

## DEPARTMENT OF FINANCE

NO. 1584

23 DECEMBER 2016

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**AMENDMENTS TO THE REGULATIONS ISSUED IN TERMS OF  
SECTION 36 OF THE PENSION FUNDS ACT, 1956 (ACT 24 OF 1956)****Definition**

In these regulations "the Regulations" means the Regulations published by Government Notice R.98 in *Government Gazette* 162 of 26 January 1962, as amended by:

Notice	Government Gazette	Date
R.99		26 January 1962
R.2144	9437	28 September 1984
R.1790	9892	16 August 1985
R.1037	10249	28 May 1986
R.232	10601	6 February 1987
R.1452	11992	7 July 1989
R.1920	12079	1 September 1989
R.2361	13536	27 September 1991
R.201	14572	12 February 1993
R.2324	15312	10 December 1993
R.141	15453	28 January 1994
R.1838	16833	24 November 1995
R.1677	17500	18 October 1996
R.801	18978	19 June 1998
R.1020	19131	14 August 1998
R.1154	19225	11 September 1998
R.1218	19269	25 September 1998
R.1644	19596	18 December 1998
R.853	20267	9 July 1999 w.e.f 1 July 1999
R.896	21545	8 September 2000 w.e.f 1 September 2000
R.337	22210	6 April 2001
R.100	23080	1 February 2002
R.1037	23689	1 August 2002
33	24264	24 January 2003
558	24780	22 April 2003
R.1739	25776	28 November 2003
R.1355	27012	19 November 2004
R.1105	28226	14 November 2005
R.491	28884	29 May 2006
R.843	29139	18 August 2006
R.1217	29446	1 December 2006
R.73	31837	4 February 2009
BN 10	33954	28 January 2011
BN 26	34024	14 February 2011
BN 61	34152	25 March 2011 w.e.f. 1 April 2011
R.183	34070	4 March 2011 w.e.f. 1 July 2011

**Amendment of definitions**

1. The definitions in the Regulations are hereby amended:

(a) by the insertion after the definition of "accounting person" of the following definitions:

**"collective investment scheme"** has the meaning assigned to it in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

**"annuity strategy"** means a strategy, as determined by the board, setting out the manner in which a member's retirement savings may be applied, with the member's consent, to provide an annuity by the fund or to purchase a proposed annuity on behalf of the member from an external provider, which annuities comply with the requirements of regulation 39 and any conditions that may be prescribed from time to time;

**"default investment portfolio"** means an investment portfolio(s) in which the retirement funding contributions of a member of a fund must be invested unless the fund has been instructed by the member in writing to invest them in another investment portfolio; provided in terms of the

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investment policy statement of the fund or options available to members of the fund, and which portfolio:

- (a) complies with the requirements set out in regulation 37; and
- (b) the composition of the portfolio may differ from member to member in respect of:
  - (i) the age or likely retirement date of each member;
  - (ii) the value of the retirement savings of the member in that fund, and
  - (iii) the actual or expected retirement funding contributions of the member;
- (c) complies with any conditions that may be prescribed.

(b) by the insertion after the definition of "insurer" of the following definitions:

**"investment portfolio"** means an identifiable portfolio of assets whether those assets are

- (a) owned by the fund;
- (b) owned by an insurer which has issued to the fund a policy in terms of which policy benefits are directly or indirectly based on the returns on the investment of those assets;
- (c) assets held by a collective investment scheme or pooled fund of which the fund or an insurer contemplated in part (b) is a unit-holder,

in which the fund has invested retirement funding contributions of its members and/or has decided to include in the range of investment portfolios in which retirement funding contributions may be invested;

**"living annuity"** has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act No 58 of 1962);

**"Long-term Insurance Act"** means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

**"long-term insurer"** means a person registered as a long-term insurer in terms of the Long-term Insurance Act;

**"paid-up member"** means a deferred pensioner;

**"paid-up membership certificate"** means a certificate issued by a fund in terms of regulation 38 in respect of a paid-up member which records, in a format which may be prescribed, at least the following:

- (a) the name, address, registration number and contact details of the retirement fund;
- (b) the name, address and contact details of the retirement fund administrator;
- (c) the name, address, ID number, tax number, fund membership number and contact details of the member in respect of whom the certificate is issued;
- (d) the date at which the member in respect of whom the certificate is issued became a paid-up member, and the date on which the certificate was issued;
- (e) the value of the member's individual account or member's individual reserve in respect of whom the certificate is issued, at the date on which such a member became paid-up;
- (f) the investment portfolios in which such retirement savings are invested; and
- (g) any other information which may be prescribed.

**"pooled fund"** means a collective investment undertaking, including investment compartments of a collective investment undertaking, constituted in any legal form, including in terms of a contract, by means of a trust, or in terms of statute, which—

- (a) raises capital from one or more investors, to facilitate the participation or interest in, subscription, contribution or commitment to a fund or portfolio, with a view to investing it in accordance with a defined investment policy for the benefit of the investors; and
  - (b) does not require approval as a collective investment scheme in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- (c) by the insertion after the definition of "privately administered fund" of the following definitions:

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**"retirement benefits counselling"** means the disclosure and explanation, in clear and understandable language, including risks, costs and charges, of:

- (a) the available investment portfolios;
- (b) the terms of the fund's annuity strategy;
- (c) the terms and process by which a fund, including a member's new fund, handles preserved benefits in terms of regulation 38; and
- (d) any other options available to members.

**"retirement funding contributions"** in a defined contribution category of a fund as defined in the Pension Funds Act (Act 24, 1956), means that part of the contributions or transfer values paid to the fund by or in respect of a member, which are applied towards retirement savings in terms of the rules of the fund.

**"retirement savings"** in a defined contribution category of a fund as defined in the Pension Funds Act, means the member's individual account.

### **Insertion of new regulations**

The Regulations are hereby amended, by the insertion after regulation 36, of the following regulations:

#### **37. Default investment portfolio**

1. The rules of funds with a defined contribution category must provide for the board to establish an investment policy statement, which provides for a default investment portfolio.
2. The board must ensure, and be able to demonstrate to the Registrar on request, that –
 

*Default investment portfolio(s) are appropriate for the members who will be automatically enrolled into them*

  - (a) the design of the default investment portfolio, including its
    - (i) high-level objective;
    - (ii) underlying asset allocation;
    - (iii) fees and charges; and
    - (iv) the expected risks and returns to which it exposes members whose retirement savings in that fund are or will be invested in the default investment portfolio of that fund;

takes account, as far as is reasonable, of the likely characteristics and needs of that category of fund members whose retirement funding contributions and retirement savings in that fund are or will be invested in the default investment portfolio of that fund;

*The composition and performance of the default investment portfolio are adequately communicated to members*
  - (b) the underlying asset allocation, and fund return net of all fees and charges in respect of the default investment portfolio are communicated to fund members on a frequency and format which may be prescribed;
 

*Default investment portfolios are cost effective*
  - (c) the fees and charges in respect of the default investment portfolio or the assets held in respect of the default investment portfolio are reasonable and competitive, taking account of market conditions, the size, asset allocation and other characteristics of the fund as a whole and the default investment portfolio in particular;
 

*All fees and charges are disclosed*
  - (d) all fees and charges, whether borne directly by the fund or paid directly or indirectly out of assets, or implicit in trading assets or in trading or holding derivative securities or policies purchased in respect of the default investment portfolio and the management of the underlying assets, as well as the impact that such fees and charges will have on members'

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actual and prospective benefits, are disclosed on a regular basis to members, in a clear and understandable language, and in a format which may be prescribed;

*Both passive and active investment must be equally considered as investment options*

- (e) boards should consider both passive and active investment strategies as part of the default investment portfolio;

*No loyalty bonuses or other complex fee structures*

- (f) no fees or charges deducted from or amounts credited to members' retirement savings or retirement funding contributions or otherwise paid to members by any service provider in respect of the default investment portfolio may depend on the length of time that a member has been a member of the fund, the number of contributions made by the member or any similar measure;

*Members are not locked into the default investment portfolio*

- (g) members may instruct the fund to transfer their retirement savings from the default investment portfolio into any other investment portfolios offered in terms of the rules of the fund at intervals not exceeding one year, in respect of which transfer the fund may deduct reasonable administration costs from the account of members concerned;

*The default investment portfolio is reviewed*

- (h) the board must review the default investment portfolio on a regular basis to ensure that it continues to comply with this regulation.

### **38. Default preservation and portability**

1. (a) If members are enrolled into a retirement fund as a condition of employment, the rules of that fund must provide for members to become paid-up in the fund.
- (b) When members leave the service of a participating employer, such members –
  - (i) must be made paid-up members of the fund until the fund is instructed by the member, in writing, to pay out or transfer the benefits due to the member in terms of the rules, and
  - (ii) must be presented with a paid-up membership certificate within two (2) calendar months of becoming aware that the member has left the services of the participating employer,
- (c) Investment fees and charges in respect of the portion of retirement savings that is invested in the default investment portfolio may not differ on the basis of whether members are paid-up members or are still in the service of the participating employer. The administration fees for paid-up members, if expressed in a similar way as active members, may not be more than the average of active members' administration fees.
- (d) No charges may be levied on the retirement savings of a member as a direct consequence of that member becoming a paid-up member.
- (e) The rules of funds must make provision to accept any amount or amounts paid or transferred, or which will be paid or transferred, to the fund from another fund for the benefit of a member or members, provided that such transfers may comprise a defined contribution benefit component, and such funds must –
  - (i) within four (4) months of a member joining the fund, obtain, in a manner which may be prescribed, a list of all paid-up membership certificates in respect of any retirement savings of that member;
  - (ii) request, for each paid-up membership certificate, in a manner which may be prescribed, whether members wish to allow the retirement savings held in respect of each paid-up membership certificate to be transferred into the new fund; and
  - (iii) if a member elects to transfer their retirement savings, arrange, on behalf of that member, in respect of each paid-up membership certificate, the transfer of all such retirement savings into the fund, without levying a charge on such amounts in respect of the transfer.
2. The fund rules should with respect to paid-up members specify that—

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- (a) no new contributions to the fund may be permitted in respect of this class of member;
- (b) no deductions may be made from the retirement savings of paid-up members in respect of risk benefits;
- (c) a defined benefit amount, on preservation, may be converted to a defined contribution component and have it preserved as such;
- (d) eligibility for retirement and early retirement for paid-up members is as per fund rules; and
- (e) members are given access to retirement benefits counselling before any withdrawal benefit is paid to them or any transfer is made on their behalf to another retirement fund.

**39. Annuity strategy**

1. The rules of all retirement funds must provide for the board to establish an annuity strategy.

2. Boards must ensure, and be able to demonstrate to the Registrar on request, that:

*The proposed annuity as per the annuity strategy is appropriate and suitable for the members who will be enrolled into it*

- (a) The proposed annuity should, as far as is reasonably ascertainable by the Board, consider: the level of income that will be payable to retiring members; the investment, inflation and other risks inherent in the income received by retiring members; and the level of income protection granted to beneficiaries in the event of the death of a member enrolled into the proposed annuity.

*The objective, composition and performance of the proposed annuity are communicated to members*

- (b) the high-level objective, average incomes and changes in the incomes in respect of the annuity option for fund members and former fund members whose retirement savings were used to provide a retirement income are communicated to fund members on a regular basis, in a clear and understandable language and in a format which may be prescribed;

*Proposed annuities have reasonable and competitive fees and charges*

- (c) the fees and charges in respect of the proposed annuity or the assets held in respect thereof are reasonable and competitive, considering the benefits provided to members or former-members of the fund, the size, composition and asset allocation of the fund and the annuity in particular;

*All fees and charges, and their impact on members' benefits are disclosed*

- (d) all fees and charges, whether borne directly by the fund or paid directly or indirectly out of assets, or implicit in trading assets or in trading or holding derivative securities or policies purchased in respect of the proposed annuity and the management of its underlying assets, as well as the impact that such fees and charges will have on members' actual and prospective benefits, are disclosed on a regular basis to members whose retirement benefits are provided in terms of this annuity, in a clear and understandable language, and in a format which may be prescribed;

*Members are given access to retirement benefits counselling*

- (e) members are given access to retirement benefits counselling not less than three (3) months before their retirement date as determined in the fund rules of the fund;

*The proposed annuity is reviewed annually*

- (f) boards must review the proposed annuity at least annually to ensure that the annuity continues to comply with this regulation.

**Living Annuities**

- 3. (a) Living annuities can be paid from the fund or through a fund owned policy or sourced from a contracted third-party external provider as part of the proposed annuity solutions; provided that in each case, the investment choice is limited to four (4) investment portfolios and drawdown levels are compliant with the accepted industry standard.

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- (b) Where the living annuity is paid from the fund or through a fund owned policy, funds must monitor the sustainability of income drawn by retirees in these living annuities and make such members aware if their incomes are deemed not to be sustainable.
- (c) Investment portfolios for a living annuity chosen should be consistent with regulation 37.

***In-fund pensions***

- 4. (a) A pension payable by the fund in terms of the rules of the fund may be chosen as part of the proposed annuity solutions.
- (b) Such a pension can be non-guaranteed, on condition that members are informed in clear and understandable language that the fund does not guarantee pension amounts, and that such pensions can fluctuate in line with the value of the underlying assets, longevity of fund members and any fund expenses.
- (c) The assets relevant for the purposes of paying pensions and determining pension increases must be maintained separately and must be reduced by any pension payments made to pensioners and any fund expenses and increased with the relative return of the underlying assets.

***Out of fund annuities***

- 5. Annuities other than living annuities provided by a long-term insurer may be provided as a proposed annuity subject to such conditions that the Registrar may prescribe.

**Short title and commencement**

These Regulations are called the Amendments to the Pension Fund Regulations, 2016, and shall come into operation on a date to be determined by the Minister in the *Government Gazette*.