

NATIONAL TREASURY

NO. 2230

1 July 2022

AMENDMENTS TO REGULATION 28 IN TERMS OF THE PENSION FUNDS ACT, 1956

The Minister of Finance has, in terms of section 36(1)(bB) of the Pension Funds Act, 1956 (Act No. 24 of 1956), made amendments to Regulation 28 of the Regulations made under section 36 of the Pension Funds Act and published under Government Notice R. 98 in *Government Gazette* No. 162 of 26 January 1962, as amended, as set out in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing Regulations.
 _____ Words underlined with a solid line indicate insertions in existing Regulations.

Interpretation

1. In this Schedule, "Regulation 28" means Regulation 28 of the Regulations made in terms of section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), published in Government Notice No. R.99 of 26 January 1962, as amended.

Amendment of subregulation (1)

2. Subregulation (1) of Regulation 28 is hereby amended by—

(a) the insertion after the definition of "credit ratings" of the following definition:

"crypto-asset" means a digital representation of value that is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility; applies cryptographic techniques and uses distributed ledger technology;

(b) the substitution for the definition of "hedge fund" of the following definition:

"hedge fund"—

(a) has the meaning assigned to it in paragraph 2 of the declaration by the Minister of Finance, in Government Notice No. 141 in Gazette No. 38503 of 25 February 2015 of the business of a hedge fund, to be a collective investment scheme to which the prescribed provisions of the Collective Investment Schemes Control Act, 2000 (Act No. 45 of 2002), apply; and

(b) includes a foreign hedge fund approved in terms of section 65 of the Collective Investment Schemes Control Act, 2000; and

(c) the insertion after the definition of "hedge fund" of the following definition:

"infrastructure" means any asset that has or operates with a primary objective of developing, constructing and/or maintaining physical assets and technology structures and systems for the provision of utilities, services or facilities for the economy, businesses, or the public;".

Amendment of subregulation (3)

3. Subregulation (3) of Regulation 28 is hereby amended by —

(a) the insertion after paragraph (d) of the following paragraph:

"(dA) Subject to paragraph (d), a fund may invest in a hedge fund, subject to conditions that may be prescribed;"

(b) the substitution in paragraph (f) in the words preceding subparagraph (i) for "35 percent" of "45 percent";

(c) the amendment in paragraph (f) by the deletion at the end of subparagraph (iii) of the word "and";

(d) the substitution in paragraph (f) for subparagraph (iv) of the following subparagraph:

"(iv) item 8: Hedge funds [private equity funds and any other asset not referred to in this schedule.];"

(e) the insertion in paragraph (f) after subparagraph (iv) of the following subparagraphs:

"(v) item 9: Private equity funds; and

(vi) item 10: any other asset not referred to in this schedule;"

(f) the substitution in paragraph (g) in the words preceding subparagraph (i) for "15 percent" of "20 percent";

- (g) the substitution in paragraph (g) for subparagraph (ii) of the following subparagraph:

“(ii) item [8.1(b)] 9: Private equity funds.”;

- (h) the substitution for paragraph (h) of the following paragraph:

“(h) The aggregate exposure by a fund per issuer or entity, in respect of all asset categories specified in Table 1, irrespective of the limits referred to in Column 1 of Table 1, must not exceed 25 per cent of the aggregate fair value of the total assets of the fund, excluding any debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic.”;

- (i) the insertion after paragraph (i) of the following paragraphs:

“(IA) The aggregate exposure by a fund to all issuers in respect of direct infrastructure, across all asset categories, excluding any debt instrument issued or guaranteed by the South African government, may not exceed 45% of the aggregate fair value of the total assets of the fund;

(IB) The limit of 65 per cent in respect of housing loans granted to members in accordance with the provisions of section 19(5) of the Act referred to in item 7 of Table 1—

(i) applies, with effect from 3 January 2023, in respect of loan guarantees entered into on or subsequent to that date; and

(ii) does not apply in respect of loan guarantees that have been entered into prior to 3 January 2023.”

- (j) the substitution in paragraph (j) in the words preceding subparagraph (i) for “(a) - (i)” of “(a) - (iB)”; and

- (k) the insertion after paragraph (j) of the following paragraph:

“(k) A fund may not invest in crypto-assets, including in relation to Item 10 of Table 1.”.

Amendment of subregulation (4)

4. Subregulation (4) of Regulation 28 is hereby amended by—

- (a) the insertion in paragraph (b) following “Notwithstanding” of “paragraph”;
- (b) the substitution for paragraph (c) of the following paragraph:

“(c) Notwithstanding paragraphs (a) and (b), any direct or indirect exposure to a hedge fund or private equity fund must be disclosed as an investment into a hedge fund or private equity fund, as the case may be, and the fund need not apply the look-through principle in respect of the underlying assets of the hedge fund or private equity fund, except in the case of infrastructure investments.”; and

- (c) the insertion in paragraph (d) after “Notwithstanding” of “paragraph”.

Amendment of subregulation (5)

5. Subregulation (5) of Regulation 28 is hereby amended by the insertion in paragraph (b) after “Notwithstanding” of “paragraph”.

Amendment of subregulation (8)

6. Subregulation (8) of Regulation 28 is hereby amended by—

- (a) deleting in paragraph (a) after “Reporting” of “and exclusions”; and
- (b) substituting for paragraph (b) the following paragraph:

“(b) Infrastructure assets must be reported, with respect to the top 20 holdings, in the format specified in Table 2.”.

Substitution of Table 1

7. Regulation 28 is hereby amended by the substitution for Table 1 of the following Table:

“TABLE 1

			Column 1	Column 2	
Item			Categories of assets	Limits being the maximum percentage of the aggregate fair value of total assets of the fund	
				Per Issuer/entity as applicable	For all issuers/entities
1			CASH		100%

1.1			Notes and coins; any balance or deposit in an account in a South African bank; A money market instrument issued by a South African Bank including an Islamic liquidity management financial instrument; Any positive net balance in a margin account with an exchange; and Any positive net balance in a settlement account with an exchange, operated for the buying and selling of assets.	25%	100%
1.2			Any balance or deposit held with a foreign bank; A money market instrument issued by a foreign bank including an Islamic liquidity management instrument.	5%	
2			DEBT INSTRUMENTS INCLUDING ISLAMIC DEBT INSTRUMENTS		100% for debt instruments issued by or guaranteed by the Republic, otherwise 75%
2.1			Inside the Republic and foreign assets		
	(a)		Debt instruments issued by, and loans to, the government of the Republic, and any debt or loan guaranteed by the Republic		100%
	(b)		Debt instrument issued or guaranteed by the government of a foreign country	10%	
	(c)		Debt instruments issued or guaranteed by a South African bank against its balance sheet -		75%
		(i)	Listed on an exchange with an issuer market capitalisation of R20 billion or more, or an amount or conditions as prescribed	25%	
		(ii)	Listed on an exchange with an issuer market capitalisation of between R2 billion and R20 billion or an amount or conditions as prescribed	15%	
		(iii)	Listed on an exchange with an issued market capitalisation of less than R2 billion or an amount or conditions as prescribed	10%	
		(iv)	Not listed on an exchange	5%	25%
	(d)		Debt instruments issued or guaranteed by an entity that has equity listed on an exchange, or debt instruments issued or guaranteed by a public entity under the Public Finance Management Act, 1999 (Act No. 1 of 1999) as prescribed -	10%	50%
		(i)	Listed on an exchange	10%	50%
		(ii)	Not listed on an exchange	5%	25%
	(e)		Other debt instruments -	5%	25%
		(i)	Listed on an exchange	5%	25%
		(ii)	Not listed on an exchange	5%	15%
3			EQUITIES		75%

3.1			Inside the Republic and foreign assets		
	(a)		Preference and ordinary shares in companies, excluding shares in property companies, listed on an exchange -		75%
		(i)	Issuer market capitalisation of R20 billion or more, or an amount or conditions as prescribed	15%	
		(ii)	Issuer market capitalisation of between R2 billion and R20 billion or an amount or conditions as prescribed	10%	
		(iii)	Issuer market capitalisation of less than R2 billion or an amount or conditions as prescribed	5%	
	(b)		Preference and ordinary shares in companies, excluding shares in property companies, not listed on an exchange	2.5%	10%
4			IMMOVABLE PROPERTY		25%
4.1			Inside the Republic and foreign assets		
	(a)		Preference shares, ordinary shares and linked units comprising shares linked to debentures in property companies, or units in a Collective Investment Scheme in Property, listed on an exchange -		25%
		(i)	Issuer market capitalisation of R10 billion or more, or an amount or conditions as prescribed	15%	
		(ii)	Issuer market capitalisation of between R5 billion and R10 billion, or an amount or conditions as prescribed	10%	
		(iii)	Issuer market capitalisation of less than R5 billion, or an amount and conditions as prescribed	5%	
	(b)		Immovable property, preference and ordinary shares in property companies, and linked units comprising shares linked to debentures in property companies, not listed on an exchange	5%	15%
5			COMMODITIES		10%
5.1			Inside the Republic and foreign assets		
	(a)		Kruger Rands and other commodities listed on an exchange, including exchange traded commodities:-		10%
		(i)	Gold	10%	
		(ii)	Each other commodity	5%	
6			INVESTMENTS IN THE BUSINESS OF A PARTICIPATING EMPLOYER INSIDE THE REPUBLIC IN TERMS OF-		
	(a)		Section 19(4) of the Pension Funds Act		5%
	(b)		To the extent it has been allowed by an exemption in terms of section 19(4A) of the Pension Funds Act		10%
7			HOUSING LOANS GRANTED TO MEMBERS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 19(5) OF THE PENSION FUNDS ACT		65%
8			HEDGE FUNDS		10%
8.1			Inside the Republic and foreign assets		
	(a)		Hedge funds		10%

		(i)	Funds of hedge funds	5% per fund of hedge funds	
		(ii)	Hedge funds	2.5% per hedge fund	
9			PRIVATE EQUITY FUNDS		15%
9.1			Inside the Republic and foreign assets		
	(a)		Private equity		15%
		(i)	Funds of private equity funds	10% per fund of private equity funds	
		(ii)	Private equity funds	5% per private equity fund	
10			OTHER ASSETS NOT REFERRED TO IN THIS TABLE		2.5%
11	(a)		Overall limit for infrastructure across all classes (excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic)		45%
	(b)		Overall limit for all instruments per entity/issuer (local and or foreign) (excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic)	25%	

Insertion of Table 2

8. Regulation 28 is hereby amended by the insertion after Table 1 of the following Table:

"TABLE 2

Categories of assets	Percentage (Infrastructure) (%)	Rand value (Infrastructure) (R)	List of Top 20 holdings in respect of infrastructure (name of issuer/entity in respect of infrastructure)
1. Cash			
2. Debt instruments including Islamic debt instruments:			
2.1 Debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic			
2.2 Other debt instruments:			
2.2.1 Listed debt instruments			
2.2.2 Unlisted debt instruments			
3. Equities:			
3.1 Listed equities			
3.2 Unlisted equities			

4. Immovable property (direct & indirect)			
5. Commodities			
6. Investment in the business of the participating employer			
7. Housing loans	n/a	n/a	n/a
8. Hedge funds			
9. Private equity			
10. Other assets not referred to in this table			
11. Infrastructure exposure in the rest of Africa			
TOTAL (Total investment in respect of direct infrastructure, excluding debt instruments issued by, and loans to, the government of the Republic and any debt or loan guaranteed by the Republic)	%	(R)	

11.

Commencement

9. These amendments to Regulation 28 come into effect on 3 January 2023.