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THE PRESIDENCY

No. 1332 6 December 2001

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 65 of 2001: Pension Funds Amendment Act, 2001



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GENERAL EXPLANATORY NOTE:

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

(English text signed by the President.)
(Assented to 5 December 2001.)

ACT

To amend the Pension Funds Act, 1956, so as to define “fair value”; to clarify the position of a registered pension fund to furnish guarantees in respect of housing loans granted to members by persons other than the fund; to extend the concept of ownership; to further regulate the amount of loans and guarantees; to extend the Minister’s powers to make regulations; to provide for the deduction from deemed benefits in cases of default and transfers to other pension funds; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 20 of Act 54 of 1989, section 29 of Act 97 of 1990, section 14 of Act 83 of 1992, section 21 of Act 104 of 1993 and section 1 of Act 22 of 1996 5

1. Section 1 of the Pension Funds Act, 1956 (hereinafter referred to as the principal Act), is hereby amended by the insertion in subsection (1) after the definition of ‘dependent’ of the following definition:

“ ‘fair value’, in relation to an asset of a fund, means the fair value of that asset determined in accordance with South African Statements of Generally Accepted Accounting Practice;” 10

Amendment of section 19 of Act 24 of 1956, as amended by section 13 of Act 80 of 1959, section 9 of Act 58 of 1966, section 1 of Act 80 of 1969, section 2 of Act 23 of 1970, section 7 of Act 91 of 1972, section 23 of Act 101 of 1976, section 11 of Act 94 of 1977, section 11 of Act 80 of 1978, section 14 of Act 103 of 1979, section 39 of Act 99 of 1980, section 14 of Act 82 of 1982, section 20 of Act 46 of 1984, section 17 of Act 86 of 1984, section 11 of Act 50 of 1986, section 5 of Act 51 of 1988, section 8 of Act 53 of 1989 and section 11 of Act 64 of 1990 15

2. Section 19 of the principal Act is hereby amended— 20

(a) by the substitution for subsection (5) of the following subsection:

“(5) (a) A registered fund may, if its rules so permit and subject to the regulations, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member— 25

- (i) to redeem a loan granted to the member **[by a person other than the fund]** against security of, either a pledge by the member concerned to the fund of the benefit contemplated in paragraph (c)(ii), or immovable property which either belongs to the member or his or her spouse or the member and his or her spouse and on which a [dwelling] residence has been or will be erected which is occupied or, as the case may be, will be occupied by the member or a dependant of the member; 5
- (ii) to **[purchase a dwelling, or to purchase land and erect a dwelling on it]** acquire immovable property on which a residence has been or will be erected, or to erect a residence on immovable property in respect of which, either the member or his or her spouse, or the member and his or her spouse, has or have obtained ownership or the right to ownership through a right of occupation, for occupation by the member or a dependant of the member; or 10
- (iii) to make additions or alterations to or to maintain or repair a **[dwelling which belongs to]** residence of which ownership or the right to ownership was obtained through a right of occupation by either the member or his or her spouse or the member and his or her spouse and which is occupied or will be occupied by the member or a dependant of the member, 15

if the right of occupation of the immovable property or residence is secured by virtue of the operation of any custom or law, other than an agreement of lease or similar temporary measure, entitling such member, or his or her dependants, to the right of occupation of such immovable property or residence or any specified portion thereof. 25

(b) A loan or guarantee by a fund, contemplated in paragraph (a), shall not be granted or furnished, respectively, after the commencement of the **[Financial Institutions Amendment Act, 1986]** Pension Funds Amendment Act, 2001— 30

- (i) unless secured by— 30
- (aa) a first mortgage on the immovable property in respect of which **[it]** the loan is granted; or
- (bb) a pledge by the member concerned to the fund of the benefits to which the member is entitled in terms of the rules of the fund; or 35
- (cc) both such mortgage and such pledge;
- (ii) in respect of immovable property if the member concerned is liable to the fund in respect of a loan or guarantee granted **[to him]** or furnished in respect of the member in respect of other immovable property; 40
- (iii) **[at a lower rate of interest than that]** unless, in the case of a loan granted by the fund, the rate of interest on the loan is equal to or exceeds the rate of interest which may from time to time be prescribed by regulation; 45
- (iv) in the case of a loan granted to the member by some other person in respect of which a guarantee has been furnished by the fund, or in respect of a loan by the fund to the member, unless the capital sum in respect of any such loan together with interest thereon, is redeemable over a period not exceeding 30 years in equal weekly or monthly instalments **[which shall include the interest on the capital sum outstanding]**: Provided that if such period in a particular case extends beyond the normal retirement date of the member concerned, the outstanding balance of the loan on that date must be able to be repaid out of no more than one third of the total value of the benefit due to the member at that date. 50 55

(c) A loan or guarantee contemplated in paragraph (a) shall not exceed, at the time it is granted or furnished, where it is secured in accordance with—

- (i) paragraph (b)(i)(aa), 90 per cent of the **[market] fair** value of the hypothecated immovable property concerned;
- (ii) paragraph (b)(i)(bb), the lesser of the amount of—
- (aa) the lowest benefit in terms of the rules which the member would receive **[if he were to terminate]** on termination of his or her membership of the fund **[voluntarily]**, nett of income tax as envisaged in section 37D(a); or
- (bb) the **[market] fair** value of the immovable property concerned **[, whichever is the lesser amount]**; or
- (iii) paragraph (b)(i)(cc), the lesser amount of—
- (aa) the amount equal to the aggregate of 90 per cent of the **[market] fair** value of the hypothecated immovable property concerned and the amount of the lowest benefit in terms of the rules which the member would receive **[if he were to terminate]** on termination of his or her membership of the fund **[voluntarily]**, nett of income tax as envisaged in section 37D(a); or
- (bb) the **[market] fair** value of the hypothecated immovable property concerned **[, whichever is the lesser amount]**.
- [(cA)](d) The percentages referred to in subparagraphs (i) and (iii) of paragraph (c) may be increased to 100 per cent, subject to the furnishing to the fund by the employer of the member of an irrevocable guarantee in respect of so much of the loan or the amount of the guarantee as may exceed 90 per cent.
- [(d)](e) For the purposes of this section ‘immovable property’ includes a **[surveyed site in respect of which a right of leasehold is registered in terms of section 6A of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945)] land tenure right as defined in section 1 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991).’;**
- (b) by the substitution for subsection (5A) of the following subsection:
- “(5A) [For the purposes of subsection (5) ‘market value’ means the price which would be obtained on a sale in the Republic between a willing seller and a willing purchaser (between whom there is no other direct or indirect connection), as estimated by a person appointed by the registered fund concerned for that purpose: Provided that—**
- (a) **[where] Where a transaction for the purchase of an immovable property [(other than vacant land upon which a dwelling is in the course of erection or about to be erected)] is pending and a purchase price has already been agreed upon, or where such an immovable property was acquired by purchase not more than six months before the date on which the estimate is made, the [market] fair value of the property shall not be fixed at an amount higher than the true purchase price of the property, as declared or to be declared by the parties concerned for transfer duty purposes [plus, in the last-mentioned case, one hundred rand]; and**
- (b) **where a transaction for the erection of, or additions or alterations to, or to maintain or repair a residence is contemplated, the estimate of the fair value of the immovable property shall not be fixed at an amount higher than the fair value contemplated in paragraph (a) plus an amount equal to the cost of such erection, additions, alterations, maintenance or repairs, as the case may be.’;** and
- (c) by the substitution in subsection (5B) for the words preceding paragraph (a) and for paragraph (a), of the following words and paragraph, respectively:
- “Notwithstanding anything to the contrary contained in the rules of a registered fund, such a fund shall not, directly or indirectly after the commencement of the [Financial Institutions Amendment Act, 1986] Pension Funds Amendment Act, 2001—**

- (a) grant a loan to, or furnish a guarantee in respect of, a member or make any of its funds available, whether by way of an investment or otherwise, to be utilised in any manner by the fund or someone else for a loan to a member or a guarantee on behalf of a member, other than—
- (i) a loan **[for a purpose mentioned in paragraph (a) of]** contemplated in subsection (5) and which complies with the provisions of [paragraphs (b) and (c) of] that subsection; and
- (ii) a guarantee contemplated in subsection (5) and which complies with the provisions of that subsection; or”.

Amendment of section 36 of Act 24 of 1956, as amended by section 18 of Act 103 of 1979, section 18 of Act 86 of 1984, section 9 of Act 53 of 1989, section 27 of Act 83 of 1992 and section 2 of Act 7 of 1993

3. Section 36 of the principal Act, is hereby amended by the insertion in subsection (1) after paragraph (bC) of the following paragraph:

“(bD) prescribing additional conditions under which a fund may grant a loan to a member or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person for the purposes contemplated in section 19(5);”.

Amendment of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978

4. Section 37D of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962), and any amount due to the fund in respect of—

- (i) a loan granted to a member in terms of section 19(5)[(a)]; or
- (ii) any amount for which the fund **[is] becomes** liable under a guarantee furnished in respect of a member for a loan granted by some other person to [a] the member [for any purpose referred to] in terms of section 19(5)[(a)], from—

(aa) the amount of the benefit to which the member or a beneficiary [is] becomes entitled in terms of the rules of the fund [to an amount not exceeding the amount which in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act]; or

(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 the 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 membership on the date of default, if such a 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;”; and

(b) by the addition of the following subsection, the existing section becoming subsection (1):

“(2) For the purposes of paragraph (a)(ii)(bb) and (cc) of subsection (1), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled on 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.”.

Short title and commencement

5. This Act is called the Pension Funds Amendment Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.