

RULE AMENDMENT NO. 1
TO THE REVISED RULES OF
THE ESKOM PENSION AND PROVIDENT FUND

Extract from the minutes of the meeting of the Board of the Eskom Pension and Provident Fund held at EPPF Office Park, Bryanston.

It was resolved on the 27th May 2016 that:

With effect from registration date, rules 1(3)(a) 2, 3.1 (2), 3.2 (1)(b), 3.2 (g), 3.2(1)(i)(ii), 3.2 (1)(k), 3.3, 3.4, 3.5, 3.6, 5, 6, and 18 (2), 26 (9), 26 (10), 36.1(5)(1),36.1(5), 40, and 41 shall be amended as follows:

1. RULE 1

The registered address of the FUND shall be updated by amending Rule 1(3)(a) as follows:

- (3) (a) Effective **14 November 2014** the registered office of the FUND shall be at EPPF Office Park, Isivuno House, 24 Georgian Crescent East, Bryanston East, 2152.

This change is necessitated by a change in the name of the office park where the Fund operates from.

2. RULE 2

The definition of "ACTUARY" shall be deleted and replaced as follows:

"ACTUARY" shall mean a natural person who is a resident in the Republic of South Africa and admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the REGISTRAR. It shall also mean a valuator who in the opinion of the REGISTRAR has sufficient actuarial knowledge to perform the duties required by the valuator in terms of the ACT. The ACTUARY shall be appointed by the BOARD.

This change is necessitated by the Act.

The definition of an "AUDITOR" shall be deleted and replaced as follows:

"AUDITOR" shall mean an auditor registered under the Auditing Profession Act, 2005 (Act No. 26 of 2005), who shall not be an officer of the FUND.

This change is necessitated by the Act.

The definition of BENEFICIARY shall be added as follows:

"BENEFICIARY" shall mean a nominee of a MEMBER or a DEPENDANT who is entitled to a benefit, as provided for in the RULES of the FUND."

This change is necessitated by the Act.

The definition of "COMPLAINANT" shall be deleted and replaced as follows:

"COMPLAINANT" shall mean --

- (a) any person who is, or who claims to be --
 - (i) a MEMBER, PENSIONER, DEFERRED PENSIONER or former MEMBER of the FUND;
 - (ii) a BENEFICIARY or former BENEFICIARY of the FUND;
 - (iii) an EMPLOYER who participates in the FUND;
 - (iv) a SPOUSE or a former SPOUSE of a MEMBER, PENSIONER, DEFERRED PENSIONER or former MEMBER, of the FUND.
- (b) any group of persons referred to in paragraphs (a)(i) -- (iv) above;
- (c) the BOARD of the FUND or a BOARD MEMBER; or
- (d) any person who has an interest in a COMPLAINT.

This change has been necessitated by the Act.

The definition of "CONTINGENCY RESERVE ACCOUNTS" shall be amended as follows:

"CONTINGENCY RESERVE ACCOUNTS" shall mean the reserve accounts which were established with effect from 30 June 2003. The accounts are described in rule 36.1.

This change was necessitated by re-alignment and clean up.

The definition of "ELIGIBLE CHILD" shall be deleted and replaced as follows:

"ELIGIBLE CHILD" shall mean a child of a MEMBER or a PENSIONER, and shall include a posthumous child, an adopted child, and a child born out of wedlock recognized by the BOARD; provided the child is under the age of 21 years; or if he is over that age, is in the opinion of the BOARD, permanently incapacitated by reason of physical or mental infirmity from supporting himself; provided further that the incapacity occurred prior to the child reaching the age of 21 years.

This change is necessary to provide clarity on eligibility requirements.

The definition of "ESKOM" shall be amended:

"ESKOM" shall mean Eskom Holdings SOC Limited, a state owned company duly incorporated in terms of the Companies Act, 71 of 2008 with registration number 2002/015527/06 having its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg.

This change has been necessitated by amendments to the Companies Act 71 of 2008.

The definition of "MARRIAGE" shall be deleted and replaced as follows:

"MARRIAGE" shall mean a MARRIAGE recognised by a South African court of law and shall include a customary union concluded in terms of customary law and custom, a civil union, a union recognised as such under the tenets of any religion, and any relationship recognised by the BOARD as constituting a MARRIAGE or akin to a MARRIAGE or life partnership for purposes of the application of the RULES.

This change has been necessitated to provide clarity on relationships that will be deemed to constitute marriages by the Fund and re-alignment.

The definition of "MINIMUM INDIVIDUAL RESERVE" shall be deleted and replaced as follows:

"MINIMUM INDIVIDUAL RESERVE" in respect of a MEMBER shall mean 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 the attainment of his PENSIONABLE AGE ; and
 - (bb) the fair value equivalent and the present value shall assume rates of increase in the PENSION before and after retirement, mortality rates and rates of discount as prescribed by the

REGISTRAR in terms of section 14B(2)(a)(i)(bb) of the ACT;

and

- (ii) an amount equal to the value of the MEMBER'S CONTRIBUTIONS, less such reasonable expenses as the BOARD deems appropriate to deduct from the CONTRIBUTIONS, augmented as from 7 December 2001 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 reasonable 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 MEMBER 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 subsection.

Provided that, for the purposes of determining a MEMBER'S MINIMUM INDIVIDUAL RESERVE, the additional voluntary contributions made by the MEMBER, if any, will not be taken into account. Instead they will be paid in addition to any other benefit to which a MEMBER may be entitled on termination of membership before retirement or taken into account for the purposes of determining the pension to which the MEMBER will be entitled on his or her retirement.

This change has been necessitated by the Act.

The definition of "REGISTRAR" shall be added as follows:

"REGISTRAR" shall mean the person appointed as the executive officer of the Financial Services Board in terms of the Financial Services Board Act 1990 and whose powers are set out in section 3 of the Act.

This addition has been necessitated by the Act.

The definition of "RULES" shall be deleted and replaced as follows:

"RULES" shall mean the rules of the FUND registered in terms of the ACT.

This change has been necessitated by the ACT

The definition of "WIDOW" shall be amended by deleting the words "of a MARRIAGE" at the end of the definition.

This change is effected to provide clarity, and re-alignment.

3. RULE 3

Rule 3.1 (2) shall be amended by the amendment of rule 3.1(2) (d) and the addition of (e), (f),(g) and (h) as follows:

OBJECT OF THE BOARD

3.1 (2) In pursuing its object the BOARD shall-

- (d) act with impartiality in respect of all MEMBERS, PENSIONERS, DEFERRED PENSIONERS and BENEFICIARIES;
- (e) act independently;
- (f) have a fiduciary duty to MEMBERS, PENSIONERS, DEFERRED PENSIONERS and BENEFICIARIES in respect of accrued benefits or any amount accrued to provide a benefit;
- (g) have a fiduciary duty to the FUND, to ensure that the FUND is financially sound and is responsibly managed and governed in accordance with the RULES and the ACT; and
- (h) comply with any other prescribed requirements.

This change has been necessitated by the Act.

Rules 3.2 (1)(b), 3.2(1)(g), 3.2 (1)(i)(ii) and 3.2(1)(k) shall be amended as follows:

"DUTIES OF THE BOARD

3.2 (1) The duties of the BOARD shall, *inter alia*, include the duties to -

- (b) ensure that adequate and appropriate information is communicated to the MEMBERS, PENSIONERS, DEFERRED PENSIONERS and other BENEFICIARIES of the FUND informing them of their rights, benefits and duties in terms of the RULES;
- (g) take such measures as would ensure the efficient and secure operation of the banking account of the FUND;
- (i) ensure that -
 - (ii) the investment policy and strategy shall have due regard to the income needs and long term interests of the FUND and its MEMBERS, PENSIONERS, DEFERRED PENSIONERS and other BENEFICIARIES and shall include guidelines on the investment objectives of the FUND, the nature of the investments appropriate to the liabilities of the FUND, the type of investments permitted or not permitted and provision for appropriate performance reviews;
- (k) should the investment policy and strategy allow for the investment of assets in a financial instrument as defined in the Financial Markets Act 19 of 2012, a futures contract, an option contract, loan stock or any instrument declared by the REGISTRAR by notice in the Government Gazette to be a financial instrument, take such precautions as may be prudent to control the risks associated with investments in such instruments. Provided that this duty shall not in any way derogate from the general duty of the BOARD to take due care in investing and protecting the moneys of the FUND;

This change has been necessitated by realignment and clean up.

Rule 3.3(1) shall be amended by adding Rule 3.3(1)(2) as follows:

- 3.3(1)(2) ESKOM shall provide the FUND with the details of EMPLOYER BOARD MEMBERS it wishes to appoint to the BOARD at least one month before the start of a BOARD term.

The change was necessitated by an alignment of the appointment and term of ESKOM appointed BOARD MEMBERS with the election process and term of other BOARD MEMBERS.

Rule 3.3(2) shall be amended by deleting it and replacing it as follows:

MEMBER BOARD MEMBERS

- 3.3 (2)(a) Two PENSIONER trustees elected by the PENSIONERS and DEFERRED PENSIONERS.
- (b) Three MEMBER trustees elected by bargaining unit MEMBERS from labour organizations recognized by ESKOM to be representing employees.
- (c) Two MEMBER trustees elected by non-bargaining unit MEMBERS.

Rule 3.3(3) shall be amended and replaced as follows:

ELECTION PROCESS

APPOINTMENT OF INDEPENDENT ELECTORAL OFFICER

- 3.3 (3) An independent electoral officer shall be appointed by the FUND to oversee the nomination and election process and ensure that it is free and fair.

Rules 3.3(4), (5), (6), (7) and (8) shall be added as follows:

NOMINATION

- 3.3(4) (a) The process for the submission of nominations shall be determined in accordance with policies determined by the BOARD from time to time.

- (b) Each labour organization recognised by the ESKOM shall cause its members who are MEMBERS of the FUND to nominate at least three candidates to stand for election to the BOARD as bargaining unit BOARD MEMBERS.
- (c) Each non-bargaining unit MEMBER shall be entitled to nominate two candidates to stand for election to the BOARD.
- (d) Each PENSIONER and DEFERRED PENSIONER shall be entitled to nominate two candidates to stand for election to the BOARD.
- (e) All the bargaining unit MEMBER candidates nominated by labour unions recognized by the ESKOM shall, subject to eligibility requirements set out in the RULES, be placed on the ballot of bargaining unit MEMBER candidates standing for election.
- (f) The six non-bargaining unit MEMBER candidates with the highest number of nominations shall, subject to eligibility requirements set out in the RULES and the Trustee Election Policy as approved by the BOARD from time to time, be placed on the ballot of non-bargaining unit MEMBER candidates standing for election.
- (g) The top ten PENSIONER candidates with the highest number of nominations shall, subject to eligibility requirements set out in the RULES, be placed on the ballot of PENSIONER candidates standing for election.

ELECTION

- 3.3(5) (a) The election of MEMBER BOARD MEMBERS shall be conducted by secret ballot and such elections shall be held every four years.
- (b) The persons elected shall be ranked according to the number of votes received for each category of candidates.
- (c) The two PENSIONER candidates with the highest number of votes

shall be PENSIONER trustees.

- (d) The next two PENSIONER candidates with the highest votes after the two candidates referred to in (c) above, shall be available to replace the two PENSIONER trustees should they be unable to act in that capacity.
- (e) The two non-bargaining unit MEMBER candidates with the highest votes shall become non-bargaining unit MEMBER trustees.
- (f) The next two non-bargaining unit MEMBER candidates with the highest votes after the two trustees referred to in (e) above, shall be available to replace the two non-bargaining unit MEMBER trustees should they be unable to act in that capacity.
- (g) The persons with the highest votes from each of the three labour organizations recognised by ESKOM shall become bargaining unit MEMBER trustees.
- (h) The next persons with the highest votes from each of the three labour organizations recognized by ESKOM after the persons referred to in (g) above, shall be available to replace the said bargaining unit MEMBER trustees should they be unable to act in that capacity.

ELIGIBILITY

- 3.3(6) The following persons shall not be eligible to be nominated as a candidate to stand for election to serve on the BOARD, or to be appointed by ESKOM to serve as a BOARD member:
- (a) An employee of the FUND;
 - (b) Executive Management Committee (Exco) member of ESKOM or a member of its governing board;
 - (c) A person who has been or is found guilty of fraud, theft, forgery or uttering a forged document, perjury, any offence involving dishonesty, any offence in connection with any company or public office or with the promotion, formation

or management of a company or any other criminal offence by a court of law or properly constituted inquiry;

- (d) A person who has been or is declared insolvent, sequestrated or placed under judicial management and has not been rehabilitated;
 - (e) A person who has been or is declared unfit to hold office as a public official, director of companies or any other position of trust due to mental incapacity, criminal record or any other reason;
 - (f) A person who has been, was or is removed from office as a BOARD member in terms of RULE 3.5 (4) of the RULES;
 - (g) A person who has served as a BOARD member for the preceding two consecutive terms;
 - (h) A person who has been or is dismissed from the service of any employer on account of misconduct and/or incapacity;
 - (i) A person who has been removed as or refused to be allowed to become or has been found unfit and proper to be approved for becoming, a BOARD member by the REGISTRAR;
- 3.3(7) Any nominations to stand for election received for any person, or any appointment made by ESKOM who is subject to any of the categories referred to in rule 3.3(6), shall be rejected by the BOARD or its duly authorised representative. Any member of the BOARD who becomes subject to any of the above, shall also be deemed to be unfit to continue to hold office as a BOARD member.

This change was necessitated by the need to remove ambiguity relating to the election and appointment of board members.

Rule 3.4 shall be deleted and replaced as follows:

TERM OF OFFICE OF THE BOARD

- 3.4 (1) The term of office of the BOARD shall be four years.

- (2) A BOARD MEMBER shall not serve as such for a period of more than two consecutive terms. A former BOARD MEMBER shall be eligible for re-election and/or re-appointment as a BOARD MEMBER after a cooling off period of at least one term after serving as such for two consecutive terms.
- (3) A BOARD MEMBER appointed or elected in terms of rules 3.3 must attain such level of skills and training as may be prescribed by the REGISTRAR within six months from the date of the BOARD MEMBER'S appointment.
- (4) A BOARD MEMBER must retain the prescribed levels of skills and training referred to in rule 3.4(3) throughout that BOARD MEMBER'S term of appointment.

The amendments in 3.4(1) and 3.4(2) were necessitated by clean up and realignment. The additions in 3.4(3) and 3.4(4) were necessitated by the Act.

Rule 3.5 shall be amended by the amendment of rules 3.5(3), 3.5(4) (c), 3.5(5)(a) and (b) and an addition of new rules 3.5(6), 3.5(7), 3.5(8) and 3.5(9) as follows:

REPLACEMENT OF BOARD MEMBERS AND FILLING OF VACANCIES

3.5

- (3) A MEMBER BOARD MEMBER or PENSIONER BOARD MEMBER may resign from his position by giving the CHAIRMAN at least 30 days written notice to that effect. In such an event the respective person with the highest votes after the resigning BOARD MEMBER during the preceding elections will fill the vacancy.
- (4) Save as otherwise provided, a BOARD MEMBER shall cease to hold office if -
 - (c) He ceases to be in SERVICE or ceases to be a member of the said labour organisation.
- (5)

- (a) In the case of an EMPLOYER BOARD MEMBER, by ESKOM;
 - (b) In the case of a PENSIONER BOARD MEMBER or MEMBER BOARD MEMBER, by the respective person with the highest votes during the preceding elections.
- (7) A vacancy shall be filled within 90 days of occurring.
- (8) A BOARD MEMBER must within 21 days of removal as a BOARD MEMBER for reasons other than the expiry of that BOARD MEMBER'S term of appointment or voluntary resignation, submit a written report to the REGISTRAR detailing the BOARD MEMBER'S perceived reasons for the termination.
- (9) A BOARD MEMBER on becoming aware of any material matter relating to the affairs of the FUND which, in the opinion of the BOARD MEMBER, may seriously prejudice the financial viability of the FUND or its MEMBERS, must inform the REGISTRAR thereof in writing.

This addition was necessitated by the Act, realignment and clean up.

A new rule 3.6 shall be added as follows:

LIABILITY OF A BOARD MEMBER

3.6 (1) In any proceedings against a BOARD MEMBER in terms of the ACT, other than for wilful misconduct or wilful breach of trust, a court may relieve a BOARD MEMBER from any liability either wholly or partly, on terms that the court considers just if it appears to the court that:

- (a) The BOARD MEMBER has acted independently, honestly and reasonably; or
- (b) having regard to all the circumstances of the case, including those connected with the appointment of the BOARD MEMBER, it would be fair to excuse the BOARD MEMBER.

This addition was necessitated by the Act.

4. RULE 5

Rule 5 shall be amended as follows:

APPOINTMENT BY BOARD

- 5 (1) The BOARD shall appoint the PRINCIPAL OFFICER of the FUND and may appoint a deputy principal officer for such periods as they may determine and withdraw any such appointment and make another appointment in its place. The PRINCIPAL OFFICER shall be an individual who is resident in the Republic of South Africa.
- (2) The PRINCIPAL OFFICER may in writing and in accordance with the system of delegation of the FUND delegate any of the PRINCIPAL OFFICER'S functions under the ACT and the RULES to the deputy principal officer subject to the conditions stipulated in the FUND's policy document relating to its governance framework. The PRINCIPAL OFFICER is not divested or relieved of a function delegated under this rule and the PRINCIPAL OFFICER may withdraw the delegation at any time.
- (3) If the PRINCIPAL OFFICER is absent from the Republic of South Africa or unable for any reason to discharge any duty imposed upon the PRINCIPAL OFFICER by any provision of the ACT, the BOARD shall appoint another person to be PRINCIPAL OFFICER within such period as may be prescribed by the REGISTRAR, after the commencement of a continuing absence or inability to discharge any duty by the PRINCIPAL OFFICER."
- (4) If the BOARD has appointed a deputy principal officer, he will act as the PRINCIPAL OFFICER when the PRINCIPAL OFFICER is absent from the Republic of South Africa or unable for any reason to discharge any duty of the PRINCIPAL OFFICER in terms of the ACT, until the FUND formally appoints a new PRINCIPAL OFFICER as set out in rule 5(1) above.

- (5) The PRINCIPAL OFFICER must within 21 days of his removal as the PRINCIPAL OFFICER for reasons other than the expiry of his term of office or other than in accordance of the provisions of section 8(5)(a) of the ACT submit to the REGISTRAR a report detailing the PRINCIPAL OFFICER'S perceived reasons for his termination of office.
- (6) The PRINCIPAL OFFICER must on becoming aware of any material matter relating to the affairs of the FUND which, in the opinion of the PRINCIPAL OFFICER may seriously prejudice the financial viability of the FUND or its MEMBERS, must inform the REGISTRAR thereof in writing.
- (7) The BOARD shall appoint an ACTUARY and an AUDITOR for such periods as they determine, and may withdraw any such appointment and make another appointment in its place.
- (8) The provisions of rules 5(5) and 5(6) above will also apply in respect of the ACTUARY and the AUDITOR.
- (9) The BOARD may appoint a SECRETARY and other officers of the FUND for such periods as they may determine and withdraw any such appointment and make another appointment in its place.

This addition was necessitated by the Act.

5. RULE 6

Rule 6 shall be amended as follows:

DELEGATION BY BOARD

- (1) The BOARD may, in writing and in accordance with a system of delegation, delegate any of its functions under the ACT to a person or group of persons, or a committee of the BOARD, subject to such conditions that the BOARD must determine. The system of

delegation is set out in the FUND'S policy document relating to its governance framework.

- (2) The BOARD is not divested or relieved of a function delegated under rule 6(1) and may withdraw the delegation at any time.
- (3) For the purposes of the interpretation of the RULES, it shall be deemed that when a rule empowers the BOARD to perform a function or duty the BOARD may delegate the power concerned in terms of rule 6(1) above, unless the context clearly indicates otherwise.

This addition was necessitated by the Act and clean up.

6. RULE 18

Rule 18 (2) shall be amended as follows:

ADDITIONAL CONTRIBUTIONS

- 18 (2) A record shall be maintained in respect of each MEMBER'S voluntary contributions, to which, after deduction of any reasonable expenses, shall be added such interest and bonus as the BOARD, acting on the advice of the ACTUARY, determine. Such interest and bonus shall be added until the date on which the claim becomes due and payable in terms of Rule 46.

This addition was necessitated by the Act, and to clarify that interest declared on additional contributions is payable until the date on which the MEMBER leaves the Fund.

7. RULE 26

Rules 26(9) and 26(10) shall be amended as follows:

DEATH

- 26 (9) If the FUND, within twelve months of the death of a MEMBER, does not become aware of or cannot trace any DEPENDANT or nominee of the MEMBER, an amount equal to twice his annual PENSIONABLE EMOLUMENTS shall, subject to the provisions of

section 37C of the ACT, be paid to his estate. If there is no estate then the benefit will be held in the FUND'S notional account which was established for such purposes in terms of rule 41 until a valid claim has been received.

(10) If no claim is made within twelve months of the death of a PENSIONER, an amount equal to:

(i) the excess, if any, of twice his annual PENSIONABLE EMOLUMENTS at the date of his retirement over the total benefits paid to him; plus

(ii) R3000,00

shall, subject to the provisions of section 37C of the ACT, be paid to his estate. If there is no estate then the benefit will be held in the FUND'S notional account which was established for such purposes in terms of rule 41 until a valid claim has been received.

This addition was necessitated by the Act and realignment.

8. RULE 28

RETRENCHMENT

Rule 28(2) shall be amended by deleting reference to rule 18(7) and replacing such reference with rule 18(6).

This amendment was necessitated by clean up and re-alignment.

9. RULE 29

DISMISSAL

Rule 29(2) shall be amended by deleting reference to rule 18(7) and replacing it with rule 18(6).

This amendment was necessitated by clean up and re-alignment.

10. RULE 30

RESIGNATION

Rule 30(2) shall be amended to delete reference to rule 18(7) and replace it with rule 18(6).

This amendment was necessitated by clean up and re-alignment.

11. RULE 36

Rule 36.1(2) shall be amended as follows:

ACTUARIAL VALUATION

36.1(2) EMPLOYER SURPLUS ACCOUNT

The EMPLOYER SURPLUS ACCOUNT shall be credited with:-

36.1(2)(1) the amount, if any, apportioned to the EMPLOYER in terms of a surplus apportionment scheme approved by the REGISTRAR in terms of section 15B of the ACT;

36.1(2)(2) any amount which is required to be transferred to such an account in terms of an application made in accordance with Section 15F of the ACT and approved by the REGISTRAR; and

36.1(2)(3) the amount standing to the credit of the EMPLOYER SURPLUS ACCOUNT shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid or accrued), together with capital appreciation, realised or unrealised.

36.1(2)(4) The amount standing to the credit of the EMPLOYER'S SURPLUS ACCOUNT may be used in the manner and for any of the purposes set out in section 15E of the ACT.

This addition was necessitated by the Act.

12. Rule 36.1(5)(1) shall be renumbered as 36.1(5).

This change was necessitated by clean-up.

13. RULE 40

Rule 40 shall be deleted and replaced as follows:

DEDUCTION FROM BENEFITS

- 40 The BOARD shall have power to deduct from any benefit, other than a PENSION or annuity, payable to or in respect of any MEMBER, any amount which may be deducted in terms of the provisions of sections 37A and 37D of the ACT.
- 40.1 The BOARD shall have the power to deduct from any benefit payable in respect of the MEMBER or a BENEFICIARY in terms of the RULES of the FUND, any amount due by a MEMBER to his EMPLOYER on the date of his retirement or on which he ceases to be an employee of the EMPLOYER or a MEMBER of the FUND, in respect of –
- 40.1 (1) compensation (including any legal costs recoverable from the MEMBER in respect of any damage caused to the EMPLOYER by reason of any theft, dishonesty, fraud or misconduct by the MEMBER), and in respect of which –
- 40.1 (1)(1) the MEMBER has in writing admitted liability to the EMPLOYER; or
- 40.1 (1)(2) judgment has been obtained against the MEMBER in any court.
- 40.2 The BOARD shall have the power to withhold a portion or all of the MEMBER's benefit where the EMPLOYER has instituted legal proceedings against the MEMBER for the recovery of any damage suffered as a result of any theft, dishonesty, fraud or misconduct by the MEMBER where it is satisfied that –
- 40.2 (1) The EMPLOYER has made out a *prima facie* case against the MEMBER concerned and there are reasonable prospects of success in the proceedings;

- 40.2 (2) The EMPLOYER is not at any stage of the proceedings responsible for any undue delay in the prosecution of the proceedings;
- 40.2 (3) The amount withheld does not exceed the value of the EMPLOYER'S claim against the MEMBER; and
- 40.2 (4) Upon the finalisation of the proceedings and after any compensation awarded to the EMPLOYER has been paid to the EMPLOYER, any balance remaining to the credit of the MEMBER shall be paid to the MEMBER.
- 40.3 The FUND shall, every four months review the matter to satisfy itself that there are no undue delays in the finalisation of the proceedings; provided that if the FUND is of the view that the time taken to finalise the matter is unreasonable and the EMPLOYER has not taken reasonable steps to ensure that the matter is finalised, the FUND may release the benefits to the MEMBER.
- 40.4 The request to deduct or withhold shall be submitted in writing to the FUND before it makes full payment to the MEMBER and shall be supported by an acknowledgement of debt or a judgement entitling the EMPLOYER to recover the money from the MEMBER or proof that action has been instituted for the recovery of the EMPLOYER'S damages.
- 40.5 If the Fund does not receive a written request to withhold or deduct moneys from a MEMBER'S benefit before the FUND makes full payment of the BENEFIT, the FUND shall not have the obligation to reverse any such payment and the EMPLOYER cannot insist on such a reversal. The EMPLOYER will have to recover such amounts directly from the MEMBER.
- 40.6 It is specifically provided that the BOARD shall have the power to deduct from any benefit any amount payable to or in respect of any MEMBER or PENSIONER to settle obligations of such MEMBER or PENSIONER in terms of the Income Tax Act, 1962 or the Maintenance Act, 1998. It is further provided that the BOARD shall have the power to deduct from any benefit payable to a PENSIONER

any amount which the FUND has paid or will by arrangement pay on behalf of such PENSIONER in respect of:

- (a) such PENSIONER's subscriptions to a medical scheme registered in terms of the Medical Schemes Act, 1998;
- (b) any insurance premium payable by such PENSIONER to an insurer registered in terms of the Long-term Insurance Act, 1998;
- (c) any purpose approved by the REGISTRAR, on the conditions determined by the REGISTRAR, upon a request in writing from the FUND;
and pay such amount to such medical scheme, insurer, institution, organization or person as the case may be.

40.7 If the FUND is furnished with a valid court order issued in respect of a MEMBER in terms of section 7(8) of the Divorce Act, 1979 as amended, the FUND shall reduce the MEMBER'S pension interest or benefit payable in terms of the RULES by the amount assigned or awarded to the MEMBER's spouse in terms of such court order. The payment of such award to the non-member spouse will have the effect of reducing the MEMBER'S years of service which will impact on the benefit payable to the MEMBER upon withdrawal from SERVICE, death or retirement.

40.8 The provision in rule 40.5 above shall also apply in terms of any order made by the court in respect of a division of assets of a marriage under Islamic law pursuant to its dissolution.

40.9 If a non-member spouse for whatever reason fails to claim the amount of pension interest due to him in terms of a valid divorce order or if the FUND does not become aware of the non-member spouse within twenty four months from the MEMBER'S election for the payment of his/her benefit, the BOARD shall arrange such portion of the non-

member spouse's pension interest to be transferred to the FUND'S notional account which was established for such purposes in terms of rule 41 until a valid claim has been received.

This amendment was necessitated by a clean-up and to provide clarity on deductions.

14. RULE 41

Rule 41 shall be amended as follows:

UNCLAIMED BENEFITS

- 41 (1) If a MEMBER, PENSIONER or DEFERRED PENSIONER does not claim the benefit payable to him in terms of these RULES or if the FUND does not become aware of any BENEFICIARY of the MEMBER, PENSIONER or DEFERRED MEMBER, within twenty four months of the date on which the benefit became payable to the MEMBER, PENSIONER or DEFERRED MEMBER, the BOARD shall establish a notional account to which shall be credited:
- (a) the full amount of the benefit due to the MEMBER, PENSIONER, DEFERRED PENSIONER or BENEFICIARY in terms of the RULES;
 - (b) Such interest as the BOARD acting on the advice of the ACTUARY, determines.
- (2) The balance standing to the credit of the notional account in terms of RULE 41 (1), less any reasonable expenses the BOARD may have incurred including but not limited to tracing the MEMBER, PENSIONER, DEFERRED PENSIONER or BENEFICIARY, shall become payable by the FUND at such time as a valid claim is submitted to the FUND in terms of the RULES. In the event that the FUND is terminated before a valid claim is submitted in terms hereof the balance standing to the credit of the notional account shall be applied in terms of RULE 44(1)(c).
- (3) If a MEMBER who is retrenched, dismissed or has resigned dies before payment of the benefit to him is completed, the BOARD shall pay the amount to his estate.

This amendment was necessitated by the ACT and clean-up.

The purpose of this rule amendment is to:

1. Amend the Revised Rules to comply with the provisions of the Financial Services Laws General Amendment Act 45 of 2013.
2. Add the definitions of "BENEFICIARY", "ACTUARY" and "REGISTRAR" to the RULES;
3. Amend the definition of "ELIGIBLE CHILD";
4. Set out the election procedures for member elected board members;
5. Set out the procedure for deductions or withholding of a member's benefit on the request of the employer; and
6. Correct certain typographical errors.


We certify that this resolution has been adopted in accordance with the provisions of the Rules of the Fund.



P.S.C. LUTHULI
PRINCIPAL OFFICER



H.C. MATHEBULA
CHAIRMAN



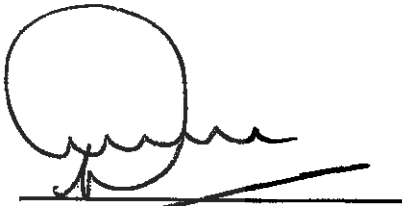
BOARD MEMBER

REGISTERED BY ME ON THIS THE
23
DAY OF JANUARY 2017

Registrar of Pension Funds

**ESKOM PENSION AND PROVIDENT FUND
ACTUARIAL CERTIFICATE IN TERMS OF SECTION 12(3) OF THE
PENSION FUNDS ACT, 1956**

1. I have examined Rule Amendment No. 1 to the Revised Rules of the Eskom Pension and Provident Fund ("the Fund")
2. I certify that these amendments are not inconsistent with the continued actuarial soundness of the Fund.

A handwritten signature in black ink, consisting of a large, rounded initial 'D' followed by a series of wavy lines representing the rest of the name. The signature is written over a horizontal line.

D. K. Little; B.Sc

Valuator to the Fund

Fellow of the Actuarial Society of South Africa

Willis Towers Watson