

(b) Notwithstanding (a), where the fair value of an asset comprises less than 5 percent of the aggregate fair value of the assets of the fund, then the fund need only disclose the categories of assets specified in Table 1, and not each underlying asset.

(c) Notwithstanding (a) and (b), any direct or indirect exposure to a hedge fund or private equity fund must be disclosed as an investment into a hedge fund or private equity fund as the case may be, and the fund need not apply the look-through principle in respect of the underlying assets of a hedge fund or private equity fund.

(d) Notwithstanding (b) and (c), and in accordance with conditions set by the South African Reserve Bank, when applying look-through any direct or indirect exposure to a foreign asset must be disclosed as a foreign asset.

Borrowing

(5)(a) A fund must not borrow.

(b) Notwithstanding (a): -

- (i) a fund may only borrow money for bridging purposes to maintain sufficient liquidity to meet its operational requirements;
- (ii) the aggregate of any loans for bridging purposes must not, throughout the financial year as determined in the rules of a fund, exceed 50 percent of the gross income of the fund (income of the fund before payment of management fees and administration fees) during the preceding financial year;
- (iii) any loan for bridging purposes must be repaid within 12 months of entering into the loan; and
- (iv) any loan for bridging purposes must not be subject to an early settlement penalty.

(c) A fund may as collateral for default on a loan referred to in paragraph (b) cede a proportionate share of its assets to the lender.

Securities lending

(6) A fund may engage in securities lending subject to conditions as prescribed.

Derivative instruments

(7) Notwithstanding subregulation 3(d), a fund may invest in derivative instruments subject to conditions as prescribed.

Reporting and exclusions

(8)(a) The Registrar may prescribe the format, content and any other particulars in respect of the disclosure of compliance with this regulation.

(b) In applying the limits set out in this regulation, subject to such prescribed reporting and disclosure, a fund may exclude the following assets or categories of assets: -

- (i) participatory interests in a collective investment scheme, in respect of which a fund obtained a certificate issued by the scheme at the end of the financial year of the fund, confirming that the assets of the scheme relevant to the fund have complied with the limits as set out in this regulation, provided that:
 - (aa) the auditor of the scheme confirms the accuracy of the certificate at the financial year end of the scheme; and
 - (bb) the confirmation is made available to the fund on request;
- (ii) a linked policy as defined in the Long-term Insurance Act, in respect of which a fund obtained a certificate issued by the long-term insurer at the end of the financial year of the fund, confirming that the assets held by the insurer in respect of its net liabilities under the said policy have complied with the limits as set out in this regulation, provided that:
 - (aa) the auditor of the insurer confirms the accuracy of the certificate at the financial year end of the insurer; and
 - (bb) the confirmation is made available to the fund on request;
- (iii) a long-term policy as defined in the Long-term Insurance Act, other than a policy referred to in paragraph (ii) above, that guarantees or partially guarantees policy benefits and in respect of which a fund obtained a certificate issued by the statutory actuary of the long-term insurer that the guarantee or partial guarantee is consistent with guidance issued by the Registrar of Long-term Insurance, under the Long-term Insurance Act, in

respect of what constitutes a guarantee or partial guarantee for purposes of this sub-regulation, provided that:

- (aa) the auditor of the insurer confirms the accuracy of the certificate at the financial year end of the insurer; and
- (bb) the confirmation is made available to the fund on request; and
- (iv) an asset issued by an entity that is regulated by the Financial Services Board, in respect of which a fund obtained a certificate issued by the auditor of the issuer of the asset at the end of the financial year of the fund, confirming that the underlying assets in respect of such asset have complied with the limits as set out in this regulation, and subject to conditions as may be prescribed;

Exemptions

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

TABLE 1

		Column 1	Column 2	
Item	Categories of assets		Limits being the maximum percentage of aggregate fair value of total assets of fund	
			Per issuer/entity, as applicable	For all issuers/entities
1.	CASH			100%
1.1	Notes and coins; any balance or deposit in an account held with a South African bank; A money market instrument issued by a South African bank including an Islamic liquidity management financial instrument; Any positive net balance in a margin account with an exchange; and Any positive net balance in a settlement account with an exchange, operated for the buying and selling of assets.		25%	100%
1.2	Any balance or deposit held with a foreign bank; A money market instrument issued by a foreign bank including an Islamic liquidity management financial instrument;		5%	
2.	DEBT INSTRUMENTS INCLUDING ISLAMIC DEBT INSTRUMENTS			100% for debt instruments issued by or guaranteed by the Republic, otherwise 75%
2.1	Inside the Republic and foreign assets			
	(a)	Debt instruments issued by, and loans to, the government of the Republic, and any debt or loan guaranteed by the Republic		100%
	(b)	Debt instruments issued or guaranteed by the government of a foreign country	10%	
	(c)	Debt instruments issued or guaranteed by a South African bank against its balance sheet: -		75%
	(i)	listed on an exchange with an issuer market capitalisation of R20 billion or more, or an amount or conditions as prescribed	25%	

	(ii)	listed on an exchange with an issuer market capitalisation of between R2 billion and R20 billion, or an amount or conditions as prescribed	15%	
	(iii)	listed on an exchange with an issuer market capitalisation of less than R2 billion, or an amount or conditions as prescribed	10%	
	(iv)	not listed on an exchange	5%	25%
(d)	Debt instruments issued or guaranteed by an entity that has equity listed on an exchange, or debt instruments issued or guaranteed by a public entity under the Public Finance Management Act, 1999 (Act No. 1 of 1999) as prescribed: -		10%	50%
	(i)	listed on an exchange	10%	50%
	(ii)	not listed on an exchange	5%	25%
(e)	Other debt instruments: -		5%	25%
	(i)	listed on an exchange	5%	25%
	(ii)	not listed on an exchange	5%	15%
3. EQUITIES				75%
3.1 Inside the Republic and foreign assets				
(a)	Preference and ordinary shares in companies, excluding shares in property companies, listed on an exchange: -			75%
	(i)	issuer market capitalisation of R20 billion or more, or an amount or conditions as prescribed	15%	
	(ii)	issuer market capitalisation of between R2 billion and R20 billion, or an amount or conditions as prescribed	10%	
	(iii)	issuer market capitalisation of less than R2 billion, or an amount or conditions as prescribed	5%	
(b)	Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange		2.5%	10%

4.	IMMOVABLE PROPERTY	25%
4.1	Inside the Republic and foreign assets	
	(a) Preference shares, ordinary shares and linked units comprising shares linked to debentures in property companies, or units in a Collective Investment Scheme in Property, listed on an exchange:-	25%
	(i) issuer market capitalisation of R10 billion or more, or an amount or conditions as prescribed	15%
	(ii) issuer market capitalisation of between R3 billion and R10 billion, or an amount or conditions as prescribed	10%
	(iii) issuer market capitalisation of less than R3 billion, or an amount or conditions as prescribed	5%
	(b) Immovable property, preference and ordinary shares in property companies, and linked units comprising shares linked to debentures in property companies, not listed on an exchange	15%
5.	COMMODITIES	10%
5.1	Inside the Republic and foreign assets	
	(a) Kruger Rands and other commodities listed on an exchange, including exchange traded commodities: -	10%
	(i) gold	10%
	(ii) each other commodity	5%
6.	INVESTMENTS IN THE BUSINESS OF A PARTICIPATING EMPLOYER INSIDE THE REPUBLIC IN TERMS OF: -	
	(a) section 19(4) of the Pension Funds Act	5%
	(b) To the extent it has been allowed by an exemption in terms of section 19(4A) of the Pension Funds Act	10%
7.	HOUSING LOANS GRANTED TO MEMBERS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 19(5)	95%

8.	HEDGE FUNDS, PRIVATE EQUITY FUNDS AND ANY OTHER ASSET NOT REFERRED TO IN THIS SCHEDULE			15%
8.1	Inside the Republic and foreign assets			
	(a)	Hedge funds		10%
	(i)	Funds of hedge funds	5% per fund of hedge funds	
	(ii)	Hedge funds	2.5% per hedge fund	
	(b)	Private equity funds		10%
	(i)	Funds of private equity funds	5% per fund of private equity funds	
	(ii)	Private equity funds	2.5% per private equity fund	
	(c)	Other assets not referred to in this schedule and excluding a hedge fund or private equity fund		2.5%

Effective date

3. This regulation comes into effect on 1 July 2011, provided that transitional arrangements may be prescribed.



**NATIONAL
TREASURY**

**EXPLANATORY MEMORANDUM
ON THE FINAL
REGULATION 28 THAT GIVES EFFECT TO SECTION 36(1)(bB) OF THE
PENSION FUNDS ACT 1956**

23 FEBRUARY 2011

[W.P. — '11]

FINAL REGULATION 28 EXPLANATORY MEMORANDUM

REGULATION 28 THAT GIVES EFFECT TO SECTION 36(1)(bB) OF THE
PENSION FUNDS ACT 1956

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FINAL REGULATION 28 EXPLANATORY MEMORANDUM

I. INTRODUCTION

Section 36(1)(bB) of the Pension Funds Act, No 24 of 1956, empowers the Minister of Finance to make regulations limiting the amount and the extent to which a pension fund may invest in particular assets. Of the R5.2 trillion total household savings in South Africa, Regulation 28 currently applies to all private retirement fund assets worth R1.1 trillion, and may be extended to the Government Employees Pension Fund (capturing an addition R1 trillion in assets).

The aim of retirement fund investment regulation is to ensure that the savings South Africans contribute towards their retirement is invested in a prudent manner that not only protects the retirement fund member, but is channelled in ways that achieve economic development and growth.

To achieve this, rules governing retirement fund investment should allow for inflation-beating capital growth for younger members and inflation-matching income for older and retired members. This can be reflected through the right mix of low risk-return "safe" assets with higher risk-return innovative products. The rules should likewise strike a balance between regulatory paternalism and empowering those entrusted with the management of retirement fund assets to do due diligence and make decisions of what investments are most appropriate for their fund's particular liability and liquidity profile.

An important consideration is the level of expertise on boards of trustees and their ability not only to make investment decisions, but also to delegate certain tasks (but never their ultimate responsibility) to advisors like asset managers, asset consultants and risk consultants. To the extent that trustees are inadequately informed of investment and liquidity requirements, governance, and risk management, the regulation must give stronger direction through rules rather than guiding principles.