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THE PRESIDENCY

No. 1280

5 December 2001

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

No. 39 of 2001: Pension Funds Second Amendment Act, 2001.

DIE PRESIDENSIE

No. 1280

5 Desember 2001

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

No. 39 van 2001: Tweede Wysigingswet op Pensioenfondse, 2001.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
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- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President.)
(Assented to 29 November 2001.)*

ACT

To amend the Pension Funds Act, 1956, so as to make new provision for the apportionment of actuarial surpluses and for minimum benefits; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 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 and sections 1 and 6 of Act 22 of 1996 5

1. Section 1 of the Pension Funds Act, 1956 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion in subsection (1) before the definition of “actuary” of the following definition: 10
“actuarial surplus”, in relation to a fund which is—
- (a) subject to actuarial valuation, means the difference between—
(i) the value that the valuator has placed on the assets of the fund less any credit balances in the member and employer surplus accounts; and
(ii) the value that the valuator has placed on the liabilities of the fund in respect of pensionable service accrued by members prior to the valuation date together with the value of those contingency reserve accounts which are established or which the board deems prudent to establish on the advice of the valuator; 15
- (b) exempt from actuarial valuation, means the difference between—
(i) the fair value of the assets of the fund less any credit balances in the member and employer surplus accounts; and
(ii) the sum of the values of all the accounts held for individual members, whether contributory or paid-up, plus any other liabilities plus the values of any investment reserve account set up to facilitate the smoothing of investment returns credited to member accounts and such contingency reserve accounts as the board deems prudent;”; 20
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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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*(Engelse teks deur die President geteken.)
(Goedgekeur op 29 November 2001.)*

WET

Tot wysiging van die Wet op Pensioenfondse, 1956, om nuwe voorsiening te maak vir die toedeling van aktuariële surplusse en vir minimumvoordele; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 24 van 1956, soos gewysig deur artikel 21 van Wet 101 van 1976, artikel 9 van Wet 94 van 1977, artikel 10 van Wet 80 van 1978, artikel 38 van Wet 99 van 1980, artikel 20 van Wet 54 van 1989, artikel 29 van Wet 97 van 1990, artikel 14 van Wet 83 van 1992, artikel 21 van Wet 104 van 1993 en artikels 1 en 6 van Wet 22 van 1996

1. Artikel 1 van die Wet op Pensioenfondse, 1956 (hierna verwys as die Hoofwet), word hierby gewysig

- (a) deur in subartikel (1) na die omskrywing van "aftreeedatum" die volgende 10 omskrywing in te voeg:
“‘aktuariële surplus’, met betrekking tot ‘n fonds wat—
(a) onderworpe is aan aktuariële waardasie, die verskil tussen—
(i) die waarde wat die waardeerder op die bates van die fonds geplaas het min enige kredietsaldo’s in die lede- en werkgewersurplusrekening; en
(ii) die waarde wat die waardeerder geplaas het op die verpligtinge van die fonds ten opsigte van pensioengewende diens wat voor die waardasiedatum deur lede verwerf is tesame met die waarde van daardie gebeurlikheidsreserwerekening wat ingestel is of wat die raad omsigtig ag om in te stel op die advies van die waardeerder;
(b) vrygestel is van aktuariële waardasie, die verskil tussen—
(i) die billike waarde van die bates van die fonds min enige kredietsaldo’s in die lede- en werkgewersurplusrekening; en
(ii) die som van die waardes van al die rekeninge vir individuele lede gehou, hetsy bydraend of opbetaald, plus enige ander verpligtinge plus die waardes van enige beleggingsreserwerekening ingestel om die stabilisering van beleggingsopbrengste gekrediteer aan lederekening te faciliteer en die gebeurlikheidsreserwerekening wat die raad omsigtig ag;”;

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Act No. 39, 2001 PENSION FUNDS SECOND AMENDMENT ACT, 2001

- (b) by the insertion in subsection (1) after the definition of "board" of the following definition:
"'commencement date' means the date of commencement of the Pension Funds Second Amendment Act, 2001;"
- (c) by the insertion in subsection (1) after the definition of "complaint" of the following definitions:
"'contingency reserve account', in relation to a fund, means an account of the fund to which shall be credited or debited such amounts as the board shall determine, on the advice of the valuator where the fund is not exempt from actuarial valuations, in order to provide for explicit contingencies;
'contribution holiday', in relation to a—
 (a) defined benefit category of a fund, means payment by the employer of less than the difference between the contribution rate recommended by the valuator, taking into account the circumstances of the fund and ignoring any surplus or deficit, and the contribution payable by members; or
 (b) defined contribution category of a fund, means payment by the employer of less than the employer contribution rate defined in the rules prior to application of any credit balance in any employer reserve account as defined in the rules or employer surplus account;
'conversion', in relation to a category of a fund, means the change of the basis of the retirement benefit from defined benefit to defined contribution, or vice versa;"
- (d) by the insertion in subsection (1) after the definition of "court" of the following definitions:
"'deferred pensioner' means a member who has not yet retired but has left the service of the employer concerned prior to normal retirement date, as defined in the rules, leaving in the fund the member's rights to such benefits as may be defined in the rules;
'defined benefit category of a fund' means a category of a fund other than a defined contribution category of a fund;
'defined contribution category of a fund' means a category of members in respect of whom the benefit on retirement has a value equal to the value of—
 (a) the fixed-rate contributions paid by the member and by the employer on behalf of the member, where such fixed rates are defined in the rules,
 (b) less such expenses as the board determines should be deducted from the contributions paid,
 (c) augmented by such investment returns and any share of actuarial surplus or transfer from a contingency reserve account as the board determines;"
- (e) by the insertion in subsection (1) after the definition of "defendant" of the following definitions:
"'employer', in relation to a fund, means an employer participating in the fund;
'employer surplus account', in relation to a fund, means an account of the fund to which shall be credited—
 (a) amounts allocated by the board in terms of section 15B, 15C and 15F for use by the employer;
 (b) such contributions as are specified in the rules to be credited to this account; and
 (c) investment return on the balance in the account from time to time at a rate determined by the board after taking account of the earnings of the fund,
 and to which shall be debited—
 (i) any surplus utilised by the employer; and
 (ii) any surplus transferred to any other account in the fund at the request of the employer;"

- (b) deur die volgende omskrywings na die omskrywing van "beampte" in te voeg:
- "belanghouer", met betrekking tot 'n fonds, 'n huidige lid, en ook 'n pensioentrekker en 'n uitgestelde pensioentrekker, 'n vorige lid en 'n werkgever wat aan die fonds deelneem;
- "beleggingsreserwerekening", met betrekking tot 'n fonds wat oor 'n omskreve bydraekategorie beskik, die verskil tussen—
- (a) die waarde van die bates gehou ten opsigte van die individuele lederekeninge en om die beleggingsopbrengste wat aan sodanige rekeninge gekrediteer staan te word, te stabiliseer, met inagneming van uitgawes; en
- (b) die waarde van die saldo's in die individuele lederekeninge;"
- (c) deur die volgende omskrywing na die omskrywing van "boekjaar" in te voeg:
- "bydraevergunning", met betrekking tot 'n—
- (a) omskreve voordeelkategorie van 'n fonds, betaling deur die werkgever van minder as die verskil tussen die bydraeskaal soos aanbeveel deur die waardeerder, met inagneming van die omstandighede van die fonds en met ignorering van enige surplus of tekort, en die bydrae betaalbaar deur lede; of
- (b) omskreve bydraekategorie van 'n fonds, betaling deur die werkgever van minder as die werkgewersbydraeskaal omskryf in die statute voor die toepassing van enige kredietsaldo in enige werkgewersreserwerekening soos omskryf in die statute of werkgewersplusrekening;"
- (d) deur die volgende omskrywing na die omskrywing van "fonds" in te voeg:
- "gebeurlikhedsreserwerekening", met betrekking tot 'n fonds, 'n rekening van die fonds wat gekrediteer of gedebiteer moet word met die bedrae wat die raad, op die advies van die waardeerder waar die fonds nie van aktuariële waardasie vrygestel is nie, bepaal, om voorsiening te maak vir uitdruklike gebeurlikhede;"
- (e) deur die volgende omskrywings na die omskrywing van "hoofbeampte" in te voeg:
- "hoofwerkgever", met betrekking tot 'n fonds, die werkgever omskryf as die hoofwerkgever in die statute;
- "individuele lederekening", met betrekking tot 'n individuele lid van 'n omskreve bydraekategorie van 'n fonds, die bedrag bepaal ingevolge artikel 14B(1);
- "inwerkingtredingsdatum" die datum van inwerkingtreding van die Tweede Wysigingswet op Pensioenfondse, 2001;"
- (f) deur die volgende omskrywing na die omskrywing van "klagte" in te voeg:
- "ledesurplusrekening", met betrekking tot 'n fonds, 'n rekening van die fonds wat—
- (a) met—
- (i) bedrae deur die raad ingevolge artikels 15B en 15C toegewys om vir die voordeel van lede gebruik te word; en
- (ii) beleggingsopbrengs op die saldo in die rekening van tyd tot tyd, teen 'n koers deur die raad na inagneming van die verdienstes van die fonds bepaal, gekrediteer word; en
- (b) met—
- (i) die koste van enige voordeleverbeteringe uit die rekening gefinansier; en
- (ii) enige uitgawes wat andersins voordele betaalbaar aan lede sou verminder, gedebiteer word;"

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- (f) by the insertion in subsection (1) after the definition of "fund" of the following definition:
"investment reserve account", in relation to a fund which has a defined contribution category, means the difference between:
 (a) the value of the assets held in respect of the members' individual accounts and for any smoothing of investment returns to be credited to such accounts, with allowances for expenses; and
 (b) the value of the balances in the members' individual accounts;";
- (g) by the insertion in subsection (1) after the definition of "member" of the following definitions:
"member's individual account", in relation to an individual member of a defined contribution category of a fund, means the amount determined in terms of section 14B(1);
'member surplus account', in relation to a fund, means an account of the fund to which shall be—
 (a) credited—
 (i) amounts allocated by the board in terms of sections 15B and 15C to be used for the benefit of members; and
 (ii) investment return on the balance in the account from time to time at a rate determined by the board after taking account of the earnings of the fund; and
 (b) debited—
 (i) the cost of any benefit improvements funded from the account; and
 (ii) any expenses which would otherwise reduce benefits payable to members;
'minimum individual reserve'—
 (a) in relation to a member of a defined benefit category of a fund, means the amount determined in terms of section 14B(2)(a); and
 (b) in relation to a member of a defined contribution category of a fund, means the amount determined in terms of section 14B(2)(b);
'minimum pension increase' means the amount determined in terms of section 14B(4);";
- (h) by the insertion in subsection (1) after the definition of "officer" of the following definition:
"pensioner", in relation to a fund, means a person who is in receipt of a pension paid from the fund;";
- (i) by the insertion in subsection (1) after the definition of "prescribed" of the following definition:
"principal employer", in relation to a fund, means the employer defined as the principal employer in the rules;";
- (j) by the insertion in subsection (1) after the definition of "regulation" of the following definitions:
"reserve account", in relation to a fund, means a contingency or investment reserve account, as the case may be;
'retrenchment', in relation to a member, means dismissal from employment based on the operational requirements of the relevant employer;"; and
- (k) by the insertion in subsection (1) after the definition of "rules" of the following definitions:
"stakeholder", in respect of a fund, means a current member, including a pensioner and a deferred pensioner, a former member and an employer participating in the fund;
'statutory actuarial valuation', in relation to a fund, means an investigation by a valuator contemplated in section 16;
'surplus apportionment date', in relation to a fund, means the effective date upon which any actuarial surplus is apportioned in terms of section 15B;".

- (g) deur die volgende omskrywings na die omskrywing van "lid" in te voeg:
"minimum individuele reserwe"
(a) met betrekking tot 'n lid van 'n omskrewe voordeelkategorie van 'n fonds, die bedrag bepaal ingevolge artikel 14B(2)(a); en
(b) met betrekking tot 'n lid van 'n omskrewe bydraekategorie van 'n fonds, die bedrag bepaal ingevolge artikel 14B(2)(b);
'minimumpensioenverhoging' die bedrag bepaal ingevolge artikel 14B(4);"; 5
- (h) deur die volgende omskrywings na die omskrywing van "Minister" in te voeg:
"omskepping", met betrekking tot 'n kategorie van 'n fonds, die verandering van die basis van die aftreevoordeel van omskrewe voordeel na omskrewe bydrae, of omgekeerd;
'omskrewe bydraekategorie van 'n fonds' 'n kategorie lede ten opsigte waarvan die voordeel by aftrede 'n waarde besit gelyk aan die waarde van— 10
(a) die bydraes volgens vaste skaal deur die lid en deur die werkewer namens die lid betaal, waar sodanige vaste skale omskryf word in die statute;
(b) min die uitgawes wat die raad bepaal om van die betaalde bydraes afgetrek te word; 15
(c) vermeerder deur die beleggingsopbrengste en enige deel van die aktuariële surplus of oordrag van 'n gebeurlikheidsreserwerekening wat die raad bepaal;
'omskrewe voordeelkategorie van 'n fonds' 'n ander kategorie van 'n fonds as 'n omskrewe bydraekategorie van 'n fonds; 20
'ontslag weens personeelinkorting', met betrekking tot 'n lid, 'n ontslag uit diens gegrond op die bedryfsvereistes van die betrokke werkewer,'";
(i) deur die volgende omskrywing voor die omskrywing van "raad" in te voeg:
volgende omskrywing:
"pensioentrekker", met betrekking tot 'n fonds, 'n persoon wat in ontvangs is van 'n pensioen betaal uit die fonds,"; 25
(j) deur die volgende omskrywing na die omskrywing van "regulasie" in te voeg:
"reserwerekening", met betrekking tot 'n fonds, 'n gebeurlikheids- of beleggingsreserwerekening, na gelang van die geval,"; 30
(k) deur die volgende omskrywings voor die omskrywing van "voorgeskryf" in te voeg:
"statutêre aktuariële waardasie", met betrekking tot 'n fonds, 'n ondersoek deur 'n waardeerder beoog in artikel 16;
'surplustoedelingsdatum', met betrekking tot 'n fonds, die effektiewe datum waarop enige aktuariële surplus ingevolge artikel 15B toegedeel word;
'uitgestelde pensioentrekker' 'n lid wat nog nie afgetree het nie maar die diens van betrokke werkewer voor normale aftree-ouderdom, soos omskryf in die statute, verlaat het maar die regte van die lid op die voordele soos omskryf in die statute in die fonds laat bly;"; en 35
(l) deur die volgende omskrywings na die omskrywing van "waardeerde" in te voeg:
"werkewer", met betrekking tot 'n fonds, 'n werkewer wat aan die fonds deelneem;
'werkgewersplusrekening', met betrekking tot 'n fonds, 'n rekening van die fonds wat gekrediteer moet word met— 40
(a) bedrae toegewys deur die raad ingevolge artikel 15B, 15C en 15F vir gebruik deur die werkewer;
(b) die bydraes wat in die statute gespesifiseer word om aan hierdie rekening gekrediteer te word; en
(c) beleggingsopbrengs op die saldo van die rekening van tyd tot tyd, teen 'n koers deur die raad bepaal na inagneming van die verdienstes van die fonds, 45
en wat gedebiteer moet word met—
(d) enige surplus deur die werkewer aangewend; en
(e) enige surplus oorgedra na enige ander rekening in die fonds op versoek van die werkewer.". 50
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Amendment of section 14 of Act 24 of 1956, as amended by section 15 of Act 81 of 1957, section 3 of Act 54 of 1991 and section 21 of Act 83 of 1992

2. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

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- “(c) the registrar is satisfied that the scheme referred to in paragraph (a) is reasonable and equitable and accords full recognition—
- (i) to the rights and reasonable benefit expectations of the [persons concerned] members transferring in terms of the rules of a fund [concerned, and] where such rights and reasonable benefit expectations relate to service prior to the date of transfer;
 - (ii) to any additional benefits in respect of service prior to the date of transfer, the payment of which has become established practice; and
 - (iii) to the payment of minimum benefits referred to in section 14A, and that the proposed transactions would not render any fund which is a party thereto and which will continue to exist if the proposed transaction is completed, unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund which is not in a sound financial condition, to attain such a condition within a period of time deemed by the registrar to be satisfactory;”.
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Insertion of sections 14A and 14B in Act 24 of 1956

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3. The following sections are hereby inserted in the principal Act after section 14:

“Minimum benefits

14A. (1) Every registered fund shall provide the following minimum benefits to a member:

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- (a) The benefit paid to a member who ceases to be a member of the fund prior to retirement in circumstances other than liquidation of the fund shall not be less than the minimum individual reserve;
 - (b) the benefit paid to a member if the fund is liquidated in terms of section 28 or 29 shall not be less than the minimum individual reserve: Provided that, where the fair value of the assets of the fund after recovery of any debt owed by the employer in terms of section 30(3) is lower than the sum of the total of the minimum individual reserves for all members who are being included in the distribution of the assets after adjustment for any benefits paid previously and the cost of annuity policies which will provide equivalent pensions to all existing pensioners and deferred pensioners, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such annuity policies;
 - (c) if a category of the fund is converted from a defined benefit category to a defined contribution category, the amount to be credited to the member's individual account shall not be less than the minimum individual reserve: Provided that, where the fair value of the assets of the fund after recovery of any debt owed by the employer in terms of section 30(3) is lower than the sum of the total of the minimum individual reserves for all members after adjustment for any benefits paid previously and the cost of annuity policies which will provide equivalent pensions to all existing pensioners and deferred pensioners, the minimum individual reserve may be proportionally reduced in the ratio which the fair value of the assets bears to the total of all the minimum individual reserves adjusted for any benefits paid previously plus the cost of such annuity policies;
 - (d) starting with the pension increase to be granted on the effective date of the first actuarial valuation following the commencement date, and at
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Wysiging van artikel 14 van Wet 24 van 1956, soos gewysig deur artikel 15 van Wet 81 van 1957, artikel 3 van Wet 54 van 1991 en artikel 21 van Wet 83 van 1992

2. Artikel 14 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (c) deur die volgende paragraaf te vervang:

- (c) die registrator oortuig is dat die skema bedoel in paragraaf (a) redelik en billik is en volle erkenning verleen—
 (i) aan die regte en redelike voordele-verwagtinge van die [betrokke persone] lede wat oordra ingevolge die statute van 'n [betrokke] fonds [en] waar sodanige regte en redelike voordele-verwagtinge op diens voor die datum van oordrag betrekking het;
 (ii) aan bykomende voordele ten opsigte van diens voor die datum van oordrag, waarvan die betaling gevvestigde praktyk geword het; en
 (iii) aan die betaling van minimumvoordele bedoel in artikel 14A,
 en dat die voorgestelde transaksies dit nie vir 'n geregistreerde fonds wat 'n party daarby is en wat sal aanhou om te bestaan as die voorgestelde transaksie voltooi word, onmoontlik sal maak om die vereistes van hierdie Wet na te kom of om in 'n gesonde finansiële toestand te bly nie of, in die geval van 'n fonds wat nie in 'n gesonde finansiële toestand is nie, om so 'n toestand binne 'n tydperk wat die registrator as bevredigend beskou, te bereik nie;”.

Invoeging van artikels 14A en 14B in Wet 24 van 1956 20

3. Die volgende artikels word hierby in die Hoofwet na artikel 14 ingevoeg:

“Minimumvoordele

- 14A. (1)** Elke geregistreerde fonds moet vir die volgende minimumvoordele vir 'n lid voorsiening maak:
 (a) Die voordeel betaal aan 'n lid wat voor aftrede ophou om 'n lid van die fonds te wees onder ander omstandighede as die likwidasie van die fonds, mag nie minder as die minimum individuele reserwe wees nie; 25
 (b) die voordeel betaal aan 'n lid indien die fonds ingevolge artikel 28 of 29 gelikwideer word, moet nie minder as die minimum individuele reserwe wees nie: Met dien verstande dat, waar die billike waarde van die bates van die fonds na invordering van enige skuld verskuldig deur die werkgewer ingevolge artikel 30(3) laer is as die som van die totaal van die minimum individuele reserwes vir alle lede wat ingesluit word in die verdeling van die bates na aanpassing vir enige voordele voorheen betaal en die koste van annuïteitspolisse wat gelykwaardige pensioene sal verskaf aan alle gevvestigde pensioentrekkers en uitgestelde pensioentrekkers, die minimum individuele reserwe eweredig verminder kan word in die verhouding waarin die billike waarde van die bates staan tot die totaal van al die minimum individuele reserwes, met aanpassing vir enige voordele voorheen betaal plus die koste van sodanige annuïteitspolisse; 35
 (c) indien 'n kategorie van die fonds omskep word van 'n omskrewe voordeelkategorie na 'n omskrewe bydraekategorie, moet die bedrag waarmee die individuele lederekening gekrediteer staan te word, nie minder as die minimum individuele reserwe wees nie: Met dien verstande dat, waar die billike waarde van die bates van die fonds na invordering van enige skuld verskuldig deur die werkgewer ingevolge artikel 30(3) laer is as die som van die totaal van die minimum individuele reserwes vir alle lede na aanpassing vir enige voordele voorheen betaal en die koste van annuïteitspolisse wat gelykwaardige pensioene sal voorsien aan alle gevvestigde pensioentrekkers en uitgestelde pensioentrekkers, die minimum individuele reserwe eweredig verminder mag word in die verhouding waarin die billike waarde van die bates staan tot die totaal van al die minimum individuele reserwes, met aanpassing vir enige voordele voorheen betaal plus die koste van sodanige annuïteitspolisse; 45
 (d) met ingang van die pensioenverhoging wat op die effektiewe datum van die eerste aktuariële waardasie volgende op die inwerking-

least once every three years thereafter, the pension increase to be granted to pensioners and deferred pensioners shall not be less than the minimum pension increase.	5
(2) (a) In respect of a fund which is registered on or after a date three months after the commencement date, subsection (1) shall apply on registration.	10
(b) In respect of a fund which is registered prior to a date three months after the commencement date—	15
(i) subsection (1)(a) shall apply from a date 12 months after the surplus apportionment date; and	20
(ii) subsection (1)(b), (c) and (d) shall apply from the commencement date.	
(3) If the employer or the board exercises any right that the employer or the board has in terms of the rules to liquidate the fund, or to terminate participation of a particular employer in the fund, prior to the commencement date or to change the basis upon which future benefits accrue prior to the date from which subsection (1)(a) applies to the fund, the members may not seek redress against the employer or the board in respect of any increase in value of the benefits that would occur as a result of the application of minimum individual reserves to the fund.	

Determination of member's individual account, minimum individual reserve and minimum pension increase

14B. (1) The member's individual account in relation to an individual member of a defined contribution category of a fund shall be determined by the board in accordance with the formula—

$$\text{MC}+\text{EC}-\text{X}+\text{AS}$$

where—

- (a) MC represents the fixed-rate contributions paid by the member; EC represents the fixed-rate contributions paid by the employer on behalf of the member; X represents such expenses as the board determines should be paid out of the contributions paid by and behalf of the member; and AS represents any actuarial surplus apportioned to the account of the member; and
 - (b) MC, EC, X and AS are augmented with such investment returns as the board determines having regard to the gross investment return earned by the fund on the assets backing the fund's liability in respect of the member and such expenses as the board determines should be paid out of the gross investment return: Provided that the board may elect to smooth these investment returns.
- (2) In determining the minimum individual reserve of a member of a—
- (a) defined benefit category of a fund, the board shall determine the greater of—
 - (i) the fair value equivalent of the present value of the member's accrued deferred pension: Provided that—
 - (aa) where there is not a uniform rate of accrual over the full period of membership of the fund, the accrued deferred pension shall be calculated assuming a uniform rate of accrual as if the member had remained in service until normal retirement date as defined in the rules of the fund; and
 - (bb) the fair value equivalent and the present value shall assume rates of increase in the pension before and after retirement,

tredingsdatum verleen staan te word, en minstens een keer elke drie jaar daarna, moet die pensioenverhoging wat aan pensioentrekkers en uitgestelde pensioentrekkers verleen staan te word, nie minder as die minimumpensioenverhoging wees nie.

(2) (a) Ten opsigte van 'n fonds wat op of na 'n datum drie maande na die inwerkingtredingsdatum geregistreer word, is subartikel (1) by registrasie van toepassing.

(b) Ten opsigte van 'n fonds wat voor 'n datum drie maande na die inwerkingtredingsdatum geregistreer word—

(i) is subartikel (1)(a) vanaf 'n datum 12 maande na die surplustoedelingsdatum van toepassing; en

(ii) is subartikel (1)(b), (c) en (d) vanaf die inwerkingtredingsdatum van toepassing.

(3) Indien die werkewer of die raad enige reg uitoefen waaroer die werkewer of die raad ingevolge die statute beskik om die fonds te likwideoer, of om deelname van 'n bepaalde werkewer in die fonds te beëindig, voor die inwerkingtredingsdatum of om die basis waarop toekomstige voordele toeval, te verander voor die datum waarop subartikel (1)(a) op die fonds van toepassing word, kan die lede nie herstel teen die werkewer of die raad vorder ten opsigte van enige verhoging in waarde van die voordele wat sou plaasvind as 'n gevolg van die toepassing van minimum individuele reserwe op die fonds nie.

Bepaling van individuele lederekening, minimum individuele reserwe en minimumpensioenverhoging

14B. (1) Die individuele lederekening ten opsigte van 'n individuele lid van 'n omskrewe bydraekategorie van 'n fonds word deur die raad bepaal ooreenkomsdig die volgende formule—

MC+EC-X+AS,

waar—

(a) MC die bydraes volgens vaste skaal betaal deur die lid, verteenwoordig;

EC die bydraes volgens vaste skaal betaal deur die werkewer namens die lid, verteenwoordig;

X die uitgawes wat die raad bepaal om betaal te word uit bydraes betaal deur of namens die lid, verteenwoordig; en

AS enige aktuariële surplus toegedeel aan die rekening van die lid, verteenwoordig; en

(b) MC, EC, X en AS vermeerder word met die beleggingsopbrengstes wat die raad bepaal met inagneming van die bruto beleggingsopbrengs verdien deur die fonds op die bates wat die fonds se verpligting ten opsigte van die lid rugsteun en die uitgawes wat die raad bepaal om uit die bruto beleggingsopbrengs betaal te word; Met dien verstande dat die raad mag verkies om hierdie beleggingsopbrengste te stabiliseer.

(2) By die bepaling van die minimum individuele reserwe van 'n lid van 'n—

(a) omskrewe voordeelkategorie van 'n fonds, moet die raad die grotere bepaal van—

(i) die billike waarde ekwivalent van die huidige waarde van die lid se opgelope uitgestelde pensioen: Met dien verstande dat—

(aa) waar daar nie 'n uniforme skaal van oploping oor die volle tydperk van lidmaatskap van die fonds is nie, die opgelope uitgestelde pensioen bereken moet word op die aanname van 'n uniforme skaal van oploping asof die lid in diens gebly het tot normale aftreedatum soos omskryf in die statute van die fonds; en

(bb) die billike waarde ekwivalent en die huidige waarde, skale van verhoging in die pensioen voor en na aftrede, mortaliteitskoerse en diskontkoerse sal veronderstel

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- mortality rates and rates of discount as prescribed by the registrar by notice in the *Gazette*; and
- (ii) an amount equal to the value of the member's contributions, less such expenses as the board deems appropriate to deduct from the contributions, augmented as from the commencement date by interest at a rate which is reasonable in relation to the gross investment return earned by the fund on the assets backing the fund's liability in respect of the member, nett of such expenses as the board determines should be offset against the gross investment return, plus such share of the employer contributions paid in respect of the member as has vested in the employee in terms of the rules of the fund, augmented with the same rate of interest: Provided that the board may elect to smooth the interest contemplated in this subparagraph; and
- (b) defined contribution category of a fund, the board shall determine the value of the member's individual account as determined in terms of subsection (1) plus a share of the investment reserve account, the member surplus account, and such contingency reserve accounts as the board may determine should be included in terms of section 15G, in the proportion that the member's individual account value as at the effective date of the calculation bears to the total of all members' individual account values as at that date or such other method of apportionment as the board deems reasonable.
- (3) (a) The board shall establish and implement a policy with regard to increases to be granted to pensioners and deferred pensioners, which policy must—
- (i) aim to award a percentage of the consumer price index, or some other measure of price inflation which is deemed suitable by the board; and
 - (ii) set the frequency with which increases will be considered in line with the policy: Provided that increases should be considered each year, with comparison to the minimum pension increase at least once every three years.
- (b) The policy contemplated in paragraph (a) must be communicated to pensioners and deferred pensioners when it is established and whenever it is changed.
- (4) (a) In determining the minimum pension increase, the board shall increase pensions by a factor, P, where P is equal to the greater of the increase that the board would grant in terms of the pension increase policy established in terms of subsection (3) and—
- (i) the increase in paragraph (b), if the increase in paragraph (b) is less than the increase in paragraph (c); or
 - (ii) the increase in paragraph (c), if the increase in paragraph (b) is greater than or equal to the increase in paragraph (c).
- (b) The board shall determine the increase that would result from—
- (i) accumulating the liabilities for pensioners at their dates of retirement and deferred pensioners at their dates of termination of service, adjusted to an equivalent fair value of assets less—
 - (aa) pension payments;
 - (bb) cash amounts paid on retirement; and
 - (cc) those expenses that the board deems reasonable,
plus the liability in respect of any special increases that have been granted to pensioners which were funded otherwise than through the nett investment return earned by the fund on the assets backing the pensioner and deferred pensioner liabilities, where such liabilities in respect of special increases have been adjusted to an equivalent fair value of assets, and augmented by the gross investment return earned on the assets of the fund less such expenses as the board deems reasonable to deduct from such investment return, but the board may use the gross investment return earned on the assets backing pensioner and deferred pensioner liabilities instead of using the gross investment return

<p>soos deur die registrator by kennisgewing in die <i>Staatskoerant</i> voorgeskryf; en</p> <p>(ii) 'n bedrag gelyk aan die waarde van die lid se bydraes, min die uitgawes wat die raad geskik ag om van die bydraes afgetrek te word, vermeerder soos met ingang van die inwerkingsdatoon met rente teen 'n koers wat redelik is met betrekking tot die bruto beleggingsopbrengs verdien deur die fonds op die bates wat die fonds se verpligting teenoor die lid rugsteun, netto van die uitgawes wat die raad bepaal om verreken te word teen die bruto beleggingsopbrengs, plus die deel van die werkgewersbydraes betaal ten opsigte van die lid wat in die werknemer gevestig het ingevolge die statute van die fonds, vermeerder met dieselfde rentekoers: Met dien verstande dat die raad mag verkies om die rente beoog in hierdie subparagraaf te stabiliseer;</p> <p>(b) omskreve bydraekategorie van 'n fonds, moet die raad die waarde bepaal van die lid se individuele rekening soos bepaal ingevolge subartikel (1) plus 'n deel van die beleggingsreserwerekening, die ledesurplusrekening, en die gebeurlikheidsreserwerekeninge wat die raad bepaal om ingevolge artikel 15G ingesluit te word, in die verhouding waarin die waarde van die individuele lederekening op die effektiewe datum van die berekening staan tot die totaal van alle waardes van individuele lederekeninge soos op daardie datum of die ander toedelingsmetode wat die raad redelik ag.</p>	5 10 15
<p>(3) (a) Die raad moet 'n beleid opstel en implementeer met betrekking tot verhogings wat toegeken staan te word aan pensioentrekkers en uitgestelde pensioentrekkers, welke beleid—</p> <p>(i) daarop gerig moet wees om 'n persentasie van die verbruikersprysindeks of 'n ander maat van prysinflasie toe te ken wat deur die raad geskik geag word; en</p> <p>(ii) die frekwensie moet bepaal waarmee verhogings oorweeg sal word in ooreenstemming met die beleid: Met dien verstande dat verhogings jaarliks oorweeg behoort te word, in vergelyking met die minimum pensioenverhoging minstens een keer elke drie jaar.</p> <p>(b) Die beleid beoog in paragraaf (a) moet aan pensioentrekkers en uitgestelde pensioentrekkers bekend gemaak word wanneer dit opgestel en wanneer dit ook al verander word.</p>	25 30 35
<p>(4) (a) By die bepaling van die minimumpensioenverhoging, moet die raad pensioene verhoog met 'n faktor, P, waar P gelyk is aan die grotere van die verhoging wat die raad sou toeken ingevolge die pensioenverhogingsbeleid opgestel ingevolge subartikel (3) en—</p> <p>(i) die verhoging in paragraaf (b), indien die verhoging in paragraaf (b) minder is as die verhoging in paragraaf (c); of</p> <p>(ii) die verhoging in paragraaf (c), indien die verhoging in paragraaf (b) groter of gelyk is aan die verhoging in paragraaf (c).</p> <p>(b) Die raad moet die verhoging bepaal wat sou volg uit—</p> <p>(i) akkumulasie van verpligte vir pensioentrekkers op hul aftreedatums en uitgestelde pensioentrekkers op hulle diensbeëindigingsdatums, aangepas tot 'n ekwivalente billike waarde van bates min—</p> <p>(aa) pensioenbetalings;</p> <p>(bb) kontantbedrae betaal by aftrede;</p> <p>(cc) daardie uitgawes wat die raad redelik ag,</p> <p>plus die verpligting ten opsigte van enige spesiale verhogings wat toegeken is aan pensioentrekkers wat anders gefinansier is as deur die netto beleggingsopbrengs verdien deur die fonds op bates wat die pensioentrekker- en uitgestelde pensioentrekkerverpligte rugsteun, waar sodanige verpligte ten opsigte van spesiale verhogings aangepas is tot 'n gelykwaardige billike waarde van bates, en vermeerder is met die bruto beleggingsopbrengs verdien op die bates van die fonds min die uitgawes wat die raad redelik ag om van sodanige beleggingsopbrengs afgetrek te word, maar die raad kan die bruto beleggingsopbrengs verdien op bates wat die pensioentrekker- en uitgestelde pensioentrekkerverpligte rugsteun, gebruik in plek</p>	40 45 50 55 60

- earned on the assets of the fund if such assets have been invested separately from the other assets of the fund; and
- (ii) dividing the amount calculated in terms of subparagraph (i) by the present value of current pensions and deferred pensions after making allowance for mortality, expenses and future pension increases at the rate determined by the board, adjusted to an equivalent fair value of assets.
- (c) The board shall determine the increase required to each pension to the pension payable in the month following retirement, nett of the commutation of any portion of the pension for cash or the deferred pension at the date of termination of service, multiplied by the change in the consumer price index from the date of retirement in the case of a pensioner, or the date of termination of service in the case of a deferred pensioner, to the effective date of the calculation of the increase.
- (d) Where the board finds it impractical to derive the increases in paragraphs (a), (b) and (c) for each individual pensioner or deferred pensioner, the board may use an approximate method which will preserve the broad principles behind paragraphs (a), (b) and (c).
- (5) For purposes of subsection (4), where the pension has arisen because of the death of a member rather than the member's retirement, any reference in that subsection to 'retirement' shall be construed as a reference to death.".

Insertion of sections 15A to 15K in Act 24 of 1956

4. The following sections are hereby inserted in the principal Act after section 15:

"Rights to use of actuarial surplus"

15A. (1) All actuarial surplus in the fund belongs to the fund.

(2) Once actuarial surplus is apportioned to either the member surplus account or the employer surplus account in terms of sections 15B and 15C, members and the employer acquire rights to such actuarial surplus as provided for in this section.

(3) After the commencement date, the only portion of the assets of the fund that may be utilised by, or for the benefit of, the employer is any credit balance in the employer surplus account: Provided that the employer may continue a contribution holiday, which the employer was already taking immediately prior to the commencement date, only if the value of any contribution holiday taken by the employer during any period between the commencement date and the surplus apportionment date, augmented by the gross investment return earned by the fund, nett of expenses, over the corresponding period is added to the actuarial surplus to be apportioned at the surplus apportionment date in terms of section 15B(5).

(4) Any credit balance in the member surplus account must be used for the benefit of members as provided for in section 15D.

Apportionment of existing surplus

15B. (1) (a) Subject to paragraph (b), the board of a fund shall submit to the registrar a scheme for the proposed apportionment of any actuarial surplus (in this section referred to as the scheme) as at the effective date of the statutory actuarial valuation of the fund coincident with, or next following, the commencement date.

(b) The board shall submit the scheme not later than 18 months after the effective date contemplated in paragraph (a): Provided that—

(i) if the board elects to apportion actuarial surplus at a date earlier than the effective date of the next statutory actuarial valuation, it may do so if the statutory valuation date is advanced to such earlier date;

<p>van die bruto beleggingsopbrengs verdien op die bates van die fonds indien sodanige bates afsonderlik van die ander bates van die fonds belê is; en</p> <p>(ii) verdeling van die bedrag bereken ingevolge subparagraaf (i) deur die huidige waarde van lopende pensioene en uitgestelde pensioene na voorsiening vir mortaliteit, uitgawes en toekomstige pensioenverhogings teen die koers wat die raad bepaal, aangepas tot 'n gelykwaardige billike waarde van bates.</p> <p>(c) Die raad moet die verhoging vereis aan elke pensioen bepaal tot die pensioen betaalbaar in die maand volgende op aftrede, netto van die omsetting van enige deel van die pensioen vir kontant of die uitgestelde pensioen op die datum van diensbeëindiging, vermenigvuldig met die verandering in die verbruikersprysindeks vanaf die datum van aftrede in die geval van 'n pensioentrekker, of die datum van diensbeëindiging in die geval van 'n uitgestelde pensioentrekker, tot die effektiewe datum van die berekening van die verhoging.</p> <p>(d) Waar die raad dit onprakties vind om die verhogings in paragrawe (a), (b) en (c) vir elke individuele pensioentrekker of uitgestelde pensioentrekker vas te stel, kan die raad 'n benaderde metode gebruik wat die breë beginsels onderliggend aan paragrawe (a), (b) en (c) sal behou.</p> <p>(5) By die toepassing van subartikel (4) word, waar die pensioen ontstaan het omrede die dood van 'n lid en nie die aftrede van die lid nie, enige verwysing in daardie subartikel na 'aftrede', uitgelê as 'n verwysing na dood.'.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
<p>Invoeging van artikels 15A tot 15K in Wet 24 van 1956</p>	25
<p>4. Die volgende artikels word hierby in die Hoofwet na artikel 15 ingevoeg:</p>	
<p style="text-align: center;">"Regte op gebruik van aktuariële surplus</p> <p>15A. (1) Alle aktuariële surplus in die fonds, behoort aan die fonds.</p> <p>(2) Wanneer aktuariële surplus aan óf die ledesurplusrekening óf die werkgewersurplusrekening ingevolge artikels 15B en 15C toegedeel is, verkry lede en die werkgewer regte op sodanige aktuariële surplus soos in hierdie artikel bepaal word.</p> <p>(3) Na die inwerkingtredingsdatum is die enigste gedeelte van die bates van die fonds wat aangewend kan word deur, of vir die voordeel van, die werkgewer, enige kredietsaldo in die werkgewersurplusrekening: Met dien verstande dat die werkgewer slegs kan voortgaan met die benutting van 'n bydraevergunning wat die werkgewer reeds onmiddellik voor die inwerkingtredingsdatum benut het, indien die waarde van enige bydraevergunning benut deur die werkgewer gedurende enige tydperk tussen die inwerkingtredingsdatum en die surplustoedelingsdatum, vermeerder deur die bruto beleggingsopbrengs verdien deur die fonds, netto van uitgawes, oor die ooreenstemmende tydperk bygevoeg word by die aktuariële surplus wat toegedeel staan te word op die surplustoedelingsdatum ingevolge artikel 15B(5).</p> <p>(4) 'n Kredietsaldo in die ledesurplusrekening moet vir die voordeel van lede gebruik word soos in artikel 15D bepaal.</p>	<p>30</p> <p>35</p> <p>40</p> <p>45</p>
<p>Toedeling van bestaande surplus</p> <p>15B. (1) (a) Behoudens paragraaf (b) moet die raad van 'n fonds 'n skema vir die voorgestelde toedeling van enige aktuariële surplus (in hierdie artikel die skema genoem) soos op die effektiewe datum van die statutêre aktuariële waardasie van die fonds wat saamval met, of eerste volg op, die inwerkingtredingsdatum, aan die registrateur voorlê.</p> <p>(b) Die raad moet die skema nie later nie as 18 maande na die effektiewe datum beoog in paragraaf (a) voorlê: Met dien verstande dat—</p> <p>(i) indien die raad verkies om die aktuariële surplus op 'n datum vroeër as die effektiewe datum van die volgende statutêre aktuariële waardasie</p>	<p>50</p> <p>55</p>

Act No. 39, 2001 PENSION FUNDS SECOND AMENDMENT ACT, 2001

<ul style="list-style-type: none"> (ii) if the fund is liquidated in terms of section 28 or 29 at a date prior to the effective date of the next statutory actuarial valuation, the effective date of the liquidation shall be the surplus apportionment date; and (iii) if a category of members of the fund is converted from defined benefit to defined contribution and the effective date of the conversion is earlier than the next statutory actuarial valuation date, the effective date of the conversion shall be the surplus apportionment date. 	5
<p>(2) A scheme—</p> <ul style="list-style-type: none"> (a) shall comply with such conditions as the registrar may prescribe by regulation; and (b) may involve— 	10
<ul style="list-style-type: none"> (i) the improvement of benefits to existing members; (ii) increases to benefits or transfer values in respect of former members; (iii) the crediting of an amount to the member surplus account; (iv) the crediting of an amount to the employer surplus account; or (v) any two or more of the matters contemplated in subparagraphs (i) to (iv). 	15
<p>(3) The board shall appoint a person to represent the interests of former members in the development of the scheme and such person shall—</p> <ul style="list-style-type: none"> (a) assist the board in— 	20
<ul style="list-style-type: none"> (i) identifying former members; (ii) communicating proposals to former members and to the funds to which former members transferred; (iii) conveying proposals from former members, and the funds to which they transferred, to the board; and (iv) collating any objections to the scheme from former members and the funds to which they transferred; 	25
<ul style="list-style-type: none"> (b) be required to report, in writing to the board, on— 	30
<ul style="list-style-type: none"> (i) the adequacy of the steps taken by the board to include former members in terms of subsection (4); and (ii) where it was necessary for the board to apply its discretion with regard to the inclusion of former members and the apportionment of actuarial surplus to such former members, whether or not the exercise of such discretion was reasonable taking into account the demands of equity within the bounds of practicality and the circumstances of the particular fund: 	35
<p>Provided that such report must accompany the scheme when it is submitted to the registrar in terms of subsection (9).</p>	40
<p>(4) The board shall determine who may participate in the apportionment of actuarial surplus, and shall include in such apportionment existing members and any former members who left the fund in the period from 1 January 1980 to the surplus apportionment date: Provided that—</p>	45
<ul style="list-style-type: none"> (a) the board may exclude from participation former members in respect of whom the board satisfies the registrar that insufficient records are available to enable the additional benefits that may be due to such former members to be calculated, after the board has taken reasonable steps— 	50
<ul style="list-style-type: none"> (i) to obtain such records from the administrator; (ii) to construct such records from the records of the— 	50
<ul style="list-style-type: none"> (aa) employer; (bb) any fund to which former members transferred; or (cc) a trade union or staff association active in the workplace during this period; or 	55
<ul style="list-style-type: none"> (iii) if the steps in subparagraphs (i) and (ii) do not yield sufficient information, to obtain such records from the potential claimants themselves following an advertisement— 	55

<p>toe te deel, die raad dit mag doen indien die datum van die statutêre waardasie verskuif word na sodanige vroeër datum;</p> <p>(ii) indien die fonds ingevolge artikel 28 of 29 gelikwideer word op 'n datum voor die effektiewe datum van die volgende statutêre aktuariële waardasie, die effektiewe datum van die likwidasie die surplustoedelingsdatum sal wees; en</p> <p>(iii) indien 'n kategorie lede van die fonds omskep word van omskrewe voordeel na omskrewe bydrae en die effektiewe datum van die omskepping vroeër is as die datum van die volgende statutêre waardasie, die effektiewe datum van die omskepping die surplustoedelingsdatum sal wees.</p> <p>(2) 'n Skema—</p> <p>(a) moet voldoen aan die voorwaardes wat die registrateur by regulasie voorskryf; en</p> <p>(b) kan—</p> <ul style="list-style-type: none"> (i) die verbetering van voordele aan bestaande lede; (ii) verhogings aan voordele of oordragwaardes ten opsigte van vorige lede; (iii) die kreditering van 'n bedrag aan die ledesurplusrekening; (iv) die kreditering van 'n bedrag aan die werkgewersurplusrekening; of (v) enige twee of meer van die aangeleenthede beoog in subparagrawe (i) tot (iv), behels. <p>(3) Die raad moet 'n persoon aanstel om die belang van vorige lede in die ontwikkeling van die skema te verteenwoordig en so 'n persoon moet—</p> <p>(a) die raad bystaan by—</p> <ul style="list-style-type: none"> (i) die identifisering van vorige lede; (ii) bekendmaking van voorstelle aan vorige lede en aan die fondse waarheen vorige lede oorgedra is; (iii) die oordra van voorstelle van vorige lede, en die fondse waarheen hulle oorgedra is, aan die raad; en (iv) die byeenbring van enige besware teen die skema van vorige lede en die fondse waarheen hulle oorgedra is; <p>(b) vereis word om, skriftelik aan die raad, verslag te doen oor—</p> <ul style="list-style-type: none"> (i) die toereikendheid van die stappe gedoen deur die raad om vorige lede ingevolge subartikel (4) in te sluit; en (ii) waar dit vir die raad nodig was om sy diskresie uit te oefen met betrekking tot die insluiting van vorige lede en die toedeling van aktuariële surplus aan sodanige vorige lede, of die uitoefening van sodanige diskresie redelik was of nie met inagneming van die eise van billikhed binne die perke van doenlikheid en die omstandighede van die betrokke fonds: <p>Met dien verstande dat so 'n verslag die skema moet vergesel wanneer dit ingevolge subartikel (9) aan die registrateur voorgelê word.</p> <p>(4) Die raad moet bepaal wie aan die toedeling van aktuariële surplus mag deelneem, en moet in so 'n toedeling bestaande lede en enige vorige lede wat die fonds verlaat het gedurende die tydperk van 1 Januarie 1980 tot die surplustoedelingsdatum insluit: Met dien verstande dat—</p> <p>(a) die raad vorige lede van deelname kan uitsluit, ten opsigte van wie die raad die registrateur tevrede stel dat onvoldoende rekords beskikbaar is om die bykomende voordele te bereken wat verskuldig mag wees aan sodanige vorige lede, nadat die raad redelike stappe gedoen het—</p> <ul style="list-style-type: none"> (i) om sodanige rekords van die administrateur te verkry; (ii) om sodanige rekords op te stel uit die rekords van die <ul style="list-style-type: none"> (aa) werkgewer; (bb) enige fonds waarheen vorige lede oorgedra is; of (cc) 'n vakbond of personeelvereniging wat gedurende hierdie tydperk in die werkplek bedrywig was; of <p>(iii) indien die stappe in subparagrawe (i) en (ii) nie voldoende inligting oplewer nie, om sodanige rekords te verkry van die potensiële eisers self na 'n advertensie—</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>
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- (aa) on a national basis and in the area where the former members used to work; or
- (bb) on a more limited basis as approved by the registrar if representations by the fund satisfy the registrar that limited advertisement will be adequate,
- inviting the former members to come forward with evidence to substantiate their claim, after which advertisement the board should wait at least six months but no longer than nine months before excluding any former members because of a lack of sufficient information to enable the calculations to be performed;
- (b) rather than excluding former members whose individual benefits cannot be determined, the board may set aside a portion of the actuarial surplus in a contingency reserve account explicitly established to satisfy claims of former members in terms of subsection (5)(e).
- (5) The board shall apportion the actuarial surplus between the various classes of stakeholders whom the board has determined shall participate in the apportionment in terms of subsection (4), following which such portion as is due to the employer shall be credited to the employer surplus account: Provided that—
- (a) the actuarial surplus to be apportioned shall be increased by the amount of actuarial surplus utilised improperly by the employer prior to the surplus apportionment date as determined in terms of subsection (6);
- (b) former members shall have the benefits previously paid to them, or the amounts previously transferred on their behalf, increased to the minimum benefit determined in terms of section 14B(2) as at the date when they left the fund, with such increase adjusted to the surplus apportionment date using the nett investment earnings of the fund over the corresponding period, and pensioners shall have their pensions increased to the minimum pension as determined in terms of section 14B(4), as a prior charge on the actuarial surplus to be apportioned: Provided further that, where the actuarial surplus to be apportioned is insufficient to permit such increases after being increased in terms of paragraph (a), the amounts shall be proportioned downwards until the total to be paid to former members and pensioners equals the actuarial surplus to be apportioned;
- (c) after deducting the cost of the increases to former members and pensioners in terms of paragraph (b) the balance of the actuarial surplus shall be equitably split between existing members, former members and the employer in such proportions as the board shall determine after taking account of the financial history of the fund: Provided further that the registrar may prescribe certain methods which, if used, shall be deemed to be equitable;
- (d) if the amount apportioned to the employer in terms of paragraph (c) is less than the actuarial surplus utilised improperly by the employer as determined in subsection (6), the difference between the amount—
- (i) determined in terms of subsection (6); and
- (ii) apportioned to the employer in terms of paragraph (c), shall represent a debt owed by the employer to the fund which the employer must redeem within a period to be agreed with the board: Provided further that the fund shall notify the registrar, in writing and in the prescribed manner, of the amount and terms of repayment of any such debt; and
- (e) the board shall determine how, in the case of existing members and former members, the allocated portion of actuarial surplus shall be applied for their benefit, including the crediting of any portion to the members' surplus accounts or to the members' individual accounts, as

<p>(aa) op nasionale grondslag en in die gebied waar die vorige lede gewoonlik gewerk het; of</p> <p>(bb) op 'n meer beperkte grondslag soos goedgekeur deur die registrator indien vertoë deur die fonds die registrator tevrede stel dat beperkte adverteering voldoende sal wees, wat vorige lede uitnooi om na vore te kom met getuenis om hulle vordering te staaf, na welke advertensies die raad minstens ses maande maar nie langer as nege maande nie, moet wag voordat vorige lede uitgesluit word omrede 'n gebrek aan voldoende inligting om die berekeninge wat uitgevoer moet word, moontlik te maak;</p> <p>(b) die raad, in plaas van om vorige lede wie se individuele voordele nie bepaal kan word nie, uit te sluit, 'n gedeelte van die aktuariële surplus kan afsonder in 'n gebeurlikheidsreserwerekening wat uitdruklik ingestel is om aan vorderings van vorige lede ingevolge subartikel (5)(e) te voldoen.</p> <p>(5) Die raad moet die aktuariële surplus toedeel tussen die verskillende klasse belanghouers wat die raad bepaal het om aan die toedeling deel te neem ingevolge subartikel (4), waarop die gedeelte wat verskuldig is aan die werkewer aan die werkgewersplusrekening gekrediteer moet word: Met dien verstande dat—</p> <p>(a) die aktuariële surplus wat toegedeel moet word, verhoog word met die bedrag van aktuariële surplus wat onbehoorlik deur die werkewer voor die surplustoedelingsdatum soos bepaal ingevolge subartikel (6), aangewend is;</p> <p>(b) vorige lede geregtig sal wees om die voordele voorheen aan hulle betaal, of die bedrae voorheen namens hulle oorgedra, te laat verhoog tot die minimumvoordeel bepaal ingevolge artikel 14B(2) soos op die datum toe hulle die fonds verlaat het, met aanpassing van so 'n verhoging tot die surplustoedelingsdatum deur gebruik van die netto beleggingsopbrengste van die fonds oor die ooreenstemmende tydperk, en pensioentrekkers sal geregtig wees om hulle pensioene te laat verhoog tot die minimumpensioen soos bepaal ingevolge artikel 14B(4), as 'n voorkeurlas op die aktuariële surplus wat toegedeel staan te word: Met dien verstande voorts dat, waar die aktuariële surplus wat toegedeel staan te word onvoldoende is om sodanige verhogings toe te laat na verhoging ingevolge paragraaf (a), die bedrae afwaarts eweredig aangepas moet word totdat die totaal wat aan vorige lede en pensioentrekkers betaal moet word, gelyk is aan die aktuariële surplus wat toegedeel staan te word;</p> <p>(c) na aftrekking van die koste van die verhogings aan vorige lede en pensioentrekkers ingevolge paragraaf (b), die saldo van die aktuariële surplus billik verdeel moet word tussen bestaande lede, vorige lede en die werkewer in die verhoudings wat die raad bepaal na inagneming van die finansiële geskiedenis van die fonds: Met dien verstande voorts dat die registrator sekere metodes moet voorskryf wat, indien gebruik, billik geag sal word;</p> <p>(d) indien die bedrag wat ingevolge paragraaf (c) aan die werkewer toegedeel staan te word, minder is as die aktuariële surplus wat die werkewer onbehoorlik aangewend het soos bepaal in subartikel (6), die verskil tussen die bedrag—</p> <p>(i) bepaal ingevolge subartikel (6); en</p> <p>(ii) toegedeel aan die werkewer ingevolge paragraaf (c), 'n skuld sal verteenwoordig wat deur die werkewer aan die fonds verskuldig is, wat die werkewer moet aflos binne 'n tydperk met die raad ooreengekom: Met dien verstande voorts dat die fonds die registrator, skriftelik en op die voorgeskrywe wyse, in kennis moet stel van die bedrag en terugbetaalingsbepalings van enige sodanige skuld; en</p> <p>(e) die raad moet bepaal hoe, in die geval van bestaande lede en vorige lede, die toegewese deel van aktuariële surplus vir hul voordeel toegepas sal word, met inbegrip van die kreditering van enige deel aan die ledesurplusrekening of aan die individuele lederekening, na</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>
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- the case may be: Provided further that the board may allocate a portion of the actuarial surplus to be used for former members to a contingency reserve account which will be used to satisfy the claims of former members—
- (i) who have been identified in subsection (4)(a) but who cannot be traced; or
 - (ii) who did not substantiate their claim during the nine-month period following the advertisement in subsection (4)(a)(iii) but who do so after the end of this period.
- (6) Surplus utilised improperly by the employer prior to the surplus apportionment date shall consist of—
- (a) the cost of benefit improvements for executives in excess of the cost that would have applied had the executives enjoyed the benefits provided to other members;
 - (b) the cost of any additional pensions or deferred pensions granted to selected members in lieu of the employer's obligation to subsidise the medical costs after retirement of those members;
 - (c) the cost to recognise prior pensionable service for selected members or for members transferred into the fund in excess of any amount paid into the fund in respect of such prior service; and
 - (d) the value of any contribution holiday enjoyed by the employer after the commencement date:
- Provided that the board may exclude from surplus utilised improperly by the employer any use of actuarial surplus which the registrar is satisfied was approved by the members, or by trade unions representing the members, after a clear and comprehensive communication exercise as part of a negotiated utilisation of surplus by stakeholders.
- (7) At least 75 per cent of the members of the board duly constituted in terms of section 7A must approve the scheme.
- (8) Notwithstanding anything to the contrary in the rules, no person other than the relevant board or, in the event of referral to the special ad hoc tribunal referred to in section 15K, the special ad hoc tribunal, and the registrar may approve the scheme.
- (9) An apportionment in terms of this section shall be of no force or effect unless—
- (a) the scheme, including a copy of every actuarial or other statement taken into account for purposes of the scheme and the report by the person appointed in terms of subsection (3), has been submitted to the registrar;
 - (b) the registrar has been furnished with a certificate signed by the valuator stating—
 - (i) whether the valuator finds that the process of apportionment complied with the Act; and
 - (ii) where it was necessary for the board to apply its discretion, whether the exercise of such discretion was not unreasonable taking into account the demands of equity within the bounds of practicality and the circumstances of the particular fund, together with such additional particulars or such special report by the valuator as the registrar may deem necessary for purposes of this subsection;
 - (c) the registrar has been furnished with such additional report as he or she may require from an independent actuary appointed by him or her on such matters associated with the apportionment of the actuarial surplus as the registrar shall determine and including such information as may be prescribed: Provided that—
 - (i) the registrar shall require such report where there are complaints in respect of the apportionment of surplus which have not been resolved to the satisfaction of the complainants concerned; and
 - (ii) the costs resulting from the appointment of such independent actuary shall be borne by the fund;

gelang van die geval: Met dien verstande voorts dat die raad 'n gedeelte van aktuariële surplus mag toewys om gebruik te word vir vorige lede aan 'n gebeurlikheidsreserwerekening wat gebruik moet word om aan die vorderings van vorige lede te voldoen—

- (i) wat in subartikel (4)(a) geïdentifiseer is maar nie opgespoor kan word nie; of
- (ii) wat nie hul vordering gedurende die nege maande tydperk volgende op die advertensie in subartikel (4)(a)(iii) gestaaf het nie maar wat dit doen na die einde van hierdie tydperk.

(6) Surplus wat onbehoorlik deur die werkewer voor die surplustoedelingsdatum aangewend is, bestaan uit—

- (a) die koste van voordeleverbeteringe vir uitvoerende bestuurslede wat die koste oorskry wat van toepassing sou gewees het as die uitvoerende bestuurslede die voordele voorsien aan ander lede geniet het;
- (b) die koste van enige bykomende pensioene of uitgestelde pensioene verleen aan uitgesoekte lede, in plek van die werkewersverpligting om die mediese kostes na aftrede van daardie lede te subsidieer;
- (c) die koste van erkenning van vorige pensioengewende diens vir uitgesoekte lede of vir lede oorgedra tot die fonds, wat enige bedrag oorskry wat in die fonds inbetaal is ten opsigte van sodanige vorige diens; en
- (d) die waarde van enige bydraevergunning benut deur die werkewer na die inwerkingtredingsdatum:

Met dien verstande dat die raad van surplus onbehoorlik deur die werkewer aangewend enige gebruik van aktuariële surplus kan uitsluit wat die registrator tevrede is deur die lede goedkeur is, of deur vakbonde verteenwoordigend van die lede, na 'n duidelike en omvattende bekendmakingsproses as deel van 'n onderhandelde aanwending van surplus deur belanghouers.

(7) Minstens 75 persent van die lede van die raad behoorlik saamgestel ingevolge artikel 7A, moet die skema goedkeur.

(8) Ondanks enigiets tot die teendeel in die statute, mag geen ander persoon as die betrokke raad, of, in die geval van 'n verwysing na die spesiale *ad hoc*-tribunaal bedoel in artikel 15K, die spesiale *ad hoc*-tribunaal, en die registrator die skema goedkeur nie.

- (9) 'n Toedeling ingevolge hierdie artikel is nie van krag nie tensy—
- (a) die skema, met inbegrip van 'n kopie van elke aktuariële of ander verklaring wat vir doeleindes van die skema in ag geneem is en die verslag deur die persoon aangestel ingevolge subartikel (3), aan die registrator voorgelê is;
 - (b) die registrator voorsien is van 'n sertifikaat onderteken deur die waardeerde wat verklaar—
 - (i) of die waardeerde bevind dat die proses van toedeling aan die Wet voldoen het; en
 - (ii) waar dit vir die raad nodig was om sy diskresie toe te pas, of die uitoefening van die diskresie nie onredelik was met inagneming van die eise van billikhed binne die perke van doenlikheid en die omstandighede van die betrokke fonds nie,

tesame met die bykomende besonderhede of die spesiale verslag deur die waardeerde wat die registrator vir die doeleindes van hierdie subartikel nodig ag;

- (c) die registrator voorsien is van die bykomende verslag wat hy of sy vereis van 'n onafhanklike aktuaris deur hom of haar aangestel oor die aangeleenthede wat verband hou met die toedeling van die aktuariële surplus wat die registrator bepaal, en met inbegrip van die inligting wat voorgeskryf is: Met dien verstande dat—
 - (i) die registrator sodanige verslag vereis waar daar klages is ten opsigte van die toedeling van die aktuariële surplus wat nie tot bevrediging van die betrokke klaers opgelos is nie; en
 - (ii) die kostes wat voortspruit uit die aanstelling van sodanige onafhanklike aktuaris deur die fonds gedra word;

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- (d) the employer, members and former members, together with any fund to which former members transferred, have been informed of the scheme in a manner which is clear and understandable to the members and former members and which gives details of the allocation of the actuarial surplus for the benefit of the various stakeholders, including the amounts of any actuarial surplus which it is intended to credit to the member surplus account and to the employer surplus account, respectively, and the costs of any benefit improvements for members and former members: Provided that—
- (i) the manner of communication and the type of information to be included in this communication may be prescribed and such prescription may include a requirement that the person appointed in terms of subsection (3), the independent actuary, if any, and the valuator shall certify that they are satisfied that the communication material is objective and contains sufficient information to enable any stakeholder to judge the reasonableness of the scheme; and
 - (ii) the communication shall be explicit about how and where any complaint should be lodged;
- (e) the employer, members, former members, and any fund to which former members have transferred have had 12 weeks after despatch of the communication in which to complain, in writing, to the board;
- (f) the board has considered any objection contemplated in paragraph (e) before submitting the scheme to the registrar;
- (g) the principal officer of the fund has furnished the registrar with details of all objections lodged with the board and the actions taken to address such objections;
- (h) the registrar is satisfied that the scheme is reasonable and equitable and accords full recognition to the rights and reasonable benefit expectations of existing members and former members in respect of service prior to the surplus apportionment date; and
- (i) the registrar has forwarded a certificate to the principal officer of the fund to the effect that all the requirements of this subsection have been fulfilled.
- (10) If the board fails to submit a scheme in terms of subsection (1) or if the registrar is not satisfied that the distribution is reasonable and equitable, or at the request of the board or at the request of the person appointed in terms of subsection (3), the registrar shall require the board to refer the apportionment of the surplus to the special ad hoc tribunal referred to in section 15K, and such tribunal shall exercise the powers of the board in terms of this section, and any reference in this section to the board shall be construed as a reference to the tribunal.

Apportionment of future surplus

15C. (1) The rules may determine any apportionment of actuarial surplus arising in the fund after the surplus apportionment date between the member surplus account and the employer surplus account.

(2) If the rules are silent on the apportionment of actuarial surplus arising after the surplus apportionment date, any apportionment shall be determined by the board taking into account the interests of all the stakeholders in the fund: Provided that, notwithstanding anything to the contrary in the rules, neither the employer nor the members may veto such apportionment.

Utilisation of surplus for benefit of members

15D. (1) Notwithstanding anything to the contrary in the rules of a fund but subject to subsection (2), any credit balance in the member surplus account may only be used by the board to—

- (a) improve benefits for existing members;
- (b) improve the benefits previously paid to former members or the amounts previously transferred in respect of former members;
- (c) reduce current contributions due from members; and

- (d) die werkewer, lede en vorige lede, tesame met enige fonds waarheen lede oorgedra is, oor die skema ingelig is op 'n wyse wat vir die lede en vorige lede duidelik en verstaanbaar is en wat besonderhede verskaf van die toewysing van die aktuariële surplus vir die voordeel van die verskillende belanghouers, met inbegrip van die bedrae van enige aktuariële surplus wat bedoel is om aan onderskeidelik die ledesurplusrekening en aan die werkgewersurplusrekening, gekrediteer te word, en die kostes van enige voordeleverbeteringe vir lede en vorige lede: Met dien verstande dat—
- (i) die wyse van kommunikasie en die tipe inligting wat in hierdie bekendmaking ingesluit moet word, voorgeskryf kan word, en so 'n voorskrif mag insluit 'n vereiste dat die persoon aangestel ingevolge subartikel (3), die onafhanklike aktuaris, indien enige, en die waardeerde moet sertifiseer dat hulle tevrede is dat die kommunikasiemateriaal objektief is en voldoende inligting bevat om enige belanghouer in staat te stel om die redelikheid van die skema te beoordeel; en
 - (ii) die kommunikasie uitdruklik moet aantoon hoe en waar enige klage ingedien moet word;
- (e) die werkewer, lede, vorige lede en enige fonds waarheen vorige lede oorgedra is, 12 weke na afstuur van die kommunikasie tot hulle beskikking gehad het waarin, skriftelik, by die raad gekla kon word;
- (f) die raad enige beswaar beoog in paragraaf (e) oorweeg het voor voorlegging van die skema aan die registrator;
- (g) die hoofbeampete van die fonds die registrator voorsien het van besonderhede van alle besware wat by die raad ingedien is en van alle stappe gedoen om sodanige besware te beredder;
- (h) die registrator tevrede is dat die skema redelik en billik is en volle erkenning verleen aan die regte en redelike voordele-verwagtings van bestaande lede en vorige lede ten opsigte van diens voor die surplustoedelingsdatum; en
- (i) die registrator 'n sertikaat na die hoofbeampete van die fonds aangestuur het met die strekking dat aan alle vereistes van hierdie subartikel voldoen is.
- (10) Indien die raad van 'n fonds versum om 'n skema ingevolge subartikel (1) voor te lê of indien die registrator nie tevrede is dat die verdeling redelik en billik is nie, of op versoek van die raad of op versoek van die persoon ingevolge subartikel (3) aangestel, moet die registrator van die raad vereis om die toedeling van die surplus te verwys na die spesiale *ad hoc*-tribunaal bedoel in artikel 15K, en sodanige tribunaal oefen die bevoegdhede van die raad ingevolge hierdie artikel uit, en enige verwysing na die raad word uitgelê as 'n verwysing na die tribunaal.

Toedeling van toekomstige surplus

15C. (1) Die statute kan 'n toedeling van aktuariële surplus, wat uit die fonds ontstaan na die surplustoedelingsdatum, tussen die ledesurplusrekening en die werkgewersurplusrekening bepaal.

(2) Indien die statute swyg oor die toedeling van aktuariële surplus wat na die surplustoedelingsdatum ontstaan, word enige toedeling bepaal deur die raad met inagneming van die belang van alle belanghouers in die fonds: Met dien verstande dat, ondanks enigets tot die teendeel in die statute, nóg die werkewer nóg die lede so 'n toedeling mag veto.

Aanwending van surplus vir voordeel van lede

15D. (1) Ondanks enigets tot die teendeel in die statute van 'n fonds, maar behoudens subartikel (2), mag enige kredietsaldo in die ledesurplusrekening slegs deur die raad van die fonds gebruik word om—

- (a) voordele vir bestaande lede te verbeter;
- (b) die voordele wat voorheen betaal is aan vorige lede of die bedrae voorheen oorgedra ten opsigte van vorige lede, te verbeter;
- (c) lopende bydraes verskuldig deur lede te verminder; en

- (d) meet, in full or in part, expenses which would otherwise reduce the proportion of the members' contributions that are invested for retirement:

Provided that the employer appointed members of the board shall not have a vote in any deliberation over the use of any credit balance in the member surplus account unless the proposal before the board will increase the contribution rate payable by the employer.

(2) The credit balance contemplated in subsection (1) after the apportionment of actuarial surplus as at the surplus apportionment date must be used as specified in the scheme submitted in terms of section 15B(1) if the scheme makes provision for the use of such credit balance.

Utilisation of surplus for benefit of employer

15E. (1) Notwithstanding anything to the contrary in the rules a participating employer may request the board to use actuarial surplus allocated to the employer surplus account in terms of sections 15B, 15C and 15F for use by that employer for any of the following purposes, namely—

- (a) funding a contribution holiday;
- (b) payment of pensions, or an increase in pensions in course of payment, so as to compensate members for the loss of any subsidy from the employer of their medical costs after retirement;
- (c) meeting, in full or in part, expenses which the employer is obliged to pay in terms of the rules of the fund;
- (d) improving the benefits payable to all members, or a category of members as defined in the rules, as determined by the employer;
- (e) transferring part, or all, of the employer surplus account in terms of subsection (2) to the employer surplus account in another fund where the employer is a participating employer;
- (f) on liquidation of the fund in terms of sections 28 or 29, payment in cash to the employer in terms of section 15I; and
- (g) in order to avoid retrenchment of a significant proportion of the workforce, payment in cash to the employer in terms of section 15J:

Provided that the members of the board who have been elected by members of the fund shall not have a vote in any deliberation over the use of any credit balance in the employer surplus account.

(2) The registrar may approve the transfer of a portion of the employer surplus account from the fund to the employer surplus account in another fund, if the following conditions are satisfied, namely—that

- (a) the employer who has control of the employer surplus account in terms of the rules of the fund has similar control of the employer surplus account in the transferee fund;
- (b) employees of the employer are members or former members of the fund to which the transfer is made;
- (c) the employer applies to the registrar for approval of the transfer, giving such details and supporting reports as the registrar may require; and
- (d) the registrar is satisfied that such transfer is necessary in order to achieve an equitable distribution of the surplus between the funds.

Existing employer reserve accounts

15F. (1) On or after the commencement date, the board may apply to the registrar to transfer all or some of the credit balance in an existing employer reserve account as defined in the rules to the employer surplus account.

(2) The registrar may approve such transfer if he or she is satisfied that the allocation of actuarial surplus to such account was negotiated between the stakeholders in a manner consistent with the principles underlying sections 15B and 15C.

- (d) uitgawes wat andersins die deel van die ledebydrae wat vir aftrede belê word, sou verminder het, in die geheel of gedeeltelik te delg: Met dien verstande dat die werkewer-aangestelde lede van die raad nie oor 'n stem sal beskik by enige oorweging van die gebruik van enige krediet saldo in die ledesurplusrekening nie tensy die voorstel voor die raad die bydraekoers betaalbaar deur die werkewer sal verhoog.
- (2) Die krediet saldo beoog in subartikel (1) na die toedeling van aktuariële surplus soos op die surplustoedelingsdatum, moet gebruik word soos gespesifieer in die skema voorgelê ingevolge artikel 15B(1) indien die skema vir die gebruik van sodanige krediet saldo voorsiening maak.

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Aanwending van surplus vir voordeel van werkewer

15E. (1) Ondanks enigets tot die teendeel in die statute, kan 'n deelnemende werkewer die raad versoek om aktuariële surplus toegewys aan die werkewersurplusrekening ingevolge artikels 15B, 15C en 15F vir gebruik deur daardie werkewer, te gebruik vir enige van die volgende doeleindes, naamlik—

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- (a) finansiering van 'n bydraevergunning;
- (b) betaling van pensioene, of 'n verhoging in pensioene in die loop van betaling, ten einde lede vir die verlies van enige subsidie van die werkewer vir hul mediese onkoste na aftrede te vergoed;
- (c) delging van uitgawes, in die geheel of gedeeltelik, wat die werkewer verplig is om ingevolge die statute van die fonds te betaal;
- (d) verbetering van die voordele betaalbaar aan alle lede, of 'n kategorie lede soos omskryf in die statute, soos deur die werkewer bepaal;
- (e) die oordra van 'n gedeelte, of die geheel, van die werkewersurplusrekening ingevolge subartikel (2) na die werkewersurplusrekening in 'n ander fonds waar die werkewer 'n deelnemende werkewer is;
- (f) by likwidasie van die fonds ingevolge artikels 28 of 29, betaling in kontant aan die werkewer ingevolge artikel 15I; en
- (g) ten einde ontslag weens personeelinkorting van 'n betekenisvolle deel van die werkskrage te verhinder, betaling in kontant aan die werkewer ingevolge artikel 15J:

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Met dien verstande dat die lede van die raad wat deur lede van die fonds verkies is nie oor 'n stem sal beskik by die oorweging van enige gebruik van enige krediet saldo in die werkewersurplusrekening nie.

(2) Die registrator kan die oordrag van 'n deel van die werkewersurplusrekening van die fonds na die werkewersurplusrekening in 'n ander fonds goedkeur, indien die volgende voorwaardes nagekom word, naamlik dat—

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- (a) die werkewer wat beheer het oor die werkewersurplusrekening ingevolge die statute van die fonds, soortgelyke beheer moet uitoefen oor die werkewersurplusrekening in die oordagnemende fonds;
- (b) werknemers van die werkewer lede of vorige lede moet wees van die fonds waarheen oordrag geskied;
- (c) die werkewer by die registrator aansoek moet doen om goedkeuring van die oordrag, met verskaffing van die besonderhede en ondersteunende verslae wat die registrator mag vereis; en
- (d) die registrator tevrede moet wees dat sodanige oordrag nodig is om 'n billike verdeling van die surplus tussen die fondse te bereik.

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Bestaande werkewersreserwerekening

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15F. (1) Die raad van 'n fonds kan, op of na die inwerkintredingsdatum, by die registrator aansoek doen om alle of sommige van die krediet saldo's in 'n bestaande werkewersreserwerekening soos omskryf in die statute, na die werkewersurplusrekening oor te dra.

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(2) Die registrator kan so 'n oordrag goedkeur indien hy of sy tevrede is dat die toedeling van aktuariële surplus aan so 'n fonds onderhandel is tussen die belanghouers op 'n wyse wat bestaanbaar is met die beginsels onderliggend aan artikels 15B en 15C.

(3) Any remaining portion of the credit balance in an existing employer reserve account shall be treated as actuarial surplus to be distributed in terms of section 15B.

Right to share in surplus accounts on exit

15G. (1) Notwithstanding anything to the contrary in the rules, members who cease to be members of the fund should receive, as part of their transfer values or benefit payments, a share of any credit balances in the member surplus account, the investment reserve account and such contingency reserve accounts as the board deems appropriate, in the ratio that the liability of the fund in respect of the past service of the members leaving the fund bears to the liability of the fund towards all its members in respect of past service at that date: Provided that the board may use a reasonable alternative if there are sound administrative reasons why such a calculation cannot be performed.

(2) Notwithstanding anything to the contrary in the rules, existing members and former members may not participate in the employer surplus account when they transfer out of a fund or when they become entitled to a benefit, unless the relevant employer so directs.

Use of contents of any surplus accounts to fund deficits

15H. (1) If a fund has credit balances in the member surplus account or the employer surplus account and the fund is found to have a deficit following an actuarial valuation, including a valuation carried out for the purpose of distributing assets on liquidation of the fund, such credit balances shall be reduced in the same proportion by the amount of the deficit: Provided that no credit balance may be reduced by more than the amount to which the account was in credit.

(2) If the deficit exceeds the credit balances in the member surplus account and the employer surplus account, these credit balances shall be applied in full to reduce the deficit and shall be reduced to zero.

Application of surplus accounts on liquidation of fund

15I. On liquidation of a fund in terms of section 28 or 29, any credit balances in any reserve accounts, the member surplus account and the employer surplus account shall be applied in the following order of priority:

- (a) All credit balances in such accounts may be drawn upon to secure the rights and reasonable benefit expectations of the members participating in the distribution: Provided that the credit balances in any such accounts shall be reduced by the same proportion.
- (b) Any remaining credit balances in the member surplus account, any contingency reserve accounts and any surplus which has not been allocated to the member and employer surplus accounts, shall be used for the benefit of the members and former members of the fund, in such manner as the liquidator, acting on the advice of the valuator, shall determine.
- (c) Any remaining balance in the employer surplus account shall be paid to the employer unless the employer was liquidated prior to the commencement of the liquidation of the fund, in which case it shall be used in the following order of priority, namely—
 - (i) to meet contributions deducted from members' earnings and not paid to the fund;
 - (ii) to meet contributions due from the employer but not paid to the fund; and

(3) Enige oorblywende gedeelte van die kredietsaldo in 'n sodanige bestaande werkgewersreserwerekening word hanteer as aktuariële surplus wat ingevolge artikel 15B verdeel moet word.

Reg om in surplusrekening te deel by beëindiging van lidmaatskap

15G. (1) Ondanks enige andersluidende bepaling in die statute, behoort lede wat ophou om lede van die fonds te wees, as deel van hul oordragwaardes of voordelebetalings, 'n deel te ontvang van enige kredietsaldo in die ledesurplusrekening, die beleggingsreserwerekening en die gebeurlikheidsreserwerekening wat die raad geskik ag, in die verhouding waarin die verpligting van die fonds ten opsigte van die vorige diens van die lede wat die fonds verlaat, staan tot die verpligting van die fonds teenoor al sy lede ten opsigte van vorige diens op daardie datum: Met dien verstande dat die raad 'n redelike alternatief kan gebruik indien daar gegronde administratiewe redes bestaan waarom so 'n berekening nie uitgevoer kan word nie.

(2) Ondanks enige andersluidende bepaling in die statute, mag lede en vorige lede nie deelneem aan die werkgewersurplusrekening nie wanneer hulle oorgedra word uit 'n fonds of wanneer hulle geregtig word op 'n voordeel nie, tensy die betrokke werkgewer aldus gelas.

Gebruik van inhoud van enige surplusrekening om tekorte te finansier 20

15H. (1) Indien 'n fonds kredietsaldo's toon in die ledesurplusrekening of die werkgewersurplusrekening en die fonds bevind word 'n tekort te toon na 'n aktuariële waardasie, met inbegrip van 'n waardasie uitgevoer ten einde bates by die likwidatie van die fonds te distribueer, moet sodanige kredietsaldo's in dieselfde verhouding met die bedrag van die tekort verminder word: Met dien verstande dat geen kredietsaldo verminder mag word met meer as die bedrag waarmee die rekening in krediet was nie.

(2) Indien die tekort die kredietsaldo's in die ledesurplusrekening en die werkgewersurplusrekening oorskry, moet hierdie kredietsaldo's ten volle toegepas word om die tekort te verminder en op nul herlei word.

Aanwending van surplusrekening by likwidasie van fonds

15I. By likwidasie van 'n fonds ingevolge artikel 28 of 29, moet enige kredietsaldo's in enige reserwerekeninge, die ledesurplusrekening en die werkgewersurplusrekening in die volgende voorkeurde toegepas word:

- (a) Verhaal kan op alle kredietsaldo's in sodanige rekeninge geneem word om die regte en redelike voordele-verwagtinge van die lede wat deelneem aan die distribusie te verseker: Met dien verstande dat die kredietsaldo's in enige sodanige rekeninge in dieselfde verhouding verminder moet word.
- (b) Enige oorblywende kredietsaldo's in die ledesurplusrekening, enige gebeurlikheidsreserwerekening en enige surplus wat nie toegewys is aan die lede- en werkgewersurplusrekeninge nie, moet gebruik word vir die voordeel van die lede en vorige lede van die fonds, op die wyse wat die likwidator, handelende op advies van die waardeerde, bepaal.
- (c) Enige oorblywende saldo in die werkgewersurplusrekening word betaal aan die werkgewer tensy die werkgewer voor die aanvang van die likwidasie van die fonds gelikwideer is, in welke geval dit in die volgende voorkeurde gebruik moet word, naamlik—
 - (i) om bydraes afgetrek van ledeverdienstes en nie aan die fonds betaal nie, te dek;
 - (ii) om bydraes verskuldig vanaf die werkgewer en nie aan die fonds betaal nie, te dek; en

- (iii) to be distributed amongst the members at the date of liquidation and such former members as are eligible in terms of the rules to participate in the distribution.

Use of employer surplus to prevent job losses

15J. (1) A fund may apply to the registrar for permission to pay any credit balance in an employer surplus account to an employer where negotiations in terms of section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), have confirmed the need to retrench employees if additional capital is not obtained: Provided that an independent auditor may be required by the fund to certify such need.

(2) The application must be made to the registrar in the prescribed manner.

(3) The registrar may only grant an application, and issue a certificate to the applicant to the effect that the requested payment may take place, if the registrar is satisfied that—

- (a) members have had full disclosure of the current financial position of the fund and the proposed distribution to the employer, and the need of the employer for additional capital in order to maintain employment, together with the report of the independent auditor, if any, and any information that members may require to exercise their rights under the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (b) members have had a reasonable opportunity to consider the proposal;
- (c) at least 75 per cent of the members currently in employment have approved the proposal, in writing; and
- (d) negotiations in terms of section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), have confirmed the need to retrench more than 10 per cent of the membership of the fund at the previous financial year end if the payment is not made.

Specialist tribunal

15K. (1) When the board fails to submit a scheme for the apportionment of an actuarial surplus in terms of section 15B within the prescribed period, or if the registrar is not satisfied that the scheme submitted by the board in terms of section 15B is reasonable and equitable or if the registrar considers that unresolved complaints require investigation which may lead to a review of such scheme or if the board requests it, the registrar shall require the board to refer the scheme to a special ad hoc tribunal to perform the functions of the board set out in section 15B.

(2) The tribunal shall consist of at least three members who must all be independent of any stakeholder in the fund, and of whom—

- (a) at least one shall be a lawyer selected by the board from a panel approved by the registrar;
- (b) at least one shall be an actuary selected by the board from a panel approved by the registrar; and
- (c) at least two must have experience in retirement fund financing: Provided that the registrar may select the members of the tribunal, if the board fails to make their selection within three months of the request being made by the registrar.

(3) The tribunal shall make the apportionment within such period as may be determined by the registrar.

(4) Three members of the tribunal shall constitute a quorum.

(iii) om verdeel te word tussen die lede op die datum van likwidasie en die vorige lede wat ingevolge die statute kwalifiseer om in die verdeling te deel.

Gebruik van werkgewersurplus om werksverliese te voorkom

- 15J.** (1) 'n Fonds kan by die registrateur aansoek doen om toestemming om enige kreditsaldo in 'n werkgewersurplusrekening aan 'n werkewer te betaal waar onderhandelinge ingevolge artikel 189 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), die noodsaak om werknemers weens personeelinkorting te ontslaan indien bykomende kapitaal nie verkry word nie, bevestig het: Met die verstande dat dit deur die fonds vereis kan word dat 'n onafhanklike ouditeur so 'n noodsaak moet sertifiseer.
- (2) Die aansoek word by die registrateur op die voorgeskrewe wyse gedoen.
- (3) Die registrateur kan slegs 'n aansoek toestaan, en aan die aansoeker 'n sertikaat uitrek met die strekking dat die aangevraagde betaling gedoen kan word, indien die registrateur tevreden is dat—
- (a) 'n volle bekendmaking aan die lede geskied het van die lopende geldelike stand van die fonds en die voorgestelde uitkering aan die werkewer, en die behoefte van die werkewer aan bykomende kapitaal om indiensneming in stand te hou, tesame met die verslag van die onafhanklike ouditeur, as daar is, en enige inligting wat die lede mag vereis om hul regte kragtens die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), uit te oefen;
- (b) lede 'n redelike geleentheid om die voorstel te oorweeg, gehad het;
- (c) minstens vyf-en-sewentig persent van die lede tans in diens die voorstel skriftelik goedgekeur het; en
- (d) onderhandelinge ingevolge artikel 189 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), die noodsaakklikheid bevestig het om meer as 10 persent van die lidmaatskap van die fonds soos aan die einde van die vorige boekjaar weens personeelinkorting te ontslaan indien die betaling nie gedoen word nie.

Spesialis-tribunaal

- 15K.** (1) Wanneer die raad van 'n fonds versuim om 'n skema vir die toedeling van 'n aktuariële surplus ingevolge artikel 15B binne die voorgeskrewe tydperk in te dien, of indien die registrateur nie tevreden is dat die skema voorgelê deur die raad ingevolge artikel 15B redelik en billik is nie of indien die registrateur van oordeel is dat onopgeloste klages 'n ondersoek vereis wat tot hersiening van so 'n skema kan aanleiding gee of indien die raad dit versoek, moet die registrateur van die raad vereis om die skema te verwys na 'n spesiale *ad hoc*-tribunaal aanstel om die werkzaamhede van die raad uiteengesit in artikel 15B te verrig.
- (2) Die tribunaal bestaan uit minstens drie lede wie almal onafhanklik van enige belanghouer in die fonds moet wees, en van wie—
- (a) minstens een 'n regsgelerde moet wees wat deur die raad verkies is uit 'n paneel goedgekeur deur die registrateur;
- (b) minstens een 'n aktuaris moet wees wat deur die raad verkies is uit 'n paneel goedgekeur deur die registrateur; en
- (c) minstens twee oor ondervinding van aftreefondsfinansiering moet beskik:
- Met dien verstande dat die registrateur die lede van die tribunaal kan verkies, indien die raad versuim om sy keuse binne drie maande na die versoek gerig deur die registrateur, te doen.
- (3) Die tribunaal moet die toedeling binne die tydperk bepaal deur die registrateur doen.
- (4) Drie lede van die tribunaal maak 'n kworum uit.

<p>(5) The tribunal shall elect a chairperson from amongst its members and such chairperson shall have a deliberative vote but no casting vote.</p> <p>(6) At least two-thirds of the members of the tribunal must agree to any decision or step taken in the exercise of the powers contemplated in section 15B(10).</p> <p>(7) The tribunal may follow any procedure which it considers appropriate in conducting an investigation, including procedures in an inquisitorial manner, and affording any stakeholder the right to a hearing.</p> <p>(8) Notwithstanding section 22 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), the tribunal may obtain copies of any document or correspondence contained in the files of the registrar relating to a fund in connection with which the tribunal is conducting an investigation.</p> <p>(9) (a) For purposes of an investigation, the tribunal may—</p> <ul style="list-style-type: none"> (i) under the hand of the chairperson, summon any person who in the opinion of the tribunal may be able to give material information concerning the subject matter of the investigation or who is believed by the tribunal to have in his or her possession or custody or under his or her control any book, document, record or thing which has any bearing on the subject matter of the investigation, to appear before it at a time and place specified in the summons, to be questioned or to produce that book, document, record or thing, and may retain for inspection any book, document, record or thing so produced; and (ii) through the chairperson administer an oath to, or accept an affirmation from, any person summoned under subparagraph (i) and question that person and require the person to produce any book, document, record or thing in his or her possession or custody or under his or her control. <p>(b) A summons referred to in paragraph (a) shall be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrate's court.</p> <p>(c) In connection with the questioning of any person summoned under this section or the production by such person of any book, document, record or thing, the law relating to privilege as applicable to a witness summoned to give evidence or to produce a book, document, record or thing in a civil trial before a court of law shall apply.</p> <p>(d) (i) Any person summoned in terms of this section or who has given evidence before a tribunal shall be entitled to the same witness fees as if he or she had been summoned to attend or had given evidence at a civil trial in a magistrate's court held at the place where the investigation is held.</p> <p>(ii) Any fees which may become payable in terms of subparagraph (i) shall be paid by the fund.</p> <p>(10) The tribunal shall keep, whether in writing or by mechanical or electronic means, a permanent record of the proceedings relating to the determination of a matter before it, including the apportionment of actuarial surplus and any evidence given: Provided that such record shall be passed to the registrar once the tribunal has completed its determination.</p> <p>(11) After the tribunal has completed an investigation, it shall send a statement containing its determination and the reasons therefor, signed by the members of the tribunal, to all parties concerned as well as to the registrar.</p> <p>(12) Any costs arising from the work of the tribunal, including periodical allowances or compensation for personal expenses of the members of the tribunal, shall be recovered from the fund out of the surplus being apportioned if the tribunal satisfies the registrar that such costs were reasonably incurred in the performance of the required functions.</p> <p>(13) Any member of the public may obtain a copy of the record from the registrar on payment of a fee determined by the registrar.</p>	<p style="margin: 0;">5</p> <p style="margin: 0;">10</p> <p style="margin: 0;">15</p> <p style="margin: 0;">20</p> <p style="margin: 0;">25</p> <p style="margin: 0;">30</p> <p style="margin: 0;">35</p> <p style="margin: 0;">40</p> <p style="margin: 0;">45</p> <p style="margin: 0;">50</p> <p style="margin: 0;">55</p>
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(5) Die tribunaal verkies 'n voorsittende persoon vanuit sy lede, en sodanige voorsittende persoon beskik oor 'n beraadslagende stem maar nie oor 'n beslissende stem nie.	
(6) Minstens twee derdes van die lede van die tribunaal moet saamstem met enige beslissing geneem of stap gedoen by die uitoefening van die bevoegdhede beoog in artikel 15B(10).	5
(7) Die tribunaal kan enige prosedure wat hy geskik ag by die onderneem van 'n ondersoek volg, met inbegrip van prosedures op 'n inkwisiotoriale wyse, en die vergunning aan enige belanghouer van die reg om aangehoor te word.	10
(8) Ondanks artikel 22 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990), kan die tribunaal afskrifte verkry van enige dokument of korrespondensie vervat in die leërs van die registrator met betrekking tot 'n fonds in verband waarmee die tribunaal 'n ondersoek onderneem.	15
(9) (a) Vir die doeleindes van 'n ondersoek kan die tribunaal—	
(i) onder die handtekening van die voorsittende persoon, enige persoon dagvaar wat na die oordeel van die tribunaal in staat mag wees om wesenlike inligting te verskaf oor die onderwerp van die ondersoek of wat die tribunaal glo in sy of haar besit of bewaring of onder sy of haar beheer enige boek, dokument, rekord of voorwerp het wat betrekking het op die voorwerp van die ondersoek, om voor die tribunaal te verskyn op 'n tyd en plek vermeld in die dagvaarding, om ondervra te word of om daardie boek, dokument, rekord of voorwerp oor te lê, en kan enige boek, dokument, rekord of voorwerp aldus oorgelê vir ondersoek behou;	20
(ii) deur die voorsittende persoon 'n eed oplê aan, of 'n bevestiging afneem van, enige persoon gedagvaar kragtens subparagraaf (i) en daardie persoon ondervra en van die persoon vereis om enige boek, dokument, rekord of voorwerp in sy of haar besit of bewaring of onder sy of haar beheer oor te lê.	25
(b) 'n Dagvaarding bedoel in paragraaf (a) word beteken op dieselfde wyse as 'n dagvaarding vir die verskyning van 'n getuie by 'n siviele verhoor in 'n landdroshof.	30
(c) Die reg met betrekking tot privilegie soos van toepassing op 'n getuie gedagvaar om getuenis te lewer of 'n boek, dokument, rekord of voorwerp oor te lê in 'n siviele verhoor voor 'n gereghof, is in verband met enige ondervraging van 'n persoon gedagvaar kragtens kragtens hierdie artikel of die oorlegging deur so 'n persoon van enige boek, dokument, rekord of voorwerp van toepassing.	35
(d) (i) 'n Persoon gedagvaar ingevolge hierdie artikel of wat getuenis voor 'n tribunaal gelewer het, is geregtig op dieselfde getuiegelde asof hy of sy gedagvaar is om te verskyn of getuenis gelewer het in 'n siviele verhoor in 'n landdroshof wat sitting gehou het op die plek waar die ondersoek gehou word.	40
(ii) Gelde wat ingevolge subparagraaf (i) betaalbaar word, word deur die fonds betaal.	45
(10) Die tribunaal moet, hetsy skriftelik of op meganiese of elektroniese wyse, 'n permanente rekord hou van die verrigtinge met betrekking tot die bepaling van 'n aangeleentheid voor die tribunaal, met inbegrip van die toedeling van aktuariële surplus en enige getuenis gelewer: Met dien verstande dat so 'n rekord na die registrator deurgestuur moet word wanneer die tribunaal sy bepaling voltooi het.	50
(11) Nadat die tribunaal 'n ondersoek afgehandel het, moet die tribunaal 'n verklaring wat sy bepaling en die redes daarvoor bevat, onderteken deur die lede van die tribunaal, na alle betrokke partye asook die registrator stuur.	55
(12) Enige koste wat voortspruit uit die werk van die tribunaal, met inbegrip van periodieke toelaes of vergoeding vir persoonlike uitgawes van die lede van die tribunaal, word bestry deur die fonds uit die surplus wat toegedeel word indien die tribunaal die registrator tevreden stel dat sodanige koste redelikerwys aangegaan is by die verrigting van die vereiste werksaamhede.	60
(13) Enige lid van die publiek kan by betaling van gelde deur die registrator bepaal, 'n afskrif van die rekord by die registrator verkry.	65

(14) The determination of the tribunal shall be binding on the stakeholders.

(15) The registrar must accept such determination as satisfying the requirements of section 15B(9) unless the registrar is of the opinion that the tribunal failed to exercise its discretion properly and in good faith.”.

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Amendment of section 30 of Act 24 of 1956, as amended by section 17 of Act 103 of 1979 and section 25 of Act 104 of 1993

5. Section 30 of the principal Act is hereby amended by the addition of the following subsection:

“(3) If a registered fund which has not been exempted from actuarial valuation in terms of section 2(3)(a) is liquidated in terms of section 28 or 29 after the date from which minimum individual reserves are payable on cessation of membership, and the fair value of the assets of the fund, less any current liabilities, is less than the sum of the minimum individual reserves payable in respect of the existing members and former members who may participate in the distribution of the assets (with appropriate adjustment for benefits previously paid in the case of former members) and the cost of annuity policies which will provide equivalent pensions for the existing pensioners and deferred pensioners, the shortfall shall represent a debt payable by the employer to the fund: Provided that, where more than one employer participates in the fund, the shortfall shall be distributed amongst such employers in a manner deemed reasonable by the liquidator.”.

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Amendment of section 30H of Act 24 of 1956, as inserted by section 3 of Act 22 of 1996

6. Section 30H of the principal Act is hereby amended by the addition of the following subsection:

“(4) The Adjudicator shall not have jurisdiction over complaints in connection with a scheme for the apportionment of surplus in terms of section 15B which relate to the decisions taken by the board or any stakeholder in the fund or any specialist tribunal convened in terms of section 15K.”.

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Short title and commencement

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7. This Act is called the Pension Funds Second Amendment Act, 2001, and comes into effect on a date to be determined by the President by proclamation in the *Gazette*.

(14) Die bepaling van die tribunaal is bindend op die belanghouers.

(15) Die registrator moet sodanige bepaling as voldoening aan die vereistes van artikel 15B(9) aanvaar, tensy die registrator van oordeel is dat die tribunaal versuim het om sy diskresie behoorlik en te goeder trou uit te oefen.”.

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Wysiging van artikel 30 van Wet 24 van 1956, soos gewysig deur artikel 17 van Wet 103 van 1979 en artikel 25 van Wet 104 van 1993

5. Artikel 30 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

“(3) Indien 'n geregistreerde fonds wat nie van aktuariële waardasie vrygestel is nie, ingevolge artikel 2(3)(a) gelikwideer word ingevolge artikel 28 of 29 na die datum van wanneer minimum individuele reserwes by beëindiging van lidmaatskap betaalbaar is, en die billike waarde van die bates van die fonds, min enige lopende verpligte, minder is as die som van die minimum individuele reserwes betaalbaar ten opsigte van die bestaande lede en vorige lede wat aan die distribusie van die bates mag deelneem (met toepaslike aanpassing vir voordele voorheen betaal in die geval van vorige lede) en die koste van annuïteitspolisse wat gelykwaardige pensioene vir die bestaande pensioentrekkers en uitgestelde pensioentrekkers sal voorsien, verteenwoordig die tekort 'n skuld betaalbaar deur die werkewer aan die fonds: Met dien verstande dat, waar meer as een werkewer in die fonds deelneem, die tekort tussen sodanige werkewers verdeel word op 'n wyse wat deur die likwidateur billik geag word.”.

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Wysiging van artikel 30H van Wet 24 van 1956, soos ingevoeg deur artikel 3 van Wet 22 van 1996

6. Artikel 30H van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

“(4) Die Beregter besik nie oor regsbevoegdheid oor klagtes in verband met 'n skema vir die toedeling van surplus ingevolge artikel 15B wat betrekking het op die besluite geneem deur die raad van die fonds of enige belanghouer in die fonds of enige spesialis-tribunaal saamgestel ingevolge artikel 15K nie.”.

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Kort titel en inwerkingtreding

7. Hierdie Wet heet die Tweede Wysigingswet op Pensioenfondse, 2001, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

