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## GOVERNMENT NOTICE

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### NATIONAL TREASURY

No. 558

22 April 2003

### PENSION FUNDS Act, 1956

(Act No. 24 of 1956)

### PENSION FUNDS AMENDMENT REGULATIONS

The Minister of Finance has under section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), made the regulations set out in the Schedule.



.....  
T A Manuel, MP

MINISTER OF FINANCE

Date

**SCHEDULE**  
**PENSION FUNDS AMENDMENT REGULATIONS, 2003**

**Definitions**

1. In this Schedule-

- (a) "the Act" means the Pension Funds Act, 1956 (Act No. 24 of 1956), and any word or expression to which a meaning has been assigned in the Act, shall have that meaning;
- (b) "the Regulations" means the Regulations under the Act, as amended by GN R99 of 26 January 1962, GN R2144 of 28 September 1984, GN R1790 of 16 August 1985, GN R1037 of 28 May 1986, GN R232 of 6 February 1987, GN R1452 of 7 July 1989, GN R1920 of 1 September 1989, GN No R2361 of 27 September 1991, GN R201 of 12 February 1993, GN R2324 of 10 December 1993, GN R141 of 28 January 1994, GN R1838 of 24 November 1995, GN r 1677 of 18 October 1996, GN R801 of 19 June 1998, GN R1020 of 14 August 1998, GN R1154 of 11 September 1998, GN R1218 of 25 September 1998, GN R1644 of 18 December 1998, GN R853 of 9 July 1999, GN R896 of 8 September 2000, and GN R337 of 6 April 2001.

**Addition of new regulations 34, 35, and 36 to Regulations**

2. The Regulations are hereby amended by the addition of the following regulations:

*"Minimum pension increase for pensioner who was a deferred pensioner prior to retirement*

34. For purposes of section 14B (4) (b) of the Act, the pension increase to be determined in terms of that section for a pensioner who was a deferred pensioner prior to retirement, is the change to the consumer price index from date of exit to the effective date of the calculation, with appropriate adjustments for any portion commuted on retirement.

*Establishment of Contingency Reserve Accounts*

35. (1) By virtue of the fact that-
- (a) the Act vests powers in boards of funds to establish contingency reserve accounts; and
  - (b) the establishment of contingency reserve accounts reduces the actuarial surplus available for apportionment and increases the possibility that actuarial surplus may be insufficient to enhance benefits previously paid to former members to the level prescribed in section 15B (5) (b) of the Act,
- no fund may, with effect from the date of commencement of this regulation, establish any contingency reserve account under circumstances where a reasonable inference may be made that the establishment of the account is contrary to the duties of the relevant board under section 7C (2) (b) of the Act and motivated by bad faith.
- (2) The establishment and magnitude of any contingency reserve account by a fund -
- (a) must be motivated by the valuator in the relevant report on the statutory actuarial valuation; and
  - (b) may, where the Registrar is not satisfied with any such motivation, be rejected by the Registrar.
- (3) A fund must, on any such rejection of the establishment or magnitude of the relevant contingency reserve account, take such steps in connection therewith as the Registrar determines and sets out in writing to the relevant fund.
- (4) Where a board is able to determine the enhancement due in respect of a particular former member in terms of section 15B (5) (b) or (c) of the Act, but is unable to trace that former member in order to make payment, the board shall put the corresponding enhancement into a contingency reserve account specific for the purpose. Notwithstanding anything in the rules of the fund, moneys

may not be released from such contingency reserve accounts except as a result of payment to such former members or as a result of crediting the Guardians Fund or some other fund established by law to include such amounts.

*Surplus apportionment dates for funds which are valuation exempt*

36. (1) In this regulation-
- "audit-exempt", in respect of a fund, means an exemption granted under section 2 (3) (a) of the Act to the fund as regards the obligation to appoint an auditor;
  - "scheme anniversary", in respect of a fund, means the anniversary of the date of commencement of the fund;
  - "valuation exempt", in respect of a fund, means the granting of exemption from the requirement to appoint a valuator in terms of section 9A of the Act and submit reports in terms of section 16 of the Act; and
  - "valuation exemption" has a corresponding meaning.
- (2) The Registrar must on the date of commencement of this regulation withdraw any valuation exemption in respect of any fund existing on that date with effect from-
- (a) in the case of a fund which is not audit-exempt, the end of the financial year of such fund following 7 December 2003; or
  - (b) in the case of an audit-exempt fund, the scheme anniversary, following 7 December 2003.
- (3) Any fund in respect of whom subregulation (2) has been applied, must submit an actuarial valuation to the Registrar-
- (a) at the end of the financial year following 7 December 2003; or
  - (b) in the case of an audit-exempt fund, the scheme anniversary following 7 December 2003.
- (4) The effective date of a valuation contemplated in subregulation (3), shall be the surplus apportionment date in respect of the fund for purposes of the provisions of the Act dealing with such dates.
- (5) A fund referred to in subregulation (3) may, in the event that the fund has after compliance with that subregulation satisfied the Registrar that

there is no actuarial surplus to apportion, submit a new request to the Registrar under section 2 (3) (a) of the Act for an authorisation referred to in subregulation (1) of this regulation.

- (6) All funds which are valuation exempt and in respect of which a surplus apportionment date has been determined in accordance with subregulation (4), must apply minimum benefits in terms of section 14B of the Act with effect from a date 12 months after such surplus apportionment date.

**Short title**

3. These Regulations are called the Pension Funds Amendment Regulations, 2003.

## MEMORANDUM ON OBJECTS OF PENSION FUNDS AMENDMENT REGULATIONS, 2002

### Introduction

1. Since the coming into operation on 7 December 2001 of the amendments of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the Act"), dealing with apportionment of actuarial surpluses, an intensive review by the Registrar of Pension Funds revealed several matters that must be urgently dealt with in order to implement the new statutory provisions, and to achieve fully the objects of the Act as regards apportionment of actuarial surpluses.
2. The Draft Regulations dealt with here represent cases where such review determined that certain aspects may be dealt with in regulations to be promulgated by the Minister of Finance under section 36 of the Act.
3. New regulations provided for in Regulation 2 of the Draft Amending Regulations:
  - 3.1 Regulation 34 brings the situation of a pensioner who was previously a deferred pensioner into line with the provisions of the Act relating to deferred pensioners who had not yet retired.
  - 3.2 Regulation 35 is sufficiently motivated by the wording used for that purpose and need not be further elaborated on. As regards legal empowerment, the regulation follows section 16 (7) of the Act which clearly makes provision for the prescribing by regulation of particulars to be contained in valuator reports under section 16 of the Act, such particulars in the present case pertaining to contingency reserve accounts. The basic rationale for regulation 35 is that if such accounts are not put under proper control, they may be abused for purposes of reducing actuarial surpluses available for apportionment. Furthermore, section 16 (9), read with section 15 (3), of the Act clearly empowers the Registrar to reject any aspect of the statutory valuation which does not, in the Registrar's opinion, correctly reflect the financial position of a fund.
  - 3.3 Regulation 36 is designed to clarify the Act as regards funds which are "valuation exempt" under section 2 (3) (a) of the Act, in that in the absence of a statutory actuarial valuation date in respect of a fund, its surplus apportionment date for purposes of dealing with actuarial surplus apportionments, cannot be determined (see the wording of section 15B (1) (a) of the Act). Furthermore, funds which were registered prior to 7 March 2002 and which have so been exempted, will not have a surplus apportionment date from which minimum benefits will apply.

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