

South Africa

Transnet Pension Fund Act, 1990

Act 62 of 1990

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Transnet Pension Fund Act, 1990

Act 62 of 1990

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Commenced on 1 October 1990 by [Transnet Pension Fund Act, 1990: Commencement](#)

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[Amended by [Transnet Limited Amendment Act, 1991 \(Act 52 of 1991\)](#) on 22 May 1991]

(English text signed by the State President.)

ACT

To make provision for the disestablishment of the pension fund referred to in section 2 of the Railways and Harbours Pensions Act, 1971, and the pension fund referred to in section 2 of the Railways and Harbours Pensions for Non-Whites Act, 1974; for the establishment of a pension fund for the employees of Transnet Limited and certain other companies; and for incidental matters.

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

1. Definitions

In this Act, unless the context indicates otherwise—

“**Company**” means the company Transnet Limited, formed and incorporated in terms of section 2 of the Legal Succession to the South African Transport Services Act, 1989;

“**employer**” means the Company or any other company of which an employee is a member of the Fund;

[definition of “employer” substituted by section 39(b) of [Act 52 of 1991](#)]

“**Fund**” means the Transnet Pension Fund established in terms of section 2 of this Act;

[definition of “Fund” substituted by section 39(a) of [Act 52 of 1991](#)]

“**Minister**” means the Minister of Mineral and Energy Affairs and Public Enterprises;

“**New Fund**” means the New Railways and Harbours Superannuation Fund referred to in section 2 of the Railways and Harbours Pensions Act, 1971;

“**Pension Fund**” means the Railways and Harbours Pension Fund for Non-White Employees established in terms of section 2 of the Railways and Harbours Pensions for Non-Whites Act, 1974; and

“**Rules**” means the Rules referred to in section 5 of this Act.

2. Disestablishment of the New Fund and the Pension Fund and establishment of the Fund

- (1) With effect from the operative date of this Act, the New Fund and the Pension Fund shall cease to exist, the Transnet Pension Fund shall be established and all the assets, liabilities, rights and obligations of the New Fund and the Pension Fund (including any assets held by any person in trust for such Funds) shall vest in and devolve Upon the Fund without any formal transfer or cession.

- (2) The Fund shall be vested with legal personality and shall be capable of suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of the Rules.

3. Obligations payable from revenue

Obligations which, in terms of regulations promulgated in terms of the Railways and Harbours Pensions Act, 1971, and the Railways and Harbours Pensions for Non-Whites Act, 1974, read in conjunction with section 36(7) of, and item (10)(a) of Schedule 2, Part 7, to, the Legal Succession to the South African Transport Services Act, 1989, are payable out of the revenue of the employer, shall continue to be payable out of such revenue.

[section 3 substituted by section 40 of [Act 52 of 1991](#)]

4. Rights and obligations of members and beneficiaries of the New Fund and the Pension Fund

Members, pensioners and other beneficiaries of the New Fund and the Pension Fund shall become members, pensioners and beneficiaries of the Fund and shall be subject to all the obligations and entitled to all the rights that would have been applicable had they, or the members through whose membership they became entitled to benefits, been contributors to the Fund from the date from which their contributions to the New Fund or the Pension Fund commenced.

5. Rules

- (1) The control and management of the Fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the employer, and the benefits due to pensioners and other beneficiaries, and the manner in which the Rules may be amended, shall be governed by the Rules of the Fund.
- (2) The Rules shall be published by the Minister, after having obtained the concurrence of the Minister of Finance, in the *Gazette* and shall have operative effect from the operative date of this Act.
- (3) Prior to the date of registration of the Fund in terms of section 13 of this Act, any amendment of the Rules shall be subject to the approval of the Minister, acting with the concurrence of the Minister of Finance.
- (4) The Rules as amended from time to time shall be binding on the employer, members, beneficiaries and the Fund.

6. Actuarial evaluation of the Fund

- (1) The Fund shall be valued by an actuary, appointed by the Minister, within three years from the operative date of this Act and thereafter at intervals, in the discretion of the Minister, of not more than three years.
- (2) The report of the actuary shall comply with the requirements set out in section 16(7) of the Pension Funds Act, 1956, and shall be submitted by the actuary to the Minister and the Minister of Finance.
- (3) A copy of the report shall be submitted by the actuary to the employer.
- (4) In addition to complying with the requirements of section 16(7) of the Pension Funds Act, 1956, the actuary shall calculate what amounts are necessary to maintain the Fund in a sound financial position.
- (5) The employer shall guarantee the financial obligations of the Fund.

7. Benefits from the Fund not assignable or executable

No pension or lump sum from the Fund, or right to such a benefit, or right in respect of contributions made by a member or on his behalf, shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, or be liable, subject to the provisions of section 7 of the Divorce Act, 1979, to be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to assign, transfer or otherwise cede or to pledge or hypothecate a benefit or right, payment thereof may be withheld, suspended or entirely discontinued, if the Fund so determines, provided that the Fund may make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a trustee for such dependant or dependants during such period as it may direct.

8. How pensions from the Fund are affected by insolvency

- (1) If the estate of any person in receipt of a pension from the Fund is sequestrated or surrendered or assigned for the benefit of his creditors, payment of the pension shall forthwith be discontinued, provided that in any such case all or any part of the pension shall be paid to or for the benefit of all or any of the following persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegitimate child or any child, whether legitimate or adopted or illegitimate, or other relative dependent on him, provided further that, if the payment is made to the pensioner, it shall be for his own personal use and may not in any way be attached or appropriated by the trustee of his insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency.
- (2) Whenever payment of a pension has been discontinued under this section, it shall be revived on rehabilitation of the pensioner or on the setting aside of the sequestration of his estate or on the claims of his creditors being satisfied, and he shall receive a pension at the same rate and under the same conditions as before the sequestration, surrender or assignment, together with any arrears that may be due.

9. Recovery of certain debts due to employer from benefits payable to members on their dismissal or retirement

If a member—

- (a) is dismissed on account of fraud or dishonesty;
- (b) resigns or absconds in order to avoid dismissal on account of fraud or dishonesty, or in anticipation of a disciplinary or a criminal charge involving fraud or dishonesty being laid against him; or
- (c) leaves the employ of the employer for any reason, or dies, before any loan or advance (other than a loan referred to in section 10 of this Act) made to him at his specific request by the employer or from the Benevolent Fund referred to in section 23 of the South African Transport Services Conditions of Service Act, 1988, has been repaid in full,

the Fund shall have the right to recover On behalf of the employer from any benefit payable from the Fund to such former member or his estate or to some other person in respect of his death, the amount of any loss, as determined by the employer, which the latter may have sustained by reason of such fraud or dishonesty, or the unpaid balance of such loan or advance, as the case may be, provided that the onus of proving that a member resigned or absconded for any reason mentioned in paragraph (b) shall be on the employer.

10. Application of benefits in liquidation of debts in respect of dwelling-houses

If in any agreement between the employer and a member in terms of which the member purchases from the employer any dwelling-house or in terms of which the member is to receive any loan from the employer in order to acquire land for the purpose of erecting a dwelling-house thereon or to acquire or

erect a dwelling-house or to discharge any bond over any land or dwelling-house owned by the member, it is provided that—

- (a) if for any reason the member retires or is dismissed or retired on a pension, the employer or the Fund may commute in a cash sum such portion of the pension as may be necessary to liquidate any amount payable—
 - (i) under such agreement; or
 - (ii) in pursuance of any insurance entered into by the employer in connection with the repayment of any amount under such agreement,

which remains unpaid at the date of his retirement or dismissal, the Fund may, upon the member so retiring or being dismissed or retired, effect such commutation with a consequent reduction in pension benefits and, on behalf of the employer, apply such first-mentioned amount towards the liquidation of the amount so remaining unpaid; or

- (b) if for any reason the member resigns voluntarily or is dismissed or retired otherwise than on pension, or if the member dies before retirement, the employer or the Fund may apply any money due under this Act to him or his successor in title in respect of such property or of his interest in such property, towards the liquidation of any amount payable—
 - (i) under such agreement; or
 - (ii) in pursuance of any insurance entered into by the employer in connection with the repayment of any amount under such agreement,

which remains unpaid at the date of his voluntary resignation, dismissal, retirement or death, the Fund may on behalf of the employer, upon the member so voluntarily resigning or being dismissed or retired or upon his death, as the case may be, so apply the said money with a consequent reduction in pension benefits, provided that the Fund shall not so apply out of money so due to any such successor an amount in excess of the amount which bears to the total amount so remaining unpaid the same proportion as the value of such successor's share or interest in property bears, in the opinion of the Fund, to the value of the whole thereof, provided further that no benefit payable to a widow shall be so applied.

11. Recovery of amounts in respect of medical scheme

The Fund is hereby empowered to recover money due by a pensioner to Transmed (the medical scheme referred to in section 10(2) of the Legal Succession to the South African Transport Services Act, 1989) in terms of the Transmed Rules and to pay such money to Transmed.

12. Guarantee

The obligations of the Company and the State in respect of the New Fund and the Pension Fund in terms of section 3(2) and section 16 of the Legal Succession to the South African Transport Services Act, 1989, shall be deemed to be obligations towards the Fund.

13. Registration and application of Pension Funds Act, 1956

- (1) The Registrar of Pension Funds may, on request by the Fund, register the Fund in terms of section 4 of the Pension Funds Act, 1956, and may, for the purposes of such request, regard the Fund as a “pension fund organization” as defined in section 1(1) of that Act.
- (2) Upon such registration—
 - (a) the whole of the Pension Funds Act, 1956, shall become applicable to the Fund;
 - (b) the provisions of sections 5 to 11 of this Act shall cease to be applicable; and

- (c) the Fund shall, for the purposes of the application of the Income Tax Act, 1962, no longer be regarded as a pension fund as defined in paragraph (a) of the definition of “pension fund” in section 1 of that Act.

14. Employees of companies forming part of group of companies

- (1) An employee of any of the companies which form part of the group of companies and who is a member of the Fund, may, subject to the Rules, continue to enjoy membership of the Fund if he is transferred or seconded from one company which forms part of the group of companies to another company which forms part of the group of companies.
- (2) An employee of any of the companies which form part of the group of companies, may, subject to the Rules, become a member of the Fund.
- (3) For the purposes of this section the following companies shall be deemed to form part of the group of companies:
 - (a) The Company;
 - (b) any company formed in terms of section 32 of this Act;
 - (c) any subsidiary company of the Company; and
 - (d) any company which conducts transport and harbour operations or any related operations and of which the Company or any of its subsidiary companies is a shareholder.
- (4) The provisions of section 1 of the Companies Act, 1973, shall apply in the application of subsection (3).

[section 14 substituted by section 41 of Act 52 of 1991]

15. Repeal of laws

The Railways and Harbours Pensions Act, 1971, and the Railways and Harbours Pensions for Non-Whites Act, 1974, are hereby repealed.

16. Short title and commencement

This Act shall be called the Transnet Pension Fund Act, 1990, and shall come into operation on a date to be stipulated by the State President in the *Gazette*.