

NOTICE 169 OF 2007**NATIONAL TREASURY****PUBLICATION OF EXPLANATORY SUMMARY OF THE PENSION FUNDS
AMENDMENT BILL, 2007**

The Minister of Finance intends tabling the Pension Funds Amendment Bill, 2007, in Parliament during the current Parliamentary term. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly. Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 16 March 2007.

All submissions must be addressed to:

**The Secretary to Parliament
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Explanatory Summary of the Pension Funds Amendment Bill, 2007

The primary objective of the Amendment Bill is to further protect the pension interest of members that often extends across their lifetimes following dedicated contribution by members, or employers on behalf of members. A number of amendments over time have had this objective at their nexus, for example, the establishment of the Pension Funds Adjudicator, the amendments passed by Parliament in 2001 regarding pension fund surpluses and the determination of minimum benefits. Over time however, not only have certain references in the Pension Funds Act, 1956 ('the Act') gradually become misaligned with provisions in other legislation, but more seriously, certain provisions of the Act have been challenged by those seeking in many instances to circumvent the spirit of the original legislation passed by Parliament through creative legal interpretations.

The proposed amendments to the Act are largely urgent technical amendments, which need to be made in order to clarify existing provisions in the Act, to bring it in line with

other legislation and to clarify the applications of surplus provisions contained in the Pension Funds Second Amendment Act, 2001.

The amendments proposed should be seen as distinct from the process of retirement fund reform, which is a longer term process that will result in an entirely new Pension Funds Act. The amendments proposed here deal with urgent issues which, in the interest of protecting members and former members of retirement funds, cannot wait for the broader retirement fund review.

The Amendment Bill broadly addresses the following areas:

- clarifying the surplus utilised improperly in terms of section 15B of the Act and other provisions regarding the surplus apportionment process. These amendments are necessary to provide clarity to boards of trustees when apportioning surplus, and to close loopholes that allow for creative interpretations not aligned with the intention of the legislature in the promulgation of the Pension Funds Second Amendment Act, 2001;
- bringing the regulation of bargaining council retirement funds under the regulatory auspices of the Registrar of Pension Funds. It is further proposed that bargaining council funds not yet registered under the Act must register on or before 1 January 2008. This amendment is necessary to ensure consistency in fund governance and dispute resolution across both bargaining council funds and other occupational funds;
- increasing the powers of the Registrar of Pension Funds so as to increase regulatory effectiveness;
- providing for specific duties of pension fund administrators;
- clarifying the jurisdiction of the Pension Funds Adjudicator. Provision is also made for the appointment of a deputy and acting adjudicator, when necessary, and the alignment of the Act with the Prescription Act;
- providing clarity on the treatment of divorce orders and maintenance claims in respect of pension benefits; and
- updating provisions in the Act which are no longer aligned to recently promulgated legislation.