REGULATION 28 OF THE SOUTH AFRICAN PENSION FUNDS ACT – LESSONS LEARNT

Isabella Mnisi – Sector Head: Asset Management & Funds

Traditional values. Innovative ideas.

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PENSION FUNDS ACT 24 OF 1956

The Pension Funds Act 24 of 1956 aims:

To provide for the registration, incorporation, regulation, and dissolution of pension funds and for matters incidental thereto.

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WHY DO REGULATIONS GET CHANGED OR AMENDED?

- Keep up with market changes
- Cater for new instruments
- Innovation
- Introduce best practice
- Clarification (definitions, formulae, valuations, pricing, etc.)

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REGULATION AMENDMENTS OVER THE YEARS

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1996

- Amend, insert, substitute or delete certain definitions; provide for boards to manage pension funds; regulate the duties of boards; establish the Office of the Pension Funds Adjudicator; further regulate the disposition of pension benefits upon the death of a member of a pension fund, etc.

2001

- Clarify the position of a registered pension fund to furnish guarantees in respect of housing loans granted to members by persons other than the fund, Define "fair value"; extend the concept of ownership; regulate the amount of loans and guarantees; extend the Minister's powers to make regulations.

2001

- Make new provision for the apportionment of actuarial surpluses and for minimum benefits; and to provide for matters connected therewith.

REGULATION AMMENDMENTS OVER THE YEARS

2007

- Update references to legislation and institutions; clarify, provide for the obligations and proper conduct of an administrator of a pension fund and the sanctions for misconduct; to regulate the amalgamation or transfer of the business of a registered fund; to provide for the granting of a minimum pension increase to pensioners.

2011

- Adoption of a responsible investment approach; prudent investing should give appropriate consideration environmental, social and governance factors; look-through principle; increase in limit for unlisted equities; listed equities and listed property allocations are now based on market cap; investment in listed commodities; private equity and hedge funds are defined.

2021

- Introduce infrastructure as an asset class – definition of infrastructure and setting investment limits; No cryptocurrencies; allowing pension fund members to access a portion of their fund before retirement. These amendments are still under discussion and industry players are sending their comments.

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CHARACTERISTICS OF A GOOD REGULATION

- Rigorous
- Flexible
- Fair
- Promote transparency particularly in areas where rules have traditionally been circumvented
- Allow for innovative financial strategies and instruments where appropriate
- Align with international best-practice, while being sensitive to local context

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LESSONS LEARNT

- Regular engagements between industry and regulator
  - Keep regulator in the loop
- Keeping updated of world trends
- Focusing on what is right for members
  - Social considerations vs. environmental ones?
- Innovate or die
  - Don’t be like Nokia
- Holistic approach vs. piece-meal approach
  - Different regulations should be aligned – e.g., pension fund regulations and CIS Regulations
- Competing interests
  - Lack of consensus between industry players can lead to the regulator being confused and not acting quickly
- Beware of political interference

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