

**PROPOSED AMENDMENTS TO TRANSNET PENSION FUND ACT TO PROVIDE FOR
TWO POT RETIREMENT SYSTEMS FOR INCLUSION IN PENSION FUND AMENDMENT
BILL [B 3-2024]**

To amend the Transnet Pension Fund Act, 1990, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide for the appropriate account of a member’s interest 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 62 of 1990, as amended by section 39 of Act 52 of 1991 and section 1 of Act 41 of 2000

1. Section 1 of the Transnet Pension Fund Act, 1990 (Act No. 62 of 1990) (herein referred to as the Transnet Pension Fund Act), is hereby amended—

(a) by the insertion after the definition of “general rules” of the following definitions:

“**Divorce Act**’ means the Divorce Act, 1979 (Act No. 70 of 1979);

‘**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;”;

(b) by the insertion after the definition of “Minister” 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;”;

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

“‘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;”;

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

“‘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;”;

(e) by the substitution for the definition of “valuator” of the following definitions:

“‘valuator’ means an actuary approved by the Registrar of Pension Funds contemplated in the Pension Funds Act, 1956 (Act No. 24 of 1956), as a valuator for the purposes of the valuation of retirement funds and appointed in terms of section 6 (1) [.] and

‘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 62 of 1990

2. The following section is hereby inserted in the Transnet Pension Fund 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 7 of Act 6 of 2007 as substituted by section 8 of Act 6 of 2007

3. The following section is hereby substituted for section 7 of the Transnet Pension Fund Act:

“Withdrawals and deductions from member’s pension benefits

7.(1)(a) No pension or lump sum from the Transport Pension Fund, or right to such a benefit, or right in respect of contributions made by a member or on his or her behalf, shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, or be liable, except for a court order in terms of the Maintenance Act, 1998 (Act No. 99 of 1998), section 7 of the Divorce Act, 1979 or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion and the Maintenance Act, 1998 (Act No. 99 of 1998), to be attached or subjected to any form of execution under a judgment or order of a court of law.

(b) In the event of the beneficiary attempting to assign, transfer or otherwise cede or to pledge or hypothecate a benefit or right, payment thereof may be withheld, suspended or entirely discontinued, if the Transport Pension Fund so determines, provided that the Transport Pension Fund may make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependents of the beneficiary or to a trustee for such dependent or dependents during such period as it may direct.

(2) Notwithstanding the provisions of subsection (1), the Transport Pension Fund may—

(a) permit a member to take a savings withdrawal benefit where a loan has been furnished in terms of section 10: Provided that the withdrawal will not result in there being insufficient funds remaining funds to repay certain debts due to the employer in terms of section 9, 10 or 11;

(b) 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

(c) 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)(c), the Transport Pension 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."

Insertion of section 7A in Act 62 of 1990

4. The following section is hereby inserted in the Transnet Pension Fund Act after section 7:

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

7A. (1) The Transport Pension Fund 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) The Transport Pension Fund may not, without the consent of the former spouse, grant a loan 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) Subject to paragraph (f), 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.

(5) The amount of the member's pension interest in the Transport Pension Fund must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the Transnet Pension 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.

(6)(a) The Transport Pension Fund 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.

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

- (i) inform the Transport Pension Fund 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 Transport 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;

(c) The Transport Pension Fund 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.

(d) 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.

(e) Despite paragraph (d), 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.

(f) 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).

(g) 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 (e)."