

Transnet Second Defined Benefit Fund Rules

Any person or organisation wishing to comment on these rules may lodge written comments or representations on or before 18 August 2000 by posting, faxing or handing them to the following address:

Mr D Matjila / Mr S Mathobela
Department of Public Enterprises
Private Bag x15
HATFIELD
0028

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401 Infotech Building
1090 Arcadia Street
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