

**PROPOSED AMENDMENTS TO POST AND TELECOMMUNICATIONS-RELATED
MATTERS ACT TO PROVIDE FOR TWO POT RETIREMENT SYSTEMS FOR
INCLUSION IN PENSION FUND AMENDMENT BILL [B 3-2024]**

To amend the Post and Telecommunications-related Matters Act, 1958, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide the appropriate account of a member's interest in the savings, retirement and vested components in the savings, retirement and vested components; to provide for deductions that may be made; and to provide for matters connected therewith.

Amendment of section 1 of Act 44 of 1958, as amended by section 1 of Act 56 of 1973, section 1 of Act 13 of 1974, section 1 of Act 113 of 1976, section 1 of Act 1 of 1978, section 1 of Act 37 of 1984, section 1 of Act 85 of 1991, section 3 of Act 101 of 1992, section 1 of Act 35 of 1995, section 105 of Act 103 of 1996, section 6 of Act 10 of 1998, section 81 of Act 124 of 1998 and section 31 of Act 22 of 2011

1. Section 1 of the Post and Telecommunication-Related Matters Act, 1958 (Act No. 44 of 1958) (herein referred to as "the Post and Telecommunication-Related Matters Act"), is hereby amended—

(a) by the insertion after the definition of "Director-General" of the following definition:

"Divorce Act' means the Divorce Act, 1979 (Act No. 70 of 1979);";

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

"Income Tax Act' means the Income Tax Act, 1962 (Act No. 58 of 1962);

'member's interest in the retirement component' has the meaning as defined in section 1(1) of the Income Tax Act;

'member's interest in the savings component' has the meaning as defined in section 1(1) of the Income Tax Act;

'member's interest in the vested component' has the meaning

as defined in section 1(1) of the Income Tax Act;”;

(c) by the insertion after the definition of “Minister” of the following definition:

“**non-member spouse**’ has the meaning as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);”;

(d) by the insertion after the definition of “officer” of the following definition:

“**pension interest**’, in relation to a court order granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, means, in relation to a party who is a member of a fund, that member’s share of the value of the fund, determined in terms of the rules of that fund, on the date of the court order;”;

(e) by the insertion after the definition of “regulation” of the following definitions:

“**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;

‘**savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act;

‘**savings withdrawal benefit**’ has the meaning as defined in section 1(1) of the Income Tax Act;”;

(f) by the substitution for the definition of “transfer date” of the following definition:

“**transfer date**’ means a date of transfer contemplated in section 4(1)[.]
;and”; and

(g) by the insertion after the definition of “transfer date” of the following definition:

“**vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* in item 6B of the Second Schedule to the Income Tax Act.”.

Insertion of section 1A in Act 44 of 1958

2. The following section is hereby inserted in the Post and

Telecommunications-Related Matters Act after section 1:

“Application of Act

1A. In the event of a conflict between the provisions of this Act and the Divorce Act, the provisions of this Act prevail.”.

Substitution of section 10B of Act 44 of 1958 as inserted by section 7 of Act 85 of 1991, as amended by section 8 of Act 101 of 1992 and as substituted by section 5 of Act 38 of 2013

3. The following section is hereby substituted for section 10B of the Post and Telecommunication-Related Matters Act:

“Withdrawals and deductions from member’s pension benefits

10B. (1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, except in terms of a court order made in accordance with the provisions of section 26 or 40 of the Maintenance Act, 1998 (Act No. 99 of 1998), section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion or and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund concerned in its discretion: Provided that the pension fund concerned may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator for such dependant or dependants.

(2) Notwithstanding the provisions of subsection (1), the pension fund

concerned may—

(a) permit a member to take a savings withdrawal benefit where—

(i) a loan or guarantee has been furnished by an employer; or

(ii) there is a judgment contemplated in paragraph (c)(ii)(cc)(BB) in favour of the employer that has not yet been executed:

Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment;

(b) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in subparagraph (ii)(BB) of paragraph (c) and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months pending the judgment by any court including a magistrate's court;

(c) deduct any amount due by the member to the member's employer on the date of retirement or the date on which the member ceases to be a member of the fund, in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), and requirements prescribed by the statutes, in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by the funds, in respect of—

(i) any amount due to that fund in respect of a loan granted by that fund in terms of its statutes to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such statutes;

(ii) any amount due by a member to his employer in respect of—

(aa) any loan granted by the employer to such member at his request; or

(bb) any amount for which the employer is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement,

maintenance or repair of a dwelling for occupation by the member or a dependent of the member, and in respect of—

(AA) the amount of the benefit to which a member becomes entitled in terms of the statutes of the fund;

(BB) in the case of a transfer of the member to another fund, the amount of the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or guarantee; or

(CC) in the case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of the membership on the date of default, if the deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;

(cc) compensation including the legal costs recoverable from the member in a matter contemplated in this subparagraph in respect of any damage caused to the employer, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member; and in respect of which—

(AA) the member has in writing admitted liability to the employer; or

(BB) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), from any benefit payable in respect of the member or a

beneficiary in terms of the statutes of that fund, and pay that amount to the employer concerned;

(dd) any other written agreement between the member and the employer in respect of a study bursary, training of the member or the military service obligations of the member, from any benefit payable to the member or a beneficiary in terms of the statutes of that fund, and pay such amount to the employer concerned;

(iii) any amount which such fund or the employer has paid or will pay by an arrangement with, or on behalf of, a member or beneficiary in respect of—

(aa) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

(bb) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 2017 (Act No. 18 of 2017);

from any benefit to which the member or beneficiary is entitled in terms of the statutes of that fund and pay such amount, if due, to such employer, medical scheme or insurer, as the case may be;

(d) deduct any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); or

(e) deduct any amount payable as maintenance in terms of an interim maintenance order granted by the court in terms of rule 43 of the High Court rules or rule 58 of the Magistrates' Court rules, made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(3) In respect of a deduction referred to in subsection (1)(d), the fund must pay the maintenance, as directed by the maintenance order as a lump sum in respect of arrear maintenance or future maintenance from the benefit to which the member becomes entitled upon termination of his or her membership of the fund or retirement from the fund.

(4) For the purposes of paragraph (c)(ii)(bb) and (cc) of subsection (2), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled upon termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer or the default.”.

Substitution of section 10F of Act 44 of 1958, as inserted by section 5 of Act 38 of 2013

4. The following section is hereby substituted for section 10F of the Post and Telecommunication-Related Matters Act:

“Payment of pension interest upon divorce or dissolution of marriage according to tenets of religion

10F. (1) The pension fund concerned must reduce a member’s pension interest by any amount assigned from the member’s pension interest to the member’s former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(2) A pension fund may not, without the consent of the former spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if—

(a) the fund received a formal notification from the former spouse that a divorce has been instituted, as defined in the Divorce Act; or

(b) an application has been made for a court order in respect of the division of assets of a marriage in accordance with the tenets of any religion.

(3) The prohibition in terms of subsection (2) applies until a court order is issued.

(4) (a) Subject to paragraph (k), for purposes of section 7(8)(a) of the Divorce Act or in terms of or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, the portion of a

member's pension interest assigned to the member's former spouse is deemed to accrue to the member on the date on which the decree of divorce or court order is granted.

(b) The amount of the member's pension interest in the pension fund concerned must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the pension fund concerned in accordance with the statutes as at the date of the decree of divorce or the date of the court order granted in respect of the division of assets of a marriage according to the tenets of a religion.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the statutes by any amount of the member's pension interest which, in a previous divorce or a previous court order granted in respect of the division of assets of a marriage according to the tenets of a religion, was paid over or awarded to another party.

(d) The amount of any pension benefit that is subsequently payable to the member in terms of the statutes must be reduced by the equivalent of the amount of the share of the pension interest of the member which was—

(i) deemed to accrue to the member as a benefit in advance of the benefit ordinarily payable in terms of the statutes; and

(ii) assigned to the member's former spouse, less the amount of any additional voluntary contributions, if any, paid by the member to the pension fund concerned from time to time, and accumulated over the period from the date on which payment to the former spouse or transfer to the approved retirement fund as referred to in paragraph (e) took place to the date on which the member first became entitled to a part or the whole of the balance of the benefit, with interest as the pension fund concerned from time to time deems appropriate.

(e) The pension fund concerned must, within 45 days of the

submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—

- (i) paid directly to the former spouse; or
- (ii) transferred to an approved retirement fund on behalf of the former spouse.

(f) The former spouse must, within 120 days of being requested to make a choice—

- (i) inform the pension fund concerned of the manner in which the amount referred to in paragraph (e) must be dealt with; and
- (ii) if the former spouse chooses that the amount must be—

(aa) paid to the former spouse directly, provide the pension fund concerned with the details that are necessary to effect the payment; or

(bb) transferred to an approved pension fund on his or her behalf, provide the pension fund concerned with the details of that approved retirement fund.

(g) The pension fund concerned must pay or transfer the amount in the circumstances contemplated in —

- (i) paragraph (f)(ii) within 30 days; or
- (ii) paragraph (f)(iii) within 60 days,

in accordance with the former spouse's choice, failing which interest becomes payable on such amount at a rate determined in the statutes.

(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount must be transferred within the period referred to in paragraph (f), the pension fund concerned must pay the amount directly to the former spouse within 30 days of the expiry of that period, failing which interest becomes payable on such amount at a rate determined in the statutes.

(i) Despite paragraph (h), in the event that the pension fund concerned cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the pension fund concerned must retain

the amount plus interest as determined in the statutes in the pension fund concerned, until such time as details of the manner in which that payment must be effected is made available to the pension fund concerned by the member, the former spouse or any other person whom the pension fund concerned is satisfied has the necessary authority and capacity to instruct the pension fund concerned in that respect.

(j) A former spouse—

- (i) is not a member or beneficiary in relation to the fund; and
- (ii) is entitled to the accrual of fund return from the date of the court order until payment or transfer of the deduction contemplated in subsection (1)(b).

(k) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act including, but not limited to, section 7 (9) (a) of the Divorce Act or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion, be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (j)."