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INFRASTRUCTURE INVESTMENTS - THE SECOND DRAFT OF THE AMENDMENT TO REGULATION 28

THE AIM OF REGULATION 28

Regulation 28 to the Pension Funds Act aims to lessen concentration risk to retirement savings by limiting the extent to which retirement funds may invest in a particular asset or in particular asset classes.

WHY IS REGULATION 28 BEING AMENDED?

The amendment of Regulation 28 is mainly intended to encourage increased investment by retirement funds in infrastructure and better measurement of this. Investment in infrastructure will remain at the discretion of the board of a fund and is not proposed to be mandatory.

IS THE AMENDMENT TO REGULATION 28 EFFECTIVE YET?

No, it is not. The first draft of the amendment to Regulation 28 was published for comment in February 2021. The second draft was published for comment on 2 November 2021.

WHAT IS THE MAIN CHANGE PROPOSED TO REGULATION 28?

The amendment introduces a definition of "infrastructure", defines limits for investments in infrastructure and prescribed reporting on infrastructure investments.

WHAT IS "INFRASTRUCTURE" DEFINED TO MEAN?

One of the major changes from the first draft to the second draft of the amendment to Regulation 28 is the definition of "infrastructure". The first definition was too limiting and excluded investments in infrastructure projects based in the rest of Africa as well as private sector infrastructure investments. This was not the intention and both these anomalies have been corrected in the new definition of "infrastructure", which is:

> "any asset class that entails physical assets constructed for the provision of social and economic utilities or benefit for the public".

WHAT ARE THE OVERALL PROPOSED LIMITS ON INVESTMENT IN INFRASTRUCTURE BY RETIREMENT FUNDS?

There have been no changes to the overall limits from the first draft to the second draft. The overall investment in infrastructure across all asset categories will be kept at 45% in respect of domestic exposure, including a limit of 10% in respect of the rest of Africa. The amendment to Regulation 28 also introduces a limit of 25% to a single issuer or project.

The first draft introduced some confusing changes within the current columns of allowable asset classes and these have been removed in the second draft, without changing the overall limits.

WHAT WILL FUNDS HAVE TO REPORT ABOUT INFRASTRUCTURE INVESTMENTS?

The first draft of the amendment provided that any direct or indirect exposure to a hedge fund or private equity fund must be disclosed as an investment into a hedge fund or private equity fund and the fund need not apply the look-through principle for the underlying assets of the hedge fund or private equity fund, *except in the case of infrastructure investments*, thus requiring reporting on all direct and indirect infrastructure investments by retirement funds.

The second draft has eased this reporting requirement to some extent by requiring that funds will only have to provide the prescribed reporting on infrastructure investment for their top 20 infrastructure investments. Funds will still need to ensure they comply with the overall limits.

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THE DRAFT AMENDMENT INCLUDES A DEFINITION OF "CRYPTO ASSETS" AND A PROHIBITION ON INVESTING IN SUCH ASSETS

The definition of "crypto-currency" has been replaced in the second draft with a definition of "crypto-assets". A new restriction in Regulation 28 on retirement funds' investment in crypto assets has been introduced, because they are seen to be of very high risk. For now, retirement funds will not be permitted to invest in crypto assets.

FURTHER COMMENTS – THE WORDING OF THE AMENDMENT MAY STILL CHANGE

There have been further comments to the wording of the draft amendment to Regulation 28 as there are still outstanding issues that require consideration. Therefore, the final version of the amendment may look different to the second draft. We will keep you informed once the final version of the amendment to Regulation 28 is released.