

## NATIONAL TREASURY

NO. 863

25 AUGUST 2017

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

I, Malusi Knowledge Nkanyezi Gigaba, Minister of Finance, under section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), hereby amend the Regulations made under section 36 of the Pension Funds Act and published under Government Notice R.98 in *Government Gazette* 162 of 26 January 1962 (as amended from time to time) as set out in the Schedule.



**MALUSI KNOWLEDGE NKANYEZI GIGABA, MP  
MINISTER OF FINANCE**

## GOVERNMENT GAZETTE

## SCHEDULE

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

**Definitions**

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

Notice	Government Gazette	Date
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
BN149	33693	27 October 2010
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 as published in GN R.98 of 1962, and amended by GN R1838 of 1995 and GNR.491 of 2006**

1. The definitions in the Regulations are hereby amended--

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

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

**"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);

**"default investment portfolio"** means an investment portfolio(s) in which the retirement funding contributions of a member 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 investment policy statement of the fund or options available to members of the fund, and which portfolio(s)–

- (a) complies with the requirements set out in regulation 37;
- (b) may differ in composition from member to member depending on:
  - (i) the age or likely date of retirement from service of each member;
  - (ii) the value of the retirement savings of the member in that fund,
  - (iii) the actual or expected retirement funding contributions of the member; or
  - (iv) any other factor reasonably considered by the board to be appropriate in respect of that member; and
- (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; and/or
- (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; and/or
- (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 and/or has decided to include in the range of investment options 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 pension or provident fund;
- (b) the name, address and contact details of the pension or provident fund administrator;
- (c) the name, address, ID number, tax number, fund membership number and most recent 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); and
- (c) by the insertion after the definition of "privately administered fund" of the following definitions:

**"retirement benefits counselling"** means the disclosure and explanation, in a 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, handles preserved benefits in terms of regulation 38; and
- (d) any other options made available to members;

**"retirement funding contributions"** in a defined contribution category of a fund, 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, means the member's individual account;'

#### **Insertion of Regulations 37 to 40**

2. (1) The Regulations are hereby amended, by the insertion after regulation 36, of the following regulations:

##### **'Default investment portfolio(s)**

**37.** (1) The board of a fund with a defined contribution category, to which members belong as a condition of employment, must include in its investment policy statement the provision of one or more default investment portfolios.

(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) 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,
 is appropriate to that category of members whose retirement funding contributions and retirement savings are or will be invested in the default investment portfolio(s);

*The composition of assets and performance of the default investment portfolio are adequately communicated to members*

- (b) the composition of assets and performance of the default investment portfolio(s), and fund returns are communicated to members on a frequency and format which may be prescribed;

*Default investment portfolios are reasonably priced and competitive*

- (c) the fees and charges in respect of the default investment portfolio(s) or the assets held in respect of the default investment portfolio(s) are reasonable and competitive, taking account of the size, asset allocation and other characteristics of the fund;

*All fees and charges are disclosed*

- (d) all fees and charges, whether borne directly or indirectly by the fund, implicit or explicit, are disclosed on a regular basis to boards and the relevant information is appropriately disclosed to members, in a clear and understandable language, and in formats which may be prescribed;

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

- (e) it considers 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 an individual 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) where member investment choice is provided in the rules, members may, at least once every twelve (12) months, instruct the fund to transfer their retirement savings from the default investment portfolio into any other investment portfolios offered in terms of the investment policy statement, in respect of which transfer the fund may deduct reasonable administration costs; and

*The default investment portfolio is reviewed*

- (h) it reviews the default investment portfolio(s) on a regular basis to ensure that it continues to comply with this regulation;

*Exemption*

(3) 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 these regulations, subject to conditions that the Registrar may impose.

### **Default preservation and portability**

**38. 1. (a)** When members are enrolled into a pension or provident fund as a condition of employment, the rules of that fund must provide for members who leave the service of a participating employer before retirement to become paid-up members.

(b) When members leave the service of a participating employer before retirement, 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 the fund 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 must be fair, reasonable and commensurate with the cost of providing the administration service to members still in the service of the participating employer.

(d) No initial once-off charge 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 to which a member belongs as a condition of employment must make provision to accept any amount or amounts transferred, to the fund from another fund for the benefit of a member or members, provided that such transfers comprise a defined contribution benefit component, and such funds must –

- (i) within four (4) months of a member joining the fund, request, 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 must with respect to paid-up members specify that–

- (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) upon the member becoming paid-up, a defined benefit amount, must be converted to a defined contribution component and have it preserved as such;<sup>3</sup>
- (d) eligibility for death benefits, 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 such withdrawal benefit as determined in the fund rules is paid to them or any transfer is made to another fund.

(3) 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 these regulations, subject to conditions that the Registrar may impose.

### **Annuity strategy**

**39.** (1)(a) The boards of all pension, pension preservation and retirement annuity funds must establish an annuity strategy.

(b) Where the rules of a provident or provident preservation fund enable a member to elect an annuity, the board must establish an annuity strategy.

(2) Boards must ensure, and be able to demonstrate to the Registrar on request, that–

*The proposed annuity or annuities as per the annuity strategy are appropriate and suitable for the specific classes of members who will be enrolled into them*

(a) in determining an annuity or annuities, the board has considered, as far as it can reasonably ascertain: 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, asset class composition and performance of the annuity are communicated to members*

(b) with respect to a living annuity, the asset class composition of investments, their performance and changes in the incomes in respect of the annuity must be communicated to members on a regular basis, in a clear and understandable language and in a format which may be prescribed;

*Annuities have reasonable and competitive fees and charges*

(c) the fees and charges in respect of the annuity or the assets held in respect thereof are reasonable and competitive, considering the benefits provided to members;

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

(d) all fees and charges, whether borne directly or indirectly by the fund, implicit or explicit, are disclosed on a regular basis to boards and the relevant information is appropriately disclosed to members, in a clear and understandable language, and in formats 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 normal retirement age as determined in the rules of the fund and as may be prescribed; and

*The annuity strategy is reviewed annually*

(f) it reviews the annuity strategy at least annually to ensure that the annuity or annuities continue to comply with this regulation and are appropriate for members.

*Living annuities*

(3)(a) In addition to traditional annuities, living annuities may be paid directly from the fund or through a fund owned policy or sourced from an external provider as part of the annuity strategy; provided that in each case, the investment choice is limited to four (4) investment portfolios, which portfolios are compliant with regulation 28 and 37 and drawdown levels are compliant with a prescribed standard.

(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 drawdown rates are deemed not to be sustainable.

*In-fund annuities other than living annuities*

(4) An annuity payable by the fund in terms of the rules of the fund may be chosen as part of the annuity strategy.

*Out of fund annuities, other than living annuities*

(5) Annuities provided by a long-term insurer may be provided as part of the annuity strategy subject to such conditions that the Registrar may prescribe.

*Exemption*

(6) 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 these regulations, subject to conditions that the Registrar may impose.

### **Application of Regulations 37 to 39**

**40.** (a) Other than where specifically indicated, regulations 37 and 38 do not apply to retirement annuity and preservation funds.

(b) Regulations 37, 38 and 39 do not apply to funds in liquidation as contemplated in section 28 of the Act.'

**Commencement**

**3.** These amendments to the Regulations come into effect on 1 September 2017. All default arrangements in place on the effective date of these amendments to the Regulations must comply with the provisions of these amendments to the Regulations within eighteen (18) months of the effective date.