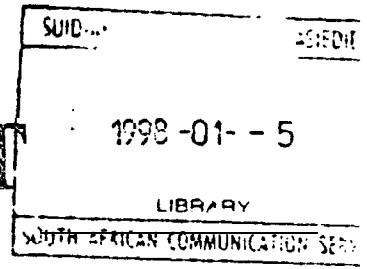




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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1649.

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17 Desember 1997

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 94 of 1997: Pension Funds Amendment Act, 1997.

No. 94 van 1997: Wysigingswet op Pensioenfondse, 1997.

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.

ACT

To amend the Pension Funds Act, 1956, in relation to the payment of contributions to pension funds and the payment of benefits or rights to benefits from one pension fund to another in certain circumstances, and to provide for the levying of interest on certain payments that are received late; to prohibit a pension fund from investing in or lending to the business of its members' employer any assets of that fund in excess of five per cent of its total assets or a greater percentage allowed by the registrar but not exceeding 10 per cent of its total assets, and to extend that prohibition to any subsidiary or holding company of such an employer that is a company; to extend the provisions governing the procedure applicable to the voluntary dissolution of a pension fund upon its total termination, to the case where a pension fund is partially terminated due to a participating employer's withdrawal from the fund, and, in appropriate cases and subject to prescribed conditions, to empower the registrar of pension funds to exempt pension funds from the provisions of section 28(6) and (7) and provide for the registrar to authorize the liquidator of a pension fund to make provisional payments to members and beneficiaries before completion of the liquidation; to make provision for the remuneration of the liquidator of a pension fund; to repeal section 19 of the Financial Institutions Amendment Act, 1992; and to provide for incidental matters.

(Afrikaans text signed by the President.)
(Assented to 26 November 1997.)

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

Substitution of section 13A of Act 24 of 1956, as inserted by section 15 of Act 86 of 1984 and amended by section 6 of Act 22 of 1996

1. The following section is hereby substituted for section 13A of the Pension Funds Act, 1956 (hereafter called the principal Act):

“Payment of contributions and certain benefits to pension funds

13A. (1) Notwithstanding any provision in the rules of a registered fund to the contrary, the employer of any member of such a fund shall pay the following to the fund in full, namely—

- (a) any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and
 (b) any contribution for which the employer is liable in terms of those rules.

(2) (a) The minimum information to be furnished to the fund by every employer with regard to payments of contributions made by the employer in terms of subsection (1), shall be as prescribed by regulation.

(b) If that information does not accompany the payment of a contribution, the information shall be transmitted to the fund concerned not later than 15 days after the end of the month in respect of which the payment was made.

(3) (a) Any contribution to a fund in terms of its rules, whether it be a contribution contemplated in subsection (1), a contribution for the payment of which a member of the fund is responsible personally, or a contribution to be paid on a member's behalf—

- (i) shall be transmitted directly into the fund's account with a bank finally registered as such under the Banks Act, 1990 (Act No. 94 of 1990), not later than seven days after the end of the month for which such a contribution is payable, or
 (ii) shall be forwarded directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month; or
 (iii) in the case of a fund contemplated in section 15(4) that has been exempted from the provisions of sections 5(2) and 9 because, in operating as a fund, its assets consist exclusively of one or more policies of insurance with an insurer carrying on long-term insurance business as contemplated in the Insurance Act, 1943, shall be forwarded to the insurer concerned in such manner as to have the insurer receive the contribution not later than seven days after the end of that month.

(b) Any contribution forwarded to and received by a fund in the circumstances contemplated in paragraph (a)(ii), shall be deposited in the fund's bank account on the first business day following the day of receipt.

(4) An amendment of the rules of a fund relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions shall not affect any liability to pay any contribution which became payable at any time before the date of the resolution whereby the amendment was effected, irrespective of the date on which the amendment may take effect.

(5) When a person who, for any reason except a reason contemplated in section 14, 28 or 29, has ceased to be a member of a fund (in this subsection called the first fund), is in terms of the rules of another fund admitted as a member of the other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person had become entitled in terms of the rules of the first fund, the first fund shall, within 60 days of the date of such person's written request to it, or, if applicable, within any longer period determined by the registrar on application by the first fund, transfer that benefit or right to the other fund in full. The transfer shall be subject to deductions in terms of section 37D and to the rules of the first fund.

(6) (a) For the purpose of monitoring and ensuring compliance with this section, the principal officer of the fund or any authorized person shall, at the times and in the manner and format prescribed by regulation, submit reports to the categories of persons, to be specified in those regulations who have an interest in such compliance.

(b) In applying paragraph (a), 'authorized person' means any person who has been authorized by the relevant board to perform the function contemplated in that paragraph and of whom the registrar has been advised in writing.

(7) Interest at a rate as prescribed from time to time by the Minister by notice in the *Gazette* shall be payable on—

- (a) the amount of any **contribution** not transmitted into a fund's bank account before the expiration of the period prescribed therefor by subsection (3)(a)(i);
- (b) the amount of any contribution not **received**—
- (i) by a fund before the expiration of the period prescribed there for by subsection (3)(a)(ii); or
- (ii) in the circumstances contemplated in subsection (3)(a)(iii), by the insurer concerned before the expiration of the period prescribed therefor by that subsection;
- (c) **the** value of any benefit, or right to any benefit, not transferred by the first fund to the other fund before the expiration of the period prescribed therefor by subsection (5).”.

Amendment of section 19 of Act 24 of 1956, as amended by section 13 of Act 80 of 1959, section 9 of Act 58 of 1966, section 1 of Act 80 of 1969, section 2 of Act 23 of 1970, section 7 of Act 91 of 1972, section 23 of Act 101 of 1976, section 11 of Act 94 15 of 1977, section 11 of Act 80 of 1978, section 14 of Act 103 of 1979, section 39 of Act 99 of 1980, section 14 of Act 82 of 1982, section 20 of Act 46 of 1984, section 17 of Act 86 of 1984, section 11 of Act 50 of 1986, section 5 of Act 51 of 1988, section 36 of Act 9 of 1989, section 8 of Act 53 of 1989 and section 11 of Act 64 of 1990

2. Section 19 of the principal Act is hereby amended— 20

(a) by the substitution-for subsection (4) of the following subsections:

“(4) Except as provided for in subsection (4A), no assets of a registered fund in excess of five per cent of their fair value, shall be invested in or lent to the business of an employer participating in the scheme or arrangement whereby the fund has been established. Where the employer is a company (in this subsection called the employer company), the business of every other company which—

(a) is a **subsidiary**—

- (i) of the employer company; or
- (ii) of any subsidiary of the employer company; or
- (iii) of any successive subsidiary within the same hierarchy; or

(b) is the **holding company**—

- (i) of the employer company; or
- (ii) of the holding company of the employer company; or
- (iii) of any successive holding company within the same hierarchy,

shall be deemed, for the purposes of this subsection, to be part of the business of the employer company. In applying paragraphs (a) and (b), ‘subsidiary’ and ‘holding company’ respectively mean—

(aa) a ‘subsidiary company’ or ‘subsidiary’ as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973);

(bb) a ‘holding company’ as defined in that section.

(4A) The registrar, on application by the Board, may allow a greater percentage of the fund's assets, but not exceeding 10 per cent of the fair value of the fund's assets, to be invested in or lent to that employer's business for the period and on any conditions determined by the registrar if, in that application, the Board has **certified**—

(a) that it has consulted with the members about the proposed investment in or loan to the employer's business; and

(b) that the members support the making of that investment or loan.

(4B) Notwithstanding the provisions of subsections (4) and (4A), no assets of a fund may be invested in or lent to such a participating employer's business unless it is in the best interest of the fund to do so.”;

and

(b) in subsection (6)(a), by the substitution for the expression “subsection (4), (5) or (5 B)(a)” of the expression “subsection (5) or (5 B)(a)”.

Amendment of section 28 of Act 24 of 1956, as amended by section 15 of Act 103 of 1979, section 25 of Act 83 of 1992 and section 6 of Act 22 of 1996

3. Section 28 of the principal Act is hereby amended— 5
- (a) by the substitution for subsection (1) of the following subsection: 5
- “(1) Subject to the provisions of this section, a registered fund may be terminated or dissolved, whether wholly or in part, in [such] the circumstances (if any) [as may be] specified for that purpose in its rules, and in the manner provided by [such] those rules. **[and] In such an event,** 10 the assets of the fund, or, in the case of the partial termination of the fund, those assets of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination (as the case may be), shall, subject to the **[said]** provisions **[in that event]** of this section, be distributed in the manner 15 provided by **[the said] those rules.**”;
- (b) in subsection (4) by the substitution for paragraph (a) of the following paragraph: 15
- “(a) The liquidator shall **as** soon as may be possible, deposit with the registrar the preliminary accounts prescribed by regulation, signed [by 20 **him**] and certified **[by him] as correct by the liquidator and** showing the assets and liabilities of the fund **as** at the commencement of the liquidation **[and] as well as** the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and 25 contingent liabilities to or in respect of members, or, in the case of the partial termination of the fund, the assets and liabilities of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination.”;
- (c) by the substitution for subsection (5) of the following subsection: 25
- “(5) If deemed fit, the registrar may **[in his discretion]** direct the 30 liquidator to furnish a report, drawn up by an independent valuator or other competent person nominated by the registrar **[upon the preliminary account and preliminary balance sheet]** on the preliminary accounts.”;
- (d) by the substitution for subsection (6) of the following subsection: 35
- “(6) The preliminary [account] accounts [preliminary balance sheet] and report (if any) referred to in subsection (5) shall lie open for inspection by interested persons for a period of 30 days at the office of the registrar and at the registered office of [such] the fund, and where the registered office of the fund is not in [any] the district [other than the 40 district wherein] in which the office of the registrar is situate, at the office of the magistrate of the district in which the registered office of the fund is situate [for inspection by interested persons for a period of thirty days].”;
- (e) by the substitution for subsection (7) of the following subsection: 45
- “(7) The registrar shall direct the liquidator to publish a notice, at the cost of such a fund, **[cause to be published]** in the *Gazette* and in one **[English and one Afrikaans] newspaper in the English language and 50 one in the Afrikaans language. or, if deemed necessary in the circumstances, in any other official language, circulating in the district in which the registered office of [such] the fund is situate [a notice stating] and in which is stated the period during which and the places at which the preliminary [account] accounts [preliminary balance sheet] and report (if any) shall lie open for inspection [as aforesaid] by interested 55 persons.**[and such] The** notice shall call upon any interested persons who have any objection to the [said] preliminary [account] accounts**

- [preliminary balance sheet] and report (if any) to lodge their objections in writing with the registrar within [a]@ period stated in the notice, [not being less] ~~which~~ shall not be shorter than fourteen days, calculated as from the last day on which [the aforesaid] those documents lie open for inspection.”; 5
- (f) by the insertion of the following subsection after subsection (7):
 “(7A) If, in the case of a particular fund or a particular participating employer whose withdrawal from the fund has caused its partial termination, the registrar is satisfied on reasonable grounds that there exist special circumstances which justify exemption from the provisions of subsections(6) and(7), the registrar, having due regard to the rights Of interested persons, may exempt the fund from all or any of the provisions of those subsections if deemed expedient in the circumstances. Such an exemption shall be subject to the conditions determined from time to time by the registrar by-notice in the *Gazette*.”; 10 15
- (g) by the substitution for subsection (12) of the following subsection:
 “(12) [The liquidator shall] Within [thirty] 30 days after [the] completion of the liquidation, the liquidator shall lodge with the registrar [a final account and a fired balance sheet] the final accounts prescribed by regulation signed and certified [by him] as correct by the liquidator and showing— 20
 (a) the assets and liabilities of the fund, as at the commencement of the liquidation, or, in the case of the partial termination of the fund, those assets and liabilities of the fund which, at the commencement of the liquidation, are attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination; and 25
 (b) the manner in which the assets have been realized and the liabilities (including any liabilities and contingent liabilities to or in respect of members) have been discharged.”; 30
- (h) by the insertion after subsection (12) of the following subsection:
 “(12A) Notwithstanding any provision to the contrary in this section, the registrar, on good cause shown, may authorize the liquidator to make payment of any-amounts to the members and beneficiaries of a fund before submission of the final accounts and report (if any), subject to the conditions that the registrar may prescribe from time to time by notice in the *Gazette*.”; 35
- (i) by the substitution for subsection (15) of the following subsection:
 “(15) [If] The registrar [is]. if satisfied that the [said account and balance sheet] liquidator’s accounts in respect of the fund are correct and that the liquidation has been completed, [he] shall— 40
 (a) cancel the registration of the fund, in the case where the fund is wholly terminated, [and thereupon] whereupon the fund shall be [deemed to be] dissolved or
 (b) in the case of the partial dissolution of the fund, only confirm the completion of the partial liquidation of the fund.”; and 45
- (j) by the addition of the following subsection:
 “(16) For the purposes of this section, ‘participating employer’ means any employer who participates in the scheme or arrangement whereby a fund has been established.”. 50

Insertion of section 28A in Act 24 of 1956

4. The following section is hereby inserted in the principal Act after section 28:

“Remuneration of liquidator

28A. (1) The registrar by notice in the *Gazette* shall determine the services for which remuneration shall be payable to the liquidator of a fund which is terminated or dissolved voluntarily, whether wholly or in part, and prescribe the tariff of remuneration in respect of those services. 5

(2) Notwithstanding subsection (1), the registrar may reduce or increase the liquidator’s remuneration if satisfied on reasonable grounds that there is good reason for doing so, and the registrar may disallow the liquidator’s remuneration because of any failure or delay to carry out the liquidator’s duties or to carry them out properly and effectively.” 10

Repeal of section 19 of Act 83 of 1992

5. Section 19 of the Financial Institutions Amendment Act, 1992 (Act No. 83 of 1992). is hereby repealed. 15

Short title and commencement

6.(1) This Act is called the Pension Funds Amendment Act, 1997, and will come into operation on a date that will be determined by the President by proclamation in the Gazette.

(2) Different dates may be determined under subsection (1) for different provisions of 20 this Act.