MEDIA STATEMENT

DRAFT AMENDMENTS TO REGULATION 28 OF THE PENSION FUNDS ACT TO ENCOURAGE INVESTMENT IN INFRASTRUCTURE: REQUEST FOR PUBLIC COMMENT

The National Treasury today publishes the draft amendments to Regulation 28 of the Pension Funds Act for public comment. This follows the 2021 Budget and 2020 MTBPS announcements that government is in the process of reviewing Regulation 28 to make it easier for retirement funds to invest in infrastructure. Accompanying this media statement is the version of the amendments to Regulation 28 that have been submitted for publication in the *Government Gazette*, which will be updated on the website with the Notice as published in the *Gazette* as soon as it has been made available by the Government Printers. Technical problems encountered at the Government Printers have delayed the publication and release of the *Gazette.*

Regulation 28, issued in terms of section 36(1)(bB) of the Pension Funds Act, reduces excessive and concentration risk to member savings and ensures protection by limiting the extent to which retirement funds may invest in a particular asset or in particular asset classes. The proposed review to Regulation 28 is informed by a number of calls for increased investment in infrastructure given the current low economic growth climate. The current regulation does not define 'infrastructure' as a specific category, which is currently spread across a number of asset classes like equity, bonds, loans and private equity. Consequently, current data from retirement funds does not record the exact investment in infrastructure. The proposed amendment therefore introduces a more precise definition of infrastructure to enable much better data and measurement.

Furthermore, the asset class "hedge funds, private equity and any other assets not listed in this schedule" has been split into "hedge funds", "private equity" and "any other assets not listed in this schedule" as stand-alone asset classes. This will allow for specific limits to each of these asset classes.

As noted below, comments are requested on the above definition and changes to asset classes, as well as the percentage limits proposed for these asset classes. In providing comments to the proposed regulatory changes to allow or increase investment in infrastructure, the overall risk and long term sustainability of the retirement funds must be taken into account, as well as the fiduciary responsibility of trustees to get good value outcomes for members.

Recognition of infrastructure investment

The amendments to Regulation 28 provide government's response to calls for retirement fund investment in infrastructure to bridge the infrastructure gap. The decision to invest in any asset

Enquiries: Communications Unit
Email: media@treasury.gov.za
Tel: (012) 315 5944

class, including infrastructure, remains that of the board of trustees of retirement funds. The draft notice on amendments to Regulation 28:

- Provides specific reference to investment in infrastructure through various asset classes already permitted through the Regulation and introduces an aggregate limit for infrastructure;
- Inserts two new columns in Table 1 of Regulation 28 with limits applicable to infrastructure investments. Investment in infrastructure will be recognised within the various underlying asset categories specified in Regulation 28. This will also enable better and more accurate data for this form of investment;
- Proposes that the overall investment in infrastructure across all asset categories, may not exceed 45% in respect of domestic exposure and an additional limit of 10% in respect of the rest of Africa; and
- Limit aggregate exposure per issuer or entity to 25% of the total assets of the fund.
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Amendments to definitions
A definition of infrastructure is also added to clearly specify and guide the meaning of the term used in the Regulation. Unrelated to the infrastructure topic is an amendment to the definition of hedge fund. The proposed amendment to the definition of hedge fund follows the Declaration of hedge fund business as a collective investment scheme in terms of Government Notice 38503 of 25 February 2015.

Delinking of Item 8 in Table 1
To further enhance the financing of infrastructure, the asset category related to "*Hedge funds, private equity funds and other assets not referred to in this schedule*" is being delinked. This amendment would make private equity an asset class on its own with its own specific limit. A number of studies document the attraction of investment in private equity and infrastructure projects. These studies find that private equity investments in infrastructure projects have a positive impact and help in sharing project risk between the project sponsors. It is for this reason that the asset category for private equity, hedge fund and other assets in Regulation 28 is being delinked, with the limit applicable to private equity being increased.

Currently, "*Hedge funds, private equity funds and other assets not referred to in this schedule*" is a single asset class with a collective limit of 15%. *Private equity* on its own has a limit of 10%; *hedge funds* also 10% and *other assets not referred to in this schedule* is 2.5%. After delinking the asset class group, the limit for *private equity* is proposed to be increased to 15%. *Hedge funds* and *other assets not referred to in this schedule* would remain unchanged at 10% and 2.5%, respectively. The overall or collective limit is being removed.

New principle Sub- regulation 28(2)(c)(x)
This sub-regulation is inserted to ensure that retirement funds pay attention to due diligence in all investments including for infrastructure investments.

Sub-regulation 28(8)(a)
The sub-regulation on reporting and exclusions is also being amended to remove the exemption on reporting of investments held by long-term insurer and collective investment schemes on behalf of retirement funds, which investment may include infrastructure investments.

Comments are requested with regards to appropriateness of the proposed amendments and the limits in addressing investment in infrastructure. Comments on the draft notice will be accepted until 29 March 2021. Comments can be sent to Basil Maseko at retirement.reform@treasury.gov.za

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Email: media@treasury.gov.za
Tel: (012) 315 5944