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No. 50968

THE PRESIDENCY

No. 5052 **23 July 2024**

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

Act No. 31 of 2024: Pension Funds Amendment Act, 2024

DIE PRESIDENSIE

No. 5052 **23 Julie 2024**

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 31 van 2024: Wysigingswet op Pensioenfondse, 2024

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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 18 July 2024)

ACT

To amend—

- the Pension Funds Act, 1956, 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;
- the Post and Telecommunications-related Matters Act, 1958, so as to insert certain definitions in order to provide for the introduction of the savings withdrawal benefit; to provide the appropriate account of a member's interest in the savings, retirement and vested components; to provide for deductions that may be made;
- 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;
- the Government Employees Pension Law, 1996, 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.

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 3 of Act 51 of 1988, 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, sections 1 and 6 of Act 22 of 1996, section 1 of Act 39 of 2001, section 1 of Act 65 of 2001, section 1 of Act 11 of 2007, section 1 of Act 22 of 2008, section 1 of Act 45 of 2013 and section 290 read with Schedule 4 of Act 9 of 2017

1. Section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), is hereby amended—

- (a) by the substitution for the definition of “beneficiary fund” of the following definition:

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vetdruk in vierkantige hakies dui weglatings uit bestaande verordeninge aan.
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- Woorde met 'n volstreep daaronder dui invoegings in bestaande verordeninge aan.
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(Engelse teks deur die President geteken)
(Goedgekeur op 18 Julie 2024)

WET

Tot wysiging van—

- die Wet op Pensioenfondse, 1956, ten einde sekere woordomsrywings in te voeg om voorsiening te maak vir die bekendstelling van 'n spaaronttrekkingsvoordeel; voorsiening te maak vir die gepaste berekening van 'n lid se belang in die spaar-, uittree- en gevestigde komponente; voorsiening te maak vir aftrekkings wat gemaak mag word;
- die Wet op Pos en Telekommunikasieverwante Aangeleenthede, 1958, ten einde sekere woordomsrywings in te voeg ten einde voorsiening te maak vir die bekendstelling van die spaaronttrekkingsvoordeel; gepas rekenskap te gee van 'n lid se belang in die spaar-, uittree- en gevestigde komponente; voorsiening te maak vir aftrekkings wat gemaak mag word;
- die Transnet-Pensioenfondswet, 1990, ten einde sekere woordomsrywings in te voeg ten einde voorsiening te maak vir die bekendstelling van die spaaronttrekkingsvoordeel; voorsiening te maak vir die rekenskap van 'n lid se belang in die spaar-, uittree- en gevestigde komponente; voorsiening te maak vir die aftrekkings wat gemaak kan word;
- die "Government Employees Pension Law, 1996", ten einde sekere woordomsrywings in te voeg ten einde voorsiening te maak vir die bekendstelling van die spaaronttrekkingsvoordeel; voorsiening te maak vir gepaste rekenskap van 'n lid se belang in die spaar-, uittree- en gevestigde komponente; voorsiening te maak vir aftrekkings wat gemaak kan word,

en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 24 van 1956, soos gewysig deur artikel 21 van Wet 101 van 1976, artikel 9 van Wet 94 van 1977, artikel 10 van Wet 80 van 1978, artikel 38 van Wet 99 van 1980, artikel 3 van Wet 51 van 1988, artikel 20 van Wet 54 van 1989, artikel 29 van Wet 97 van 1990, artikel 14 van Wet 83 van 1992, artikel 21 van Wet 104 van 1993, artikels 1 en 6 van Wet 22 van 1996, artikel 1 van Wet 39 van 2001, artikel 1 van Wet 65 van 2001, artikel 1 van Wet 11 van 2007, artikel 1 van Wet 22 van 2008, artikel 1 van Wet 45 van 2013 en artikel 290 gelees met Bylae 4 van Wet 9 van 2017

1. Artikel 1 van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), word hierby gewysig—

- (a) deur die omskrywing van "begunstigdefonds" deur die volgende omskrywing te vervang:

- “ **‘beneficiary fund’** means a fund referred to in paragraph (c) or (d) of the definition of ‘pension fund organisation’ ”;
- (b) by the insertion after the definition of “disclosure” of the following definition:
“ **‘Divorce Act’** means the Divorce Act, 1979 (Act No. 70 of 1979);”;
- (c) by the insertion after the definition of “fund return” of the following definition: 5
“ **‘Income Tax Act’** means the Income Tax Act, 1962 (Act No. 58 of 1962);”;
- (d) by the insertion after the definition of “member’s individual account” of the following definitions: 10
“ **‘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;”;
- (e) by the substitution for the definition of “pension fund organisation” of the following definition: 15
“ **‘pension fund organisation’** means—
(a) any association of persons established with the object of providing annuities, including living annuities, or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or 20
(b) any business carried on under a scheme or arrangement established with the object of providing annuities, including living annuities, or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons; or 25
(c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits that became payable in terms of the employment of a member on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds[,]; or 30
(d) any association of persons or business carried on under a scheme or arrangement established with the object of making payments in respect of arrear and future maintenance orders payable in terms of a court order issued against a fund on behalf of beneficiaries, 35
and includes any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a), (b), (c) or (d) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefits provided for in its rules, whether or not it continues to admit, or collect contributions from or on behalf, of members;”;
- (f) by the insertion after the definition of “pension fund organisation” of the following definition: 40
“ **‘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 individual account or minimum individual reserve, as the case may be, determined in terms of the rules of that fund, on the date of the court order;”;
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- “**‘begunstigdefonds’** ’n fonds in paragraaf (c) of (d) van die omskrywing van ‘pensioenfondsorganisasie’ bedoel;”;
- (b) deur die volgende omskrywing na die omskrywing van “finansiële state” in te voeg:
 “**‘gevestigde komponent’** soos omskryf in artikel 1(1) van die Inkomstebelastingwet, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;” 5
- (c) deur die volgende omskrywing na die omskrywing van “individuele lederekening” in te voeg:
 “**‘Inkomstebelastingwet’** die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962);” 10
- (d) deur die volgende omskrywings na die omskrywing van “lid” in te voeg:
 “**‘lid se belang in die gevestigde komponent’** soos in artikel 1(1) van die Inkomstebelastingwet omskryf;
‘lid se belang in die spaarkomponent’ soos in artikel 1(1) van die Inkomstebelastingwet omskryf;
‘lid se belang in die uitreekomponent’ soos in artikel 1(1) van die Inkomstebelastingwet omskryf;” 15
- (e) deur die volgende omskrywing na die omskrywing van “opvolgermaatskappy” in te voeg:
 “**‘pensioenbelang’** met betrekking tot ’n hofbevel wat kragtens artikel 7(8)(a) van die Wet op Egskeiding of ’n hofbevel gegee ten opsigte van die verdeling van bates van ’n huwelik ooreenkomstig die leerstellings van ’n godsdiens, in verband met ’n party wat ’n lid van ’n fonds is, daardie lid se individuele rekening of minimum individuele reserwe, na gelang van die geval, ingevolge die reëls van die fonds vasgestel, op die datum van die hofbevel;” 20
- (f) deur die omskrywing van “pensioenfondsorganisasie” deur die volgende omskrywing te vervang:
 “**‘pensioenfondsorganisasie—** 30
 (a) ’n vereniging van persone wat opgerig is om jaargelde of eenbedragbetalings te verskaf aan lede of gewese lede van daardie vereniging wanneer hulle hul aftreedatums bereik, of aan afhanklikes van sodanige lede of gewese lede by die dood van daardie lede of gewese lede; of 35
 (b) enige besigheid wat gedryf word ingevolge ’n skema of reëling ingestel met die oogmerk om jaargelde of eenbedragbetalings te verskaf aan persone wat behoort of behoort het tot die klas persone vir wie se voordeel daardie skema of reëling ingestel is, wanneer hulle hul aftreedatums bereik, of aan afhanklikes van sodanige persone by die dood van daardie persone; of 40
 (c) ’n vereniging persone of besigheid wat gedryf word kragtens ’n skema of reëling ingestel met die oogmerk om voordele, ingevolge die diens van ’n lid en betaalbaar by die dood van meer as een lid van een of meer pensioenfondse, ten behoeve van begunstigdes te ontvang, te administreer, te belê en te betaal[.]; of 45
 (d) enige vereniging van persone of besighede wat gedryf word kragtens ’n skema of reëling wat ingestel is met die oogmerk om betalings ten opsigte van agterstallige en toekomstige onderhoudsbevele te maak wat betaalbaar is ingevolge ’n hofbevel wat namens begunstigdes teen ’n fonds uitgereik is, 50
 en ook so ’n vereniging of besigheid wat, benewens die dryf van besigheid in verband met enige van die oogmerke in paragraaf (a), (b), [of] (c) of (d) genoem, ook besigheid dryf in verband met enige van die oogmerke waarvoor ’n onderlinge hulpvereniging soos in artikel 2 van die Wet op Onderlinge Hulpverenigings, 1956, vermeld, ingestel mag word, of wat aanspreeklik is, of mag word vir die betaling van enige voordele waarvoor sy statute voorsiening maak, hetsy hy aanhou om lede in te neem of bydraes van of ten behoeve van hulle in te vorder, al dan nie;” 55
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- (g) by the insertion after the definition of “retirement annuity 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* to paragraph 6B of the Second Schedule to the Income Tax Act;”;
- (h) 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* to paragraph 6B of the Second Schedule to Income Tax Act;
savings withdrawal benefit’ has the meaning as defined in section 1(1) of the Income Tax Act;”;
- (i) by the substitution for the definition of “valuator” of the following definitions:
 “**valuator**’ means an actuary who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of the Act[.]; and
vested component’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act.”.

Amendment of section 2 of Act 24 of 1956, as amended by section 10 of Act 94 of 1977, section 13 of Act 103 of 1979, section 36 of Act 9 of 1989, section 15 of Act 83 of 1992, section 23 of Act 104 of 1993 and section 211 of Act 66 of 1995, as substituted by section 2 of Act 11 of 2007, section 2 of Act 22 of 2008, and substituted by section 2 of Act 45 of 2013

2. Section 2 of the Pension Funds Act, 1956, is hereby amended by the addition of the following subsection:

“(6) In the event of a conflict between the provisions of this Act and the Divorce Act, the provisions of this Act prevail.”.

Amendment of section 14B of Act 24 of 1956, as inserted by section 3 of Act 39 of 2001, substituted by section 10 of Act 11 of 2007 and amended by section 21 of Act 45 of 2013

3. Section 14B of the Pension Funds Act, 1956, is hereby amended—

- (a) by the substitution in subsection (1)(a) for the definition of “OC” of the following definition:
 “OC represents any other amounts lawfully permitted, credited to or debited, deducted or withdrawn from the member’s individual account, in terms of this Act, if any, and includes any savings withdrawal benefit paid from the savings component; and”;
- (b) by the deletion in subsection (2)(a) of the word “and” at the end of subparagraph (i) and the addition of the following subparagraph after subparagraph (ii):
 “(iii) when determining the amounts referred to in subparagraphs (i) and (ii), the pensionable service applied in the determination of the accrued deferred pension referred to in subparagraph (i) must be reduced to take into account any savings withdrawal benefit previously paid from the savings component as permitted in terms of the Income Tax Act and the amount referred to in subparagraph (ii) must be reduced by any savings withdrawal benefit previously paid from the savings component; and”.

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

- (g) deur die volgende omskrywings na die omskrywing van “raad” in te voeg:
 “**‘spaarkomponent’** soos omskryf in artikel 1(1) van die Inkomstebelastingwet, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet; **‘spaaronttrekkingsvoordeel’** dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is; **‘uittreekomponent’** soos omskryf in artikel 1(1) van die Inkomstebelastingwet, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;”;
 en
- (h) deur die volgende omskrywing na die omskrywing van “Wet op Beskermdes Bekendmakings” in te voeg:
 “**‘Wet op Egskeiding’** die Wet op Egskeiding, 1979 (Wet No. 70 van 1979);”.
- Wysiging van artikel 2 van Wet 24 van 1956, soos gewysig deur artikel 10 van Wet 94 van 1977, artikel 13 van Wet 103 van 1979, artikel 36 van Wet 9 van 1989, artikel 15 van Wet 83 van 1992, artikel 23 van Wet 104 van 1993 en artikel 211 van Wet 66 van 1995, soos vervang deur artikel 2 van Wet 11 van 2007, artikel 2 van Wet 22 van 2008 en vervang deur artikel 2 van Wet 45 van 2013**
2. Artikel 2 van die Wet op Pensioenfondse, 1956, word hierby gewysig deur die volgende subartikel by te voeg:
 “(6) In die geval van ’n teenstrydigheid tussen die bepalinge van hierdie Wet en die Wet op Egskeiding, geld die bepalinge van hierdie Wet.”.
- Wysiging van artikel 14B van Wet 24 van 1956, soos ingevoeg deur artikel 3 van Wet 39 van 2001, vervang deur artikel 10 van Wet 11 van 2007 en gewysig deur artikel 21 van Wet 45 van 2013**
3. Artikel 14B van die Wet op Pensioenfondse, 1956, word hierby gewysig—
- (a) deur in subartikel (1)(a) die omskrywing van “OC” deur die volgende omskrywing te vervang:
 “OC enige ander bedrae verteenwoordig wat wettig toelaatbaar is, gekrediteer teen of gedebiteer uit, afgetrek van of onttrek uit die lid se individuele rekening, ingevolge hierdie Wet, indien enige en sluit enige spaaronttrekkingsvoordeel in wat uit die spaarkomponent betaal is; en”;
 en
- (b) deur in subartikel (2)(a) die woord “en” aan die einde van subparagraaf (i) te skrap en die volgende subparagraaf na subparagraaf (ii) in te voeg:
 “(iii) by die vasstelling van die bedrae in subparagrafe (i) en (ii) bedoel, moet die pensioengegewende diens wat toegepas word in die vasstelling van die opgelope uitgestelde pensioen in subparagraaf (i) bedoel, verminder word om enige spaaronttrekkingsvoordeel wat voorheen uit die spaarkomponent betaal is, in berekening te bring soos ingevolge die Inkomstebelastingwet bedoel en die bedrag in subparagraaf (ii) bedoel, moet verminder word met enige spaaronttrekkingsvoordeel wat voorheen uit die spaarkomponent betaal is; en”.
- Wysiging van artikel 19 van Wet 24 van 1956, soos gewysig deur artikel 13 van Wet 80 van 1959, artikel 9 van Wet 58 van 1966, artikel 1 van Wet 80 van 1969, artikel 2 van Wet 23 van 1970, artikel 7 van Wet 91 van 1972, artikel 23 van Wet 101 van 1976, artikel 11 van Wet 94 van 1977, artikel 11 van Wet 80 van 1978, artikel 14 van Wet 103 van 1979, artikel 39 van Wet 99 van 1980, artikel 14 van Wet 82 van 1982,**

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, section 11 of Act 64 of 1990, section 2 of Act 94 of 1997, section 2 of Act 65 of 2001, section 33 of Act 45 of 2013 and section 290 read with Schedule 4 of Act 9 of 2017

4. Section 19 of the Pension Funds Act, 1956 is hereby amended— 5
- (a) by the substitution for paragraph (c) of subsection (5) of the following paragraph: 5
- “(c) A loan or guarantee contemplated in paragraph (a) must not exceed, at the time it is granted or furnished, 65 per cent of the member’s individual account or minimum individual reserve, as the case may be, in the member’s interest in the savings, retirement and vested components.”; 10
- (b) by the deletion of paragraph (d) of subsection (5); and
- (c) by the substitution for paragraph (a) of subsection (6) of the following paragraph: 15
- “(a) The [registrar] Authority may, on application by a fund and the payment of the prescribed fee, under exceptional circumstances, and [on such] subject to conditions and for [such] the periods [as he] that the Authority may determine, temporarily exempt any fund from compliance with any provision of subsection (5) or (5B)(a).” 20

Amendment of section 37A of Act 24 of 1956, as inserted by section 24 of Act 101 of 1976 and substituted by section 12 of Act 94 of 1977, amended by section 40 of Act 99 of 1980, section 45 of Act 104 of 1993, substituted by section 4 of Act 22 of 1996 and as amended by section 50 of Act 45 of 2013

5. Section 37A of the Pension Funds Act, 1956 is hereby amended by the substitution for subsection (1) of the following subsection: 25
- “(1) Save to the extent permitted by this Act, the Income Tax Act, [1962 (Act No. 58 of 1962), and] the Tax Administration Act, 2011 (Act No. 28 of 2011) and [,] the Maintenance Act, 1998, no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor’s financial position in terms of section 65 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine.”. 30 35 40 45

Substitution 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, section 4 of Act 65 of 2001, section 28 of Act 11 of 2007, section 4 of Act 35 of 2007, section 16 of Act 22 of 2008, section 3 of Act 60 of 2008 and section 52 of Act 45 of 2013

6. The following section is hereby substituted for section 37D of the Pension Funds Act, 1956: 50

artikel 20 van Wet 46 van 1984, artikel 17 van Wet 86 van 1984, artikel 11 van Wet 50 van 1986, artikel 5 van Wet 51 van 1988, artikel 8 van Wet 53 van 1989, artikel 11 van Wet 64 van 1990, artikel 2 van Wet 94 van 1997, artikel 2 van Wet 65 van 2001, artikel 33 van Wet 45 van 2013 en artikel 290 gelees met Bylae 4 van Wet 9 van 2017

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4. Artikel 19 van die Wet op Pensioenfondse, 1956, word hierby gewysig—

(a) deur paragraaf (c) van subartikel (5) deur die volgende paragraaf te vervang:

“(c) ’n lening of waarborg in paragraaf (a) beoog, moet nie, wanneer dit toegestaan of uitbetaal word, 65 persent van die lid se individuele rekening of minimum individuele reserwe, na gelang van die geval, in die lid se belang in die spaar-, uittree- en gevestigde komponente te bowe gaan nie.”;

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(b) deur paragraaf (d) van subartikel (5) te skrap; en

(c) deur paragraaf (a) van subartikel (6) deur die volgende paragraaf te vervang:

“(a) Die [registrateur] Owerheid kan, by aansoek deur ’n fonds en die betaling van die voorgeskrewe gelde, onder buitengewone omstandighede, en op die voorwaardes en vir die tydperke wat hy mag bepaal, enige fonds tydelik vrystel van voldoening aan enige bepaling van subartikel (5) of (5B)(a).”.

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Wysiging van artikel 37A van Wet 24 van 1956, soos ingevoeg deur artikel 24 van Wet 101 van 1976 and vervang deur artikel 12 van Wet 94 van 1977, gewysig deur artikel 40 van Wet 99 van 1980, artikel 45 van Wet 104 van 1993, vervang deur artikel 4 van Wet 22 van 1996 en soos gewysig deur artikel 50 van Wet 45 van 2013

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5. Artikel 37A van die Wet op Pensioenfondse, 1956, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

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“(1) Behalwe in die mate by hierdie Wet, die Inkomstebelastingwet, [1962 (Wet No. 58 van 1962)] die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011)[,] en die Wet op Onderhoud, 1998, veroorloof, kan geen voordeel waarvoor in die statute van ’n geregistreerde fonds voorsiening gemaak word (met inbegrip van ’n jaargeld wat so ’n fonds vir ’n lid by ’n versekeraar gekoop het of sal koop), of reg op so ’n voordeel, of reg ten opsigte van bydraes deur of ten behoeve van ’n lid gestort, ondanks andersluidende bepalings van die statute van so ’n fonds, verminder, oorgedra of andersins gesedeer, of verpand of met verband beswaar word nie, of ingevolge ’n vonnis of bevel van ’n geregshof in beslag geneem of aan enige vorm van tenuitvoerlegging onderwerp word nie, of tot die bedrag van hoogstens drieduisend rand per jaar in berekening gebring word nie by ’n vasstelling van ’n vonnisskuldenaar se finansiële toestand ingevolge artikel 65 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), en in die geval waar die betrokke lid of bevoordeelde poog om so ’n voordeel of reg oor te dra of andersins te sedeer, of om dit te verpand of met verband te beswaar, kan die betrokke fonds betaling daarvan terughou of opskort: Met dien verstande dat die fonds, gedurende die tydperk wat hy bepaal, so ’n voordeel of enige voordeel uit hoofde van sodanige bydraes, of gedeelte daarvan, kan betaal aan een of meer van die lid of bevoordeelde se afhanklikes of aan ’n voog of kurator vir die voordeel van sodanige afhanklike of afhanklikes.”.

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Vervanging van artikel 37D van Wet 24 van 1956, soos ingevoeg deur artikel 14 van Wet 94 van 1977, en gewysig deur artikel 14 van Wet 80 van 1978, artikel 4 van Wet 65 van 2001, artikel 28 van Wet 11 van 2007, artikel 4 van Wet 35 van 2007, artikel 16 van Wet 22 van 2008, artikel 3 van Wet 60 van 2008 en artikel 52 van Wet 45 van 2013

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6. Artikel 37D van die Wet op Pensioenfondse, 1956, word hierby deur die volgende artikel vervang:

“Fund may make certain deductions from pension benefits**37D.** (1) A registered fund may—

- (a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) and any amount due to the fund in respect of—
- (i) a loan granted to a member in terms of section 19(5); or
 - (ii) any amount for which the fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to the member in terms of section 19(5), from—
 - (aa) the amount of the benefit to which a member becomes entitled in terms of the rules of the fund;
 - (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 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 the membership on the date of default, if the 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;
- (b) deduct any amount due by a member to the member’s employer on the date of retirement, the date on which the member ceases to be a member of the fund or the date on which the member’s employment with a participating employer in a retirement fund is terminated in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), in respect of compensation, including any legal costs recoverable from the member in a matter contemplated in subparagraph (ii), in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—
- (i) the member has in writing admitted liability to the employer; or
 - (ii) judgment has been obtained against the member in any court, including a magistrate’s court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),
- from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay that amount to the employer concerned;
- (bA) permit a member to take a savings withdrawal benefit where there is a judgment contemplated in paragraph (b)(ii) or a written admission of liability in favour of the employer that has not yet been executed: Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment;
- (bB) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in paragraph (b)(ii), and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months pending the judgment by any court including a magistrate’s court;
- (c) in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), deduct any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of—

“Fonds mag sekere aftrekkings van pensioenvoordele maak**37D. (1) ’n Geregistreeerde fonds mag—**

- (a) enige bedrag aftrek wat op die betrokke voordeel deur die lid verskuldig is ooreenkomstig die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011) en enige bedrag wat aan die fonds verskuldig is ten opsigte van—
- (i) ’n lening wat ingevolge artikel 19(5) aan ’n lid toegestaan is; of
- (ii) enige bedrag waarvoor die fonds aanspreeklik word kragtens ’n waarborg wat verstrek is ten opsigte van ’n lid vir ’n lening wat deur iemand anders aan ’n lid toegestaan is ingevolge artikel 19(5), vanaf—
- (aa) die bedrag van die voordeel waarop ’n lid ingevolge die reëls van die fonds geregtig word;
- (bb) in die geval van ’n oordrag van die lid na ’n ander fonds, die bedrag van die voordeel wat die fonds aldus geregtig is om oor te dra, indien die raad van die oordraerfonds oortuig is dat dit nie andersins redelik moontlik is om die terugbetaling te onderhandel of om die lening of waarborg oor te dra nie; of
- (cc) in die geval van ’n wanbetaling op die terugbetaling van enige sodanige lening deur die betrokke lid onder omstandighede waar sy of haar lidmaatskap van die fonds nie beëindig word nie, die bedrag van die voordeel wat die lid sou ontvang het by beëindiging van lidmaatskap op die datum van wanbetaling, as die aftrekking slegs gedoen word as ’n laaste uitweg nadat die raad van die fonds oortuig is dat geen ander reëling vir die vereiste betaling gemaak kan word nie;
- (b) enige bedrag wat ’n lid aan die lid se werkgewer verskuldig is op die datum van aftrede, die datum waarop die lid ophou om ’n lid van die fonds te wees of die datum waarop die lid se diens by ’n deelnemende werkgewer in ’n aftreefonds beëindig word ooreenkomstig die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011), ten opsigte van vergoeding, insluitend enige regskoste wat van die lid verhaal kan word in ’n aangeleentheid beoog in subparagraaf (ii), ten opsigte van enige skade vir die werkgewer veroorsaak weens enige diefstal, oneerlikheid, bedrog of wangedrag deur die lid, en ten opsigte waarvan—
- (i) die lid skriftelik aanspreeklikheid teenoor die werkgewer erken het; of
- (ii) vonnis teen die lid verkry is in enige hof, met inbegrip van ’n landdroshof, en sluit ’n vergoedingsbevel in wat ingevolge artikel 300 van die Strafproseswet, 1977 (Wet No. 51 van 1977), toegestaan is,
- van enige voordeel betaalbaar ten opsigte van die lid of ’n begunstigde ingevolge die reëls van die fonds, en betaal daardie bedrag aan die betrokke werkgewer;
- (bA) ’n lid toelaat om ’n spaaronttrekkingsvoordeel te neem waar daar ’n vonnis beoog in paragraaf (b)(ii) is, of skriftelike erkenning van aanspreeklikheid ten gunste van die werkgewer wat nog nie tenuitvoer gelê is nie: Met dien verstande dat die onttrekking nie sal meebring dat daar onvoldoende fondse is om die lening of waarborg terug te betaal of om aan die vonnis te voldoen nie;
- (bB) ’n spaaronttrekkingsvoordeel opskort waar die werkgewer nie ’n vonnis beoog in paragraaf (b)(ii) verkry het nie en die onttrekking sal meebring dat daar onvoldoende oorblywende waarde sal wees om aan die hangende bevel te voldoen, indien toegestaan, vir ’n tydperk van 12 maande hangende die vonnis deur enige hof, met inbegrip van ’n landdroshof;
- (c) ooreenkomstig die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011), enige bedrag aftrek wat die fonds betaal het of sal betaal volgens ’n reëling met en namens, ’n lid of begunstigde ten opsigte van—

- (i) the member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998);
- (ii) any insurance premium payable by such a member or beneficiary to an insurer licensed in terms of the Insurance Act, 2017 (Act No. 18 of 2017), in respect of a life insurance policy;
- (iii) any purpose approved by the Authority, on the conditions determined by the Authority, upon a request in writing from the fund,
- from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be;
- (d) deduct from a member's individual account in the case of a defined contribution category of a fund or, in any other case, from a minimum individual reserve in the fund as determined by the fund rules or as determined in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011)—
- (i) any portion of the pension interest assigned to a non-member spouse in the court order;
- (iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); and
- (iB) 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. 1 of 1985); and
- (e) deduct from a member's individual account or minimum individual reserve referred to in subsection (1)(d) or the benefit payable to a pensioner referred to in subsection (1A), as the case may be, employees' tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, as a result of a deduction referred to in this subsection.
- (1A) In respect of a pensioner, deductions referred to in subsection (1)(d) must be made from the capital value of the pensioner's pension after retirement.
- (1B) The aggregate of all amounts deducted in terms of subsection (1) may not exceed the amount of the member's individual account or the member's minimum individual reserve, as the case may be, referred to in subsection (1)(d).
- (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 upon 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.
- (3)(a) Any amount that may be deducted in terms of subsection (1)(d) may only be deducted after the member's individual account or member's minimum individual reserve, as the case may be, has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where the loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not.
- (aA) A fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse with proof that—
- (i) a divorce has been instituted, as defined in the Divorce Act;
- (ii) 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.

- (i) die lid of begunstigde se lidmaatskap van 'n mediese skema, geregistreer andersins as voorlopig ingevolge die Wet op Mediese Skemas, 1998 (Wet No. 131 van 1998);
- (ii) enige versekeringspremie wat deur so 'n lid of begunstigde betaalbaar is aan 'n versekeraar wat gelisensieer is ingevolge die Versekeringswet, 2017 (Wet No. 18 van 2017), ten opsigte van 'n lewensversekeringspolis; 5
- (iii) enige doel deur die Owerheid goedgekeur, op die voorwaardes deur die Owerheid vasgestel, by versoek op skrif vanaf die fonds, 10
- vanaf die voordeel waarop die lid of begunstigde geregtig is ingevolge die reëls van die fonds, en sodanige bedrag, indien verskuldig, betaal aan die betrokke mediese skema, versekeraar of persoon, na gelang van die geval;
- (d) van 'n lid se individuele rekening in die geval van 'n omskewe bydraekategorie van 'n fonds of, in enige ander geval, van 'n minimum individuele reserwe in die fonds soos deur die fondstreëls bepaal of soos bepaal ooreenkomstig die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011)— 15
- (i) enige gedeelte van die pensioenbelang wat in die hofbevel aan 'n nie-lid eggenoot toegewys is, aftrek; 20
- (iA) enige bedrag aftrek wat betaalbaar is ingevolge 'n onderhoudsbevel soos in artikel 1 van die Wet op Onderhoud, 1998 (Wet No. 99 van 1998), omskryf; en
- (iB) enige bedrag betaalbaar as onderhoud ingevolge 'n tussentydse onderhoudsbevel deur die hof toegestaan ingevolge reël 43 van die Hooggeregshofreëls of reël 58 van die Landdroshofreëls, gemaak kragtens artikel 6 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 1 van 1985); en 25
- (e) van 'n lid se individuele rekening of minimum individuele reserwe bedoel in subartikel (1)(d) of die voordeel betaalbaar aan 'n pensioentrekker bedoel in subartikel (1A), na gelang van die geval, die werknemersbelasting aftrek wat afgetrek of teruggehou moet word ingevolge die Vierde Bylae by die Inkomstebelastingwet, as gevolg van 'n aftrekking in hierdie subartikel bedoel. 30
- (1A) Ten opsigte van 'n pensioentrekker, moet aftrekkings in subartikel (1)(d) bedoel, gemaak word van die kapitaalwaarde van die pensioentrekker se pensioen na aftrede. 35
- (1B) Die totaal van alle bedrae wat ingevolge subartikel (1) afgetrek is, mag nie die bedrag van die lid se individuele rekening of die lid se minimum individuele reserwe, na gelang van die geval, in subartikel (1)(d) bedoel, oorskry nie. 40
- (2) By die toepassing van paragraaf (a)(ii)(bb) en (cc) van subartikel (1), word die bedrae wat aldus afgetrek word, geag 'n voordeel te wees waarop die lid geregtig word by die beëindiging van sy of haar lidmaatskap van die fonds vir redes anders as as gevolg van aftrede of die dood wat geskied op die datum van die oordrag of wanbetaling. 45
- (3)(a) Enige bedrag wat ingevolge subartikel (1)(d) afgetrek kan word, kan slegs afgetrek word nadat die lid se individuele rekening of lid se minimum individuele reserwe, na gelang van die geval, verminder is deur enige leningsbedrag of waarborgbedrag bedoel in subartikel (1)(a), waar die lening of waarborg toegestaan is voordat die hofbevel toegestaan is, ongeag die feit dat daardie bedrag verskuldig en betaalbaar is of nie. 50
- (aA) 'n Fonds kan nie, sonder die toestemming van die nie-lid eggenoot, 'n lening of waarborg toestaan of toelaat dat 'n spaaronttrekkingsvoordeel geneem word deur 'n lid nie as die fonds skriftelike kennisgewing van die lid of nie-lid gade ontvang het met bewys dat— 55
- (i) 'n egskeiding ingestel is, soos in die Wet op Egskeiding omskryf;
- (ii) aansoek gedoen is om 'n hofbevel ten opsigte van die verdeling van bates van 'n huwelik ooreenkomstig die leerstellings van enige godsdiens. 60

(aB) The prohibition in terms of paragraph (aA) applies until finalisation of the divorce or until a court order is issued.

(aC) In respect of a deduction referred to in subsection (1)(d)(iA) or (iB), the fund must pay the maintenance as a lump sum in respect of arrear or future maintenance or in monthly payments in respect of future maintenance, as directed by the maintenance order: Provided that a fund may pay the maintenance to a fund contemplated in paragraph (d) of the definition of 'pension fund organisation' in section 1.

(aD) A fund may not allow a member to take a savings withdrawal benefit where there is a maintenance order against the fund in place, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the order.

(aE) A fund may, subject to a formal written notice from the maintenance investigating officer authorising the suspension of a savings withdrawal, suspend a savings withdrawal benefit where it is aware that proceedings relating to a maintenance order against the fund is pending, and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted.

(b) In the event that more than one of the court orders referred to in subsection (1)(d) provide for deductions at the same time, the court orders must be dealt with in accordance with the following hierarchy:

(i) Any maintenance order referred to in subsection (1)(d)(iA) or (iB); and

(ii) any court order referred to in the definition of 'non-member spouse'.

(4)(a) For the deduction referred to in subsection (1)(d)(i), the portion of the pension interest assigned to the non-member spouse in terms of the court order concerned is deemed to accrue to the member on the date of the court order which—

(i) must be deducted by—

(aa) the fund or funds named in or identifiable from the court order; or

(bb) the fund or funds referred to in item (aa) in which the pension interest referred to in the court order is transferred;

(ii) must be deducted on the date on which an election is made in accordance with paragraph (b)(i) or, if no election is made within the period referred to in paragraph (b)(ii), the date on which that period expires; and

(iii) must, subject to subsection (1A), reduce the member's individual account or member's individual reserve, as the case may be, at the date of the court order.

(b)(i) The fund must, within 45 days of the submission of the court order by the non-member-spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to the non-member spouse or if it must be transferred to a fund on the non-member spouse's behalf.

(ii) The non-member spouse must within 120 days of being requested to make an election—

(aa) inform the fund of how the amount referred to in subparagraph (i) must be dealt with;

(bb) if the non-member spouse elects that the amount must be paid to them directly, provide the fund with the details of how that payment must be effected; or

(cc) if the non-member spouse elects that the amount must be transferred to a fund on their behalf, provide the fund with the details of that fund.

(iii) The fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse's election.

(iv) In the event that the non-member spouse fails to make an election or identify the fund to which the amount should be transferred within the period referred to in subparagraph (ii), the fund must pay the amount directly to the non-member spouse within 30 days of the expiry of that period.

(aB) Die verbod ingevolge paragraaf (aA) is van toepassing totdat die egskeding afgehandel is of totdat 'n hofbevel uitgereik word.

(aC) Ten opsigte van 'n aftrekking bedoel in subartikel (1)(d)(iA) of (iB), moet die fonds die onderhoud as 'n kontantbedrag betaal ten opsigte van agterstallige of toekomstige onderhoud of in maandelikse betalings ten opsigte van toekomstige onderhoud, soos deur die onderhoudsbevel gelas: Met dien verstande dat 'n fonds die onderhoud kan betaal aan 'n fonds in paragraaf (d) van die omskrywing van 'pensioenfondsorganisasie' in artikel 1 beoog.

(aD) 'n Fonds mag nie toelaat dat 'n lid 'n spaaronttrekkingsvoordeel neem waar daar 'n onderhoudsbevel teen die fonds in plek is nie, tensy die fonds oortuig is dat die onttrekking nie sal meebring dat onvoldoende waarde oorbly om aan die bevel te voldoen nie.

(aE) 'n Fonds kan, behoudens 'n formele skriftelike kennisgewing van die onderhoudsondersoeker wat die opskorting van 'n spaaronttrekking magtig, 'n spaaronttrekkingsvoordeel opskort waar die fonds bewus is dat die verrigtinge wat met 'n onderhoudsbevel teen die fonds hangende is en die onttrekking sal meebring dat onvoldoende waarde sal oorbly om aan die hangende bevel te voldoen, indien dit toegestaan word.

(b) Waar meer as een van die hofbevele bedoel in subartikel (1)(d) terselfdertyd voorsiening maak vir aftrekkings, moet die hofbevele in die volgende hiërargie hanteer word:

- (i) Enige onderhoudsbevel in subartikel (1)(d)(iA) of (iB) bedoel; en
- (ii) enige hofbevel in die omskrywing van 'nie-lid eggenoot' bedoel.

(4)(a) Vir die aftrekking bedoel in subartikel (1)(d)(i), word die gedeelte van die pensioenbelang wat ingevolge die betrokke hofbevel aan die nie-lid eggenoot opgedra is, geag aan die lid toe te val op die datum van die hofbevel wat—

- (i) afgetrek moet word deur—

(aa) die fonds of fondse genoem in of identifiseerbaar uit die hofbevel; of

(bb) die fonds of fondse in item (aa) bedoel waarheen die pensioenbelang in die hofbevel bedoel, oorgedra word;

- (ii) afgetrek moet word op die datum waarop 'n keuse ooreenkomstig paragraaf (b)(i) gemaak word of, indien geen keuse binne die tydperk bedoel in paragraaf (b)(ii), gemaak word nie, op die datum waarop daardie tydperk verstryk; en

- (iii) behoudens subartikel (1A), die lid se individuele rekening of die lid se individuele reserwe, na gelang van die geval, moet verminder op die datum van die hofbevel.

(b)(i) Die fonds moet binne 45 dae na die indiening van die hofbevel deur die nie-lid eggenoot, versoek dat die nie-lid eggenoot kies of die bedrag wat afgetrek moet word, direk aan die nie-lid eggenoot betaal moet word of indien dit namens die nie-lid eggenoot na 'n fonds oorgeplaas moet word.

(ii) Die nie-lid eggenoot moet binne 120 dae nadat hy of sy gevra is om 'n keuse te maak—

(aa) die fonds inlig oor hoe met die bedrag bedoel in subparagraaf (i) gehandel moet word;

(bb) indien die nie-lid eggenoot kies dat die bedrag direk aan hom of haar betaal word, besonderhede van die besonderhede van hoe daardie betaling gedoen moet word, aan die fonds voorsien; of

(cc) indien die nie-lid eggenoot kies dat die bedrag namens hom of haar na 'n fonds oorgeplaas moet word, die besonderhede van daardie fonds aan die fonds voorsien.

(iii) Die fonds moet die bedrag betaal of oorplaas binne 60 dae nadat die fonds ingelig is oor hoe in ooreenstemming met die nie-lid eggenoot se keuse met die bedrag gehandel moet word.

(iv) Indien die nie-lid eggenoot versuim om binne die tydperk bedoel in subparagraaf (ii) 'n keuse te maak of die fonds te identifiseer waarheen die bedrag oorgeplaas moet word, moet die fonds die bedrag binne 30 dae sedert die verstryking van daardie tydperk direk aan die nie-lid eggenoot oorbetaal word.

(v) Despite subparagraph (iv), in the event that the fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the fund until such time as details of how that payment must be effected is made available to the fund by the member, the non-member spouse or any other person. 5

(c) A non-member 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 deduction until payment or transfer of the deduction contemplated in paragraph (a)(ii). 10

(d) Any portion of the pension interest assigned to the non-member spouse in terms of a court order granted prior to 13 September 2007 is for the purposes of any law other than the Income Tax Act including, but not limited to, section 7(8)(a) of the Divorce Act, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).” 15

Amendment of section 1 of Act 44 of 1958, as amended by section 1 of Act 56 of 1973, section 1 of Act 13 of 1974, section 1 of Act 113 of 1976, section 1 of Act 1 of 1978, section 1 of Act 37 of 1984, section 1 of Act 85 of 1991, section 3 of Act 101 of 1992, section 1 of Act 35 of 1995, section 105 of Act 103 of 1996, section 6 of Act 10 of 1998, section 81 of Act 124 of 1998 and section 31 of Act 22 of 2011 20

7. Section 1 of the Post and Telecommunication-related Matters Act, 1958 (Act No. 44 of 1958) (herein referred to as “the Post and Telecommunication-related Matters Act”), is hereby amended— 25

(a) by the insertion after the definition of “Director-General” of the following definition:

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

(b) by the insertion after the definition of “excluded commitments” of the following definitions: 30

“**‘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; 35

‘member’s interest in the vested component’ has the meaning as defined in section 1(1) of the Income Tax Act;”

(c) by the insertion after the definition of “Minister” of the following definition: 40

“**‘non-member spouse’** has the meaning as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);”

(d) by the insertion after the definition of “officer” 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 individual account or minimum individual reserve, as the case may be, determined in terms of the rules of that fund, on the date of the court order;” 45

(e) by the insertion after the definition of “regulation” of the following definitions: 50

“**‘retirement component’** has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act;

‘savings component’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 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;” 55

(f) by the substitution for the definition of “transfer date” of the following definition: 60

(v) Ongeag subparagraaf (iv), indien die fonds nie redelikerwys kan vasstel hoe die betaling aan die nie-lid eggenoot gedoen moet word nie, moet die fonds die bedrag en enige fondsopgawe bedoel in paragraaf (c)(ii) in die fonds hou tot tyd en wyl besonderhede oor hoe daardie betaling gedoen moet word deur die lid, die nie-lid eggenoot of enige ander persoon, aan die fonds beskikbaar gestel word. 5

(c) 'n Nie-lid eggenoot—

(i) is nie 'n lid of begunstigde met betrekking tot die fonds nie; en
(ii) is geregtig op die opgeloopte fondsopbrenge vanaf die datum van die aftrekking tot betaling of oordrag van die aftrekking in paragraaf (a)(ii) beoog. 10

(d) Enige gedeelte van die pensioenbelang wat aan die nie-lid eggenoot toegeken is ingevolge 'n hofbevel wat voor 13 September 2007 gegee is, is by die toepassing van enige wet behalwe die Inkomstebelastingwet, met inbegrip van, maar nie beperk nie tot, artikel 7(8)(a) van die Wet op Egskeiding, geag aan die lid toe te geval het op 13 September 2007, en moet betaal of oorgedra word ooreenkomstig paragrawe (a) en (b).” 15

Wysiging van artikel 1 van Wet 44 van 1958, soos gewysig deur artikel 1 van Wet 56 van 1973, artikel 1 van Wet 13 van 1974, artikel 1 van Wet 113 van 1976, artikel 1 van Wet 1 van 1978, artikel 1 van Wet 37 van 1984, artikel 1 van Wet 85 van 1991, artikel 3 van Wet 101 van 1992, artikel 1 van Wet 35 van 1995, artikel 105 van Wet 103 van 1996, artikel 6 van Wet 10 van 1998, artikel 81 van Wet 124 van 1998 en artikel 31 van Wet 22 van 2011 20

7. Artikel 1 van die Wet op Pos en Telekommunikasieverwante Aangeleenthede, 1958 (Wet No. 44 van 1958) (hierin die “Wet op Pos en Telekommunikasieverwante Aangeleenthede” genoem), word hierby gewysig— 25

(a) deur die volgende omskrywing na die omskrywing van “Direkteur-generaal” in te voeg:

“**gevestigde komponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;” 30

(b) deur die volgende omskrywings na die omskrywing van “hoofaktuaris” in te voeg:

“**Inkomstebelastingwet**’ die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962); 35

‘**lid se belang in die gevestigde komponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is;

‘**lid se belang in die spaarkomponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is; 40

‘**lid se belang in die uittreekomponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is;”;

(c) deur die volgende omskrywing na die omskrywing van “Minister” in te voeg:

“**nie-lid gade**’ dit wat aan ‘nie-lid eggenoot’ soos omskryf in artikel 1(1) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), toegeskryf is;” 45

(d) deur die omskrywing van “oordragdatum” deur die volgende omskrywing te vervang:

“**oordragdatum**’ ’n datum van oordrag in artikel 4(1) bedoel[.]; en”;

en 50

(e) deur die volgende omskrywing na die omskrywing van “opvolgermaatskappy” in te voeg:

“**pensioenbelang**’ met betrekking tot ’n hofbevel wat kragtens artikel 7(8)(a) van die Wet op Egskeiding toegestaan is, of ’n hofbevel gegee ten opsigte van die verdeling van bates van ’n huwelik ooreenkomstig die leerstellings van ’n godsdienst, in verband met ’n party wat ’n lid van ’n fonds is, daardie lid se individuele rekening of minimum individuele reserwe, na gelang van die geval, ingevolge die reëls van die fonds vasgestel, op die datum van die hofbevel;” 55

(f) deur die volgende omskrywings na die omskrywing van “regulasie” in te voeg: 60

“**transfer date**” means a date of transfer contemplated in section 4(1)[.]; and”; and
 (g) by the insertion after the definition of “transfer date” of the following definition:

“**vested component**” has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act.”. 5

Insertion of section 1A in Act 44 of 1958

8. The following section is hereby inserted in the Post and Telecommunications-related Matters Act after section 1: 10

“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 10B of Act 44 of 1958, as inserted by section 7 of Act 85 of 1991, as amended by section 8 of Act 101 of 1992 and as substituted by section 5 of Act 38 of 2013 15

9. The following section is hereby substituted for section 10B of the Post and Telecommunication-related Matters Act:

“Withdrawals and deductions from member’s pension benefits

10B. (1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, except in terms of a court order made in accordance with the provisions of section 26 or 40 of the Maintenance Act, 1998 (Act No. 99 of 1998), 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 or and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund concerned in its discretion: Provided that the pension fund concerned may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator for such dependant or dependants. 20 25 30 35

(2) Notwithstanding the provisions of subsection (1), the pension fund concerned may—

(a) permit a member to take a savings withdrawal benefit where there is a judgment contemplated in paragraph (c)(ii)(bb)(BB) or written admission of liability in favour of the employer that has not yet been executed: Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment; 40

- “**‘spaarkomponent’** dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;
- “**‘spaaronttrekkingsvoordeel’** dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is; 5
- “**‘uittreekomponent’** dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;”;
- en 10
- (g) deur die volgende omskrywing na die omskrywing van “voorgeskryf” in te voeg:
- “**‘Wet op Egskeiding’** die Wet op Egskeiding, 1979 (Wet No. 70 van 1979);”.

Invoeging van artikel 1A in Wet 44 van 1958 15

8. Die volgende artikel word hierby na artikel 1 in die Wet op Pos en Telekommunikasieverwante Aangeleenthede ingevoeg:

“Toepassing van Wet

1A. In die geval van ’n teenstrydigheid tussen die bepaling van hierdie Wet en die Wet op Egskeiding, geld die bepaling van hierdie Wet.” 20

Vervanging van artikel 10B van Wet 44 van 1958, soos ingevoeg deur artikel 7 van Wet 85 van 1991, soos gewysig deur artikel 8 van Wet 101 van 1992 en soos vervang deur artikel 5 van Wet 38 van 2013

9. Artikel 10B van die Wet op Pos en Telekommunikasieverwante Aangeleenthede word hierby deur die volgende artikel vervang: 25

“Onttrekkings en aftrekkings van lid se pensioenvoordele

10B. (1) Geen pensioen of enkelbedrag van ’n pensioenfonds in artikel 10 bedoel, of reg op sodanige voordeel, of reg ten opsigte van bydraes gemaak deur, of namens ’n lid, mag gesedeer, verpand of met verband beswaar, of op beslag gelê word of aan enige vorm van tenuitvoerlegging kragtens ’n vonnis of bevel van ’n geregshof onderwerp word nie, behalwe ingevolge ’n hofbevel wat ooreenkomstig die bepaling van artikel 26 of 40 van die Wet op Onderhoud, 1998 (Wet No. 99 van 1998), artikel 7(8)(a) van die Wet op Egskeiding of ’n hofbevel wat toegestaan is ten opsigte van die verdeling van bates van ’n huwelik volgens die leerstellings van ’n godsdienst of en in die geval waar ’n voordeeltrekker probeer om ’n voordeel of reg daarop oor te dra, te verpand of met verband te beswaar, kan betaling van die voordeel op eie diskresie deur die betrokke pensioenfonds teruggehou, opgeskort of heeltemal beëindig word: Met dien verstande dat die betrokke pensioenfonds, tydens sodanige tydperk soos die pensioenfonds kan bepaal, sodanige voordeel of enige voordeel uit hoofde van sodanige bydraes of deel daarvan kan betaal aan een of meer van die afhanklikes van die begunstigde of aan ’n kurator vir sodanige afhanklike of afhanklikes. 30 35 40

(2) Ondanks die bepaling van subartikel (1), kan die betrokke pensioenfonds— 45

(a) toelaat dat ’n lid ’n spaaronttrekkingsvoordeel neem waar daar ’n vonnis in paragraaf (c)(ii)(bb)(BB) beoog of skriftelike erkenning van aanspreeklikheid ten gunste van die werkgewer is, wat nog nie tenuitvoer gelê is nie: Met dien verstande dat die onttrekking nie sal meebring dat daar onvoldoende oorblywende fondse is om die lening of waarborg terug te betaal of aan die vonnis te voldoen nie; 50

- (b) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in subparagraph (ii)(bb)(BB) of paragraph (c) and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months pending the judgment by any court including a magistrate's court; 5
- (c) deduct any amount due by the member to the member's employer on the date of retirement or the date on which the member ceases to be a member of the pension fund concerned, in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) in respect of— 10
- (i) any amount due to that fund in respect of a loan granted by that fund in terms of its statutes to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such statutes; 15
- (ii) any amount due by a member to his employer in respect of— 15
- (aa) any amount for which the employer is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement, maintenance or repair of a dwelling for occupation by the member or a dependent of the member, and in respect of— 20
- (AA) the amount of the benefit to which a member becomes entitled in terms of the statutes of the pension fund concerned; 25
- (BB) in the case of a transfer of the member to another pension fund concerned, 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 guarantee; or 30
- (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 the membership on the date of default, if the 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; 35
- (bb) compensation including the legal costs recoverable from the member in a matter contemplated in this subparagraph in respect of any damage caused to the employer, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member and in respect of which— 45
- (AA) the member has in writing admitted liability to the employer; or
- (BB) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), 50
- from any benefit payable in respect of the member or a beneficiary in terms of the statutes of that fund, and pay that amount to the employer concerned; and 55

- (b) 'n spaaronttrekkingsvoordeel opskort waar die werkgewer nie 'n vonnis ingevolge subparagraaf (ii)(bb)(BB) van paragraaf (c) beoog, verkry het nie en die onttrekking sal meebring dat onvoldoende waarde sal oorbly om aan die hangende bevel te voldoen, indien dit toegestaan sou word, vir 'n tydperk van 12 maande hangende die vonnis deur enige hof, met inbegrip van 'n landdroshof; 5
- (c) enige bedrag aftrek wat die lid aan die lid se werkgewer verskuldig is op die datum van aftrede of die datum waarop die lid ophou om 'n lid van die betrokke pensioenfonds te wees, ooreenkomstig die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011), ten opsigte van— 10
- (i) enige bedrag aan daardie fonds verskuldig ten opsigte van 'n lening wat deur daardie fonds aan 'n lid of 'n begunstigde toegestaan is ingevolge die fonds se statute, uit enige voordeel waarop die lid of voordeeltrekker ingevolge sodanige statute geregtig is; 15
- (ii) enige bedrag wat deur 'n lid verskuldig is aan sy of haar werkgewer ten opsigte van—
- (aa) enige bedrag waarvoor die werkgewer aanspreeklik is ingevolge 'n waarborg wat toegestaan is ten opsigte van 'n lening wat deur 'n ander persoon aan die lid toegestaan is vir die aankoop van grond of 'n woning of die oprigting, verbouing, verbetering, onderhoud of herstel van 'n woning vir okkupasie deur die lid of 'n afhanklike van die lid, en ten opsigte van— 20
- (AA) die bedrag van die voordeel waarop 'n lid geregtig word ingevolge die statute van die betrokke pensioenfonds; 25
- (BB) in die geval van 'n oordrag van die lid aan 'n ander betrokke pensioenfonds, die bedrag van die voordeel wat die fonds aldus geregtig is om oor te plaas, as die raad van die oordraerfonds oortuig is dat dit nie andersins redelik moontlik is om die terugbetaling te beding of om die lening of waarborg oor te dra nie; of 30
- (CC) in die geval van wanbetaling op die terugbetaling van enige sodanige lening deur die betrokke lid in omstandighede waar sy of haar lidmaatskap van die fonds nie beëindig word nie, die bedrag van die voordeel wat die lid sou ontvang het by beëindiging van die lidmaatskap op die datum van wanbetaling, as die aftrekking slegs gedoen word as 'n laaste uitweg nadat die raad van die fonds oortuig is dat geen ander reëling vir die vereiste terugbetaling gemaak kan word nie; 35
- (bb) vergoeding, met inbegrip van die regskoste verhaalbaar van die lid in 'n aangeleentheid in hierdie subparagraaf beoog ten opsigte van enige skade wat vir die werkgewer veroorsaak is, as gevolg van enige diefstal, oneerlikheid, bedrog, wangedrag of nalatigheid deur die lid en ten opsigte waarvan— 40
- (AA) die lid skriftelik aanspreeklikheid aan die werkgewer erken het; of 45
- (BB) vonnis in enige hof, met inbegrip van 'n landdroshof, teen die lid gekry is, en sluit 'n vergoedingsbevel in wat ingevolge artikel 300 van die Strafproseswet, 1977 (Wet No. 51 van 1977), toegestaan is, 50
- uit enige voordeel betaalbaar ten opsigte van die lid of 'n voordeeltrekker ingevolge die statute van daardie fonds, en daardie bedrag aan die betrokke werkgewer betaal; en 55
- 60

- (cc) any other written agreement between the member and the employer in respect of a study bursary, training of the member or the military service obligations of the member, from any benefit payable to the member or a beneficiary in terms of the statutes of that fund, and pay such amount to the employer concerned; 5
- (iii) any amount which such fund or the employer has paid or will pay by an arrangement with, or on behalf of, a member or beneficiary in respect of—
- (aa) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998); 10
- (bb) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 2017 (Act No. 18 of 2017), 15
- from any benefit to which the member or beneficiary is entitled in terms of the statutes of that fund and pay such amount, if due, to such employer, medical scheme or insurer, as the case may be;
- (d) 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 20
- (e) 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). 25
- (3) In respect of a deduction referred to in subsection (1)(d), the pension fund concerned 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. 30
- (4) The pension fund concerned may not permit a member to take a savings withdrawal benefit where there is a maintenance order or a written notification from the maintenance investigating officer against the pension fund concerned in place, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the order or the written notification. 35
- (5) For the purposes of paragraph (c)(ii)(bb) and (cc) of subsection (2), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled upon 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.”. 40

Substitution of section 10F of Act 44 of 1958, as inserted by section 5 of Act 38 of 2013

10. The following section is hereby substituted for section 10F of the Post and Telecommunication-related Matters Act: 45

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

10F. (1) The pension fund concerned 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. 50

- (cc) enige ander skriftelike ooreenkoms tussen die lid en die werkgewer ten opsigte van 'n studiebeurs, opleiding van die lid of die militêre diensplig van die lid, uit enige voordeel wat aan die lid of 'n voordeeltrekker betaalbaar is ingevolge die statute van die fonds, en sodanige bedrag aan die betrokke werkgewer betaal; 5
- (iii) enige bedrag wat sodanige fonds of die werkgewer betaal het of sal betaal volgens 'n reëling met, of namens, 'n lid of voordeeltrekker ten opsigte van—
- (aa) die lid of voordeeltrekker se lidmaatskap van 'n mediese skema, geregistreer andersins as voorlopig ingevolge die Wet op Mediese Skemas, 1998 (Wet No. 131 van 1998); 10
- (bb) enige versekeringspremie deur sodanige lid of voordeeltrekker betaalbaar aan 'n versekeraar wat geregistreer is ingevolge die Versekeringswet, 2017 (Wet No. 18 van 2017), 15
- uit enige voordeel waarop die lid of begunstigde geregtig is ingevolge die statute van daardie fonds en sodanige bedrag, indien verskuldig, aan sodanige werkgewer, mediese skema of versekeraar, na gelang van die geval, betaal; 20
- (d) enige bedrag aftrek wat ingevolge 'n onderhoudsbevel soos omgeskryf in artikel 1 van die Wet op Onderhoud, 1998 (Wet No. 99 van 1998), betaalbaar is; of
- (e) enige bedrag aftrek wat as onderhoud betaalbaar is ingevolge 'n tussentydse onderhoudsbevel wat deur die hof toegestaan is ingevolge reël 43 van die Hooggereregshofreëls of reël 58 van die Landdroshofreëls, wat kragtens artikel 6 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985), gemaak is. 25
- (3) Ten opsigte van 'n aftrekking in subartikel (1)(d) bedoel, moet die betrokke pensioenfonds die onderhoud, soos deur die onderhoudsbevel gelas, as 'n enkelbedrag betaal ten opsigte van agterstallige onderhoud of toekomstige onderhoud uit die voordeel waarop die lid geregtig word by beëindiging van sy of haar lidmaatskap van die fonds of uittrede uit die fonds. 30
- (4) Die betrokke pensioenfonds mag nie 'n lid toelaat om 'n spaaronttrekkingsvoordeel te neem waar daar 'n onderhoudsbevel of 'n skriftelike kennisgewing van die onderhoudondersoekbeampte teen die betrokke pensioenfonds in plek is nie, tensy betrokke pensioenfonds oortuig is dat die onttrekking nie sal meebring dat onvoldoende waarde oorbly om aan die bevel of skriftelike kennisgewing te voldoen nie. 35
- (5) By die toepassing van paragraaf (c)(ii)(bb) en (cc) van subartikel (2), word die bedrae wat aldus afgetrek word, geag 'n voordeel te wees waarop die lid geregtig word by beëindiging van sy of haar lidmaatskap van die fonds vir redes anders as as gevolg van uittrede of die dood wat voorkom op die datum van die oordrag of die wanbetaling.”. 40 45

Vervanging van artikel 10F van Wet 44 van 1958, soos ingevoeg deur artikel 5 van Wet 38 van 2013

10. Artikel 10F van die Wet op Pos en Telekommunikasieverwante Aangeleenthede word hierby deur die volgende artikel vervang:

“Betaling van 'n pensioenbelang by egskeiding of ontbinding van huwelik ooreenkomstig leerstellings van godsdiens 50

10F. (1) Die betrokke pensioenfonds moet 'n lid se pensioenbelang verminder met enige bedrag wat toegewys is van die lid se pensioenbelang aan die lid se voormalige gade ingevolge 'n egskeidingsbevel toegestaan kragtens artikel 7(8)(a) van die Wet op Egskeiding of 'n hofbevel toegestaan ten opsigte van die verdeling van bates van 'n huwelik ooreenkomstig die leerstellings van 'n godsdiens. 55

(2) A fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse with proof that—

- (a) a divorce has been instituted, as defined in the Divorce Act;
- (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 finalisation of the divorce, or until a court order is issued.

(4)(a) Subject to paragraph (k), 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.

(b) The amount of the member's pension interest in the pension fund concerned must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the pension fund concerned 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.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the statutes by any amount of the member's pension interest which, in a previous divorce or a previous court order granted in respect of the division of assets of a marriage according to the tenets of a religion, was paid over or awarded to another party.

(d) The amount of any pension benefit that is subsequently payable to the member in terms of the statutes must be reduced by the equivalent of the amount of the share of the pension interest of the member which was—

- (i) deemed to accrue to the member as a benefit in advance of the benefit ordinarily payable in terms of the statutes; and
- (ii) assigned to the member's former spouse, less the amount of any additional voluntary contributions, if any, paid by the member to the pension fund concerned from time to time, and accumulated over the period from the date on which payment to the former spouse or transfer to the approved retirement fund as referred to in paragraph (e)(ii) took place to the date on which the member first became entitled to a part or the whole of the balance of the benefit, with interest as the pension fund concerned from time to time deems appropriate.

(e) The pension fund concerned 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.

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

- (i) inform the pension fund concerned 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 pension fund concerned with the details that are necessary to effect the payment; or

- (2) 'n Fonds mag nie, sonder die toestemming van 'n nie-lid gade, 'n lening of waarborg toestaan of toelaat dat 'n lid 'n spaar-onttrekkingsvoordeel neem nie as die fonds skriftelike kennisgewing van die lid of nie-lid gade ontvang het met bewyse dat—
- (a) 'n egskeiding ingestel is, soos in die Wet op Egskeiding omskryf; 5
- (b) aansoek om 'n hofbevel gedoen is ten opsigte van die verdeling van die bates van huwelik ooreenkomstig die leerstellings van enige godsdien. 5
- (3) Die verbod ingevolge subartikel (2) is van toepassing totdat die egskeiding afgehandel is, of totdat 'n hofbevel uitgereik word. 10
- (4)(a) Behoudens paragraaf (k), by die toepassing van artikel 7(8)(a) van die Wet op Egskeiding of ingevolge 'n hofbevel toegestaan ten opsigte van die leerstellings van 'n godsdien, word die gedeelte van 'n lid se pensioenbelang wat aan die lid se voormalige gade toegewys is, geag aan die lid toe te val op die datum waarop die egskeidingsbevel of hofbevel toegestaan word. 15
- (b) Die bedrag van die lid se pensioenbelang in die betrokke pensioenfondse, moet bepaal word en die bedrag van die lid se pensioenbelang wat aan die voormalige gade toegewys word, moet deur die betrokke pensioenfondse bereken word ooreenkomstig die statute met ingang van die datum van die hofbevel of die datum van die hofbevel wat toegestaan is ten opsigte van die verdeling van bates van 'n huwelik volgens die leerstellings van 'n godsdien. 20
- (c) Voordat die bedrag vasgestel word van die lid se pensioenbelang wat aan die voormalige gade toegewys is, moet die bedrag van die lid se pensioenbelang in paragraaf (b) bedoel, eers verminder word ooreenkomstig die statute deur enige bedrag van die lid se pensioenbelang wat, in 'n vorige egskeiding of 'n vorige hofbevel wat toegestaan is ten opsigte van die verdeling van bates van 'n huwelik ooreenkomstig die leerstellings van 'n godsdien, aan 'n ander persoon of party oorbetaal of toegeken is. 25
- (d) Die bedrag van enige pensioenvoordeel wat daarna aan die lid betaalbaar is ingevolge die statute, moet verminder word met die ekwivalent van die bedrag van die deel van die pensioenbelang van die lid wat— 35
- (i) geag word aan die lid toe te val voor die voordeel wat gewoonlik betaalbaar is ingevolge die statute; en
- (ii) aan die lid se voormalige gade toegewys is, minus die bedrag van enige bykomende vrywillige bydraes, indien enige, van tyd tot tyd deur die lid aan die betrokke pensioenfondse betaal, en opgeloop oor die tydperk vanaf die datum waarop betaling aan die voormalige gade of oordrag aan die goedgekeurde aftreefondse soos in paragraaf (e)(ii) bedoel, plaasgevind het, tot die datum waarop die lid die eerste keer geregtig geword het op 'n deel of die geheel van die saldo van die voordeel, met rente soos die betrokke pensioenfondse van tyd tot tyd gepas ag. 40
- (e) Die betrokke pensioenfondse moet, binne 45 dae sedert die indiening van die hofbevel deur die voormalige gade van 'n lid, versoek dat die voormalige gade kies of die bedrag wat afgetrek moet word— 45
- (i) regstreeks aan die voormalige gade betaal moet word; of 50
- (ii) namens die voormalige gade na 'n goedgekeurde aftreefondse oorgedra moet word.
- (f) Die voormalige gade moet, binne 120 dae nadat hy of sy versoek is om 'n keuse te maak—
- (i) die betrokke pensioenfondse inlig van die wyse waarop die bedrag in paragraaf (e) bedoel, mee gehandel moet word; en 55
- (ii) indien die voormalige gade kies dat die bedrag—
- (aa) regstreeks aan die voormalige gade betaal moet word, die besonderhede wat nodig is om die betaling te maak, aan die pensioenfondse voorsien; of 60

(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.

(g) The pension fund concerned must pay or transfer the amount in the circumstances contemplated in—

- (i) paragraph (f)(ii)(aa) within 30 days; or
 - (ii) paragraph (f)(ii)(bb) 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.

(h) 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.

(i) Despite paragraph (h), 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.

(j) A former spouse—

- (i) is not a member or beneficiary in relation to the pension fund concerned; and
- (ii) is entitled to the accrual of pension fund concerned return from the date of deduction until payment or transfer of the deduction contemplated in this subsection.

(k) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce, or 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(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, 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 (j)."

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

11. 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 substitution for the definition of "dependent pensioner" of the following definition:

"**'dependent pensioner'**, in relation to **[the Transport Pension Fund]** a designated retirement fund, means a person who is entitled to a pension paid by that fund as a result of the membership of that fund of a deceased member or a deceased pensioner;"

- (b) by the insertion after the definition of "dependent pensioner" of the following definition:

"**'designated retirement fund'** means any of the Transport Pension Fund, the Transnet Retirement Fund and the Transnet Second Defined Benefit Fund and any other pension fund established in terms of section 14A of this Act;"

- (c) by the insertion after the definition of "designated retirement fund" of the following definition:

"**'Divorce Act'** means the Divorce Act, 1979 (Act No. 70 of 1979);

- (bb) namens hom of haar na 'n goedgekeurde pensioenfonds oorgeplaas moet word, die besonderhede van daardie goedgekeurde aftreefonds aan die betrokke pensioenfonds verstrek.
- (g) Die betrokke pensioenfonds moet die bedrag in die omstandighede beoog in— 5
- (i) paragraaf (f)(ii)(aa) binne 30 dae; of
- (ii) paragraaf (f)(ii)(bb) binne 60 dae,
- betaal of oorplaas ooreenkomstig die voormalige gade se keuse, by gebreke waarvan rente op daardie bedrag betaalbaar word soos in die statute bepaal. 10
- (h) Waar die voormalige gade nie binne die tydperk in paragraaf (f) bedoel 'n keuse maak nie of nie die goedgekeurde aftreefonds waarheen die bedrag oorbetaal moet word, identifiseer nie, moet die betrokke pensioenfonds die bedrag regstreeks aan die voormalige gade oorbetaal binne 30 dae sedert die verstryking van die daardie tydperk, by gebreke waarvan rente op daardie bedrag betaalbaar word teen 'n koers in die statute vasgestel. 15
- (i) Ondanks paragraaf (h), waar die betrokke pensioenfonds nie redelikerwys kan vasstel hoe die betaling aan die voormalige gade gedoen moet word nie, moet die betrokke pensioenfonds die bedrag plus rente soos in die statute van die betrokke pensioenfonds bepaal, behou totdat die besonderhede van die wyse waarop die betaling moet geskied, aan die betrokke pensioenfonds beskikbaar gestel word deur die lid, die voormalige gade of enige ander persoon wat die betrokke pensioenfonds oortuig is die nodige gesag en kapasiteit het om die betrokke pensioenfonds in daardie opsig opdrag te gee. 20
- (j) 'n Voormalige gade— 25
- (i) is nie 'n lid of voordeeltrekker ten opsigte van die betrokke pensioenfonds nie; en
- (ii) is geregtig op die opgelope opbrengs van die betrokke pensioenfonds vanaf die datum van die aftrekking tot betaling of oordrag van die aftrekking in hierdie subartikel beoog. 30
- (k) Enige gedeelte van 'n lid se pensioenbelang wat ingevolge 'n egskedingsbevel aan 'n voormalige gade toegewys is, of wat voor die inwerkingstelling van hierdie subartikel toegestaan is, moet, by die toepassing van enige wet anders as die Inkomstebelastingwet met inbegrip van, maar nie beperk nie tot, artikel 7(8)(a) van die Wet op Egskeiding of 'n hofbevel toegestaan ten opsigte van die verdeling van bates van 'n huwelik ooreenkomstig die leerstellings van 'n godsdiens, geag word aan die lid toegeval het op die datum van inwerkingstelling van hierdie artikel, en moet betaal of oorgeplaas word ooreenkomstig paragrawe (a) tot (j).” 35
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Wysiging van artikel 1 van Wet 62 van 1990, soos gewysig deur artikel 39 van Wet 52 van 1991 en artikel 1 van Wet 41 van 2000

11. Artikel 1 van die Transnet-Pensioenfondswet, 1990 (Wet No. 62 van 1990) (hierna die Transnet-Pensioenfondswet genoem), word hierby gewysig— 45
- (a) deur die volgende omskrywing voor die omskrywing van “afhanklike gepensioeneerde” in te voeg: 45
- “‘aangewese aftreefonds’ enige een van die Vervoer-pensioenfonds, die Transnet-aftreefonds en die Transnet Tweede Vastevoordeelfonds en enige ander pensioenfonds wat ingevolge artikel 14A van hierdie Wet gestig is;” 50
- (b) deur die omskrywing van “afhanklike gepensioeneerde” deur die volgende omskrywing te vervang: 55
- “‘afhanklike gepensioeneerde’, met betrekking tot [**die Vervoer-pensioenfonds**] ’n aangewese uitreefonds, ’n persoon wat geregtig is op ’n pensioen betaal deur daardie fonds as gevolg van die lidmaatskap van ’n gestorwe lid of gestorwe gepensioeneerde van daardie fonds;”;
- (c) deur die omskrywing van “filiaal” deur die volgende omskrywing te vervang: 60
- “‘filiaal’ ’n filiaal beoog in artikel [1(3)(a)] 3 van die Maatskappywet, [1973 (Wet No. 61 van 1973)] 2008 (Wet No. 71 van 2008);”;

- (d) by the insertion after the definition of “employer” of the following definition:
 “**Financial Sector Conduct Authority**’ means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);”;
- (e) by the insertion after the definition of “general rules” of the following definitions: 5
 “**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; 10
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;”;
- (f) by the substitution for the definition of “pensioner” of the following definition: 15
 “**pensioner**’, in relation to [**the Transport Pension Fund**] a designated retirement fund, means a person who is entitled to a pension paid by that fund resulting from his or her membership of that fund;”;
- (g) by the insertion after the definition of “pensioner” of the following definition: 20
 “**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 individual account or minimum individual reserve, as the case may be, determined in terms of the rules of that fund, on the date of the court order;”;
- (h) by the insertion after the definition of “principal employer” of the following definition: 30
 “**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act;”;
- (i) by the insertion after the definition of “Rules” of the following definitions: 35
 “**savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* to paragraph 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;”
- (j) by the substitution for the definition of “subsidiary” of the following definition: 40
 “**subsidiary**’ means a subsidiary contemplated in section [1(3)(a)] 3 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;
- (k) by the substitution for the definition of “Transnet” of the following definition: 45
 “**Transnet**’ means Transnet SOC Limited, formed and incorporated in terms of section 2 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);”
- (l) by the substitution for the definition of “valuator” of the following definitions: 50
 “**valuator**’ means an actuary approved by the [**Registrar of Pension Funds**] Financial Sector Conduct Authority 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

- (d) deur die volgende omskrywing na die omskrywing van “filiaal” in te voeg:
 “**Gedragsoowerheid vir die Finansiële Sektor**’ die Gedragsoowerheid vir die Finansiële Sektor gestig ingevolge artikel 56 van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017);”;
- (e) deur die omskrywing van “gepensioneerde” deur die volgende omskrywing te vervang:
 “**gepensioneerde**’ met betrekking tot [die Vervoer-pensioenfonds] ’n aangewese aftreefonds, ’n persoon wat geregtig is op ’n pensioen betaal deur daardie fonds wat voortspruit uit sy of haar lidmaatskap van daardie fonds;”;
- (f) deur die volgende omskrywing na die omskrywing van “gepensioneerde” in te voeg:
 “**gevestigde komponent**’ soos omskryf in artikel 1(1) van die Inkomstebelastingwet, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;”;
- (g) deur die volgende omskrywings na die omskrywing van “hoofwerkgever” in te voeg:
 “**Inkomstebelastingwet**’ die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962);”;
 “**lid se belang in die gevestigde komponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is;
 “**lid se belang in die spaarkomponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is;
 “**lid se belang in die uittrekkomponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is;”;
- (h) deur die volgende omskrywing na die omskrywing van “Nuwe Fonds” in te voeg:
 “**pensioenbelang**’, met betrekking tot ’n hofbevel kragtens artikel 7(8)(a) van die Wet op Egskeiding toegestaan of ’n hofbevel ten opsigte van die verdeling van die bates van ’n huwelik ooreenkomstig die leerstellings van ’n godsdienst gegee, met betrekking tot ’n party wat ’n lid van ’n fonds is, daardie lid se individuele rekening of minimum individuele reserwe, na gelang van die geval, ingevolge die reëls van daardie fonds bepaal, met ingang van die datum van die hofbevel;”;
- (i) deur die volgende omskrywings na die omskrywing van “Pensioenfonds” in te voeg:
 “**spaarkomponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;
 “**spaaronttrekkingsvoordeel**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is;”;
- (j) deur die omskrywing van “Transnet” deur die volgende omskrywing te vervang:
 “**Transnet [Beperk]**’ Transnet MIS Beperk, opgerig en ingelyf ingevolge artikel 2 van die Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste, 1989 (Wet No. 9 van 1989);”;
- (k) deur die volgende omskrywing na die omskrywing van “Transnet Tweede Vastevoordeelfonds” in te voeg:
 “**uittrekkomponent**’ dit wat in artikel 1(1) van die Inkomstebelastingwet daaraan toegeskryf is, behoudens die toepaslike voorbehoudsbepalings by paragraaf 6B van die Tweede Bylae by die Inkomstebelastingwet;”;
- (l) deur die omskrywing van “waardeerder” deur die volgende omskrywing te vervang:
 “**waardeerder**’ ’n aktuaris wat deur die [Registrateur van Pensioenfondse] Gedragsoowerheid vir Pensioenfondse beoog in die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), goedgekeur is as ’n waardeerder om aftreefondse te waardeer en ingevolge artikel 6(1) aangestel is;”;

‘vested component’ has the meaning as defined in section 1(1) of the Income Tax Act, subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act;”.

Insertion of section 1A in Act 62 of 1990

12. The following section is hereby inserted in the Transnet Pension Fund Act after section 1: 5

“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.”.

Amendment of section 6 of Act 62 of 1990, as amended by section 3 of Act 41 of 2000 and section 7 of Act 6 of 2007 10

13. Section 6 of the Transnet Pension Fund Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) the **[Registrar of Pension Funds contemplated in section 3 of the Pension Funds Act, 1956]** Financial Sector Conduct Authority; and” 15

Substitution of section 7 of Act 62 of 1990, as substituted by section 8 of Act 6 of 2007

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

“Withdrawals and deductions from member’s pension benefits 20

7. (1)(a) Subject to this Act and any guarantee, suretyship or pledge in accordance with the rules of the designated retirement fund, in each case as contemplated by section 10A of this Act, no benefit provided for in the rules of the designated retirement fund including an annuity purchased or to be purchased by the designated retirement fund from an insurer for a member, or right to such a benefit, or right in respect of contributions made by a member or on his or her behalf, shall, subject to the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011), 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(8)(a) of the Divorce Act, a court order granted in respect of the division of assets of a marriage according to the tenets of a religion or an interim maintenance order granted in terms of rule 43 of the High Court rules or rule 58 of the Magistrates’ Court rules, to be attached or subjected to any form of execution under a judgment or order of a court of law. 25 30 35

(b) In the event of the member or 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 designated retirement fund so determines, provided that the designated retirement 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 dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may direct. 40 45

(2) Notwithstanding the provisions of subsection (1), the designated retirement fund may—

(m) deur die volgende omskrywing na die omskrywing van “werkgewer” in te voeg:

“**Wet op Egskeiding**’ die Wet op Egskeiding, 1979 (Wet No. 70 van 1979);”.

Invoeging van artikel 1A in Wet 62 van 1990

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12. Die volgende artikel word hierby na artikel 1 in die Transnet-Pensioenfondswet ingevoeg:

“Toepassing van Wet

1A. In die geval van ’n teenstrydigheid tussen die bepalings van hierdie Wet en die Wet op Egskeiding, geld die bepalings van hierdie Wet.”

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Wysiging van artikel 6 van Wet 62 van 1990, soos gewysig deur artikel 3 van Wet 41 van 2000 en artikel 7 van Wet 6 van 2007

13. Artikel 6 van die Transnet-Pensioenfondswet, word hierby gewysig deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:

“(c) die [Registrateur van Pensioenfondse beoog in artikel 3 van die Wet op Pensioenfondse, 1956] Gedragsowerheid vir die Finansiële Sektor; en”.

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Vervanging van artikel 7 van Wet 62 van 1990, soos vervang deur artikel 8 van Wet 6 van 2007

14. Artikel 7 van die Transnet-Pensioenfondswet word hierby deur die volgende artikel vervang:

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“Onttrekkings en aftrekkings van lid se pensioenvoordele

7. (1)(a) Onderhewig aan hierdie Wet en enige waarborg, borgstelling of pand ooreenkomstig die reëls van die aangewese aftreefonds, in elke geval soos beoog deur artikel 10A van hierdie Wet, is geen voordeel waarvoor voorsiening gemaak word in die reëls van die aangewese aftreefonds, met inbegrip van ’n annuïteit wat deur die aangewese aftreefonds aangekoop is of aangekoop gaan word van ’n versekeraar vir ’n lid, of reg op so ’n voordeel, of reg ten opsigte van bydraes wat deur ’n lid of namens daardie lid gemaak is, behoudens die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011), in staat om opgedra of oorgedra of andersins gesedeer te word, of om verpand of met verband beswaar te word, of vatbaar te wees, met uitsondering van ’n hofbevel ingevolge die Wet op Onderhoud, 1998 (Wet No. 99 van 1998), artikel 7(8)(a) van die Wet op Egskeiding, ’n hofbevel toegestaan ten opsigte van die verdeling van bates van ’n huwelik volgens die leerstellings van ’n godsdienst of ’n tussentydse onderhoudsbevel toegestaan ingevolge reël 43 van die Hooggeregshofreëls of reël 58 van die Landdroshofreëls, waarop ingevolge ’n vonnis of bevel van ’n geregshof beslag gelê is, of wat aan enige vorm van tenuitvoerlegging onderwerp moet word.

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(b) Indien die lid of begunstigde probeer om ’n voordeel of reg toe te wys, oor te dra of andersins te sedgeer of om ’n voordeel of reg te verpand of met verband te beswaar, kan betaling daarvan weerhou, opgeskort of heeltemal gestaak word, indien die aangewese aftreefonds aldus bepaal, met dien verstande dat die aangewese aftreefonds kan betaling maak van sodanige voordeel of van enige voordeel ingevolge sodanige bydraes, of deel daarvan, aan een of meer van die afhanklikes van die lid of begunstigde of aan ’n voog of trustee tot voordeel van sodanige afhanklike of afhanklikes gedurende die tydperk wat sodanige aftreefonds mag voorskryf.

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(2) Ongeag die bepalings van subartikel (1), kan die aangewese aftreefonds—

- (a) permit a member to take a savings withdrawal benefit where a loan, suretyship or guarantee has been furnished by the designated retirement fund or another entity referred to in section 10 or there is a judgment contemplated in section 9(1)(d)(i) or written admission of liability, in favour of the employer that has not yet been executed: Provided that the withdrawal may not result in there being insufficient funds remaining to repay the loan, pay the amount of the suretyship or guarantee or comply with the judgment; 5
- (b) deduct from the member's interest in the designated retirement fund, the member's account or the member's individual account, as the case may be, any amount payable by the member in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); or 10
- (c) deduct from the member's interest in the designated retirement fund, the member's account or the member's individual account, as the case may be, any amount payable by the member 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). 15 20
- (3) In respect of a deduction referred to in subsection (2)(b) or (c), the designated retirement 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 designated retirement fund or retirement from the designated retirement fund. 25
- (4) A designated retirement fund may not permit a member to take a savings withdrawal benefit where there is a maintenance order or a written notification from the maintenance investigating officer against the designated retirement fund in place, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the order or the written notification. 30
- (5) The rules of a designated retirement fund may provide for the designated retirement fund to provide savings withdrawal benefits to members of the designated retirement fund who are not pensioners. 35

Insertion of section 7A in Act 62 of 1990

15. 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 40

7A. (1) The designated retirement fund must deduct from the member's interest in the designated retirement fund, the member's account or the member's individual account, as the case may be, any portion of the member's pension interest assigned 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. 45

(2) A designated retirement fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the designated retirement fund received written notification from the member or non-member spouse with proof that— 50

- (a) a divorce has been instituted, as defined in the Divorce Act; or 55
- (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 finalisation of the divorce or until a court order is issued.

- (a) 'n lid toelaat om 'n spaaronttrekkingsvoordeel te neem waar 'n lening, borgstelling of waarborg verskaf is deur die aangewese aftreefonds of 'n ander entiteit waarna in artikel 10 verwys word, of daar 'n vonnis in artikel 9(1)(d)(i) beoog is, of skriftelike erkenning van aanspreeklikheid, ten gunste van die werkgewer, wat nog nie tenuitvoer gelê is nie: Met dien verstande dat die onttrekking nie daartoe mag lei dat daar onvoldoende fondse oorbly om die lening terug te betaal, die bedrag van die borg of waarborg te betaal of aan die vonnis te voldoen nie; 5
- (b) enige bedrag aftrek van die lid se belang in die aangewese aftreefonds, die lid se rekening of die lid se individuele rekening, na gelang van die geval, wat deur die lid betaalbaar is lid ingevolge 'n onderhoudsbevel soos omskryf in artikel 1 van die Onderhoudswet, 1998 (Wet No. 99 van 1998); of 10
- (c) enige bedrag aftrek van die lid se belang in die aangewese aftreefonds, die lid se rekening of die lid se individuele rekening, na gelang van die geval, wat deur die lid betaalbaar is as onderhoud ingevolge 'n tussentydse onderhoudsbevel wat deur die hof toegestaan is ingevolge reël 43 van die Hooggeregshofreëls of reël 58 van die Landdroshofreëls, gemaak kragtens artikel 6 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985). 15
- (3) Ten opsigte van 'n aftrekking bedoel in subartikel (2)(b) of (c), moet die aangewese aftreefonds die onderhoud, soos voorgeskryf deur die onderhoudsbevel, as 'n enkelbedrag betaal ten opsigte van agterstallige onderhoud of toekomstige onderhoud vanuit die voordeel waarop die lid geregtig word by beëindiging van sy of haar lidmaatskap van die aangewese aftreefonds of aftrede uit die aangewese aftreefonds. 20
- (4) 'n Aangewese aftreefonds mag nie 'n lid toelaat om 'n spaaronttrekkingsvoordeel te neem waar daar 'n onderhoudsbevel of 'n skriftelike kennisgewing van die onderhoudsbeampte teen die aangewese aftreefonds in plek is nie, tensy die aangewese aftreefonds oortuig is dat die onttrekking nie sal meebring dat onvoldoende waarde oorbly om aan die bevel of die skriftelike kennisgewing te voldoen nie. 25
- (5) Die reëls van 'n aangewese aftreefonds kan daarvoor voorsiening maak dat die aangewese aftreefonds spaaronttrekkingsvoordele verskaf aan lede van die aangewese aftreefonds wat nie gepensioeneerdes is nie.”. 30
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Invoeging van artikel 7A in Wet 62 van 1990

15. Die volgende artikel word hierby na artikel 7 in die Transnet-Pensioenfondswet ingevoeg:

“Betaling van pensioenbelang by egskedding of ontbinding van huwelik ooreenkomstig leerstellings van godsdien 40

7A. (1) Die aangewese pensioenfonds moet van die lid se belang in die aangewese pensioenfonds, die lid se rekening of die lid se individuele rekening, na gelang van die geval, enige gedeelte aftrek van die lid se pensioenbelang wat aan die lid se voormalige gade toegewys is ingevolge 'n egskeddingsbevel wat kragtens artikel 7(8)(a) van die Wet op Egskedding toegestaan is, of 'n hofbevel wat ten opsigte van die verdeling van bates van 'n huwelik ooreenkomstig die leerstellings van 'n godsdien toegestaan is. 45

(2) 'n Aangewese aftreefonds mag nie, sonder die toestemming van 'n nie-lid gade, 'n lening of waarborg toestaan of toelaat dat 'n lid 'n spaaronttrekkingsvoordeel neem nie as die aangewese aftreefonds skriftelike kennisgewing van die lid of nie-lid gade ontvang het met bewyse dat— 50

(a) 'n egskedding ingestel is, soos in die Wet op Egskedding omskryf; 55

(b) aansoek om 'n hofbevel gedoen is ten opsigte van die verdeling van die bates van 'n huwelik ooreenkomstig die leerstellings van enige godsdien.

(3) Die verbod ingevolge subartikel (2) is van toepassing totdat die egskedding afgehandel is, of totdat 'n hofbevel uitgereik word.

(4) Subject to subsection (6)(g), 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 designated retirement 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 designated retirement fund in accordance with the rules of the designated retirement fund, 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 designated retirement fund must, within 45 days of the submission of the court order by the former spouse of a member to the designated retirement fund, 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 pension 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 designated retirement fund of the manner in which the amount referred to in paragraph (a) must be dealt with; and

(iii) if the former spouse chooses that the amount must be—

- (aa) paid to the former spouse directly, provide the designated retirement 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 designated retirement fund with the details of that approved pension fund;

(c) The designated retirement fund must pay or transfer the amount in the circumstances contemplated in—

- (i) paragraph (b)(ii)(aa) within 30 days; or
- (ii) paragraph (b)(ii)(bb) 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 rules of the designated retirement fund.

(d) In the event that the former spouse fails to make a choice or identify the approved pension fund to which the amount must be transferred within the period referred to in paragraph (b), the designated retirement fund 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 rules of the designated retirement fund.

(e) Despite paragraph (d), in the event that the designated retirement fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the designated retirement fund must retain the amount plus interest as determined in the rules of the designated retirement fund, until such time as details of the manner in which that payment must be effected, is made available to the designated retirement fund by the member, the former spouse or any other person whom the designated retirement fund concerned is satisfied has the necessary authority and capacity to instruct the designated retirement fund in that respect.

(f) A former spouse—

- (i) is not a member or beneficiary in relation to the designated retirement fund; and
- (ii) is entitled to the accrual of fund return from the date of the deduction until payment or transfer of the deduction contemplated in subsection (1).

(g) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a court order granted in respect of the division of assets of a marriage according to the tenets of a religion granted prior to the enactment of this subsection must, for purposes of any

- (4) Behoudens subartikel (6)(g), by die toepassing van artikel 7(8)(a) van die Wet op Egskeiding of ingevolge 'n hofbevel toegestaan ten opsigte van die verdeling van die bates van 'n huwelik ooreenkomstig die leerstellings van 'n godsdienst, word die gedeelte van 'n lid se pensioenbelang wat aan die lid se voormalige gade toegewys is, geag aan die lid toe te val op die datum waarop die egskeidingsbevel of hofbevel toegestaan word. 5
- (5) Die bedrag van die lid se pensioenbelang in die aangewese pensioenfonds, moet bepaal word en die bedrag van die lid se pensioenbelang wat aan die voormalige gade toegewys word, moet deur die betrokke pensioenfonds bereken word ooreenkomstig die reëls van die aangewese aftreefonds, met ingang van die datum van die hofbevel of die datum van die hofbevel wat toegestaan is ten opsigte van die verdeling van bates van 'n huwelik volgens die leerstellings van 'n godsdienst. 10
- (6)(a) Die aangewese pensioenfonds moet, binne 45 dae sedert die voorlegging van die hofbevel aan die aangewese pensioenfonds deur die voormalige gade van 'n lid, versoek dat die voormalige gade kies of die bedrag wat afgetrek moet word— 15
- (i) regstreeks aan die voormalige gade betaal moet word; of
- (ii) namens die voormalige gade na 'n goedgekeurde aftreefonds oorgedra moet word. 20
- (b) Die voormalige gade moet, binne 120 dae nadat hy of sy versoek is om 'n keuse te maak—
- (i) die aangewese pensioenfonds inlig van die wyse waarop met die bedrag in paragraaf (a) bedoel, gehandel moet word; en
- (ii) indien die voormalige gade kies dat die bedrag— 25
- (aa) regstreeks aan die voormalige gade betaal moet word, die besonderhede wat nodig is om die betaling te maak, aan die aangewese pensioenfonds verstrekk; of
- (bb) namens hom of haar na 'n goedgekeurde pensioenfonds oorgeplaas moet word, die besonderhede van daardie goedgekeurde aftreefonds aan die aangewese pensioenfonds verstrekk; 30
- (c) Die aangewese pensioenfonds moet die bedrag in die omstandighede beoog in—
- (i) paragraaf (b)(ii)(aa) binne 30 dae; of
- (ii) paragraaf (b)(iii)(bb) binne 60 dae, 35
- betaal of oorplaas ooreenkomstig die voormalige gade se keuse, by gebreke waarvan rente op daardie bedrag betaalbaar word soos in die reëls van die aangewese aftreefonds bepaal.
- (d) Indien die voormalige gade nie binne die tydperk in paragraaf (b) bedoel 'n keuse maak nie of nie die goedgekeurde aftreefonds waarheen die bedrag oorbetal moet word, identifiseer nie, moet die aangewese aftreefonds die bedrag regstreeks aan die voormalige gade oorbetal binne 30 dae sedert die verstryking van die daardie tydperk, by gebreke waarvan rente op daardie bedrag betaalbaar word teen 'n koers wat in die reëls van die aangewese aftreefonds bepaal is. 40
- (e) Ongeag paragraaf (d), waar die aangewese aftreefonds nie redelik kan vasstel hoe die betaling aan die voormalige gade gedoen moet word nie, moet die aangewese aftreefonds die bedrag plus rente soos in die reëls van die aangewese aftreefonds bepaal, behou totdat die besonderhede van die wyse waarop die betaling moet geskied, aan die aangewese aftreefonds beskikbaar gestel word deur die lid, die voormalige gade of enige ander persoon wat die aangewese aftreefonds oortuig is die nodige gesag en kapasiteit het om die aangewese aftreefonds in daardie opsig opdrag te gee. 50
- (f) 'n Voormalige gade— 55
- (i) is nie 'n lid of begunstigde van die aangewese fonds nie; en
- (ii) is geregtig op die opgeloopte fondsopbrengs vanaf die datum van die aftrekking tot en met betaling of oordrag van die aftrekking in subartikel (1) beoog.
- (g) Enige gedeelte van 'n lid se pensioenbelang wat ingevolge 'n egskeidingsbevel aan 'n voormalige gade toegewys is, of wat voor die inwerkingstelling van hierdie subartikel toegestaan is, moet, by die toepassing van enige wet anders as die Inkomstebelastingwet met inbegrip 60

law other than the Income Tax Act, including, but not limited to, section 7(8)(a) of the Divorce Act, 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).”.

Substitution of section 9 of Act 62 of 1990, as substituted by section 10 of Act 6 of 2007 5

16. The following section is hereby substituted for section 9 of the Transnet Pension Fund Act:

“Recovery of certain debts owing to the employer from benefits payable to members on their dismissal or retirement and in certain other circumstances 10

- 9.** (1) If a member of a designated retirement fund—
- (a) is dismissed on account of fraud, misconduct, theft or dishonesty;
 - (b) resigns or absconds in order to avoid dismissal on account of fraud, misconduct, theft or dishonesty, or in anticipation of a disciplinary or a criminal charge involving fraud or dishonesty being laid against him or her: Provided that the onus of proving that a member resigned or absconded for any reason mentioned in this paragraph shall be on the employer;
 - (c) leaves the employ of an employer for any reason, or dies, before any loan or advance, other than a loan referred to in section 10 or 10A of this Act, made to him or her at his or her specific written request by an employer or from the Benevolent Fund referred to in section 23 of the South African Transport Services Conditions of Service Act, 1988 (Act No. 41 of 1988), has been repaid in full; or
 - (d) is liable for compensation in the circumstances contemplated in subparagraph (i), the designated retirement fund may deduct any amount owed by the member to the member’s employer on the date of retirement, date of dismissal or date on which the member otherwise ceases to be a member of such fund, or the date on which the member’s employment with a participating employer in a designated retirement fund is terminated, in respect of compensation, including any legal costs recoverable from the member, in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—
 - (i) the member has in writing admitted liability to the employer,
 - (ii) judgment has been obtained against the member in any court, including a magistrate’s court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (iii) the amount of any loss, as determined by the employer, which the latter may have sustained by reason of such fraud, misconduct, theft or dishonesty on the part of the member; or
 - (iv) the unpaid balance of such loan or advance from any benefit payable in respect of the member or his or her estate or a beneficiary in terms of the rules of the designated retirement fund and pay that amount to the employer concerned.
- (2) The designated retirement fund may request any additional information from the employer which the board of trustees, in its absolute discretion, deems necessary and reasonable for purposes of deducting the benefit.”.

van, maar nie beperk nie tot, artikel 7(8)(a) van die Wet op Egskeiding of 'n hofbevel toegestaan ten opsigte van die verdeling van bates van 'n huwelik ooreenkomstig die leerstellings van 'n godsdiens, geag word aan die lid toe te geval het op die datum van inwerkingstelling van hierdie artikel, en moet ooreenkomstig paragrawe (a) tot (e) betaal of oorgeplaas word.”.

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Vervanging van artikel 9 van Wet 62 van 1990, soos vervang deur artikel 10 van Wet 6 van 2007

16. Artikel 9 van die Transnet-Pensioenfondswet word hierby deur die volgende artikel vervang:

“Verhaal van sekere skulde aan die werkgewers verskuldig uit voordele betaalbaar aan lede by ontslag of aftrede en onder sekere ander omstandighede

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9. (1) Indien 'n lid van 'n aangewese aftreefonds—

(a) weens bedrog, wangedrag, diefstal of oneerlikheid afdank word;

(b) bedank of dros ten einde afdanking weens bedrog, wangedrag, diefstal of oneerlikheid te vermy, of in antisipasie dat 'n dissiplinêre of 'n strafregtelike klag wat bedrog of oneerlikheid behels, teen hom of haar gebring gaan word: Met dien verstande dat die bewyslas dat 'n lid om enige rede in hierdie paragraaf vermeld, bedank of gedros het, op die werkgewer rus;

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(c) die diens van 'n werkgewer om enige rede verlaat, of tot sterwe kom, voordat enige lening of voorskot, anders as 'n lening in artikel 10 of 10A van hierdie Wet bedoel, wat op sy of haar spesifieke skriftelike versoek, deur 'n werkgewer of uit die Hulpfonds bedoel in artikel 23 van die Wet op Diensvoorwaardes vir die Suid-Afrikaanse Vervoerdienste, 1988 (Wet No. 41 van 1988), aan hom of haar toegestaan is, ten volle terugbetaal is; of

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(d) aanspreeklik is vir vergoeding in die omstandighede in subparagraaf (i) beoog, kan die aangewese aftreefonds enige bedrag aftrek wat die lid op die datum van aftrede, datums van ontslag of datum waarop die lid andersins ophou om 'n lid van sodanige fonds te wees, of die datum waarop die lid se diens by 'n deelnemende werkgewer in 'n aangewese aftreefonds beëindig word, ten opsigte van die vergoeding, met inbegrip van enige regskoste wat van die lid verhaalbaar is, ten opsigte van enige skade wat vir die werkgewer veroorsaak is weens enige diefstal, oneerlikheid, bedrog of wangedrag deur die lid, en ten opsigte waarvan—

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(i) die lid skriftelik aanspreeklikheid aan die werkgewer erken het;

(ii) vonnis teen die lid verkry is in enige hof, met inbegrip van 'n landdroshof, en sluit 'n vergoedingsbevel in wat ingevolge artikel 300 van die Strafproseswet, 1977 (Wet No. 51 van 1977), toegestaan is;

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(iii) die bedrag van enige verlies, soos deur die werkgewer bepaal, wat laasgenoemde moontlik weens sodanige bedrog, wangedrag, diefstal of oneerlikheid aan die kant van die lid, gely het; of

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(iv) die uitstaande saldo van sodanige lening of voorskot uit enige voordeel wat betaalbaar is ten opsigte van die lid of sy of haar boedel of 'n begunstigde ingevolge die reëls van die aangewese aftreefonds en daardie bedrag aan die betrokke werkgewer betaal.

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(2) Die aangewese aftreefonds kan enige bykomende inligting van die werkgewer aanvra wat die raad van trustees, in hul absolute diskresie, nodig en redelik ag vir die doeleindes om die voordeel af te trek.”.

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Insertion of section 10A in Act 62 of 1990

17. The following section is hereby inserted in the Transnet Pension Fund Act after section 10:

“Housing loan schemes involving financial support from designated retirement fund

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10A. (1) A designated retirement fund may, in accordance with the rules of the designated retirement fund, provide a loan to a member of the designated retirement fund, or provide a suretyship or guarantee to a financier, in order to enable a member of the designated retirement fund to acquire, improve or refinance residential immovable property.

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(2) The member of the designated retirement fund may, in accordance with the rules of the designated retirement fund, secure its obligations in respect of any such transaction by pledging some or all of the rights of the member in respect of the designated retirement fund to the designated retirement fund.”

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Insertion of section 11A in Act 62 of 1990

18. The following section is hereby inserted in the Transnet Pension Fund Act after section 11:

“Recovery of other amounts due by member of designated retirement fund

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11A. (1) A designated retirement fund may deduct any amount that such fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of—

(a) the member’s or beneficiary’s subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

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(b) any insurance premium payable by such a member or beneficiary to an insurer licensed in terms of the Insurance Act, 2017 (Act No. 18 of 2017), in respect of a life insurance policy; and

(c) any purpose approved by the Financial Sector Conduct Authority, on the conditions determined by that Authority, upon a request in writing from the designated retirement fund, from the benefit to which the member or beneficiary is entitled in terms of the rules of the designated retirement fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be.

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(2) The rules of the designated retirement fund may provide for deductions from the benefits and transfer values of a member of the designated retirement fund in accordance with, and for such benefits and transfer values to be reduced, adjusted or otherwise affected—

(a) by the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) and a designated retirement fund;

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(b) by any loan, suretyship or guarantee provided in accordance with this Act or the rules of the designated retirement fund; or

(c) in accordance with the rules of the designated retirement fund.

(3) Where there is any deduction in terms of this Act, the rules of the designated retirement fund may allocate that deduction to any account or components contemplated by the Income Tax Act.”

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Amendment of section 13 of Act 62 of 1990, as substituted by section 14 of Act 6 of 2007

19. Section 13 of the Transnet Pension Fund Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: 50

Invoeging van artikel 10A in Wet 62 van 1990

17. Die volgende artikel word hierby na artikel 10 in die Transnet-Pensioenfondswet ingevoeg:

“Behuisingsleningskemas wat finansiële ondersteuning van aangewese aftreefonds behels 5

10A. (1) 'n Aangewese aftreefonds kan, ooreenkomstig die reëls van die aangewese aftreefonds, 'n lening aan 'n lid van die aangewese aftreefonds toestaan, of 'n borgstelling of waarborg aan 'n finansier voorsien, ten einde die lid van die aangewese aftreefonds in staat te stel om vaste eiendom te verkry, te verbeter of te herfinansier. 10

(2) Die lid van die aangewese aftreefonds kan, ooreenkomstig die reëls van die aangewese aftreefonds, sy of haar verpligtinge ten opsigte van enige sodanige transaksie verkry deur sommige of al die regte van die lid ten opsigte van die aangewese aftreefonds in pand te gee aan die aangewese aftreefonds.”. 15

Invoeging van artikel 11A in Wet 62 van 1990

18. Die volgende artikel word hierby na artikel 11 in die Transnet-Pensioenfondswet ingevoeg:

“Verhaling van ander bedrae wat deur lid van aangewese aftreefonds verskuldig is 20

11A. (1) 'n Aangewese aftreefonds kan enige bedrag aftrek wat sodanige fonds betaal het of sal betaal per reëling met, en namens, 'n lid of begunstigde ten opsigte van—

(a) die lid of begunstigde se lidmaatskap van 'n mediese skema, geregistreer andersins as voorlopig ingevolge die Wet op Mediese Skemas, 1998 (Wet No. 131 van 1998); 25

(b) enige versekeringspremie wat deur so 'n lid of begunstigde betaalbaar is aan 'n versekeraar wat gelisensieer is ingevolge die Versekeringswet, 2017 (Wet No. 18 van 2017), ten opsigte van 'n lewensversekeringspolis; en 30

(c) enige doel deur die Gedragsowerheid vir die Finansiële Sektor goedgekeur, op die voorwaardes deur daardie Owerheid bepaal, by versoek op skrif vanaf die aangewese aftreefonds, uit die voordeel waarop die lid of begunstigde geregtig is ingevolge die reëls van die aangewese aftreefonds, en sodanige bedrag, indien verskuldig, betaal aan die betrokke mediese skema, versekeraar of persoon, na gelang van die geval. 35

(2) Die reëls van die aangewese aftreefonds kan voorsiening maak vir aftrekkings van die voordele en oordragswaardes van 'n lid van die aangewese aftreefonds ooreenkomstig, en vir sodanige voordele en oordragswaardes om verminder, aangepas of andersins geraak te word— 40

(a) deur die Inkomstebelastingwet en die Wet op Belastingadministrasie, 2011 (Wet No. 28 van 2011) en 'n aangewese aftreefonds; 45

(b) deur enige lening, borgstelling of waarborg wat ooreenkomstig hierdie Wet of die reëls van die aangewese aftreefonds verstrekk is; of 45

(c) ooreenkomstig die reëls van die aangewese aftreefonds.

(3) Waar daar enige aftrekking ingevolge hierdie Wet is, kan die reëls van die aangewese aftreefonds daardie aftrekking toewys aan enige rekening of komponente deur die Inkomstebelastingwet beoog.”.

Wysiging van artikel 13 van Wet 62 van 1990, soos vervang deur artikel 14 van Wet 6 van 2007 50

19. Artikel 13 van die Transnet-Pensioenfondswet word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

“(b) the provisions of sections 7 to 11A of this Act shall cease to be applicable.”

Amendment of section 14A of Act 62 of 1990, as inserted by section 7 of Act 41 of 2000 and substituted by section 16 of Act 6 of 2007

20. Section 14A of the Transnet Pension Fund Act is hereby amended by the substitution for subsections (7) and (8) of the following subsections: 5

“(7) A pension fund is deemed to be a pension fund as defined in paragraph (a) of the definition of ‘pension fund’ in section 1 of the Income Tax Act.

(8) Sections 6, 7, 7A, 8, 9, 10, 10A, 11, 11A, 13 and 14 apply with the changes required by the context to a pension fund.”

Amendment of section 1 of Proclamation 21 of 1996, as amended by section 1 of Act 35 of 2003, section 1 of Act 21 of 2004, section 1 of Act 19 of 2011, section 53 of Act 11 of 2013 and section 11 of Act 9 of 2023 10

21. Section 1 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996) (herein referred to as “the Government Employees Pension Law”), is hereby amended— 15

(a) by the insertion after the definition of “dependent” of the following definition: 15

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

(b) by the insertion after the definition of “member” of the following definitions: 15

“‘**Income Tax Act**’ means the Income Tax Act, 1962 (Act No. 58 of 1962); 20

‘**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; 25

‘**member’s interest in the vested component**’ has the meaning as defined in section 1(1) of the Income Tax Act;”;

(c) by the substitution for the definition of “pension interest” of the following definition: 25

“‘**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 individual account or minimum individual reserve, as the case may be, determined in terms of the rules of that fund, on the date of the court order;”;

(d) by the insertion after the definition of “related fund” of the following definition: 30

“‘**retirement component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 6B of the Second Schedule to the Income Tax Act;”;

(e) by the insertion after the definition of “rule” of the following definitions: 40

“‘**savings component**’ has the meaning as defined in section 1(1) of the Income Tax Act subject to the applicable *provisos* to paragraph 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;”;

(f) by the substitution for the definition of “this Law” of the following definitions: 45

“(b) hou die bepalings van artikels 7 tot 11A van hierdie Wet op om van toepassing te wees.”.

Wysiging van artikel 14A van Wet 62 van 1990, soos ingevoeg deur artikel 7 van Wet 41 van 2000 en vervang deur artikel 16 van Wet 6 van 2007

20. Artikel 14A van die Transnet-Pensioenfondswet word hierby gewysig deur subartikels (7) en (8) deur die volgende subartikels te vervang: 5

“(7) ’n Pensioenfonds word geag ’n pensioenfonds te wees soos omskryf in paragraaf (a) van die omskrywing van ‘pensioenfonds’ in artikel 1 van die Inkomstebelastingwet.

(8) Artikels 6, 7, 7A, 8, 9, 10, 10A, 11, 11A, 13 en 14 is op ’n pensioenfonds van toepassing met die veranderinge deur die samehang vereis.” 10

Kuchitjiyelwa kwesigaba 1 sesiMemetelo 21 sanga-1996, njengoba Sichertjiyelwe esigabeni 1 seMtsetfo 35 wanga-2003, sigaba 1 seMtsetfo 21 wanga-2004, sigaba 1 seMtsetfo 19 wanga-2011, sigaba 53 seMtsetfo 11 wanga-2013 kanye nesigaba 11 seMtsetfo 9 wanga-2023 15

21. Sigaba 1 seMtsetfo Wempesheni yetisebenti aTahulumente, 1996 (Simemetelo No. 21 wanga-1996) (lapha lobitwa ngekutsi “uMtsetfo Wetimpesheni Tetisebenti Tahulumente”), ngaloku uchitjiyelwa—

(a) ngekufakwa ngemuva kwenchazelo yeligama lelitsi “lomnakekelako” lenchazelo lelandzelako: 20

“‘**UMtsetfo Wesehlukaniso**’ usho uMtsetfo Wesehlukaniso, 1979 (uMtsetfo No. 70 wanga 1979);”;

(b) ngekufakwa ngemuva kwenchazelo letsi “lilunga” leti tinchazelo letilandzelako: 25

“‘**uMtsetfo Wemtselw Wentsela**’ usho uMtsetfo Wemtselw Wentselaho, 1962 (uMtsetfo No. 58 wanga-1962; ‘**inshisekelo yelilunga encenyeni yemhlalaphansi**’ inenchazelo ngekutsi kuchazwe esigabeni 1(1) seMtsetfo Wemtselw Wentsela; ‘**inshisekelo yelilunga encenyeni yekonga**’ inenchazelo ngekutsi kuchazwe esigabeni 1(1) seMtsetfo Wemtselw Wentsela; ‘**inshisekelo yelilunga encenyeni lebekiwe**’ inenchazelo ngekutsi kuchazwe esigabeni 1(1) seMtsetfo Wemtselw Wentsela;”;

(c) ngekufakwa esikhundleni senchazelo “yenzuzo yemphesheni” kwalena lelandzelako inenchazelo: 35

“‘**intalo yemhlalaphansi**’, mayelana nesincumo senkantolo lesikhishwe ngekulandzela sigaba 7(8)(a) seMtsetfo weSihlukaniso nobe sincumo senkantolo lesikhishwe mayelana nekwehlukaniswa kwemphahla yemshado ngekulandzela timiso tenkholo, kusho, mayelana nelicembu lelingumlingani wesikhwama, i-akhawunti yelilunga nobe imali lencane yemuntfu ngamunye, kuye ngekutsi ngusiphi simo, lokuncunywe ngekulandzela imitsetfomgomo yaleso sikhwama, ngelusuku lwekukhishwa kwesincumo senkantolo;”;

(d) ngekufaka ngemuva kwenchazelo “yesikhwama lesihlobene” loku lokulandzelako inenchazelo: 45

“‘**incenye yemhlalaphansi**’ inenchazelo njengobe ichaziwe kusigaba 1 (1) seMtsetfo weMtselo weNtselw ngekulandzela timiso letisebentako kusigaba 6B seShejuli yesiBili yeMtsetfo weMtselo Wentselaho;”;

(e) ngekufaka ngemuva kwenchazelo “umtsetfo” loku lokulandzelako inenchazelo: 50

“‘**incenye yekonga**’ inenchazelo njengobe ichaziwe kusigaba 1 (1) seMtsetfo weMtselo weNtsela leseceleni, ngekulandzela imibandzela lefanele lephawulwe endzimeni 6B yeShejuli yesiBili yeMtsetfo weMtselo weMntselaho; ‘**lencenye yemali leseceleni**’ inenchazelo njengobe ichaziwe kusigaba 1 (1);”;

(f) ngekufaka ngemuva kwenchazelo “loMtsetfo” loku lokulandzelako inenchazelo: 55

“‘**this Law**’ includes the rules[.]; and
 ‘**vested component**’ has the meaning as defined in section 1(1) of the
 Income Tax Act subject to the applicable *provisos* to paragraph 6B of the
 Second Schedule to the Income Tax Act.”.

Insertion of section 1A in Proclamation 21 of 1996

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22. The following section is hereby inserted in the Government Employee Pension Law 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.”.

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Substitution of section 21 of Proclamation 21 of 1996, as substituted by section 45 of Act 99 of 1998, section 2 of Act 19 of 2011 and as amended by section 2 of Act 21 of 2004

23. The following section is hereby substituted for section 21 of the Government Employees Pension Law:

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“Withdrawals and deductions from member’s pension benefits

21. (1)(a) No benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, except for in terms of a court order in terms of section 26 or 40 of the Maintenance Act, 1998 (Act No. 99 of 1998), section 7(8) 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.

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(b) In the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.

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(2) If any member, pensioner or beneficiary attempts to assign or transfer or otherwise cede or to pledge or hypothecate any benefit to which he or she is entitled under this law or any right in respect of such benefit, payment of such benefit to such member, pensioner or beneficiary may be withheld, suspended or discontinued if the Board so directs: Provided that the Board may direct that such benefit or part thereof shall be paid to one or more of the dependants of such member or pensioner or to a trustee for such member or pensioner or his or her dependants during such period as the Board may determine.

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(3) Notwithstanding the provisions of subsection (1) or of any other law, the Fund may—

(a) permit a member to take a savings withdrawal benefit where there is a judgment contemplated in paragraph (c)(iii)(bb) or a written admission of liability in favour of the employer that has not yet been executed: Provided that the withdrawal will not result in there being insufficient remaining funds to repay the loan or guarantee or to comply with the judgment;

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(b) suspend a savings withdrawal benefit where the employer has not obtained a judgment contemplated in paragraph (c)(iii)(bb), and the withdrawal will result in there being insufficient remaining value to comply with the pending order, if granted, for a period of 12 months

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“‘**IoMtsetfo**’ ufaka ekhatsi imitsetfomgomo[.]; futsi
 ‘**Incenye lebekiwe**’ inenchazelo njengobe ichaziwe kusigaba 1(1)
 seMtsetfo weMtselo weNtseloholo, ngekulandzela imibandzela
 lebekiwe lephawulwe endzimeni 6B yeShejuli yesiBili yeMtsetfo
 weMtselo weNtselomhlo.”

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Kufakwa kwesigaba 1A kuSimemetelo 21 wanga-1996

22. Sigaba lesilandzelako siyafakwa emTsetfweni weMhlalaphansi weTisebenti taHulumende ngemuva kwesigaba 1:

“Kusetjentiswa kweMtsetfo

1A. Uma kunekungcubutana emkhatsini kwemibandzela yaloMtsetfo
 nemTsetfo weSihlukaniso, timiso taloMtsetfo titawusebenta.”

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**Kufaka esikhundleni sesigaba 21 seSimemetelo No. 21 sanga-1996, njengobe
 sifakiwe sigaba 45 seMtsetfo No. 99 wanga-1998, sigaba 2 seMtsetfo No. 19
 wanga-2011 njengobe sichitjiyelwe sigaba 2 seMtsetfo No. 21 wanga-2004.**

23. Sigaba 21 seMtsetfo weMhlalaphansi weTisebenti taHulumende sibuyeketwa
 ngalesigaba lesilandzelako:

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“Kukhishwa kanye nekuncishiswa kwetibonelelo tempsheni yemalunga

21.(1)(a) Kute inzuzo nobe lilungelo leliphatselele nenzuzo
 lekhokhelwa ngaphasi kwaloMtsetfo lelitawuniketwa nobe lidluliselwe
 nobe liniketwe ngaleny indlela nobe lifakwe njengesibambiso nobe
 litsatfwe njengesibambiso, ngaphandle kwesincumo senkantolo
 ngekwesigaba 26 nobe 40 seMtsetfo weSondlo, 1998 (uMtsetfo No. 99
 wanga-1998), sigaba 7(8) seMtsetfo weSehlukano nobe sincumo
 senkantolo lesiniketwe mayelana nekwehlukano kwemphahla
 yemshado ngekulandzela timiso tenkholo.

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(b) Uma kwenteka lowo lozuzako etama kuniketa, kubambisa nobe
 kubeka embili inzuzo nobe lilungelo lekutfolela inzuzo, kukhokhelwa
 kwenzuzo kungancatjelwa, kungabekelwa eceleni nobe ngabe nguluphi
 luhlobo lwekucinisekiswa ngekulandzela sigwebo nobe sincumo
 senkantolo.

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(2) Uma ngabe nobe nguluphi lilunga, umuntfu lotsetse umhlalaphasi
 nobe umzuzi wetinzuzo tetenhlalakahle etama kuniketa nobe kwendlulisa
 nobe kwendlulisa nobe kubamba ngekweMtsetfo tinzuzo letisite lanato
 ngekwaloMtsetfo nobe nguluphi lilungelo macondzana netinzuzo letinjalo,
 kukhokhelwa kwaloluhlobo lwenzuzo kulelilunga, lilunga lemphesheni
 nobe umzuzi angancatjelwa, imiswe nobe iphelele uma iBhodi iyalela
 kanjalo: Ngaphasi kwemibandzela wekutsi liBhodi lingayalela kutsi inzuzo
 lenjalo nobe incenye yayo ikhokhelwe kulomunye nobe ngetulu kwalabo
 labaphetfwe ngulelo lunga nobe kumgcini walelilunga nobe umhlalaphansi
 nobe labo labaphetfwe ngilo ngesikhatsi lesingabekwa yiBhodi.

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(3) Nanobe kunetiphakamiso tesigatjana (1) nobe nanobe ngumuphi
 lomunye umtsetfo, leSikhwama singenta—

(a) Kuvunyelwe lilunga kutsi litsatse tinzuzo tekukhishwa kwemali uma
 kunekwehlulela lokucatjangwe endzimeni (c)(iii)(bb) nobe kuvuma
 ngekubhala kwesikwelede semcashi lesisengakentiwa:

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Uma nje lokuhociswa kungeke kuholele ekutseni kube khona imali
 lengenele yekubhadala lemali lebolekiwe nobe sicinisekiso nobe
 sekuhambisana nesigwebo;

(b) Kumiswe tinzuzo tekukhishwa kwemali uma umcashi angakatfoli
 sincumo lesicatjangwe endzimeni (c)(iii)(bb), futsi lokucoshwa
 kutawuholele ekutseni kubete linani lelisele lelingene kuhlangebetana
 nesincumo lesilindzelwe, uma siniketwe, sikhatsi setinyanga

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- pending the judgment by any court including a magistrate's court;
- (c) deduct any amount due by the member to the member's employer on the date of retirement or the date on which the member ceases to be a member of the Fund, in accordance with the Income Tax Act and the Tax Administration Act, 2011 (Act No. 28 of 2011) in respect of— 5
- (i) any amount which is payable to the employer or the Fund by any member in the employment of such employer on the date of his or her retirement or discharge, or which the employer is liable to pay in respect of such member;
- (ii) any amount which has been paid to any member, pensioner or beneficiary in accordance with the provisions of this law and to which such member, pensioner or beneficiary was not entitled; 10
- (iii) the amount of any loss which has been sustained by the employer through theft, dishonesty, fraud, negligence or any misconduct on the part of any member, pensioner or beneficiary which has been admitted by such member or pensioner in writing or has been proved in a court of law in respect of which— 15
- (aa) the member has in writing admitted liability to the employer; or 20
- (bb) judgment has been obtained against the member in any court, including a magistrate's court, and includes a compensation order granted in terms of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (iv) any amount, plus interest at the rate determined by the Board after any other written agreement between the member and the employer in respect of a study bursary from any benefit payable to the member or a beneficiary in terms of the rules of the Fund, and pay such amount to the employer concerned or 25
- (v) any amount, plus interest at the rate determined by the Board after consultation with the actuary, due to the Fund in respect of an amount for which the Fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to that member in terms of the rules of the Fund from— 30
- (aa) the amount of the benefit to which a member becomes in terms of the rules of the fund; 35
- (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 guarantee; or 40
- (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 the membership on the date of default, if the 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; 45 50

- letingu-12 kudzimate kube sincumo lesikhishwe ngunobe nguyiphi inkantolo kufaka ekhatsi inkantolo yemantji;
- (c) anganciphisa nobe ngabe nguyiphi imali lekweletwa lilunga kumcashi welilunga ngelusuku lwekutsatsa umhlalaphansi nobe ngelusuku lelilunga leliyekela ngalo kuba lilunga lesiKhwama, ngekulandzela uMtsetfo weMtselo weMali lengenako kanye neMtsetfo wekuPhatfwa kweMtselo, 2011 (uMtsetfo No. 28 wanga-2011) macondzana na—
- (i) nobe nguyiphi imali lekumele ikhokhwe kumcashi nobe kusikhwama nobe lilunga lelisebentela lomcashi ngalolusuku lwekutsatsa umhlalaphansi kwalo nobe lwekukhishwa kwalo, nobe umcashi lokumele ayikhokhe mayelana nalelilunga; 5
- (ii) nobe nguliphi linani lelikhokhelwe kunobe nguliphi lilunga, umhlalaphasi nobe umzuzi ngekulandzela timiso taloMtsetfo kantsi lelo lunga, umhlalaphasi nobe umzuzi bekangakakulungeli kulitfoli; 10
- (iii) nelinani lemali lelahlekelwe ngumcashi ngenca yekweba, kungetsembeki, inkohlakalo, kunganaki nobe kungatiphatsi kahle kwanobe ngabe nguliphi lilunga, umhlalaphansi nobe umzuzi, lokuvunywe ngulelo lunga nobe lilunga lempshesheni ngekubhala phasi nobe lokufakazelwe enkantolo yemtsetfo mayelana naloku— 15
- (aa) lelilunga livume ngekubhala licala lalo kumcashi; nobe (bb) sincumo lesentiwe macondzana nalelilunga kunobe nguyiphi inkantolo, lokufaka ekhatsi inkantolo yemantji, futsi lesifaka ekhatsi umyalelo wekuncetheletwa lokhishwe ngekwesigaba 300 seMtsetfo wekuChutjwa kweMacala, 1977 (uMtsetfo No. 51 wanga-1977); 20
- (iv) nobe nguyiphi imali, ngetulu kwelinani lelibekwe liBhodi ngemuva kwanobe ngabe ngusiphi sivumelwano lesibhaliwe emkhatsini kwemalunga nemcashi mayelana nemfundzate wekufundza kunobe ngabe ngutiphi tinzuzo letikhokhelwa lilunga nobe umzuzi ngekwemitsetfomgomo yesiKhwama, futsi akhokhele leyo mali kumcashi lotsintsekako nobe nobe ngabe nguyiphi imali, ngetulu kwelinani lelibekwe liBhodi ngemuva kwekubonisana nemshwalensi lokukhokhelwa siKhwama mayelana nemali lesiKhwama lesingaba nesibopho ngayo ngekwesibambiso lesibekwe mayelana nelilunga semalimboleko leniketwe ngulomunye umuntfu kulelo lilunga ngekwemitsetfomgomo yesiKhwama; 25
- (v) nanoma nguliphi linani, lelifakwe intalo ngelinani lelibekwe yiBhodi ngemuva kwekubonisana ne-actuary, lelikhokhelwa siKhwama ngelinani lelivela esiKhwameni ngekwesibambiso lesifakwe mayelana nelilunga ngemali lebolekwe ngulomunye umuntfu kulelo lunga ngekwemibandzela yemitsetfomgomo yesiKhwama— 30
- (aa) linani lesincephetelo lilunga leliba naso ngekulandzela imitsetfomgomo yesikhwama; 35
- (bb) esimeni sekwendluliselwa kwelilunga kulenye inkapani, linani lenzuzo lenkapani lelinelilungelo lekuyendlulisela, uma ngabe libhodi lalenkapani lewendlulisa imali licinisekisiwe kutsi akunangcondvo kucocisana ngalokukhokhwa nobe kwendlulisa lemali lebolekwe nobe sicinisekiso; nobe 40
- (cc) uma ngabe lilunga lelitsintsekako lingayibuyiseli imali yalowo mboleko etimeni lapho lilunga lingakayincishi lilunga lesiKhwama, linani lenzuzo lelingatfolwa lilunga uma ngabe lilunga liyekela kuba lilunga ngalolusuku lwekwehluleka, uma ngabe lokuncishiswa kwentiwa kuphela njengentfo yekucina ngemuva kwekutsi libhodi lesiKhwama selicinisekisiwe kutsi kute lokunye lokungahle kwentiwe mayelana nekukhokhwa kwemali lefunekako; 45

- (d) 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
- (e) 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).

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(4) In respect of a deduction referred to in subsection (3)(d), the 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 on retirement from the Fund.

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(5) The Fund may not permit a member to take a savings withdrawal benefit where there is a maintenance order or a written notification from the maintenance investigating officer against the Fund in place, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the order or the written notification.

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(6) For the purposes of paragraph (c)(iv)(bb) and (cc) of subsection (3), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled upon 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.

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(7) Where a member dies before the last day of a period in respect of which any salary or allowance was paid to him or her prior to his or her death, a *pro rata* part of the amount so paid may be recovered in respect of the unexpired portion of that period by deducting it in a lump sum, or in such instalments as the Board may determine, from the benefit payable to the estate or to a beneficiary of the deceased member, as provided in the rules of the Fund.”.

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Substitution of section 24A of Proclamation 21 of 1996, as inserted by section 3 of Act 19 of 2011 and substituted by section 12 of Act 18 of 2019

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24. The following section is hereby substituted for section 24A of the Government Employees Pension Law:

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

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24A. (1) The 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.

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(2) A fund may not, without the consent of the non-member spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the fund received written notification from the member or non-member spouse with proof that—

- (a) a divorce has been instituted, as defined in the Divorce Act;
- (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.

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- (d) anganciphisa nobe nguyiphi imali lekhokhelwa ngekulandzela umyalelo wekondla njengobe uchazwe kusigaba 1 seMtsetfo weSondlo, 1998 (uMtsetfo No. 99 wanga 1998); nobe
- (e) anganciphisa nobe nguyiphi imali lekumele ikhokhelwe njengesondlo ngekulandzela umyalelo wesikhashana wesondlo loniketwe yinkantolo ngekulandzela umtsetfo 43 weMitsetfomgomo yeNkantolo lePhakeme nobe umtsetfo 58 weMitsetfomgomo yeMantji yeNkantolo, lowentiwe ngekulandzela sigaba 6 seMtsetfo weBhodi yemiTsetfosimiso yeTinkantolo teMtsetfo, 1985 (uMtsetfo No. 107 wanga-1985) futsi.
- (4) Mayelana nekuncishiswa lokushiwo kusigatjana (3)(d), siKhwama kumele sikhokhele sondlo, njengobe siyalelwe ngumyalelo wesondlo njengenani leliphela mayelana nesondlo lesengakakhokhwa nobe lesitawukhokhwa esikhatsini lesitako lesisuka kunzuzo leligatja leliba nelilungelo kuyo ngemuva kwekuphela kwelilunga lesiKhwama nobe ngemuva kwekutfolela umhlalaphasi kuleSikhwama.
- (5) LeSikhwama angeke sivumele lilunga kutsi litsatse inzuzo yekuhociswa kwemali yesondlo uma kunemyalelo wesondlo nobe satiso lesibhaliwe lesikhishwe siphatsimandla lesiphenya ngesondlo lesibhekiswe kuleSikhwama, ngaphandle uma sicinisekisiwe kutsi lokuhociswa angeke kuholele ekutseni kube nelinani lelingene lelisele lekuhambisana nemyalelo nobe satiso lesibhaliwe.
- (6) Ngekwemigomo yetindzima (c)(iv)(bb) na (cc) tesigatjana (3), imali lencishiswe ngalendlela itawutsatfwa njengenzuzo lezuzwa lilunga uma ngabe lilunga liyekela kuba lilunga laleSikhwama ngetizatfu letingesito tekutfolela umhlalaphasi nobe kushona lokwenteka ngelusuku lwekululiselwa nobe kwehluleka kwenta umsebenzi.
- (7) Uma lilunga lishona ngembi kwelusuku lwekugcina lwesikhatsi lebekukhokhelwe ngaso umholo nobe sibonelelo ngembi kwekufa kwalo, incenye lelinganisiwe yalemali lekhokhelwe ingalandvwa mayelana nencenye lengakapheli yaleso sikhatsi ngekutsatfwa kwaso ngelinani lelinganisiwe, nobe ngetigaba letincunye yiBhodi, kulesibonelelo lesikhokhelwe impahla yelifa lelilunga lelingakafi nobe kumuntfu lozuzako, njengobe kumiswe kumitsetfosimiso yeSikhwama.”.
- Kufakwa kwesigaba 24A seSimemetelo sanga-1996, njengobe kufakwe ngesigaba 3 seMtsetfo 19 wanga-2011 futsi kwafakwa ngesigaba 12 seMtsetfo 18 wanga-2019**
- 24.** Sigaba 24A seMtsetfo weMhlalaphansi weTisebenti taHulumende sibuyeketwa ngalesigaba lesilandzelako:
- “Kukhokhelwa kwetinzuzo tempsheni uma sesihlukaniso nobe kucitfwa kwemshado ngekulandzela tinkholelo tenkholo**
- 24A.** (1) LeSikhwama kumele sinciphise imali yenzuzo yemphesheni yemlilunga ngaleyo mali lebelwe umlingani wakhe lomdzala ngekulandzela sincumo sesihlukaniso lesentiwe ngekulandzela sigaba 7(8)(a) seMtsetfo weSehlukaniso nobe sincumo senkantolo lesentiwe mayelana nekwehlukaniwa kwemphahla yemshado ngekulandzela timiso tenkholo.
- (2) Sikhwama angeke, ngaphandle kwemvumo yemlingani longasilo lilunga, sinikete sikweleti nobe siciniseko nobe sivumele inzuzo yekukhishwa kwemali lekongiwe kutsi itsatfwe lilunga uma ngabe sikhwama sitfole satiso lesibhaliwe lesivela kulolilunga nobe kumlingani longasilo lilunga lesifakazela kutsi—
- (a) kwehlukaniwa kwemshado sekweniwe, njengobe kuchaziwe kuMtsetfo weSehlukaniso;
- (b) kufakwe sicelo semyalelo wenkantolo mayelana nekwehlukaniwa kwemphahla yemshado ngekulandzela timiso tanoma nguyiphi inkholo.

(3) The prohibition in terms of subsection (2) applies until finalisation of the divorce or until a court order is issued.

(4)(a) Subject to paragraph (k), 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.

(b) The amount of the member's pension interest in the 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 Fund in accordance with the rules 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.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the rules by any amount of the member's pension interest which, in a previous divorce or a previous court order granted in respect of the division of assets of a marriage according to the tenets of a religion, was paid over or awarded to another party.

(d)(i) The benefit that is subsequently payable to the member shall, as provided in the rules, be decreased by reducing the member's years of pensionable service to take into account the pension interest of the member which was assigned to any former spouse of the member.

(ii) The rules referred to in subparagraph (i) shall be made on the advice of an actuary.

(e) The 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.

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

- (i) inform the 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 Fund with the details that are necessary to effect the payment; or
 - (bb) if the former spouse chooses that the amount must be transferred to an approved pension fund on his or her behalf, provide the Fund with the details of that approved retirement fund;

(g) The Fund must pay or transfer the amount in the circumstances contemplated in—

- (i) paragraph (f)(ii)(aa), within 30 days; or
 - (ii) paragraph (f)(ii)(bb), 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 rules.

(h) 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 Fund 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 rules.

(3) Lokungavunyelwa ngekwesigatjana (2) kusebenta kuze kuphele nesehluhaniso nobe kute kukhishwe sincumo senkantolo.

(4)(a) Ngekuya ngekulandzela indzima (k), ngekwenhloso yesigaba 7(8)(a) seMtsetfo weSehluhaniso nobe ngekwebandzela yesincumo senkantolo lesikhishwe mayelana nekwehluhaniswa kwemphahla yemshado ngekulandzela timiso tenkholo, incenye yemali yempesheni yemlilungana lebekelwe umlingani wangaphambilini wemlingani itsatfwa ngekutsi itfolwe ngulomlingani ngelusuku lokukhishwa ngalo sincumo sekwehluhaniswa nobe sincumo senkantolo.

(b) Linani lemholo wemalunga emhlahaphansi kuleSikhwama kumele lincunywe futsi linani lemholo wemalunga emhlahaphansi lelibekelwe lowo lobekangumlingani kumele libalwe ngulesiKhwama ngekulandzela imitsetfomgomo lesebentako ngelusuku lwekukhishwa kwesehluhaniso nobe ngelusuku lwekukhishwa kwesincumo senkantolo lesiniketiwe mayelana nekwehluhaniswa kwetimpahla temshado ngekulandzela timiso tenkholo.

(c) Ngembi kwekuncuma linani lemali yempesheni yelilunga lelibekelwe lowo lobekangumlingani wakhe, linani lemali yempesheni yelilunga lekucondziswe kulo indzima (b) kumele licele lincishiswe ngekulandzela imitsetfomgomo ngunobe nguyiphi imali yentalo yempesheni yelilunga leyakhokhwa nobe yaniketwa lelinye licumbu ngekwehluhaniswa kwemshado lokwendlulile nobe ngesincumo senkantolo lesendvulela kwehluhaniswa kwetimpahla temshado ngekulandzela timiso tenkholo.

(d)(i) Inzuzo lekhokhelwa lilunga ngekuhamba kwesikhatsi itawuncishiswa ngekunciphisa iminyaka yemalunga yekusebenta lengatfolwa impesheni kute kucatjangwe linani lempesheni lelendluliselwe kunobe ngumuphi umlingani walelo lilunga.

(ii) Lemitsetfomgomo lephawulwe kundzinyana (i) kumele yentiwe ngekwelelekwa ngumcwaningimabhuku wetemnotfo.

(e) Sikhwama kumele, kungakapheli emalanga langu-45 ngemuva kwekwetfulwa kwesincumo senkantolo ngumlingani wangaphambilini wemlingani, sicele lomlingani wangaphambilini kutsi akhetse kutsi ngabe linani lelitawuncishiswa kumele libe ngu—

(i) lekhokhelwa ngco kumlingani wangaphambili; nobe
(ii) lebekiwe esikhwameni semhlahaphansi lesemukelwe egameni lalobekashade naye.

(f) Umlingani wangaphambilini kumele, ngekhatshi kwetinsuku letingu-120 ngemuva kwekucelwa kutsi ente sincumo—

(i) atise leSikhwama ngendlela lemali lekucondziswe kuyo kundzima (e) lekufanele isetjentiswe ngayo; futsi

(ii) uma lona lobekangumlingani akhetisa kutsi lemali kufanele—

(aa) kukhokhelwe kumlingani wangaphambilini ngco, anikete leSikhwama imininingwane ledzingekile yekukhokhela; nobe

(bb) uma lona lobekangumlingani akhetisa kutsi lemali kumele idluliselwe esikhwameni sempshesheni lesemsetfweni egameni lakhe, anikete leSikhwama imininingwane yalesikhwama sempshesheni lesemsetfweni;

(g) LeSikhwama kumele sikhokhe nobe sidlulisele lemali etimeni letiphawulwe ku—

(i) endzima (f)(ii)(aa), kungakapheli emalanga langu-30; nobe
(ii) sigatjana (f)(ii)(bb), kungakapheli emalanga langu-60, ngekukhetisa kwaloyo lobekangumlingani wakhe, uma kungenjalo intalo lefanelekile itawukhokhelwa ngelinani lelibekwe emtsetfweni.

(h) Uma ngabe lona lobekangumlingani ehluleka kukhetisa nobe kukhomba sikhwama sempshesheni lesemukelwe lapho lemali kumele idluliselwe khona kungakapheli lesikhatsi lesishiwo endzimeni (f), leSikhwama kumele sikhokhele lemali ngco kulowo lobekangumlingani wakhe kungakapheli emalanga langu-30 ngemuva kwekuphela kwaleso sikhatsi, uma ngabe kungakhonakali, intalo lefanele kutsi ikhokhelwe kulelo nani ngelinani lelibekwe kumitsetfomgomo.

(i) Despite paragraph (h), in the event that the Fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the Fund must retain the amount plus interest as determined in the rules of the Fund, until such time as details of the manner in which that payment must be effected is made available to the Fund by the member, the former spouse or any other person whom the Fund is satisfied has the necessary authority and capacity to instruct the Fund in that respect. 5

(j) 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 deduction until payment or transfer of the deduction contemplated in this subsection. 10

(k) Any portion of a member’s pension interest assigned to a former spouse in terms of a decree of divorce or a court order 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(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, 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 (j).” 15

Short title and commencement 20

25. This Act is called the Pension Funds Amendment Act, 2024, and comes into effect on a date determined by the President by proclamation in the *Gazette*.

(i) Ngekungcubutana nendzima (*h*), uma ngabe leSikhwama singeke sikhone kutfola kahle indlela yekukhokhela lowo lobekangumlingani waso, leSikhwama kumele sibambe imali kanye nentalo njengobe kubekiwe kumitsetfomgomo yaleSikhwama, kudzimate kube sikhatsi lapho imininingwane ngendlela lokumele kukhokhelwe ngayo itawuniketwa lesikhwama ngulomuntu lolilunga, lowo lobekangumlingani waso nobe lomunye umuntu lowenetisekile kulesiKhwama uneligunya nemandla ladzingekile ekuyalela leSikhwama ngaloludzaba. 5

(j) umlingani wangaphambilini—

(i) akasilo lilunga nobe umzuzi mayelana nesikhwama; futsi 10
 (ii) unelilungelo lekutfola imali lebuyiswayo kusukela ngelilanga lekukhishwa kwesincumo senkantolo kute kube sekukhokhelweni nobe kwendlulisweni kwekuncishiswa lokubekwe kulesigatjana.

(k) Nobe ngabe nguyiphi incenye yemali yempesheni yelilunga lebekwe kumlingani wangaphambilini ngekulandzela umtsetfo wesehlukaniso nobe sincumo senkantolo lesikhishwe ngembi kwekusebenta kwalesigaba kumele, ngekwemigomo yanobe ngumuphi umtsetfo ngaphandle kweMtsetfo weMtselo weNtselaholo kufaka ekhatsi, kepha kungakhawulelwa, sigaba 7(8)(a) seMtsetfo weSehlukano nobe sincumo senkantolo lesikhishwe mayelana nekwehlukaniwa kwemphahla yemshado ngekulandzela timiso tenkholo letsite, itsatfwe ngekutsi itfolwe lilunga ngelilanga lekusebenta kwalesigaba, futsi kumele ikhokhwe nobe idluliswe ngekulandzela tindzima (*a*) kuya ku (*j*).” 20

Kort titel en inwerkingtreding

25. Hierdie Wet heet die Wysigingswet op Pensioenfondse, 2024, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* vasgestel. 25

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