

RULE AMENDMENT NO. 1

TO THE REVISED AND CONSOLIDATED RULES OF THE ESKOM PENSION AND PROVIDENT FUND

ON THIS THE 23th DAY OF JUNE 2022, AT A MEETING OF THE BOARD OF THE ESKOM PENSION AND PROVIDENT FUND, HELD BOTH VIRTUALLY AND AT THE EPPF OFFICE PARK, THE BOARD BY A MAJORITY RESOLVED TO AMEND THE REVISED AND CONSOLIDATED RULES OF THE ESKOM PENSION AND PROVIDENT FUND WITH EFFECT FROM THE REGISTRATION DATE, FOR THE FOLLOWING REASONS:

- i.) To include a date from which above maximum contributions can be paid into the Fund.*
- ii.) To align the rules with the Taxation Laws Amendment Act 23 of 2020 changes that allow transfers from provident funds to pension funds.*
- iii.) To include a new definition for “provident vested rights” to accommodate transfers from provident funds to the Fund and allow those lump sums to be payable as lump sums on retirement.*
- iv.) To align the rules with PF130 on management of conflicts of interest on the Board and allow Board Members to vote in instances where a conflict is a structural conflict.*
- v.) To include a pension increase affordability reserve account and include rules to regulate the account.*
- vi.) To introduce a new rule that clarifies that temporary employees will cease making contributions to the Fund and provide a definition for that category of Members.*
- vii.) To allow deferred pensioners under pensionable age to withdraw from the Fund.*
- viii.) To remove the restriction on deferred pensioners from receiving a withdrawal benefit from age 55 onwards and to remove the restriction on in-service members who are 55 years and older from receiving a withdrawal benefit without proof of alternative employment or self-employment upon termination of employment on account of resignation or dismissal.*

- ix.) To include provisions that allow a dismissed Member to elect to retain his benefit in the Fund if he intends to challenge his dismissal.*
- x.) To amend the provisions of the rules dealing with termination of the Fund to include wording that clarifies when the Board can elect to terminate the Fund.*
- xi.) To amend the provisions of the rules dealing with rule amendments to make it clear that Members should be consulted when the proposed rule amendments are likely to have a negative impact on them.*

The Rules will be amended as follows:

1. By amending the definition of **“Above Maximum Payment”** as follows:

“ABOVE MAXIMUM PAYMENT” with effect from 1 June 2019, shall mean that portion of a MEMBER’S increase in remuneration, as notified by the EMPLOYER to the FUND in writing at the time of payment to the FUND, that exceeds an EMPLOYEE’S maximum of the remuneration scale effective from the implementation of any increase in remuneration. The ABOVE MAXIMUM PAYMENT is a one-time upfront payment of a 12-month period and shall be regarded as PENSIONABLE EMOLUMENTS. RULE 5.2.6 and RULE 5.2.7 shall apply to any ABOVE MAXIMUM PAYMENT received by the FUND from an EMPLOYER.

2. By inserting a new definition as follows:

“NON-CONTRIBUTING MEMBER” shall mean a MEMBER who becomes a TEMPORARY EMPLOYEE as contemplated in RULE 4.2.2, who is not required to make CONTRIBUTIONS to the FUND in terms of RULE 4.2.2 but whose MEMBERSHIP in the FUND has not ceased. For the avoidance of doubt, a NON-CONTRIBUTING MEMBER is not a DEFERRED PENSIONER or a PAID-UP MEMBER.

3. By inserting a new definition as follows:

“PROVIDENT VESTED RIGHTS” shall mean that portion of an amount transferred into the FUND in respect of a new MEMBER, as indicated by the transferor fund, transferred into the FUND on or after 1 March 2021, afforded protection as per the Taxation Laws Amendment Act 23 of 2020, in terms of which the MEMBER was a member of a PROVIDENT FUND or PROVIDENT PRESERVATION FUND prior to this date.

4. By deleting rule 3.9.14 and replacing it as follows:

3.9.14 A BOARD MEMBER who has a direct or indirect personal and/or financial Interest in a decision to be taken by the BOARD shall disclose such interest before any discussion of the matter and shall not be present during such discussion and shall not vote on the matter. Notwithstanding the foregoing

provision, if the interest arises from a structural conflict, the BOARD MEMBER shall disclose such interest and may be allowed to vote on the matter. The BOARD MEMBER must act without regard for his personal interest or those of the entity or person through which the BOARD MEMBER was appointed, in line with established guidelines to distinguish the different types of conflicts of interest and how they will be managed. A register of all declared conflicts of interest shall be kept by the FUND.

5. By deleting rule 4.2 and replacing it as follows:

4.2 CESSATION OF MEMBERSHIP

4.2.1 A MEMBER shall not be permitted to withdraw from his membership while he remains in SERVICE.

4.2.2 On the date that a MEMBER becomes a TEMPORARY EMPLOYEE, the MEMBER shall cease to make contributions to the FUND and shall become a NON-CONTRIBUTING MEMBER. Such NON-CONTRIBUTING MEMBER'S ACCUMULATED CONTRIBUTIONS or MINIMUM INDIVIDUAL RESERVE (whichever is higher) determined at the date of becoming a NON-CONTRIBUTING MEMBER, plus INVESTMENT RETURN from that date, shall remain in the FUND, and shall only be due to the MEMBER when he leaves the employment of the EMPLOYER. In this context, EMPLOYER shall mean the EMPLOYER in whose SERVICE that MEMBER, is or was last employed.

6. By deleting Rule 5.2.3 and replacing it as follows:

5.2.3 If a MEMBER retires or is retired from SERVICE and becomes entitled to a PENSION or if a MEMBER dies and a PENSION becomes payable in respect of him, the amount of the additional voluntary contributions accumulated with INVESTMENT RETURN in terms of RULE 5.2.2 shall be utilised to provide such additional PENSION as the BOARD, after consulting the ACTUARY, determines, provided that the BOARD may commute for a lump sum the whole or part of the additional PENSION subject to the provisions of RULE 8.5. Provided that if all or a portion of the additional contribution amounts to

PROVIDENT VESTED RIGHTS, then that portion can be taken as a lump sum as provided by revenue laws from time to time.

7. By deleting rule 6.1.3 and 6.1.4 in their entirety.
8. By deleting rules 7.1.3.6 and 7.1.3.7 and replacing them as follows:

7.1.3.6 Subject to notifying the FUND in writing before attaining PENSIONABLE AGE, a DEFERRED PENSIONER who elected to defer payment of his benefit in terms of RULE 7.1.3.2, shall be entitled to receive his entire withdrawal benefit as a lump sum or to transfer his entire benefit to an APPROVED FUND. For clarity, the full withdrawal benefit must be taken or transferred, there can be no partial withdrawal or transfer. The provisions of this RULE 7.1.3.6 shall apply to every DEFERRED PENSIONER, including a DEFERRED PENSIONER who elected to become a DEFERRED PENSIONER before 1 April 2021.

7.1.3.7 If a DEFERRED PENSIONER did not elect in writing to receive payment of his withdrawal benefit as contemplated in RULE 7.1.3.6, then such a DEFERRED PENSIONER shall be entitled to a PENSION calculated in terms of Rule 8.1 upon attaining PENSIONABLE AGE, or shall be entitled to retire early on or after attaining age 55 (fifty-five) (but before attaining PENSIONABLE AGE), in which case his benefit shall be calculated in terms of RULE 7.2.

By renumbering rule 10.2.1, 10.2.2 and 10.2.3 as 10.2.3, 10.2.4 and 10.2.5 respectively and inserting new rule 10.2.1 and 10.2.2 as follows:

10.2 RE-JOINING OF A MEMBER WHO HAS BEEN DISMISSED

10.2.1 If a MEMBER is dismissed from SERVICE of an EMPLOYER and contests his dismissal in terms of labour laws seeking reinstatement and the MEMBER has not yet been paid a benefit in terms of RULE 6, the MEMBER can elect that payment of the benefit be suspended until the legal process has been completed.

10.2.2 If a MEMBER is dismissed from SERVICE of an EMPLOYER and elects to receive his benefit in terms of RULE 6 before the legal process as contemplated in RULE 10.2.1 is completed and the outcome of the legal

process is that the MEMBER should be reinstated, the MEMBER'S PENSIONABLE SERVICE will be adjusted to take into account the benefit already paid to the MEMBER and/or periods for which the FUND did not receive CONTRIBUTIONS for the MEMBER'S SERVICE.

10.2.3 If a MEMBER has been paid his benefit in terms of RULE 6 and is reinstated into the SERVICE of the EMPLOYER after the MEMBER'S dismissal, the MEMBER may choose to repay to the FUND the benefit he had received in terms of RULE 6, together with INVESTMENT RETURN, within six months of the reinstatement date and thereby reinstate his membership with the FUND. If the MEMBER fails to exercise this option within the six-month period, he will not retain his previous PENSIONABLE SERVICE and his membership period with the FUND will commence from the date of his reinstatement.

10.2.4 Where the MEMBER'S SERVICE has been reinstated following dismissal, the period between the date of dismissal and reinstatement shall not be treated as PENSIONABLE SERVICE unless the MEMBER exercises his option in RULE 10.2.3 above, if applicable, and pays into the FUND his CONTRIBUTIONS for the said period. The EMPLOYER shall in this case, also pay its CONTRIBUTIONS for the said period into the FUND.

10.2.5 To be clear: where a MEMBER re-joins SERVICE of an EMPLOYER following dismissal, unless the FUND receives MEMBER and EMPLOYER contributions for the period between the date of dismissal and reinstatement, the period between the date of dismissal and reinstatement shall not be treated as PENSIONABLE SERVICE and will result in a MEMBER'S years of SERVICE being adjusted by the ACTUARY which will impact on the benefit payable to the MEMBER in terms of the RULES.

9. By inserting new rule 11.4.3.6 as follows with effect from 30 June 2021:

11.4.3.6 Pension Increase Affordability Reserve

10. By inserting new rule 11.10 as follows:

11.10 Pension Increase Affordability Reserve

To be established with effect from 30 June 2021. This reserve account will be utilised to provide future increases to PENSIONS as required by section 14(B)(4) of the ACT. The PENSION INCREASE AFFORDABILITY RESERVE will be credited with an amount determined by the BOARD on the advice of the ACTUARY at the date of each actuarial valuation of the Fund as required in terms of rule 11.3.1. The balance of the PENSION INCREASE AFFORDABILITY RESERVE will not be credited with INVESTMENT RETURNS and will be restated at each actuarial valuation.

11. By deleting rule 12.1 and replacing it as follows:

12.1 The FUND may, including when ESKOM is wound up whether voluntarily or not, or ceases to carry on business, subject to the discretion of the BOARD and after consultation with ESKOM and the ACTUARY regarding the best interests of MEMBERS and/or specific groups of MEMBERS and/or BENEFICIARIES, be liquidated or continue to operate its business as a retirement fund.

12. By deleting rule 14.9.1 and replacing it as follows:

14.9.1 The BOARD may amend the RULES by making a new rule or altering or rescinding any existing rule, provided also that:

14.9.1.1 the amendment must be approved by an EMPLOYER if it results in an increase in the contributions or in any other financial risk or obligation being imposed on that EMPLOYER;

14.9.1.2 If the proposed rule has a negative impact on MEMBERS, the BOARD shall consult those affected MEMBERS,

14.9.1.3 The amendment is not inconsistent with the provisions of the ACT or Income Tax Act, 1962 or any other applicable legislation;

14.9.1.4 if the REVENUE AUTHORITIES at any time refuses to approve the FUND or any part of it to enable the MEMBERS to obtain the benefit of exemption or allowance in respect of income or other tax, or if the BOARD consider it expedient, having regard to any ruling or condition of the REVENUE AUTHORITIES about income or other tax, the BOARD may alter the RULES to enable such approval to be obtained;

- 14.9.1.5 every proposed amendment to the RULES affecting the financial soundness of the FUND shall be submitted to the ACTUARY for his report before being adopted,
- 14.9.1.6 within 60 (sixty) calendar days of the date of the resolution amending the RULES, the PRINCIPAL OFFICER shall submit the amendment to the RULES to the AUTHORITY and, if applicable, to the REVENUE AUTHORITIES, in writing, for registration of the amendment; and
- 14.9.1.7 after approval and registration of any amendment to the RULES by the AUTHORITY, within six months after the FUND'S FINANCIAL YEAR END, the PRINCIPAL OFFICER shall notify the MEMBERS of all amendments to the RULES.