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# GOVERNMENT NOTICE

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## DEPARTMENT OF PUBLIC ENTERPRISES

No. 620

13 July 2007

### Amendments to Rules

In terms of section 5 of the Transnet Pension Fund Act, 1990 (Act 62 of 1990), as amended by Transnet Pension Fund Amendment Act, 2000 (Act No. 41 of 2000), I, Mr. Alec Erwin, Minister of Public Enterprises, acting with the concurrence of Mr. Trevor Manuel, Minister of Finance, hereby amend the Rules published by Government Gazette 21705 of 31 October 2000 with effect from 31 March 2007.

#### GENERAL EXPLANATORY NOTE:

[            ] Words in bold type in square brackets indicate omissions from existing regulations.

\_\_\_\_\_ Words underlines with a solid line indicate insertions in existing regulations.

### SCHEDULE

#### Amendment of Rule 1 of the Schedule to Act 62 of 1990

1. Rule 1 of the Schedule to the Transnet Pension Fund Act 62 of 1990 (hereinafter referred to as the Schedule) is hereby substituted as follows:

“1. This **[f]Fund, [is]** established at the commencement date **[to]** provides benefits exclusively for **[p]Pensioners, Special Pensioners [from the Transnet Pension Fund] and Beneficiaries to the extent permitted by the Act.”**

#### Amendment of Rule 2 of the Schedule to Act 62 of 1990

2. Rule 2 of the Schedule is hereby amended-

(a) by the insertion before the definition of “**actuary**” of the following definition:

“ ‘2006 Rule Amendment Date’ means the date which the Minister by notice in the Government Gazette declares that amendments to these Rules made in 2006 will take effect;”

(b) by the insertion before the definition of “**auditor**” of the following definition:

“ ‘Administrator’ means any person or legal entity appointed by Transnet to manage and to attend to the administrative functions of the Fund;”

(c) by the substitution of the definition of “**auditor**” for the following definition:

“ ‘auditor’ means an auditor registered under the Auditing Profession Act, 2005 (Act No. 26 of 2005), and appointed by the Board in terms of Rule 9(3); ”

(d) by the insertion before the definition of “**Board**” of the following definition:

“ ‘Beneficiary’ means a Spouse, a Child, and any person, other than a Pensioner, who transferred from the Transport Pension Fund in terms of section 14B of the Act and who received a benefit from the Transport Pension Fund prior to such transfer to the Fund;”

(e) by the substitution of the definition of “**Board**” for the following definition:

“ ‘Board’ or ‘Board of Trustees’ means the Board of Trustees referred to in rule 5;”

(f) by the insertion before the definition of “**commencement date**” of the following definition:

“ ‘Child’ means -

- (i) a child born to a Pensioner; or
- (ii) a child who as at the 2006 Rule Amendment Date was a stepchild or adopted child of a Pensioner;

and who

- (i) has survived the Pensioner, and is not more than 18 years of age; or
- (ii) has survived the Pensioner, and is more than 18 years of age and in respect of whom it has been demonstrated to the satisfaction of the Board that -
  - (a) as at the 2006 Rule Amendment Date was in receipt of a benefit from the Fund because he or she was engaged in full-time tuition at an education institution registered as such with the Department of Education, has been continuously in such full-time tuition since then, and is not more than 26 years of age; or
  - (b) he or she is mentally or physically incapable of supporting him or herself, who was dependent on the Pensioner at the date of the death of the Pensioner and who is not more than 26 years of age: Provided that up until the 2006 Rule Amendment Date, the Board of Trustees may in a particular case extend the maximum age of 26 years, on condition that Transnet agrees to contribute to the Fund such additional amounts as deemed necessary, by the actuary, to make provision for such benefit,

and “Children” shall bear a corresponding meaning;”

(g) by the deletion of the definition of “**Company**”;

(h) by the insertion before the definition of “**dependant**” of the following definition:

“ ‘Date of Retirement’ means the normal retirement date applicable to a Pensioner in terms of his or her conditions of service as at the date that he or she actually retired from employment and became a pensioner of the Transport Pension Fund;”

(i) by the substitution of the definition of “**dependant**” for the following definition:

“ ‘**[d]Dependant**’ in relation to a **[p]Pensioner** means—

- (i) a **[s]Spouse [of a recognised marriage, provided that such person is not living apart from the pensioner, whether by judicial agreement or otherwise];**
- (ii) a **[c]Child [stepchild, legally adopted child or child born out of wedlock whose age is not more than 18 years, who is unmarried and who, in the discretion of the Board was dependent on the pensioner, at the time of death of the pensioner];**
- [(iii)] [A child contemplated in subparagraph (ii) but who is older than 18 years and younger than 26 years and who is studying full time or is physically or mentally handicapped: Provided that the Board may in a particular case extend the maximum age of 26 years, on condition that the employer agrees to contribute to the Fund such additional amounts as deemed necessary, by the actuary, to make provision for such benefit;]**
- [(iv)] [A child born after the death of a pensioner who would have been regarded as a child in terms of subparagraph (ii); or]**
- [(v)] [A person, who in the opinion of the Board, was in fact dependent upon the pensioner for maintenance;]**

(j) by the deletion of the definition of “**employer**”;

(k) by the insertion before the definition of “**interest**” of the following definition

“ ‘**Fund**’ means the Transnet Second Defined Benefit Fund established in terms of section 14B of the Act;”

(l) by the insertion before the definition of “**Managing Director**” of the following definitions;

“ ‘**Investment Consultant**’ means a natural or legal person who is appointed to furnish advice to the Fund on the strategic investment of its assets and the allocation of mandates to Investment Managers and who performs any other function as the Board may decide;”

“ ‘**Investment Manager**’ means a natural or legal person who invests assets of the Fund on its behalf and in accordance with its instructions;”

(m) by the deletion of the definition of “**Managing Director**”;

(n) by the substitution of the definition of “**pensioner**” for the following definition:

“**[p]Pensioner**’ means a pensioner member transferred from the Transport Pension Fund in terms of section 14B of the Act [and shall include a widow or widower or dependant pensioner member] and who was employed by or rendered services to Transnet, its predecessor, or a subsidiary of Transnet prior to receiving a benefit from the Transport Pension Fund;”

(o) by the deletion of the definition of “**Registrar**”;

- (p) by the substitution for the definition of “**recognised marriage**” for the following definition:

“ ‘Recognised Marriage’ means, in relation to a Pensioner

- (i) a civil marriage or customary marriage or a marriage by religious rites; or
- (ii) a union,

which existed as at the 2006 Rule Amendment Date and continued to exist until the date of the death of the Pensioner and which the Board has in its discretion has determined to be a Recognised Marriage for the purposes of these Rules;”

- (q) by the insertion after the definition of “**Recognised Marriage**” of the following definition:

“ ‘Rules’ means these rules of this Fund;”

- (r) by the insertion after the definition of “**Rules**” of the following definition:

“ ‘Special Pensioner’ means a person who, as at the 2006 Rule Amendment Date

- (a) was in receipt of a pension and/or other benefit paid by Transnet;
- (b) was not entitled to a pension and/or other benefit paid by the Fund, the Transport Pension Fund or the Transnet Retirement Fund;”

- (s) by the insertion before the definition of “**the Act**” of the following definition:

“ ‘Spouse’ means a person who was a party to a Recognised Marriage with a Pensioner;”

- (t) by the insertion after the definition of “**the Act**” of the following definition:

“[Transnet] ‘Transport Pension Fund’ means the Fund established in terms of [section 2 of ] the Act and formerly known as the Transnet Pension Fund; and”

- (u) by the insertion after the definition of “**Transport Pension Fund**” of the following definition:

“ ‘Transnet’ means Transnet Limited.

3. The following is inserted before rule 3 which deals with “**Fund: Object, Membership, Contributions and Transfers**”:

“The headings to the Rules shall not be taken into account in the interpretation of the Rules. If there is any inconsistency between the Act and these Rules, the provisions of the Act will prevail. A reference to the singular shall include the plural and vice versa. Expressions in the masculine shall include the feminine and vice versa.”

**Amendment of Rule 3 of the Schedule to Act 62 of 1990****4. Rule 3 of the Schedule is hereby amended:**

(a) by the substitution of subrule (2) for the following:

“3. (2) In terms of section 14B (4) of the Act, the Fund is vested with legal personality and is capable of suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of the [r]Rules.”

(b) by the substitution of subrule (3) for the following:

“3. (3) The object of these [r]Rules shall be to maintain and regulate a fund, from which benefits to [p]Pensioners, Special Pensioners and Beneficiaries [or their dependants] shall be paid, and for whose benefit this [f]Fund is established.”

(c) by the substitution of subrule (4) for the following rule:

“3. (4) Membership shall commence from **[the date of transfer of a pensioner from the Transnet Pension Fund in terms of section 14B of the Act.]**

(a) in the case of a Pensioner, the date of transfer of the Pensioner from the Transport Pension Fund in terms of section 14B of the Act; and

(b) in the case of a Special Pensioner, the date with effect from which he or she first became entitled to a pension from this fund in terms of these Rules.”

(d) by the substitution of subrule (5) for the following rule:

“3. (5) No [p]Pensioner, Special Pensioner or Beneficiary shall contribute to this fund: Provided that **[the employer] Transnet**, if the Board of Trustees deems this necessary after consultation with the actuary, shall contribute to the Fund.”

(e) by the substitution of subrule (6) for the following rule:

“3. (6) The **[Trustees] Fund** shall have the power to receive transfer values of pensioners from **[Transnet]Transport Pension Fund.**”

**Substitution of Rule 4 of the Schedule to Act 62 of 1990**

5. Rule 4 of the Schedule is hereby substituted for the following:

**“Registered Office**

4. The registered office of the Fund shall be at **[222 Smit Street, Braamfontein, Johannesburg or such other]** such address as the Board of Trustees may decide, notification of which must be given to the Minister.”

**Substitution of Rule 5 of the Schedule to Act 62 of 1990**

6. Rule 5 of the Schedule is hereby substituted for the following:

**“Board of Trustees**

5. (1) The Board of Trustees shall comprise six [T]trustees and their alternates appointed by **[the employer]** Transnet of which two [T]trustees and their alternates will be nominated from amongst pensioners.
- (2) The Board of Trustees shall control the Fund.
- (3) **[The Managing Director]** Transnet shall appoint a [C]chairperson for the Board who shall not be a trustee.
- (4) Subject to there being sufficient members to form a quorum as laid down in rule 7(5), the Board of Trustees shall be entitled to function notwithstanding the existence of any vacancy.
- (5) The duty of the [C]chairperson, members of the Board of Trustees and their alternates towards the Fund shall be of a fiduciary nature and they shall, when acting in such capacities, act only in the interests of the Fund, **[its pensioners and other beneficiaries,]** to the exclusion of all other considerations or objectives. The chairperson, members of the Board of Trustees and their alternates shall also act in good faith towards all of the stakeholders in the Fund including Pensioners, Beneficiaries, Special Pensioners and Transnet.
- (6) The members of the Board of Trustees shall conduct themselves, at meetings of the Board, in a responsible manner that is in harmony with their status as members of that Board [Trustees]. Should a member of the Board [Trustee] act in breach of this requirement, the Board may, by a majority vote of at least two thirds of the members of the Board of Trustees present at the meeting at which such breach occurs, require the person concerned to leave the meeting or take such other decision or action as may, in the circumstances, be necessary.”

**Amendment of Rule 6 of the Schedule to Act 62 of 1990**

## 7. Rule 6 of the Schedule is hereby amended -

(a) by the substitution of subrule (1)(a) with the following:

“6. (1) (a) a body corporate or a minor or any person who is insane or any other person otherwise incapable of acting as a member of the Board of Trustees.”

(b) by the substitution of subrule (2) for the following rule:

“6. (2) The [C]chairperson or a [Trustee] member of the Board shall cease to hold office upon—

(a) resignation from the Board:

(b) disqualification in terms of subrule (1); or

(c) termination of appointment by Transnet [ the Managing Director].”

**Amendment of Rule 7 of the Schedule to Act 62 of 1990**

## 8. Rule 7 of the Schedule is hereby amended:

(a) by the substitution of subrule (10) for the following:

“7. (10) If there is no quorum at a meeting of the Board within thirty (30) minutes after the time fixed for its commencement, the meeting shall adjourn for a period of not less than [a week ] two weeks and not more than four weeks.”

(b) by the insertion of subrule (12) as follows:

“(7) (12) With the consent of the chairperson, a decision may be taken by the members of the Board of Trustees by “round robin” resolution provided that every board member who is in the Republic of South Africa at the time exercises a vote in respect of that decision and the decision is noted at the next meeting of the Board.”

**Substitution of Rule 9 of the Schedule to Act 62 of 1990**

## 9. Rule 9 of the Schedule is hereby amended:

(a) by the substitution of subrule (2) for the following:

“9. (2) The Board may take any action (including the control of the finances and the administration of the Fund) not specifically provided for in these [r]Rules that may be necessary to achieve the objects of the Fund provided that such action is not inconsistent with the Act or these Rules.”



(b) by the substitution of subrule (4) for the following:

- “9. (4) The Board shall appoint—
- (a) an Executive Committee which shall consist of—
- (i) a chairperson appointed by the Board;
- (ii) the [manager ] [(P)principal [O]officer]] of the Fund; and
- (iii) **[one member of the Board and an alternate member nominated by the members of the Board] one other person appointed by the Board who may be, but need not be, a member of the Board of Trustees; or [and]**
- (iv) alternates to the trustees in (i) to (iii) above, which alternates must themselves be members of the Board;
- (b) an Investment Committee which shall consist of—
- (i) a [C]chairperson appointed by the Board;
- (ii) **[a member of the personnel of an employer, engaged in the administration of the Fund and nominated by the Chairperson of the Board] the principal officer of the Fund; and**
- (iii) **[one member of the Board and an alternate member, nominated by the members of the Board] one other person appointed by the Board who may be, but need not be, a member of the Board of Trustees; or**
- (iv) alternates to the trustees in (i) to (iii) above, which alternates must themselves be members of the Board;”

(c) by the insertion of subrules (5), (6), (7) and (8) as follows:

- “9. (5) The Board has the discretion to delegate to another person or body selected by it such powers and functions as it may determine but this does not mean that the Board does not retain its overall responsibility for the exercise of those powers and the fulfilment of those functions.
- (6) Transnet must appoint the first Investment Consultant appointed after the 2006 Rule Amendment Date and shall pay the fees of that Consultant for the period of that appointment. Any appointment of an Investment Consultant thereafter must be made by the Fund at its expense.
- (7) The Board shall determine the investment policy of the Fund and shall review, and if necessary, revise it at intervals of not more than three years. The Board shall also determine the strategy of the Fund after

taking into account the recommendation of the Investment Committee and review, and, if necessary, revise it at intervals of no more than 12 months. Provided that the Board's decisions on the investment policy and strategy of the Fund will be of no force or effect unless -

- (i) the actuary has in writing declared that it is suitable for the Fund; and
  - (ii) Transnet has in writing approved it.
- (8) The investment policy of the Fund may not be changed without the approval of the actuary and Transnet: Provided that if within 60 days of the date on which the proposed new investment policy is in writing submitted to Transnet for consideration Transnet does not in writing indicate whether or not it has approved or rejected the proposed new investment policy, it will be deemed to have approved it."

#### **Amendment of Rule 10 of the Schedule to Act 62 of 1990**

10. Rule 10 of the Schedule is hereby amended by the substitution of subrule (a) for the following:

"10. (a) [settle] deal with all disputes in respect of benefits;"

#### **Substitution of Rule 11 of the Schedule to Act 62 of 1990**

11. Rule 11 of the Schedule is hereby substituted for the following:

##### **"Investment Committee**

11. (1) The Investment Committee shall-
- [(a)] **[subject to the requirements stipulated in the Pension Funds Act, 1956 (Act No. 24 of 1956), and the regulations promulgated thereunder in connection with the investment of money invest or cause to be invested the monies of the Fund not immediately required for current expenses, to the best advantage of the Fund;]**
  - (a) after taking advice on the matter from the Investment Consultant and after taking into account the characteristics and circumstances of the Fund, formulate a proposed investment policy and strategy for the Fund, including a proposal in regard to the appointment of an Investment Manager or Investment Managers, for consideration by the Board. Provided that such investment strategy may not provide for the investment outside of the Republic of a greater percentage of its assets than that which a pension fund registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956) may so invest.
  - (b) subject to rule 9(7) -

- (i) implement or procure the implementation of the policy and strategy;
  - (ii) monitor the performance of the Fund's investments; and
  - (iii) review, and, when it believes it to be appropriate, recommend changes to the Fund's investment policy and strategy.
- [(b)] submit reports on the investments to the Board at such intervals and in such form as the Board may prescribe; and
- (c)
- [(c)] keep complete accounts, records and minutes of all actions taken in the performance of its functions and the exercise of its
- (d) powers.
- (2) The Investment Committee may, for the purpose of subrule (1) or subrule (4), make use of the services of **[portfolio] Investment [m]Managers. [not employed by the Fund or an employer.]**
- (3) Any security belonging to the Fund and held by it [the Investment Committee] or an [portfolio] Investment [m] Manager[s] on its behalf shall be kept in safe custody in the safes or strongrooms at the registered office of the Fund or at any bank or building society approved by the Board or in the safe custody of the Fund's approved custodian/s. **[portfolio managers appointed in terms of subrule (2). ]**
- (4) Subject to subrule (1) the Investment Committee shall have the power to do anything relating to the making of investments or the protection of investments which in its opinion is to the best advantage of the Fund
- =
- (a) to enable the Fund to meet its current and future liabilities;
  - (b) without limiting subrule (4)(a), to reduce investment risk;
  - (c) without limiting subrule (4)(a), to ensure for efficient portfolio management;
  - (d) to facilitate the discharge of its functions in terms of subrules (1)(a), (4)(a), (4)(b) or (4)(c).
- (5) All actions taken by the Investment Committee must be consistent with the investment policy approved in terms of rules 9(7) and (8) and any diversion from this investment policy must therefore be approved by the Board of Trustees in terms of rules 9(7) and (8)."

**Substitution of Rule 12 of the Schedule to Act 62 of 1990**

12. Rule 12 of the Schedule is hereby amended-

(a) by the substitution of subrules (1), (2), and (3)(a) as follows:

**“[Manager]Administrator and Principal Officer**

12. (1) **[The Managing Director] Transnet shall appoint [a member of the personnel of the Employer to be the Manager] the Administrator and the [(p[P]rincipal [O]fficer)] of the Fund and may, at any stage, terminate such appointments. The costs of the principal officer shall be borne by Transnet.**
- (2) Should the **[Manager (P)]principal [O]fficer()** be absent from the Republic for more than thirty days or be otherwise unable to fulfil his or her functions, **[the Managing Director] Transnet** shall appoint another person to act as **[Manager] [(P)]principal [O]fficer()** for the period of such absence or inability and shall advise the Board of the appointment.
- (3) The **[Manager (P)]principal [O]fficer()** shall have power—
- (a) to open **[and operate]** a banking account in the name of the Fund;

(b) by the deletion of subrules (3)(b) and (c)

(c) by the substitution of subrules (3)(d) and (e) with the following subrules (3)(b) and (c):

- “[(d)] with the approval of the Board or any sub-committee thereof including the Investment Committee and the Executive Committee, to enter into and sign any contract [or document]on behalf of the Fund;**
- [(e)] with the approval of the Board or any sub-committee thereof including the Investment Committee and the Executive Committee to institute or defend any legal proceedings by or against the Fund and to instruct a legal representative with regard to such proceedings;”**

(d) by the deletion of subrule (3)(f)

(e) by the substitution of subrules (3)(g) and (h) with the following subrules 3(d) and (e):

- “[(g)] to procure the execut[e]ion of the decisions of the Investment Committee by the Investment Managers or any other person or body authorised to execute those decisions; and**
- [(h)] to procure the execut[e]ion of the decisions of Board and the Executive Committee by the Administrator or any other person or body authorised to execute those decisions.”**

(f) by the insertion of subrule (4):

- “(4) The Administrator shall have the power as the agent of the Fund and subject to any terms and conditions set out in any agreement concluded**

between it and the Fund to-

- (a) to operate a banking account in the name of the Fund;
- (b) to receive and administer the moneys of the Fund required to meet current expenses;
- (c) with the approval of the Board to borrow money from any source and to obtain an overdraft from a bank or building society;
- (d) to exercise such powers as it may be given and to fulfil such functions as it may be required to fulfil in terms of any agreement between it and the Fund."

### **Substitution of Rule 13 of the Schedule to Act 62 of 1990**

13. Rule 13 of the Schedule is hereby amended:

(a) by the substitution of subrule 13(1) by the following rule 13:

#### **"Appointment of Secretary**

13. [(1)] The [Managing Director] principal officer shall appoint **[a member of the personnel of an employer as]** the [S]secretary of the Fund and may, at any stage, terminate any such appointment. The cost in respect of the remuneration of the secretary shall be borne by Transnet.

(b) by the deletion of subrule (2).

### **Amendment of Rule 14 of the Schedule to Act 62 of 1990**

14. Rule 14 of the Schedule is hereby amended by the substitution of subrule (b) for the following:

#### **"Duties of Secretary**

14. The [S]secretary shall---
- (b) submit to the Board all matters and documents received **[from an employer];"**

### **Substitution of Rule 16 of the Schedule to Act 62 of 1990**

15. Rule 16 of the Schedule is hereby substituted for the following:

#### **"Indemnification and insurance**

16. (1) The Fund shall indemnify the [C]chairperson, members of the Board and their alternates, **[and all persons engaged in the administration of the Fund ]** the principal officer and the secretary against all costs and expenses incurred by reason of any act carried out in good faith in

the performance of their duties in connection with the Fund.

- (2) The Board shall insure the Fund against losses due to dishonesty, negligence and [or] fraud of [persons engaged in the administration of the Fund] officials of the Fund including members of the Board.”

#### Substitution of Rule 17 of the Schedule to Act 62 of 1990

16. Rule 17 of the Schedule is hereby substituted for the following:

##### “Administration expenses

17. **[The employer] Transnet** shall pay to the Fund annually all expenses in connection with the administration of the Fund subject to the condition that such expenses have been provided for in an annual budget prepared by the Fund and approved by Transnet.”

#### Amendment of Rule 18 of the Schedule to Act 62 of 1990

17. Rule 18 of the Schedule is hereby amended:

(a) by the substitution of subrule (1)(b) for the following :

- “18. (1) (b) The accounts shall be prepared in the format prescribed **[by regulation in terms of the Pension Fund Act, 1956 (Act No. 24 of 1956),]** in terms of legislation applicable to retirement funds not established by law and shall be balanced at the end of each financial year and shall be audited by the auditor.”

(b) by the substitution of the subrule (1)(c) for the following:

- “18. (1) (c) The Board shall, at the end of the financial year, submit to **[the employer] Transnet**—
- (i) an annual report on all matters relating to the Fund; and
  - (ii) the financial statements pertaining to the Fund.”

(c) by the substitution of subrule (2)(a) for the following:

- “18. (2) (a) The Board shall cause accurate records to be kept **[records]** to enable the actuary to make an actuarial valuation at any time.”

(d) by the substitution of subrule (2)(b) for the following:

- “18. (2) (b) The Fund shall be valued by the actuary at intervals of not more than three years, in the discretion of the Minister, to determine whether the Fund is in a financial position to pay the benefits provided for in these **[r]Rules** and the actuary shall submit the report of the valuation to the Minister, the Minister of Finance, **[the employer] Transnet** and the Board.”

**Amendment of Rule 19 of the Schedule to Act 62 of 1990**

18. Rule 19 of the Schedule is hereby amended:

(a) by the substitution of subrule (3) for the following:

“19. (3) If the Minister and the Minister of Finance are satisfied that the arrangements referred to in sub rule (1) or (2) should suffice to accomplish the objects of this rule, the Minister with the concurrence of the Minister of Finance shall approve the scheme.”

(b) by the substitution of subrule (5)(c) for the following:

“19. (5) (c) if, in the opinion of the Minister of Finance, the financial condition of the Fund is no longer unsound, the former shall inform the **[Manager] principal officer** to that effect and, on receipt of such communication, the obligations of the Fund in respect of that scheme shall terminate.”

(c) by the substitution of subrule (6)(a) for the following:

“19. (6) (a) apply to the court for an order directing that the provisions of these **[r]Rules** relating to the appointment, powers, remuneration (if any) and removal from office of the person managing the business of the Fund, or relating to such other matter as he or she may regard appropriate, be altered in a manner to be specified in such application, or directing that the whole or any part of the business of the Fund be wound up; or

(d) by the substitution of subrule (6)(b) for the following

“19. (6) (b) call on a guarantee to be furnished by Transnet **[each employer]** to place the Fund in a financially sound condition on terms specified by the Minister.”

**Amendment of Rule 20 of the Schedule to Act 62 of 1990**

19. Rule 20 of the Schedule is hereby amended by the substitution of the subrule (1) for the following:

**“Appeals**

20. (1) If a person is dissatisfied with any decision of the **[Manager] principal officer or Administrator** such person shall have a right of appeal to the Executive Committee.”

**Substitution of Rule 21 of the Schedule to Act 62 of 1990**

20. Rule 21 of the Schedule is hereby amended:

(a) by the substitution of subrule(1) for the following:

**“Disposition of pension benefits on death of [p]ensioner**

21. (1) [Any benefit payable in terms of the rules of the Fund in respect of a deceased pensioner shall be dealt with in the following manner, subject to the provisions of sections 9, 10 and 11 of the Divorce Act, 1979 (Act No. 70 of 1979), and] shall not form part of the assets in the estate of such a pensioner.]

No benefit will be paid to a Child or Spouse unless within 12 months of the date upon which notice of the death of the Pensioner was received in writing by the Fund the benefit has been in writing claimed for him or her.

(b) by the deletion of subrules (1)(a), (b), (c) and (d)

(c) by the substitution of subrule (2) for the following:

- “21. (2) For the purpose of this rule a payment by the Fund to a trustee contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), for the benefit of a [dependant or nominee] person contemplated in th[is]ese [r]ules shall be deemed to be a payment to such [dependant or nominee] person.”

**Substitution of Rule 22 of the Schedule to Act 62 of 1990**

21. Rule 22 of the Schedule is hereby substituted for the following:

**“Pension benefits**

22. [The pension equals the pension payable and calculated in terms of the Transnet Pension Fund Rules and all the conditions that apply in terms of the Transnet Pension Fund Rules shall apply to this pension.]

- (1) The pension payable to a Pensioner or Beneficiary shall be the pension to which he or she was entitled immediately prior to the 2006 Rule Amendment Date increased from time to time as may be determined in terms of rule 24.
- (2) Subject to rule 21(1), a Spouse or Child shall be entitled to a benefit as determined in terms of rule 23 with effect from the first day of the month following the date of death of the Pensioner increased from time to time as may be determined in terms of rule 24.”



**Substitution of Rule 23 of the Schedule to Act 62 of 1990**

22. Rule 23 of the Schedule is hereby amended:

(a) by the substitution of subrule (1) for the following:

**“Death of Pensioner**

23. (1) Upon the death of a [person who is in receipt of a pension in terms of these rules] Pensioner there shall be paid to the [d] Dependant or [d] Dependants a benefit [, as determined by the Fund and] provided for in this sub rule in relation to the particular class of [d] Dependant.”

(b) by the deletion of subrules (2), (3) and (4);

(c) by the substitution of subrule (5) for the following subrule (2);

“23. [(5)] In relation to the death of a [p]Pensioner [contemplated in sub rule (2)(a)] who was a female [p]Pensioner, no benefit is paid to her [spouse or d]Dependants if—

(2)

(a) such [member] Pensioner had retired before 1 January 1991; and

(b) such member while a member of the Transport Pension Fund elected on or before 1 January 1991 to exclude her [spouse or d] Dependants from receiving any benefit upon her death.”

(d) by the insertion of the following subrules (3), (4), (5), (6), (7), (8), (9) and (10):

“23. (3) Subject to rule 22, the aggregate of the benefit payable to Spouses and Children in terms of these Rules shall not exceed 70% of the benefit that was payable to the deceased Pensioner at the date of his or her death, or such adjusted benefit as determined in terms of rule 23A, as the case may be.

(4) In the event that there is only one Spouse and no Children, such spouse shall receive 70% of the benefit that was payable to the deceased Pensioner at the date of his or her death, or such adjusted benefit as determined in terms of rule 23A, as the case may be.

(5) In the event that there is more than one Spouse and no Children, each Spouse shall receive an equal share of the total benefit referred to in rule 23(3).

(6) In the event that there is one Spouse and Children, the Board shall have the discretion to distribute the amount of the benefit referred to in rule 23(3) between such Spouse and such Children as the Board may deem fit.

(7) In the event that there is more than one Spouse and Children, the Board shall have the discretion to pay such benefit as is referred to in rule 23(3) to any one of the Spouses or to all of the Spouses in the proportion as the Board deems fit subject to the Board's further

discretion to pay all of such benefit or a portion thereof to some or all of the Children in such proportions as the Board deems fit.

- (8) In the event that there is no Spouse who is entitled to a benefit but only a Child or Children at the date of death of the Pensioner, the total benefit payable to such Child or Children in terms of these Rules shall not exceed 56% of the benefit that was payable to the deceased Pensioner at the date of his or her death. In this event the Board has the discretion to allocate the total benefit or a part thereof in terms of this sub rule in such proportions as the Board may deem fit for the benefit of all or only one or more of such Children as the Board may deem fit.
- (9) The Board may in its discretion pay any benefit allocated to those Children, individually or as a group into a trust as contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988) for the benefit of such Children and it shall be deemed to be a payment to such Children.
- (10) In the event that a benefit is payable to a Pensioner or Beneficiary in the month in which he or she dies, but has not been paid before his or her death, the benefit payable in respect of that month will be paid to the estate of the deceased Pensioner or Beneficiary and thereafter there will be no further amount payable in respect of him or her.”

#### **Insertion of Rule 23A of the Schedule to Act 62 of 1990**

23. The following rule is hereby inserted as rule 23A to the Schedule:

##### **“Calculation of benefit**

- 23A. (1) Subject to the provisions of subrule (4), if the Pensioner had retired on attaining the Date of Retirement, the benefit payable in terms of these Rules to all Beneficiaries after the death of the Pensioner shall not exceed in aggregate 70% of the benefit which was payable to the deceased Pensioner on the date of his or her death.
- (2) Subject to the provisions of subrule (4), if the Pensioner had retired before attaining the Date of Retirement, the total benefit payable in terms of these Rules to all Beneficiaries, Spouses and Children shall not exceed in aggregate an amount calculated by multiplying 70% of the benefit which was payable by this Fund or the Transport Pension Fund, whichever is applicable at the date of the death of the Pensioner by the factor which is arrived at by dividing the sum of the total of service and the number of years service that the Pensioner could have still rendered from the date of his or her death to the Date of Retirement by the pensionable service.
- (3) Subject to the provisions of sub rule (4), if the deceased Pensioner to whom a benefit was paid by this Fund and/or the Transport Pension was paid due to dismissal after the completion of 20 years of service with Transnet, its predecessor or a subsidiary of Transnet, the benefit referred to in sub rule (1) is payable.

- (4) (a) Where the age difference between the Pensioner and the Spouse is not more than five years and where a Recognised Marriage has been entered into by the Pensioner subsequent to retirement but before the 2006 Rule Amendment Date, the benefit determined in subrules (1) or (2), as the case may be, shall be payable.
- (b) Where the age difference between the Pensioner and the Spouse is more than five years and where a Recognised Marriage has been entered into by the Pensioner subsequent to retirement but before the 2006 Rule Amendment Date, the benefit as determined in subrules (1) or (2), as the case may be, is adjusted by multiplying the benefit by a factor that is arrived at by dividing the age of the Spouse by that of the Pensioner, as at the date of death of the Pensioner, provided that the benefit shall not exceed the benefit as determined in sub rules (1) and (2)."

#### **Substitution of Rule 24 of the Schedule to Act 62 of 1990**

24. Rule 24 of the Schedule is hereby substituted for the following:

##### **"Annual increase**

24. [The pension received by a pensioner shall be increased by 2%, compounded annually, for each completed year in respect of which the pension has been or is received: Provided that in the case of a widow or widower or dependant pensioner, the 2% enhancement of the pension shall be calculated from the date on which the pension first became payable to the original pensioner.]

The pension received by a Pensioner or Beneficiary immediately before each anniversary of the date on which the pension commenced shall be increased by 2% on that anniversary: Provided that in the case of a Beneficiary, the anniversary date shall be the anniversary of the date on which the pension first became payable to the Pensioner from whose membership the Beneficiary's claim is derived."

#### **Substitution of Rule 25 of the Schedule to Act 62 of 1990**

25. Rule 25 of the Schedule is hereby substituted for the following:

##### **"Payment to person other than Beneficiary**

25. The [Manager] Board may if [he or she] it is satisfied, after having considered a report by two medical practitioners, that any [b]Beneficiary, Special Pensioner or Pensioner to whom any amount is payable under these [r]Rules is, by reason of a mental condition, unable to manage his or her own affairs. order—
- (a) That such amount be paid to some other person upon such conditions as the [Manager] Board may determine as to its administration for the benefit of the [b]Beneficiary Special Pensioner or Pensioner; or
- (b) That a portion of such amount be paid to the [b]Beneficiary, Special Pensioner or Pensioner, and that the balance be paid, in the order of

preference laid down in rule 23 to the persons mentioned in that paragraph who are dependent upon the **[b]Beneficiary, Special Pensioner or Pensioner** or to some other person upon such conditions as the **[Manager] Board** may determine as to its administration. in accordance with the said order of preference, for the benefit of any such **[dependent]** person or that the balance be partly so paid to any such **[dependent]** person and partly to such other person upon the said conditions: Provided that no such order shall be made in respect of a **[b]Beneficiary, Special Pensioner or Pensioner,** for the administrator of whose estate a *curator bonis* has been appointed and that any such order shall lapse if a *curator bonis* for the administration of the estate of the **[b]Beneficiary, Special Pensioner or Pensioner** concerned is appointed.”

#### Substitution of Rule 26 of the Schedule to Act 62 of 1990

26. Rule 26 of the Schedule is hereby substituted for the following:

##### “Payment to estate

26. When the amounts referred to in rule 23 have been paid to any person mentioned therein other than the person lawfully administering the estate of a deceased **[p]Pensioner, [the employer and the Fund shall be exempt from any further claim under any of those paragraphs and]** no such amount shall be deemed to form part of the estate of the deceased Pensioner and there will be no further claim against either Transnet or the Fund in terms of that rule.”

#### Substitution of Rule 27 of the Schedule to Act 62 of 1990

27. Rule 27 of the Schedule is hereby substituted for the following:

##### “Provision in case of Pensioner who is re-employed

27. If a **[member of the Fund] person** has been granted a pension under these **[r]Rules** or appropriate provisions that preceded these **[r]Rules** and is thereafter re-employed, such member shall continue to receive the pension being paid.”

#### Substitution of Rule 28 of the Schedule to Act 62 of 1990

28. Rule 28 of the Schedule is hereby substituted for the following:

##### “Payment of pensions

28. (1) The **[Manager] Board** shall arrange for the monthly amount of a pension to be credited to **[a pensioner’s]** an account in the name of the Pensioner, Beneficiary or Special Pensioner at a bank to be nominated by the **[p]Pensioner, Beneficiary or Special Pensioner,** as the case may be.
- (2) (a) Where exceptional circumstances prevail, the **[Manager] Board** may arrange for the payment of pensions by means of pension warrants, the encashment of which shall be subject to

such condition as the [Manager] Board may prescribe and which shall be reflected on the warrants.

- (b) The payment of a pension by means of warrants shall be made monthly and not earlier than a date to be determined by the [Manager] Board, which date shall be reflected on the warrants.
- (3) In the case of a pension payable to the Master of the High Court for deposit in the Guardian's Fund on behalf of a [pensioner] person entitled to that pension, the [Manager] Executive Committee may waive compliance with all or any of the requirements prescribed in sub rule (2)."

### Insertion of Rule 29 of the Schedule to Act 62 of 1990

29. The following rule is hereby inserted as rule 29 of the Schedule:

#### "Transfer of liabilities in respect of Special Pensioners

29. (1) Subject to the Act and the approval of Transnet and the Board of Trustees the Fund may accept the obligation to pay a pension and/or other benefit to a Special Pensioner from date of acceptance to the date of his or her death in an amount not less than the amount of the pension and/or benefit enjoyed by him or her immediately before the date of acceptance, provided that there is paid to the Fund an amount equal in value to the actuarial value of the Fund's liability to pay the pension and/or other benefit until the date of his or her death determined on a basis agreed between the Fund's actuary and an actuary appointed by Transnet or, failing such agreement, on a basis determined by an actuary appointed for this purpose by the president for the time being of the Actuarial Society of South Africa.
- (2) Following the acceptance of the obligation in terms of rule 29(1), the Special Pensioner will be entitled to receive from the Fund a pension and/or other benefit equal to the pension and/or other benefit he or she received immediately before the transfer and will have no claim to a pension and/or other benefit from Transnet.
- (3) By agreement between the Fund and Transnet, the pension and/or other benefit payable to a Special Pensioner in terms of rule 29(2) may be increased as contemplated in rule 24, with any changes required by the context."

### Insertion of Rule 30 of the Schedule to Act 62 of 1990

30. The following rule is hereby inserted as rule 30 of the Schedule:

#### "Minimum pension payment

30. (1) Subject to the approval of Board of Directors of Transnet, the Fund may determine a minimum pension which shall be payable to a Pensioner, Special Pensioner or Beneficiary, as the case may be, multiplied, in the case of a Beneficiary, by the same proportion that was used to determine the Beneficiary's pension as a proportion of the Pensioner's pension from whose membership the Beneficiary's pension is derived.
- (2) The Fund may in terms of subrule (1) determine a different minimum pension in respect of Pensioners, Special Pensioners and/or Beneficiaries. A minimum pension may be determined in respect of only one or more of these categories of persons and if a minimum pension is determined in respect of one category, this will not entitle any person falling within a different category to the same or a different minimum pension.
- (3) The determination of a minimum pension to be paid to persons falling within a category in any one year will not mean that the Fund is required to determine a higher minimum pension to be paid to such persons in any subsequent year."

#### **Insertion of Rule 31 of the Schedule to Act 62 of 1990**

31. The following rule is hereby inserted as rule 31 of the Schedule:

##### **"Bonus payments**

31. (1) If, in the opinion of the actuary, the value of the Fund's assets is in excess of the value of its actual and contingent liabilities as determined by the actuary, the Board may, with the approval of the Board of Directors of Transnet, use part of the surplus to grant a once-off bonus to each Pensioner, Special Pensioner and/or Beneficiary.
- (2) Different bonuses may be granted to different categories of Pensioners, Special Pensioners and Beneficiaries and a bonus may be granted only to a category of Pensioners, Special Pensioners or a category of Beneficiaries.
- (3) The payment of a bonus to one category of Pensioners, Special Pensioners or Beneficiaries will not entitle any person falling within a different category of Pensioners, Special Pensioners or Beneficiaries to an equivalent bonus.
- (4) The payment of a bonus to a Pensioner, Special Pensioner or Beneficiary in any one year will not entitle that Pensioner, Special Pensioner or Beneficiary to an equivalent bonus or any bonus at all in any subsequent year."

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