

DEPARTMENT OF PUBLIC ENTERPRISES

No. 1236

24 December 2010

**TRANSNET PENSION FUND ACT, 1990 (ACT NO. 62 OF 1990)
RULES IN TERMS OF SECTION 14B (6) OF THE TRANSNET PENSION FUND ACT**

In terms of section 14B (6) of the Transnet Pension Fund Act, 1990 (Act No. 62 of 1990) I, Malusi Gigaba, have made the rules in the Schedule.

Malusi Gigaba MP

MINISTER OF PUBLIC ENTERPRISES

SCHEDULE**GENERAL EXPLANATORY NOTE:**

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

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

Amendment of rule 2 of the Rules, as amended by item 2 of the Schedule to Government Notice 620 of 2007

1. Rule 2 of the Rules is hereby amended –

(a) by the substitution for the definition of “Child” of the following definition:

“Child” means –

- (i) a child born to a Pensioner; or
- (ii) a child who as at the 2006 Rule Amendment Date was a stepchild or adopted child of a Pensioner;

and who –

- (i) has survived the Pensioner and is not more than 18 years of age; or
- (ii) has survived the Pensioner and is more than 18 years of age and in respect of whom it has been demonstrated to the satisfaction of the Board that –

(a) as at the 2006 Rule Amendment Date he or she was in receipt of a benefit from the Fund because he or she was engaged in full-time tuition at an education institution registered as such with the Department of Education, has been continuously in such full-time tuition since then, and is not more than 26 years of age; or

[(b) **he or she is mentally or physically incapable of supporting him or herself, who was dependent on the Pensioner at the date of the death of the Pensioner and who is not more than 26 years of age: Provided that up until the 2006 Rule Amendment Date, the Board of Trustees may in a particular case extend the maximum age of 26 years, on condition that Transnet agrees to contribute to the Fund such additional amounts as deemed necessary, by the actuary, to make provision for such benefit,]**

(b) (i) he or she is mentally or physically incapable of supporting him or herself; and

(ii) in respect of whom the Board has at intervals not exceeding 5 years exercised its discretion to treat him or her as a qualifying Child for the purposes of these Rules for a period or further period not exceeding 5 years,

and **"Children"** shall bear a corresponding meaning."; and

- (b) by the substitution for the definition of **"Recognised Marriage"** of the following definition:

"Recognised Marriage" means, in relation to a Pensioner –

- (i) a civil marriage or customary marriage or a marriage by religious rites; or
- (ii) a union as defined in the Civil Union Act No. 17 of 2006; or
- (iii) cohabitation between a Pensioner and another person which the Board in its discretion has determined to be a Recognised Marriage;

[which existed as at the 2006 Rule Amendment Date and continued to exist until the date of the death of the Pensioner and which the Board has in its discretion has determined to be a Recognised Marriage for the purposes of these Rules;] Provided that any relationship referred to in (i) to (iii) which constitutes a Recognised Marriage, should have existed prior to or at the 2006 Rule Amendment Date and continued to exist until the date of death of the Pensioner;".

Amendment of rule 5 of the Rules, as amended by item 6 of the Schedule to Government Notice 620 of 2007

2. Rule 5 of the Rules is hereby amended by the substitution for subrule (1) of the following subrule:

- "(1) The Board of Trustees shall comprise ~~[six]~~ four trustees and their alternates appointed by Transnet ~~[of which]~~ and two trustees and their alternates to be elected by the Pensioners, Dependants and Special Pensioners [shall be nominated] from amongst ~~the [p]Pensioners in accordance with rule 32 ("Pensioner-elected Trustees").~~

Substitution of Rule 6 of the Rules, as amended by item 7 of the Schedule to Government Notice 620 of 2007

3. The following rule is hereby substituted for rule 6 of the Rules:

"6. Disqualification and tenure of office of Board members

- (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 member of the Board of Trustees]** a minor or a person that is certified as mentally ill, or who is physically or otherwise incapable of acting;
- (b) **[an unrehabilitated insolvent]** a person whose estate is sequestrated, surrendered or assigned in favour of his or her creditors and has not been rehabilitated by a court;
- (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] a person who has been convicted by a court of law of theft, forgery or fraud or a similar offence involving dishonesty and has not been pardoned or granted amnesty for that offence;

- (d) [any person sentenced to imprisonment without the option of a fine] a person who has been previously expelled from this Board or any other position of trust as a result of misconduct, or on account of not being a fit and proper person to occupy such a position;
- (e) [any person removed by a competent court from any office of trust on account of misconduct.] a person who has previously displayed dishonesty or conduct which, in the opinion of the Board and the Electoral Officer, indicates that he or she is not a fit and proper person to occupy a position of trust;
- (f) a person who is in a position in which his or her interests (other than as a Member of the Fund), and/or the interests of a third party are likely to conflict with his or her duties to the Fund; and
- (g) a person who in the opinion of 75% of the members of the Board of Trustees is not a fit and proper person to occupy the position.

(1A) A Dependant or Special Pensioner is not eligible to be nominated for election, or to stand for election, as a Pensioner- elected Trustee or his or her alternate.

(2) The chairperson or a member 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 Transnet in the case of those Trustees who are not Pensioner-elected Trustees.

(3) A Pensioner-elected Trustee will remain in office for a period of not more than three years but will be eligible for re-election, subject to the terms of subrule (1), on the expiry of his or her period of office."

Amendment of Rule 9 of the Rules, as amended by item 9 of the Schedule to Government Notice 620 of 2007

4. Rule 9 of the Rules is hereby amended by the substitution for subrule (4) of the following subrule:

"(4) The Board shall appoint—

- (a) an Executive Committee which shall consist of a minimum of—
 - (i) a chairperson appointed by the Board;
 - (ii) the principal officer of the Fund; and

- (iii) ~~[one] two~~ other ~~[person] people~~ appointed by the Board who may be, but need not be, ~~[a] members~~ of the Board of Trustees; or
- (iv) alternates to the trustees in (i) to (iii) above, which alternates must themselves be members of the Board;
- (b) an Investment Committee which shall consist of a minimum of —
 - (i) a chairperson appointed by the Board;
 - (ii) the principal officer of the Fund; and
 - (iii) ~~[one] two~~ other ~~[person] people~~ appointed by the Board who may be, but need not be, ~~[a] members~~ of the Board of Trustees; or
 - (iv) alternates to the trustees in (i) to (iii) above, which alternates must themselves be members of the Board.”.

Insertion of new Rule 28A into the Rules

5. The following Rule is hereby inserted after Rule 28 of the Rules:

“28A Payment of interest

- (1) The Fund must pay to a Pensioner, Beneficiary, Dependant or Special Pensioner interest on the amount of any benefit payable to him or her in respect of the period commencing 60 days after the date on which all conditions for the payment of the benefit have been fulfilled and ending on the date of payment of the benefit.
- (2) The conditions for payment contemplated in subrule (1) above include, but are not limited to —
 - (a) the receipt by the Fund of such information as it may require for the purpose of determining the amount of the benefit to be paid after the deduction of amounts which may be deducted in terms of the Act and these Rules including, but not limited to —
 - (i) such directive from the SA Revenue Service as may be required for the purpose of determining the tax, if any, to be deducted from the amount of the benefit;
 - (ii) proof of amounts deductible from the benefit and payable to the former spouse, housing finance provider or former employer of the Pensioner, Beneficiary, Dependant or Special Pensioner, as applicable; and
 - (b) the receipt by the Fund of the information reasonably required by it for the secure payment of the benefit into the bank account of the Pensioner, Beneficiary, Dependant or Special Pensioner, as the case may be.
- (3) The rate at which interest will be payable in terms of this Rule will be determined from time to time by the Board after they have taken into account all relevant factors including, but not limited to the rates of return earned on the investment of the unpaid benefits over the period in respect of which the interest is payable.”.

Addition of new Rule 32 to the Rules

6. The following Rule is hereby added to the Rules after Rule 31:

"32 The Election of Pensioner Trustees to the Board of Trustees**(1) Appointment of the Independent Electoral Officer**

- (a) The Board must appoint an independent electoral officer (which may be a natural or juristic person) to:
- (i) oversee the nomination and election of pensioner-elected trustees in accordance with the Rules;
 - (ii) ensure that it is conducted in a manner that is free and fair;
 - (iii) deal with all complaints and objections that may be raised in relation to the nomination and election process, provided that such complaints and objections will not necessarily invalidate or delay the nomination and election process unless the Fund resolves otherwise; and
 - (iv) issue a report to the Board after the conclusion of the election process.
- (b) The Board must determine the process to be followed in appointing the independent electoral officer.

(2) Eligibility to stand for election

- (a) The nomination of any person disqualified from being appointed in terms of rule 6(1), for the position of trustee or alternate is null and void.
- (b) Should any nominee fall into one of the categories mentioned in rule 6(1) and subrule (3)(d) after the nomination process but before the voting process, he or she is immediately disqualified from standing for election. The nominee with the next highest number of votes must then replace him or her. If there have been fewer than four persons nominated, further nominations must be called for in accordance with the process set out in subrule (3)(h) and (i).
- (c) If there is any dispute as to a person's eligibility to be nominated or to stand for election, a hearing must be conducted by the independent electoral officer, who must then make a final decision on the issue.

(3) Nomination Process

- (a) Each Pensioner, Dependant and Special Pensioner is entitled, but not required, to nominate one candidate for election to the post of Pensioner-elected Trustee.
- (b) A nomination form, prepared in the manner and form determined by the Board of Trustees, must be sent by post to each Pensioner, Dependant and Special Pensioner and must be accompanied by:
- (i) information about the nomination and election process;

- (ii) the name and contact details of the independent electoral officer; and
- (iii) a pre-paid reply envelope bearing the address of the electoral officer.

Nominations can only be made by properly completing the nomination form referred to in Rule 32(3)(b) above. Nominations provided in any other form will not be accepted. The electoral officer will have the discretion to decide whether a nomination form has been properly completed

- (c) All nominated candidates will, if possible, be contacted by the independent electoral officer to confirm their acceptance of the nomination and their willingness to abide by the Codes of Conduct and Rules referred to below. The nominees must then sign a written declaration confirming the same and supply any additional information required by the independent electoral officer.
- (d) If a person who has been nominated and –
 - (i) has not given written notice to the electoral officer of his or her acceptance of the nomination; and/or
 - (ii) has been nominated by fewer than 10 persons who are Pensioners and/or Dependants and/or Special Pensioners; and/or
 - (iii) the electoral officer has been unable to make contact with the nominee within 10 days of receiving his or her nomination; and/or
 - (iv) fails or declines to undertake in writing to abide by –
 - a. the Fund's Code of Conduct for Candidates for Election; and
 - b. the Fund's Code of Conduct for Trustees; and
 - c. the Fund's Rules; and/or
 - (v) declines to provide the information that the independent election officer requires that he or she provides,
within the time period specified for the purpose by the electoral officer, the nomination will fall away and will be deemed not to have been made.
- (e) All nominations must reach the electoral officer on or before the date specified by the electoral officer in writing.
- (f) Nominations can only be opened by the independent electoral officer.
- (g) Before accepting the nomination, the independent electoral officer must verify the information on the nomination form using the Fund's data base.
- (h) If only 1 (one) or 2 (two) valid nominees are received, the candidates will be regarded as automatically having been elected, and the Board will appoint two or three other Pensioners, as the case may be, to act as pensioner-elected trustees or alternates, as the Board so decides.

- (i) If three or more valid nominations are received, the election will be conducted. If a post of alternate pensioner-elected trustee remains vacant, the Board may appoint a Pensioner to fill it.

(4) Who can vote

- (a) Each Pensioner, Dependant and Special Pensioner may vote for not more than four persons.

(5) Voting

- (a) If more than 2 (two) valid nominations are received, ballot papers and information to be given to the voters must be prepared in the manner and form determined by the Board.
- (b) The ballot papers must be sent by post to all Pensioners, Dependents and Special Pensioners and must be accompanied by:
- (i) information about each of the nominees;
 - (ii) an explanation of the voting process; and
 - (iii) a pre-paid reply envelope bearing the address of the Fund.
- (c) No vote will be regarded as having been validly exercised unless –
- (i) it was made on a ballot paper given to the Pensioner, Dependant or Special Pensioner;
 - (ii) it was placed inside the pre-paid envelope and posted or delivered (not telefaxed or emailed) to the electoral officer; and
 - (iii) the pension number of the Pensioner, Dependant or Special Pensioner appears on the outside of the pre-paid envelope.
- (d) All completed ballot papers must reach the Fund within the period determined by the independent electoral officer.
- (e) The independent electoral officer must verify and record the ballot papers after the closing date for submission of ballot papers, utilising the Fund's data capturing system, and must forward the results to the Fund's Principal Officer.
- (f) Candidates for election or their properly authorised representatives will be permitted to observe the counting of votes by the independent electoral officer.
- (g) The 2 (two) nominees with the highest number of votes will be regarded as the properly elected trustees. The 2 (two) nominees with the next highest number of votes will be regarded as their alternates. The result of the election will be communicated to Pensioners, Special Pensioners and Dependents as soon as is reasonably possible."