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GOVERNMENT NOTICES

NATIONAL TREASURY**No. R. 1217****1 December 2006****PENSION FUNDS ACT, 1956: AMENDMENT OF REGULATION 30**

I, Trevor Andrew Manuel, Minister of Finance, hereby under section 36(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), amend regulation 30 of the Regulations as set out in the Schedule.



TREVOR A MANUEL, MP
MINISTER OF FINANCE

SCHEDULE

Definitions

1. In this Schedule "the Regulations" means the Regulations made, and as amended from time to time, under section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956).

Amendment of Regulation 30 of the Regulations

2. Regulation 30 of the Regulations is hereby amended –

(a) by the addition of the following paragraph to subregulation (2):

" (w) where the assets of a pension fund consist exclusively or in part of fund member policies, the rules of that fund must provide clearly -

(i) whether or not the fund's liability to provide benefits to affected members or beneficiaries is funded exclusively or in part by fund member policies;

(ii) to the extent that benefits provided or to be provided by the fund to a member or beneficiary are funded by a fund member policy, that -

(aa) the fund's liability from time to time to the member or beneficiary in respect of those benefits is equal to the fund's corresponding claim from time to time as policyholder against the insurer for the policy benefits provided or to be provided by the insurer under the policy in accordance with the policy prescriptions;

(bb) the policy is administered by the insurer, and all values and benefits of the policy and charges in respect of it are determined, in accordance with the policy prescriptions;

(cc) any change in the policy benefits provided or to be provided under the policy on account of a causal event, as determined in accordance with the policy prescriptions, has the result that the fund's liability to the member or beneficiary changes accordingly;

(dd) the fund must notify the member or beneficiary of the change contemplated in paragraph (cc) in respect of causal events that occur after the coming into operation of this subregulation (w);

(iii) where applicable, that every member or beneficiary affected by (i) and (ii) selected or must select the fund member policy (including the investment and other features of the policy) which funds or is to fund the benefits provided or to be provided to the member or beneficiary, and where applicable that the member or beneficiary decided or must decide on any

amendments or other transactions regarding the policy, in accordance with the policy prescriptions;

- (iv) where applicable, where (i), (ii) and (iii) have application, that the fund or its board do not provide advice with regard to the selection of policies by members or beneficiaries (in particular regarding the investment and other related features of the policies), or with regard to amendments or other transactions regarding those policies;
- (v) that the board of the fund must, to reasonably satisfy themselves that the fund member policies made available to members or beneficiaries for selection are suitable for the membership profile of the fund –
 - (aa) within one year of the date of the coming into operation of this subregulation, review the existing range of fund member policies available for selection by members or beneficiaries ; and
 - (bb) after this subregulation has come into operation -
 - (i) approve all new fund member policies made available for selection by members or beneficiaries, and
 - (ii) annually review the range of fund member policies that are made available to members or beneficiaries for selection.”;

(b) by the addition of the following wording at the end of subregulation (3):

“, provided that a pension fund that is a registered fund at the date of the coming into operation of subregulation (2)(w) shall amend its rules to comply with that subregulation within one year of that date.”; and

(c) by the addition of the following subregulation:

“ (4) In subregulation (2)(w) and in this subregulation (4), unless the context indicates otherwise:

- (a) the terms “**actuarial basis**”, “**benefit**”, “**causal event**”, “**charge**”, “**fund member policy**”, “**member**”, “**policy**” and “**values**” have the meaning assigned in Part 5 of the Regulations under the Long-term Insurance Act, 1998; and
- (b) “**policy prescriptions**”, in relation to a fund member policy, means the terms of the policy, the underlying actuarial basis of the policy, and the prescriptions of the Long-term Insurance Act, 1998 and the regulations issued under that Act.”.

No. R. 1218

1 December 2006

**AMENDMENT OF REGULATIONS UNDER THE LONG-TERM INSURANCE
ACT, 1998**

I, Trevor Andrew Manuel, Minister of Finance, under section 72 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), read with section 54 of the Act, hereby amend the Regulations under the Long-term Insurance Act, 1998, as set out in the Schedule.



TREVOR A MANUEL, MP
MINISTER OF FINANCE

SCHEDULE

Substitution of Part 5 of the Regulations under the Long-term Insurance Act, 1998.

1. The following Part is hereby substituted for Part 5 of the Regulations under the Long-term Insurance Act, 1998:

"PART 5

REQUIREMENTS AND LIMITATIONS REGARDING THE VALUES AND BENEFITS OF POLICIES

(Section 54)

Definitions

5.1 In this Part, unless the context indicates otherwise -

"actuarial basis", in relation to a policy, means the underlying actuarial rules, specifications and formulae in terms of which the policy operates, which:

- (a) in compliance with the Act, are approved by the statutory actuary of the insurer, in particular for the purposes of sections 46 and 52; and
- (b) if and while the Insurance Act, 1943 applied to the policy, in compliance with that Act, were approved by the valuator of the insurer, in particular for the purposes of sections 34 and 62(2) of that Act;

"basic premium" means the premium, including a premium paid by virtue of a premium-waiver benefit, less charges (if any) deductible from the premium for rider-benefits;

"basic risk benefit" means a risk benefit for which the charge is determined periodically with reference to changes in factors pertaining to the risk, including but not limited to the age of the life insured, the amount of the risk cover, or the investment value of the policy, but excluding a rider-benefit;

"benefit" means a policy benefit, including a consideration payable upon the full or partial surrender of a policy, but excluding a loan in respect of a policy;

"causal event", in relation to a policy, means one of the following events:

- (a) the policy becomes fully paid-up;
- (b) the basic premium is reduced, without the policy thereby coming to an end or becoming fully paid-up;
- (c) the remaining policy term or the remaining premium-paying term is reduced, without the policy thereby coming to an end or becoming fully paid-up;

- (d) the policy is surrendered in part, other than for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956, or a part of the policy comes to an end for another reason (other than because risk cover under the policy has come to an end);
- (e) the policy, in the case of a fund member policy, is surrendered in part for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956;
- (f) the policy is surrendered in full, other than for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956, or the policy comes to an end for another reason (other than because the policy has reached its maturity date); or
- (g) the policy, in the case of a fund member policy, is surrendered in full for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956;

“causal event charge” means a charge occasioned by and pertaining to a causal event;

“charge” means a charge stipulated in a policy or its actuarial basis, whether or not the actuarial basis has been expressly incorporated in the policy, which charge is deductible in respect of the policy in accordance with its terms or actuarial basis;

“come to an end” means that the final benefit under a policy has become payable, including in the case of a fund member policy for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956, or that the policy has lapsed without a benefit becoming payable;

“dependant” has the meaning assigned in section 1 of the Pension Funds Act, 1956;

“effective date” means 1 December 2006;

“excluded policy” means:

- (a) a fund policy;
- (b) a reinsurance policy;
- (c) a policy that provides risk benefits only;
- (d) a whole-life policy that provides risk benefits and has an investment value or a materially equivalent value referred to in regulation 5.2(2)(b), and in respect of which policy, immediately before a causal event, the ratio of the aggregate of the sums insured of all basic risk benefits to the monthly basic premium (or the monthly equivalent where recurring premiums are not paid monthly) is greater than the threshold ratio in the table below:

Age next birthday of the life insured at the inception of the policy	Threshold ratio
Up to and including 30	480
31	468
32	456
33	444
34	432
35	420
36	408
37	396
38	384
39	372
40	360
41	348
42	336
43	324
44	312
45	300
46	288
47	276
48	264
49	252
50	240
51	228
52	216
53	204
54	192
55	180
56	168
57	156
58	144
59	132
60 and above	120

(e) and any other policy that provides primarily risk benefits;

“fund member policy” means a policy –

- (a) of which a fund is or was the policyholder; and
- (b) which is or was entered into by the fund for the purpose of funding exclusively the fund’s liability to a particular member (or to the surviving spouse, children, dependants or nominees of the member) in terms of the rules of the fund;

“growth rate” means, over a given period, the positive or negative investment return declared for a portfolio, which investment return is net of those portfolio charges that are deducted before the declaration of the investment return, and in the case where a bonus is declared is inclusive of vested and non-vested bonuses;

“insurer” means a long-term insurer;

“investment value” means the value of a policy:

(a) calculated using a method commonly referred to as a back-end loaded basis, by accumulating the basic premium less deductions at the growth rate that applies to the policy, which deductions comprise:

- (i) benefits paid, excluding basic risk benefits and rider-benefits;
- (ii) charges for basic risk benefits;
- (iii) charges deducted when benefits are paid or the policy is altered;
- (iv) charges stipulated as a fixed amount, which amount, over the full term of the policy, is designed to remain unchanged or is designed to be increased at a specified rate at regular intervals;
- (v) charges stipulated as a percentage or proportion of premiums, which percentage or proportion is designed to remain unchanged over the full term of the policy; and
- (vi) those portfolio charges that are deducted after the declaration of the growth rate, where, in the case of general portfolio charges deducted after the declaration of the growth rate, their percentage or proportion of the value of the portfolio is designed to remain unchanged over the full term of the policy;

provided that in determining the growth rate to be applied for the purposes of this calculation, the percentage or proportion of the value of the portfolio for general portfolio charges that are deducted before the declaration of the growth rate, is designed to remain unchanged over the full term of the policy; and

(b) adjusted, where the growth rate that applies to the policy does not follow the fluctuation in the value of the portfolio on a daily basis, and where that is required by the terms or actuarial basis of the policy, by a market-adjustment factor to take into account the difference between the value of the policy so calculated and the value of the portfolio;

“member”, in relation to a fund member policy, means the member of the fund in respect of whom the fund had or has taken out the policy;

“nominee”, in relation to a member, means a nominee of the member contemplated in the rules of the fund;

“policy” means a long-term policy, whether entered into before or after the commencement of the Act;

“portfolio” means the one or more investment funds representing the underlying assets of a policy;

“portfolio charges” means charges deducted from a portfolio, being:

- (a) **“specific portfolio charges”**, namely charges for specific expenses, which expenses include but are not limited to taxes, statutory levies, investment expenses (including investment performance fees), and investment guarantees; and
- (b) **“general portfolio charges”**, namely management charges, capital charges and other stipulated general charges, which general portfolio charges are stipulated as a percentage or proportion of the value of the portfolio;

“rider-benefit” means a risk benefit for which the charge is a certain amount or a percentage of the premium or is otherwise fixed, which risk benefit excludes a basic risk benefit;

“this Part” means this Part 5 of these regulations; and

“values” means all values of a policy including, but not limited to, its investment value, its remaining value and other values contemplated in section 52(2), and its maturity value.

Basis for determination of values and benefits of policies

5.2(1) The values and benefits of a policy, and charges in respect of the policy, are determined, over the full term of the policy, in accordance with its terms and its underlying actuarial basis, whether or not the actuarial basis has been expressly incorporated in the policy.

(2) Notwithstanding anything to the contrary in the terms or actuarial basis of a policy which is not an excluded policy, and in respect of which a causal event has occurred on or after 1 January 2001, but subject to regulation 4.2:

- (a) where the terms or actuarial basis of that policy make provision for the calculation of an investment value as described in the definition “investment value”, regulations 5.3 to 5.6 apply to that policy; or
- (b) where the terms or actuarial basis of that policy do not make provision for the calculation of an investment value as described in the definition “investment value”, the values or benefits of that policy upon or immediately after the causal event must be, as certified by the insurer’s statutory actuary, materially equivalent to such values or benefits as determined in accordance with regulations 5.3 to 5.6 for a policy contemplated in paragraph (a).

Fund member policies

5.3(1) Where a causal event occurred in respect of a fund member policy on or after 1 January 2001, but before the effective date, and the insurer on account of that causal event deducted causal event charges which in total exceed the maximum prescribed in subregulation (2), the insurer must:

(a) if the policy has not come to an end before the effective date, within 6 months after the effective date credit the policy with the amount by which the total causal event charges deducted exceed the prescribed maximum ("the excess amount") plus interest on the excess amount calculated in accordance with regulation 5.5;

or

(b) if the policy has come to an end before the effective date, and if the amount by which the total causal event charges deducted exceed the prescribed maximum ("the excess amount") is R150 or more, upon the written request of the member, or in the case of a deceased member upon the written request of the dependants or nominees of the member, which request in every case must be received by the insurer within three years after the effective date, within 6 months after having received the written request pay the excess amount plus interest on the excess amount calculated in accordance with regulation 5.6, less any tax that must be deducted, to the member or to the dependants or nominees of a deceased member.(2) The maximum deductible charges for purposes of subregulation (1) are:

(a) where the causal event is one contemplated in paragraph (a), (c),(f) or (g) of the definition "causal event", 35% of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to 35% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) where the causal event is one contemplated in paragraph (d) or (e) of the definition "causal event", 35% of the amount by which the investment value immediately before the causal event has been reduced.

(3) Where a causal event occurs in respect of a fund member policy on or after the effective date, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (4).

(4) The maximum deductible charges for purposes of subregulation (3) are:

(a) where the causal event is one contemplated in paragraph (a), (c), (f) or (g) of the definition "causal event", 30% of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the

causal event equal to 30% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

- (c) where the causal event is one contemplated in paragraph (d) or (e) of the definition "causal event", 30% of the amount by which the investment value immediately before the causal event has been reduced.

Policies other than fund member policies

5.4(1)(a) Where a causal event occurred in respect of a policy other than a fund member policy on or after 1 January 2001, but before the effective date, and the insurer on account of that casual event deducted causal event charges which in total exceed the maximum prescribed in subregulation (2), the insurer must, if the policy has not come to an end before the effective date, within 6 months after the effective date credit the policy with the amount by which the total causal event charges deducted exceed the prescribed maximum ("the excess amount") plus interest on the excess amount calculated in accordance with regulation 5.5.

(b) Despite paragraph (a), where a policy other than a fund member policy has come to an end before the effective date, no maximum is prescribed with regard to the deduction of causal event charges on account of a causal event.

(2) The maximum deductible charges for purposes of subregulation (1) are:

- (a) where the causal event is one contemplated in paragraph (a) or (c) of the definition "causal event", 35% of the investment value immediately before the causal event;
- (b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to 35% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;
- (c) No maximum is prescribed with regard to the deduction of causal event charges on account of a causal event contemplated in paragraph (d) or (f) of the definition "causal event".

(3) Where a causal event occurs in respect of a policy other than a fund member policy on or after the effective date, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (4).

(4) The maximum deductible charges for purposes of subregulation (3) are:

- (a) where the causal event is one contemplated in paragraph (a) or (c) of the definition "causal event", 30% of the investment value immediately before the causal event;
- (b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the

causal event equal to 30% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

- (c) where the causal event is one contemplated in paragraph (d) of the definition "causal event", 40% of the amount by which the investment value immediately before the causal event has been reduced;
- (d) where the causal event is one contemplated in paragraph (f) of the definition "causal event", 40% of the investment value immediately before the causal event.

Interest on the excess amount

5.5 The interest on the excess amount contemplated in regulations 5.3(1)(a) and 5.4(1)(a) is:

- (a) calculated from and including the date the excess amount was deducted, to but excluding the date it is credited to the policy; and
- (b) at an annual interest rate equal to the growth rate (net of those portfolio charges that are deducted after the declaration of the growth rate) over this period, which annual interest rate is subject to a maximum effective rate of 10% and a minimum effective rate of 0%.

5.6 The interest on the excess amount contemplated in regulation 5.3(1)(b) is:

- (a) calculated from and including the date the causal event occurred, to but excluding the date the excess amount is paid to the member or to the dependants or nominees of a deceased member;
- (b) for the period from the date the causal event occurred, to and including the date the policy came to an end, at an annual interest rate equal to the growth rate (net of those portfolio charges that are deducted after the declaration of the growth rate) over this period, which annual interest rate is subject to a maximum effective rate of 10% and a minimum effective rate of 0%; and
- (c) for the period from and excluding the date the policy came to an end, to but excluding the date the excess amount is paid, at an annual effective rate of 5%.

Delayed implementation

5.7(1) Upon application by an insurer to the Minister, the Minister may, after consultation with the Registrar and subject to such conditions the Minister may determine, by notice in the *Gazette* extend the 6 month period prescribed in subregulations 5.3(1)(a) and (b) and 5.4(1)(a).

(2) The application contemplated in subregulation (1) must be lodged with the Minister within 3 months after the effective date, and must be fully motivated and accompanied by financial or other information illustrating what the immediate and

potential future impact on the financial soundness or business of the insurer would be were this Part to be implemented within the 6 month period prescribed in subregulations 5.3(1)(a) and (b) and 5.4(1)(a).

Amendments to actuarial basis and values

5.8(1) An insurer must, within 3 months after the effective date, inform the Registrar of any amendment made from 30 June 2005 to the day before the effective date to the actuarial basis of a policy issued by that insurer before the effective date, where that amendment will have the effect of reducing the values or benefits of that policy. The insurer must also provide the reasons for the amendment.

(2) An insurer must, before giving effect to an amendment made to the actuarial basis of a policy on or after the effective date, where that amendment will have the effect of reducing the values or benefits of that policy, inform the Registrar of the amendment. The insurer must also provide the reasons for the amendment.

(3) The Registrar may, if he or she is of the opinion that an amendment contemplated in subregulation (1) or (2) was affected to directly or indirectly reduce the impact on the insurer of complying with this Part, direct the insurer to review that amendment.

(4) An insurer must keep a record of amendments contemplated in subregulations (1) and (2), which record must be made available to the Registrar on request.

Disclosure

5.9 An insurer must, within 6 months after the effective date:

- (a) take reasonable measures to communicate the content of the relevant provisions of this Part, and the possible implications of those provisions, to the public through mass media;
- (b) in respect of policies that have not come to an end before the effective date and are affected by this Part, inform every member in respect of a fund member policy, and every policyholder of a policy other than a fund member policy, in writing of the content of the relevant provisions of this Part, and of the possible implications of those provisions for those policies.”.

2. The following Part is hereby added to the Regulations under the Long-term Insurance Act, 1998:

“PART 6

TITLE AND COMMENCEMENT

-
- 6.1 These regulations are called the Regulations under the Long-term Insurance Act, 1998.
 - 6.2 Regulations 1 to 4 came into operation on commencement of the Act.”
-