

NATIONAL TREASURY

NO. 1460

29 October 2021

DRAFT AMENDMENTS TO REGULATION 28 IN TERMS OF PENSION FUNDS ACT, 1956: PUBLISHED FOR COMMENT

The Minister of Finance, in terms of section 36(1)(bB) of the Pension Funds Act, 1956 (Act No. 24 of 1956), and as required by section 40C of that Act, publishes for public comment amendments to Regulation 28 of the Regulations made under section 36 of the Pension Funds Act and published under Government Notice R. 98 in *Government Gazette* No. 162 of 26 January 1962, as amended, as set out in the Schedule.

Written comments on the draft amendment to Regulation 28 should be submitted to retirement.reform@treasury.gov.za by close of business on **12 November 2021**.

Any questions of clarity can also be emailed to that address.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing Regulations.
 _____ Words underlined with a solid line indicate insertions in existing Regulations.

Interpretation

1. In this Schedule, "Regulation 28" means Regulation 28 of the Regulations made in terms of section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), published in Government Notice No. R.99 of 26 January 1962, as amended.

Amendment of subregulation (1)

2. Subregulation (1) of Regulation 28 is hereby amended by—

(a) the insertion after the definition of "credit ratings" of the following definition:

"crypto-asset" means a digital representation of value that is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility; applies cryptographic techniques and uses distributed ledger technology;

(b) the substitution for the definition of "hedge fund" of the following definition:

"hedge fund" has the meaning assigned to it in paragraph 2 of the declaration of the business of a hedge fund by the Minister of Finance, in Government Notice No. 141 in *Gazette* No. 38503 of 25 February 2015, to be a collective investment scheme to which the prescribed provisions of the Collective Investment Schemes Control Act, 2000 (Act No. 45 of 2002), apply;"; and

(c) the insertion after the definition of "hedge fund" of the following definition:

"infrastructure" means any asset class that entails physical assets constructed for the provision of social and economic utilities or benefit for the public".

Amendment of subregulation (2)

3. Subregulation (2)(c) of Regulation 28 is hereby amended by—

(a) the deletion at the end of subparagraph (viii) of the word "and";

(b) the substitution at the end of subparagraph (ix) for "." of ","; and

Amendment of subregulation (3)

4. Subregulation (3) of Regulation 28 is hereby amended by —

(a) the insertion after paragraph (d) of the following paragraph:

"(dA) Subject to paragraph (d), a fund may invest in a hedge fund, subject to conditions as prescribed.";

(b) the substitution in paragraph (f) for item (iv) of the following item:

"(iv) [item] items 8 to 10: Hedge funds, private equity funds and any other asset not referred to in this schedule.";

(c) the substitution in paragraph (g) for subparagraph (ii) of the following subparagraph:

“(ii) item [8.1(b)] 9: Private equity funds.”;

(d) the insertion after paragraph (i) of the following paragraphs:

“(iA) The aggregate exposure by a fund to all issuers in respect of infrastructure, including the aggregate exposure in respect of the rest of Africa, excluding South African government and government guaranteed instruments, may not exceed 45%, of the aggregate fair value of the total assets.

“(iB) The aggregate exposure by a fund per issuer/entity must not exceed 25% of the aggregate fair value of the total assets of the fund, excluding government and government guaranteed instruments.”;

(e) the substitution in paragraph (j) in the words preceding subparagraph (i) for “(a) - (i)” of “(a) - (iB)”; and

(f) the insertion after paragraph (j) of the following paragraph:

“(k) A fund may not invest in crypto-assets directly or indirectly, including in relation to Item 10 of Table 1 in respect of “other assets” not referred to in Table 1.”.

Amendment of subregulation (4)

5. Subregulation (4) of Regulation 28 is hereby amended by—

(a) the insertion in paragraph (b) following “Notwithstanding” of “paragraph”; and

(b) the substitution for paragraph (c) of the following paragraph:

“(c) Notwithstanding paragraphs (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 the hedge fund or private equity fund, except in the case of infrastructure investments.”.

Amendment of subregulation (5)

6. Subregulation (5) of Regulation 28 is hereby amended by the insertion in paragraph (b) following “Notwithstanding” of “paragraph”.

Amendment of subregulation (8)

7. Subregulation (8) of Regulation 28 is hereby amended by—

(a) deleting in paragraph (a) following “Reporting” of “and and exclusions”; and

(b) substituting for paragraph (b) the following paragraph:

“(b) Infrastructure assets must be reported, with respect to the top 20 holdings, in the format specified in Table 2.”.

Substitution of Table 1

8. Regulation 28 is hereby amended by the substitution for Table 1 of the following Table:

“TABLE 1

			Column 1	Column 2	
Item			Categories of assets	Limits being the maximum percentage of the aggregate fair value of total assets of the 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 in a South African bank; Any money market issued by a South African Bank including 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 instrument	5%	
2			DEBT INSTRUMENTS INCLUDING ISLAMIC DEBT INSTRUMENTS		100% for debt instruments issued by or guaranteed by the Republic, otherwise 75%.
2.1					
	(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 instrument issued or guaranteed by 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 R2 billion or more but less than R20 billion or an amount or conditions as prescribed	15%	
		(iii)	Listed on an exchange with an issued 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 in 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 in 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 less than R20 billion but equal to or more than R2 billion and 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 debenture 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 less than R10 billion but equal to or more than R5 billion, or an amount or conditions as prescribed	10%	
		(iii)	Issuer market capitalisation of less than R5 billion or an amount and conditions as prescribed	5%	
	(b)		Immovable property and ordinary shares in property companies, and linked units comprising shares linked to debentures in property companies not listed on an exchange	5%	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) OF THE PENSION FUNDS ACT		65%
8			HEDGE FUNDS		10%
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	
		(iii)	Hedge funds approved and licensed under the Collective Investment Scheme Control Act	5% per hedge fund	10%
9			PRIVATE EQUITY FUNDS		15%
9.1			Inside the Republic and foreign assets		
	(a)		Private equity		15%
		(i)	Funds of private equity funds	10% per fund of private equity funds	
		(ii)	Private equity funds	5% per private equity fund	
10			ALL OTHER ASSETS NOT REFERRED TO IN THIS TABLE AND EXCLUDING HEDGE FUNDS, PRIVATE EQUITY, AND CRYPTO-ASSETS		2.5%
11	(a)		Overall Limit for infrastructure across all classes (excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic, including exposure in respect infrastructure in the rest of Africa)		45%
	(b)		Overall limit for all instruments per entity/issuer (Local and or foreign) (excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic)	25%	

Insertion of Table 2

9. Regulation 28 is hereby amended by the insertion after Table 1 of the following Table:

“TABLE 2

Asset class	Percentage (Infrastructure) (%)	Rand value (infrastructure) (R)	List Top 20 holdings (name of issuer/entity in respect of Infrastructure)

1. Cash			
2. Debt instruments including Islamic debt instruments: 2.1 Debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic (excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic) 2.2 Other debt instruments: 2.2.1 Listed debt instruments 2.2.2 Unlisted debt instruments			
3. Equities: 3.1 Listed 3.2 Unlisted			
4. Immovable property (direct & indirect) 4.1 Listed 4.2 Unlisted			
5. Commodities			
6. Investment in the business of the participating employer			
7. Housing loans	n/a	n/a	n/a
8. Hedge funds			
9. Private equity			
10. All other assets (not listed above)			
11. Infrastructure exposure in the rest of Africa			
TOTAL (overall maximum 45% in respect of infrastructure, excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic, (including exposure in respect of infrastructure in the rest of Africa)	%	R	

“

Commencement

10. These amendments to Regulation 28 come into effect on the date of publication in the *Gazette*.