
GOVERNMENT NOTICE

NATIONAL TREASURY

No. _____

_____ 2009

PENSION FUNDS ACT, 1956: PUBLICATION OF PROPOSED AMENDMENT OF REGULATION 28 OF THE REGULATIONS MADE UNDER SECTION 36 FOR PUBLIC COMMENT

I, Pravin J Gordhan, Minister of Finance, in accordance with section 40C of the Pension Funds Act, 1956 (Act No. 24 of 1956), hereby publish the proposed amendment of regulation 28 of the Regulations made under section 36 of the Pension Funds Act and published under GNR.98 in *Government Gazette* 162 of 26 January 1962 to be made under section 36(1)(bB) and (c) of the Pension Funds Act, for public comment. An explanatory memorandum explaining the proposed amendment is also published to facilitate comments.

Comments on the proposed amendment may be submitted in writing on or before Friday 16 April 2010 to:

The Chief Director of Financial Services, c/o Linda van Zyl, Private Bag X115, Pretoria, 0001; or per facsimile to (012) 315 5206; or email to reg28@treasury.gov.za.

The draft regulations are also available on the National Treasury and Financial Services Board websites - www.treasury.gov.za and www.fsb.co.za.

PRAVIN J GORDHAN
MINISTER OF FINANCE

SCHEDULE

Definitions

1. In this Schedule, “the Regulations” means the Regulations made under section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956) and published under GNR.98 in *Government Gazette* 162 of 26 January 1962, and as amended from time to time.

2. Amendment of regulation 28 of the Regulations

Regulation 28 of the Regulations is hereby substituted for the following regulation:

“28. Investments and financial management

(1) (a) A fund may, throughout the reporting period, only invest in assets referred to in Column 1 of Table 1, only to the extent to which the credit risk of an asset where applicable is rated by a recognised credit rating agency and such rating lies within a credit rating band, and only to the extent to which the fair value of the investment expressed as a percentage of the aggregate fair value of the total assets of the fund does not exceed, through out the reporting period, the percentage listed in Column 2 of Table 1 in respect of such an asset.

(b) The sum of aggregate exposure to any issuer or entity by a fund, irrespective of limits referred to in Column 1 of Table 1, may not exceed 30% of the aggregate fair value of the total assets.

(c) Foreign investments by a fund, referred to in Column 1 of Table 1, expressed as a percentage, may not exceed 20% of the aggregate fair value of the total assets of the fund.

(d) A fund may, in addition to the 20% limit referred to in paragraph (c), invest an additional 5% of the aggregate fair value of the total assets of the fund in African investments referred to in Column 1 of Table 1.

(e) (i) Despite paragraphs (a), (b), (c) and (d), the limits referred to in those paragraphs may be exceeded where the excess is due to the appreciation or depreciation of the fair value of the investments.

(ii) Where the limits referred to in paragraphs (a), (b), (c) and (d) are exceeded under the circumstances referred to in sub-paragraph (i):

(aa) A fund may not, for as long as the excess continues, make any further investments in the categories of assets in respect of which the excess exists; and

(bb) The Registrar may require a fund to comply with asset limits referred to in Column 1 of Table 1 within a period of 12 months or some other period determined by the Registrar.

(2) A fund may engage in securities lending subject to provisions and conditions as prescribed.

(3) A fund may invest in derivative instruments subject to provisions and conditions as prescribed.

(4) Where a fund provides an individual member with an option to elect his or her underlying investments and that member is directly exposed to the return on the elected underlying investments, the underlying investments in respect of that member must throughout the period comply with this regulation 28 and the distribution of assets referred to in Table 1.

(5) (a) In the application of this regulation with regard to the total assets of a fund -

(i) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), in respect of which a fund obtained a certificate, as prescribed, that the scheme has met, throughout the reporting period, the distribution requirements of assets referred to in Table 1 through out the reporting period;

(ii) a policy issued to a fund by an insurer carrying on a long-term insurance business as contemplated in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), which -

(aa) is not a linked policy, as prescribed; or

(bb) is a linked policy, and the fund has obtained from the insurer a certificate, as prescribed, indicating that the assets held by the insurer in respect of his net liabilities under the said policy meet the distribution requirements of assets referred to in Table 1 throughout the reporting period,

shall be deemed not to be an asset of the fund, except for the purposes of calculating the percentages listed in Column 2 of Table 1 in respect of assets in liquid form.

(b) In the case of a collective investment scheme or a linked policy, in respect of which no certificate as referred to in paragraphs (a)(i) or (a)(ii)(bb) has been obtained, the fund shall obtain a statement in writing containing particulars of the extent to which the value of the assets in the collective investment scheme or benefits under the policy, as appropriate, is determined by the market value of assets referred to in Table 1, and the market value of such assets shall be deemed to be assets of the fund and, in the case of a fund exempted in terms of section 2(5)(a) of the Act, the certificate shall furnish the reasons for not complying with the aforementioned distribution requirements of assets as referred to in Table 1.

(c) The certificate or statement referred to in paragraph (a)(i) and (b) shall be furnished to the fund by the auditor appointed in terms of section 11 of the Collective Investment Schemes Control Act, 2002, at the end of each financial year of the fund and the certificate or statement referred to in paragraphs (a)(ii) and (b) shall also be furnished to the fund at the end of each financial year of the fund or, in the case of a fund which is exempted in terms of section 2(5)(a) of the Act, at the end of the insurer's financial year by the valuator of the insurer concerned or by the valuator's delegate.

(d) Where a fund has invested in a collective investment scheme, a linked insurance policy or any other investment product, the underlying asset or assets of that scheme, policy or investment must be disclosed as investments of the fund, unless a certificate of compliance has been received in accordance with subparagraphs (b) or (c) above.

(e) Any exposure to a foreign investment must be disclosed as a foreign investment.

(6) (a) A fund may not borrow money to make investments and must at all times maintain sufficient liquidity to meet its operating cash requirements.

(b) A fund may not borrow money other than for bridging purposes. The aggregate of any loans for bridging purposes may not through out the reporting period exceed 50% percent of the gross income of the fund from all sources during

the preceding financial year and any loan must be repaid within 12 months of entering into that loan.

(c) A fund may as security for the fund defaulting on a loan referred to in paragraph (b) -

(i) cede a proportionate share of its assets to the lender subject to the condition that the ownership of the assets will only be transferred to the lender; or

(ii) grant an option to the lender to purchase a percentage of its assets equal in value to the outstanding amount of the loan.

(d) A fund may not enter into a loan agreement that provides for an early settlement penalty.

(7) The Registrar may on prior written application by a fund or in general, exempt a fund or different categories, types or kinds of funds, from any of the provisions of this regulation, subject to such conditions that the Registrar may impose.

(8) In this regulation –

(a) **“African investments”** means an investment that is -

(i) domiciled in Africa or its activities are geographically located in Africa; or

(ii) domiciled outside Africa, but the majority of its activities are geographically located in Africa,

where African based activities would generally be determined by employment of assets and/or capital in countries which are part of the African Union;

(b) **“assets in liquid form”** means -

(i) a deposit;

(ii) any other money market instrument that can be converted into cash within seven days without prejudice to a fund, provided that any exposure to an entity created through the inclusion of assets in liquid

form must be added to any other exposure to the same entity for the purposes of calculation any limit prescribed in this Regulation;

- (ii) a positive balance in a margin account with an exchange; and
- (iii) a positive net balance in a settlement account with an exchange, operated for the buying and selling of underlying assets;
- (c) **“auditing pronouncements”** has the meaning assigned to it in section 1 of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
- (d) **“bank”** means a bank or branch as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- (e) **“derivative instrument”** has the meaning assigned to it in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (f) **“exchange”** has the meaning assigned to it in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004) and means an exchange licensed under the Securities Services Act, 2004 (Act No. 36 of 2004), a recognised African exchange or a recognised foreign exchange;
- (g) **“foreign investment”** means foreign currency denominated assets or Rand denominated foreign assets acquired through direct or indirect investment;
- (h) **“foreign bank”** means an entity that is authorised to conduct business similar to the business of a bank in a foreign country;
- (i) **“foreign country”** means any country other than the Republic;
- (j) **“fair value”**, in relation to an asset of a fund, means the fair value of that asset determined in accordance with the auditing standards;
- (k) **“linked policy”** has the meaning assigned to it in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- (l) **“listed securities”** means securities included in the list of securities kept or traded by an exchange;
- (m) **“money market instrument”** must be transferable and acknowledging indebtedness and is defined as:-
 - (i) **“banker’s acceptance”** means a bill as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964), drawn on and accepted by a bank as defined in the Banks Acts, 1990 (Act No. 94 of 1990),

or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);

- (ii) *"bridging bond"* means an acknowledgement of debt in which the issuer thereof undertakes to repay the debt together with interest on the maturity of the debt to the holder of the bridging bond;
- (iii) *"commercial paper"* means any negotiable acknowledgement of debt;
- (iv) *"debenture"* means a debenture as defined in the Companies Act, 2008 (Act No. 71 of 2008);
- (v) *"deposit"* means a deposit as defined in the Banks Act, 1990, or in the Mutual Banks Act, 1993;
- (vi) *"Islamic liquidity management financial instrument"* means a financial instrument that is issued by a bank or a foreign bank –
 - (aa) that is negotiable; and
 - (bb) in respect of which the title to the underlying tangible asset or assets pass from a fund to a third party within seven business days from the date of purchase thereof, and at which purchase date the future sale price of the tangible asset or assets is fixed despite any increase or decrease in the market value thereof;
- (vii) *"land bank bill"* means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the Land and Agricultural Bank of South Africa;
- (viii) *"national housing bill"* means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the National Housing Board;
- (ix) *"negotiable certificate of deposit"* means a certificate of deposit issued by a bank as defined in the Banks Act, 1990, or a mutual bank as defined in the Mutual Banks Act, 1993, and payable to order or to bearer;
- (x) *"parastatal bill"* means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by a parastatal institution;

- (xi) "*promissory note*" means a promissory note as defined in the Bills of Exchange Act, 1964;
- (xii) "*trade bill*" or "*trade note*" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued to provide for the payment for goods;
- (xiii) "*treasury bill*" means a bill drawn by the Government on the Secretary to the Treasury calling on the latter to pay a sum certain in money to a specified person or his order or to bearer, on demand or on a certain specified future date;
- (n) "**Postbank**" means the SA Post Office Limited established pursuant to section 3 the Post Office Act, 1958 (Act No. 44 of 1958);
- (o) "**prescribed**" means as prescribed by the Registrar;
- (p) "**property company**" means a company—
- (i) of which 50% or more of the market value of its assets consists of immovable property, irrespective of whether such property is held directly by the company as registered owner, indirectly through ownership of the shares or the exercise of control over the company that is the registered owner of the property; or
 - (ii) of which 50% or more of its income is derived from investments in immovable property, or from an investment in a company of which 50% or more of the income of that company' is derived from investments in immovable property;
- (q) "**recognised credit rating agency**" means a credit rating agency as prescribed;
- (r) "**credit rating band**" means a category of credit ratings, which ratings are issued by a recognised credit rating agency, as prescribed;
- (s) "**recognised African exchange**" means an exchange that is subject to the regulatory environment of a country situated in Africa and which is a full member of the World Federation of Exchanges, or which has been subjected to a due diligence assessment by the Fund, which assessment was conducted in accordance with provisions and conditions as prescribed;
- (t) "**recognised foreign exchange**" means an exchange that is subject to the regulatory environment of a foreign country, other than a country situated in Africa, and which is a full member of the World Federation of Exchanges;

- (u) **“reporting period”** means the financial year determined in the rules of a fund; and
- (v) **“securities”** -
- (i) has the meaning assigned to it in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004); or
 - (ii) means an Islamic investment instrument that is a bond based on the ownership of an underlying immovable property or a tangible asset or portfolio of immovable properties or tangible assets issued by –
 - (aa) the Government of the Republic;
 - (bb) the South African Reserve Bank;
 - (cc) any public entity listed in the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
 - (dd) a bank or a foreign bank;that is negotiable and in respect of which the title to the underlying property or asset or portfolio of properties and assets is vested in a special purpose vehicle that derives its income from commercial activities related to that property, asset or portfolio.

TABLE 1

	Column 1		Column 2
Item	Categories or kinds of assets		Maximum percentage of aggregate fair value of total assets of fund
1.	ASSETS IN LIQUID FORM		
	(a)	Inside the Republic - Assets in a liquid form excluding a positive balance in a margin account with an exchange	100%
	(i)	Credit Rating Band 1	30% per issuer
	(ii)	Credit Rating Band 2	25% per issuer
	(iii)	Credit Rating Band 3	20% per issuer
		Assets in a liquid form including only a positive balance in a margin account with an exchange	5%
	(b)	Foreign investments -	20 % in aggregate 25% in aggregate for African investments
	(i)	Credit Rating Band 1	15% per issuer,
	(ii)	Credit Rating Band 2	10% per issuer
	(iii)	Credit Rating Band 3	10% per issuer
2.	KRUGER RANDS		5%
3.	LISTED SECURITIES AND SECURITIES ISSUED OR GUARANTEED BY A GOVERNMENT		
	(a)	Inside the Republic -	
	(i)	Listed securities issued or guaranteed by, and loans to the government of the Republic	100%
	(ii)	Listed shares on an exchange, licensed under the	

		Securities Services Act No. 36 of 2004	<ul style="list-style-type: none"> with a market capitalization of R20 billion or more with a market capitalization of less than R20 billion 	15% per issuer 10% per issuer 75% in aggregate
	(iii)	Listed bonds, excluding bonds issued by the government of the Republic		
		Credit Rating Band 1		15% per issuer, 25% in aggregate
		Credit Rating Band 2		10% per issuer, 20% in aggregate
		Credit Rating Band 3		10% per issuer, 15% in aggregate
	(b)	Foreign investments -		
	(i)	Listed securities issued or guaranteed by the foreign Government concerned		20%
	(ii)	Securities listed on a recognised foreign exchange	<ul style="list-style-type: none"> with a market capitalization of R20 billion or more with a market capitalization of less than R20 billion 	10% per issuer 10% per issuer 20% in aggregate
	(v)	Securities listed on a recognised African exchange		5% per issuer 25% in aggregate
4.	UNLISTED SECURITIES			5%
	(a)	Inside the Republic -		
	(i)	Credit Rating Band 1 and 2		5%
5.	IMMOVABLE PROPERTY AND CLAIMS SECURED BY MORTGAGE BONDS THEREON. SECURED LOANS TO AND DEBENTURES, BOTH CONVERTIBLE AND NON-CONVERTIBLE IN PROPERTY COMPANIES			25%

	(a) Inside the Republic- - per single property or issuer	5%
6.	INVESTMENTS IN THE BUSINESS OF A PARTICIPATING EMPLOYER INSIDE THE REPUBLIC IN TERMS OF:	
	(a) section 19 (4) of the Act; or	5%
	(b) to the extent it has been allowed by an exemption in terms of section 19 (4A) of the Act	10%
7.	LOANS GRANTED TO MEMBERS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 19(5)	
	Housing loans granted to members in accordance with the provisions of section 19(5)	95%
8.	ANY OTHER ASSETS NOT REFERRED TO IN THIS ANNEXURE	
	Any other investment not included above	2.5%