

DRAFT
REPUBLIC OF SOUTH AFRICA

REVENUE ADMINISTRATION AND PENSION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75))
(The English text is the official text of the Bill)*

(MINISTER of FINANCE)

9 JUNE 2023

[Bxx—2023]

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.

BILL

To amend the Pension Funds Act, 1956, so as to insert certain definitions; to amend certain provisions; and to provide for matters connected therewith.

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 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, section 1 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 Act 24 of 1956 is hereby amended—
 - (a) by the insertion after the definition of “member’s individual account” of the following definitions:

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

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

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

(b) by the insertion in subsection (1) after the definition of “pension fund” of the following definition:

“**pension interest**”, notwithstanding the definition of “pension interest” in section 1(1) of the Divorce Act (Act 70 of 1979), in relation to a court order referred to in the definition of non-member spouse, means, —

(a) where the court order refers to a retirement fund other than a retirement annuity fund, a pension preservation fund or a provident preservation fund, the benefits to which the member concerned would have been entitled in terms of the rules of the retirement fund if, on the date of the court order—

(i) the member's membership had terminated on account of the member's resignation from employment;

(ii) in the case of a deferred pensioner who has not reached normal retirement age as defined in the fund rules, the member elected to withdraw from the fund; or

(iii) in the case of a deferred pensioner who has reached normal retirement age as defined in the fund rules, the member retired;

(b) where the court order refers to a retirement annuity fund, the total amount of the contributions made to the fund by the member concerned up to the date of the court order, together with an amount of

annual simple interest on those contributions up to that date, calculated in accordance with section 37D(5);

(c) where the court order refers to a pension preservation fund or a provident preservation fund, means the equivalent portion of the benefits to which the member concerned would have been entitled on the date of the court order in terms of the rules of the pension preservation fund or provident preservation fund if —

- (i) the member elected to withdraw from the fund, including having taken a cash withdrawal; or
- (ii) in the case of a member who has reached normal retirement age as defined in the fund rules or has taken early retirement and is awaiting payment of the member's benefit, the member retired;

(d) where the member concerned is a pensioner, means the regular pension benefit amount payable in terms of the rules of the fund, and the manner in which the savings, retirement, and vested components of a member's pension interest referred to in paragraphs (a) to (c) are allocated and the timing at which the different components of the member's pension interest may or must be paid to a non-member spouse, is subject to applicable requirements in the Income Tax Act, and applicable requirements that may be prescribed in terms of this Act;"

(c) by the insertion in subsection (1) after the definition of "retirement annuity fund" of the following definitions:

"retirement component" has the meaning defined in section 1(1) of the Income Tax Act;'

(d) by the insertion after the definition of “rules” of the following definitions:

“**savings component**” has the meaning defined in section 1(1) of the Income Tax Act;

“**savings withdrawal benefit**” has the meaning defined in section 1(1) of the Income Tax Act;’; and

(e) by the substitution in subsection (1) for the definition of “valuator” of the following definition:

“**vested component**” has the meaning defined in section 1(1) of the Income Tax Act;’.

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 amended by section 21 of Act 45 of 2013

2. Section 14B of Act 24 of 1956 is hereby amended—

(a) by the substitution for subsection (1) of the following subsection 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 or member’s individual reserve, if any, taking into appropriate account the member’s interest in the savings, retirement and vested components, and including any savings withdrawal benefit paid from the savings component as permitted in terms of the Income Tax Act, and deductions specified in section 37D of this Act, or; and”;

(b) by the substitution in subparagraphs (i) and (ii) of subsection (3)(c) for the phrase “Long Term Insurance Act, 1998” of the phrase “Insurance Act, 2017 (Act No. 18 of 2017)”; and

(c) by the substitution in subsection (2)(a) for subparagraph (iii) of the following subparagraph:

“(iii) when determining the amounts referred to in subparagraphs (i) and (ii), any savings withdrawal benefit previously paid from the savings component as permitted in terms of the Income Tax Act and deductions referred to in section 37D must be deducted;”.

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, by section 2 of Act 23 of 1970, section 7 (a) 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 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 No. 9 of 2017

3. Section 19 of Act 24 of 1956 is hereby amended—

(a) by the substitution in paragraph (a) of subsection (5) for the words preceding subparagraph (i) of the following words:

“(5) (a) A **[registered]** licensed retirement fund
may, if its rules so permit and subject to those conditions that may be

prescribed [prudential standards], grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the retirement fund in respect of a loan granted or to be granted by **[such]** that other person to a member to enable the member—”;

(b) by the substitution in subsection (5) for paragraph (c) of the following paragraph:

“(c) A loan or guarantee contemplated in paragraph (a) **[shall]** must not exceed, at the time it is granted or furnished, 65% of the member’s benefit available, including the member’s interest in the savings, retirement and vested components, as contemplated in section 37D(1)(a) **[where it is secured in accordance with—**

(i) **paragraph (b) (i) (aa), 90 per cent of the fair value of the hypothecated immovable property concerned;**

(ii) **paragraph (b) (i) (bb), the lesser amount of—**

(aa) the lowest benefit in terms of the rules which the member would receive on termination of his or her membership of the fund, nett of income tax as envisaged in section 37D(a); or

(bb) the fair value of the immovable property concerned, or

(iii) **paragraph (b)(i)(cc), the lesser amount of—**

(aa) the amount equal to the aggregate of 90 per cent of the fair value of the hypothecated immovable property concerned and the amount of [the lowest benefit in terms of the rules which the member would receive on termination of his or her

membership of the fund, nett of income tax as envisaged in section 37D(a); or

(bb) the fair value of the hypothecated immovable property concerned].”;

(c) by the substitution for paragraph (d) of the following paragraph:

“(d) A loan or guarantee provided by an employer, or any combination of loans or guarantees provided for the purpose of this subsection, as contemplated in section 37D (1)(b)(i), may not exceed 65% of the member’s benefit available, including the member’s interest in the savings, retirement and vested components;” and

(d) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) The **[registrar]** Authority may, on application by a retirement 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 retirement fund from compliance with any provision of subsection (5) or (5B)(a).”.

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

4. Section 37D of Act 24 of 1956 is hereby substituted by the following section:

“37D Fund may make certain deductions from pension benefits

(1) A **[registered]** licensed retirement fund may—

(a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act[, **1962 (Act 58 of 1962)**] and the Tax Administration Act (Act No. 28 of 2011), and prescribed requirements in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by retirement funds, 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; or
 - (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 membership on the date of default, if **[such a]** 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 **[his]** the member's employer on the date **[of his retirement or on which he ceases to be a member of the fund]** 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 (Act No. 28 of 2011), and prescribed requirements in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by retirement funds, in respect of —

- (i) (aa) a loan granted by the employer to the member as referred to in section 19(5)(d) for any purposes referred to in section 19(5)(a); or
- (bb) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member as referred to in section 19(5)(d) for any purpose referred to in section 19(5)(a),

to an amount not exceeding the amount which in terms of the Income Tax Act, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act; or

- (ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) 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—

- (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),

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the retirement fund, and pay **[such]** that amount to the employer concerned;

(bA) not without the employer's consent permit a member to take a savings withdrawal benefit where an employer housing loan or guarantee has been furnished, or where there is a judgment in favour of the employer that has not yet been executed, unless it is satisfied that the withdrawal will not result in there being insufficient remaining value to comply with the judgment;

(bB) where the employer has not obtained a judgment contemplated in paragraph (b)(ii)(bb), only withhold the payment of benefits to a member or refusal to permit a member to take a savings withdrawal benefit if a court, including a magistrate's court has granted an order authorising the withholding or refusal.

(c) in accordance with the Income Tax Act and the Tax Administration Act (Act No. 28 of 2011), and any prescribed requirements that may be made in relation to how deductions in terms of this section and savings benefit withdrawals must be applied by retirement funds, 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—

- (i) **[such]** the member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act 131 of 1998);
- (ii) any insurance premium payable by such a member or beneficiary to an insurer licensed in terms of the **[Long-term] Insurance Act, [1998 (Act 53 of 1998)] 2017 (Act 18 of 2017)** in respect of a life insurance policy;
- (iii) any purpose approved by the registrar, on the conditions determined by him, 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) subject to subsection (1A), deduct from a **[member's or deferred pensioner's member's benefit]** individual account in the case of a defined contribution category of a fund or, in any other case, from a member's interest in the fund as determined by the fund or as determined in accordance with any applicable conduct standards **[or minimum individual reserve, or the capital value of a pensioner's pension after retirement, as the case may be]**, in accordance with the Income Tax Act and the Tax Administration Act (Act No. 28 of 2011), and any prescribed requirements that may be made in relation to how deductions in terms of this section and savings benefit withdrawals must be applied by retirement funds—

- (i) any **[amount]** portion of the pension interest assigned **[from such benefit or individual reserve]** to a non-member spouse in **[terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act 70 of 1979) or in terms of any order made by a court in respect of**

the division of assets of a marriage under Islamic law pursuant to its dissolution] the applicable court order;

(iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act 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.

(e) deduct from a member's **[or deferred pensioner's benefit, interest or minimum individual reserve]** individual account or member's interest 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, 1962 (Act 58 of 1962), 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 member's benefit that is payable, monthly, annually or another recurring period, as the case may be.

(1B) A licensed retirement fund must appropriately adjust a member's minimum individual reserve to take account of any deductions made in terms of this subsection, and the adjustment must be made in accordance with any applicable conduct standards.

(1C) The aggregate of all amounts deducted in terms of subsection (1) may not exceed the amount of the individual account or member's interest 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 on 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) **[or (6)]** may only be deducted after the **[amount of the]** member's **[or deferred pensioner's benefit or minimum individual reserve available]** individual account or member's interest, as the case may be, has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where **[such a]** 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: **Provided that the aggregate of all amounts deducted in terms of this subsection may not exceed the member's pension interest available at any given time].**

(aA) A retirement fund may not, without the consent of the member's spouse, grant a loan or guarantee or permit a savings withdrawal benefit to be taken by a member if the retirement fund is aware that an action in relation to the dissolution of a relationship as referred to in the definition of "non-member spouse" is pending in respect of the member.

(aB) In respect of a deduction referred to in subsection (1)(d)(iA) or (iB), the retirement fund must pay the maintenance, as directed by the maintenance order -

(aa) as a lump sum in respect of arrear maintenance;

(bb) in monthly payments in respect of future maintenance or annually in advance where a fund is unable to make monthly payments.

(aC) a retirement fund may not allow a member to take a savings withdrawal benefit where there is a maintenance order in place, unless it is satisfied that the

withdrawal will not result in there being insufficient remaining value to comply with the order.

(aD) A retirement fund may refuse to allow a member to take a savings withdrawal benefit of the payment of benefits to a member or refusal to permit a member to take a savings withdrawal benefit where it is aware that an action relating to a maintenance order is pending, and the retirement fund is not satisfied that the withdrawal will not result in there being insufficient remaining value to comply with a pending order, if a court, including a magistrate's court has granted an order authorising the refusal until the order is granted or the action is otherwise concluded.

(aE) Subject to the Income Tax Act and the Tax Administration Act (Act No. 28 of 2011), and prescribed requirements in relation to how deductions in terms of this section and savings withdrawal benefits must be applied by retirement funds, a savings withdrawal benefit may be permitted subject to the fund satisfying itself that the withdrawal will not otherwise compromise the fund's ability to make deductions as provided for in this section.

(b) In the event that more than one of the court orders referred to in subsection (1)(d) provides for **[the deduction of amounts from a member's benefit or minimum individual reserve, as the case may be,]** deductions at the same time, the court orders must be dealt with in accordance with the following hierarchy **[—]**:

- (i) **[any]** Any maintenance order referred to in subsection (1)(d)(iA) or (iB);
- (ii) any **[decree of divorce or for the dissolution of a customary marriage]** court order referred to in the definition of "non-member spouse".

(4) (a) For the [purposes of section 7(8)(a) of the Divorce Act, 1979 (Act 70 of 1979)] a deduction referred to in subsection (1)(d)(i), the portion of the pension interest assigned to the non-member spouse in terms of **[a decree of divorce or decree for the dissolution of a customary marriage]** the court order concerned is deemed to accrue to the member on the date **[on which the decree of divorce or decree for the dissolution of a customary marriage is granted]** of the court order, and, on the written submission of the court order by the non-member spouse—

(i) must be deducted by—

(aa) the **[pension] retirement** fund or **[pension] retirement** funds named in or identifiable from the **[decree] court order**; or

(bb) the **[pension] retirement** fund or **[pension] retirement** funds to which the **[pension] retirement** fund referred to in item (aa) transferred the pension interest referred to in the **[decree] court order**;

(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 **[accrued benefits or minimum individual reserve]** individual account or member's interest, as the case may be, at the date of the **[decree] court order**.

(b)(i) The **[pension] retirement** 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 **[him or her]** the non-member spouse, or if it must be transferred to a pension fund on **[his or her]** 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 **[pension]** retirement fund of how the amount referred to in subparagraph (i) must be dealt with; and
 - (bb) If **[he or she]** the non-member spouse elects that the amount must be paid to **[him or her]** them directly, provide the **[pension]** retirement fund with the details of how that payment must be effected; or
 - (cc) if **[he or she]** the non-member spouse elects that the amount must be transferred to a **[pension]** retirement fund on **[him or her]** their behalf, provide the pension fund with the details of that **[pension]** retirement fund.
- (iii) The **[pension]** retirement 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 **[pension]** retirement fund to which the amount should be transferred within the period referred to in subparagraph (ii), the **[pension]** retirement fund must pay the amount directly to the non-member spouse within 30 days of the expiry of that period.
- (v) Despite subparagraph (iv), in the event that the **[pension]** retirement fund cannot reasonably ascertain how the payment to the non-member spouse

must be effected, the **[pension] retirement** fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the **[pension] retirement** fund until such time as details of how that payment must be effected is made available to the **[pension] retirement** fund by the member, the non-member spouse or any other person.

(c) A non-member spouse—

- (i) is not a member or beneficiary in relation to the **[pension] retirement** fund; and
- (ii) is entitled to the accrual of fund return from the date of the **[deduction contemplated in paragraph (a)(ii)] court order** until payment or transfer **[thereof]** of the deduction contemplated in paragraph (a)(ii), but not to any other interest or growth.

(d) Any portion of the pension interest assigned to the non-member spouse in terms of a court order **[decree of divorce or decree for the dissolution of a customary marriage]** granted prior to 13 September 2007 **[are]** is for the purposes of any law other than the Income Tax Act[, 1962], including, but not limited to, section 7(8)(a) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).

(5) (a) The simple interest referred to in paragraph (b) of the definition of "pension interest" must be calculated at the rate prescribed as at that date by the Minister of Justice in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), for the purposes of that Act.

(b) **[Despite paragraph (b) of the definition of 'pension interest' in section 1(1) of the Divorce Act, 1979 (Act 70 of 1979), the]** The total amount of annual

simple interest **[payable in terms of the definition]** referred to in paragraph (b) of the definition of "pension interest" may not exceed the applicable fund return **[on the pension interest assigned to the non-member spouse in terms of a decree granted in terms of section 7(8)(a) of the Divorce Act, 1979].**

[(6) Despite paragraph (b) of the definition of 'pension interest' in section 1(1) of the Divorce Act, 1979 (Act 70 of 1979), the portion of the pension interest of a member or a deferred pensioner of a pension preservation fund or provident preservation fund, that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated, or the member or the deferred pensioner retired on the date on which the decree was granted.]”.

Short title and commencement

5. (1) This Act is called the Revenue Administration and Pension Laws Amendment Act, 2023 and comes into effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister in respect of the coming into effect of different provisions of this Act.