

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU ARE A MEMBER OF THE TRANSNET SECOND DEFINED BENEFIT FUND (TSDBF) OR THE TRANSPORT PENSION FUND (TPF) (both will be collectively referred to as the “FUNDS”), PLEASE READ THIS NOTICE AS THE IMPLEMENTATION OF THE SETTLEMENT AFFECTS YOU.

THE MEMBERS OF THE FUNDS INCLUDE:

- **EVERYONE WHO RECEIVES A PENSION FROM ONE OF THE FUNDS**
- **EVERYONE WHO IS AN ACTIVE MEMBER OF THE TPF (EACH EMPLOYEE OF TRANSNET SOC LIMITED, SOUTH AFRICAN AIRWAYS SOC LIMITED (“SAA”) OR THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (“PRASA”) WHO CONTRIBUTES TO THE TPF).**

If you are a person with an interest in the proposed settlement (an “Interested Party”), then you should also read this notice.

Geysers & Coetzee Attorneys is the Class Legal Representative of the members of the TSDBF and the TPF (including the PRASA sub-fund of the TPF and the SAA sub-fund of the TPF) in the Class Action Litigation against those two Funds and Transnet SOC Ltd (Transnet). The Class Action was initiated for claims arising from:

- An allegation that a representative of Transnet’s predecessor and the predecessors of the Funds made a promise to the members of the Funds in 1989. The alleged promise was that pensions would increase each year by a rate of at least 70% of inflation;
- An allegation that Transnet took over its predecessors’ obligation to pay an amount into the old pension funds (these are the funds that were ultimately replaced by the Funds) that were necessary to maintain the old pension funds in a sound financial position; and
- An alleged unlawful donation made by one of the new pension funds to Transnet.

The Class Action Litigation was certified (authorised) by the High Court on 31 July 2014 (**Certification Date**). Pensioners and other members of the TSDBF and the TPF are members of the Class. No current members of the Funds elected to opt out of the Class Action Litigation.

The Class Legal Representative has negotiated and signed a settlement agreement with the Funds and Transnet. The Class Representatives, Mr JPH Pretorius and Mr MD Kwapa, have also signed the settlement agreement. The parties to the settlement agreement have applied to the High Court for a court order that the settlement agreement should be binding on the parties to the Class Action Litigation, including all of the members of the Class.

The relevant terms of the settlement agreement are summarised as follows:

Conditions

The settlement agreement must be made an order of the High Court.

The Minister of Public Enterprises and the Minister of Finance have to approve rule amendments in respect of the TSDBF and the Transnet Sub-Fund of the TPF (**TSF**) to allow the pension increases mentioned in the settlement agreement to be implemented.

The TSDBF and TSF must adopt pension increase policies that allow the pension increases mentioned in the settlement agreement to be implemented.

The PRASA sub-fund of the TPF and the SAA sub-fund of the TPF must obtain necessary approvals for the benefit enhancements proposed in the settlement agreement relating to those two sub-funds.

Certain of these Conditions might be wholly or partly fulfilled as at the date of this Notice.

Lump sum payments

The parties agreed that within two months of the settlement agreement being signed by them, even if all the conditions above were not yet met, each Pensioner would be paid an amount of R10 000.00 (ten thousand Rand). That amount was paid in December 2019. The exception is SAA Pensioners, who will be paid after the company approvals required for the payment have been given.

Approximately one year later (around December 2020), each Pensioner will be paid a second amount of R10 000.00 (ten thousand Rand).

Approximately one year later (around December 2021), each Pensioner will be paid a third amount of R10 000.00 (ten thousand Rand).

Each lump sum payment must be made by the relevant fund less such tax as the relevant fund is obliged to deduct or withhold in respect of each Pensioner.

The Funds retain discretion to grant bonuses in addition to these amounts subject to their rules and policies if that is affordable.

If a person who was a Pensioner has passed away, or passes away between the Certification Date and the date on which any lump sum payment becomes due, then one of two things will happen, depending on the Pensioner’s circumstances:

- If the late Pensioner leaves any dependents whom the relevant Fund’s rules recognise as a surviving spouse pensioner or as a child pensioner, then each of those ‘new’ pensioners will become entitled to the benefits set out in the settlement agreement, from the Pensioner’s date of passing going forward, including where applicable one or more pension increases and/or one or more special lump sum awards, and the deceased estate will not receive the lump sum(s).
- If the late Pensioner leaves no dependants who qualify for pensions from one of the Funds or sub-funds themselves, then the late Pensioner’s estate will not have a claim against the TSDBF or the TPF or any sub-fund of the TPF or Transnet under the settlement agreement or otherwise.

In future, after the 3 lump sum payments have been made, the board of trustees of each Fund will have the power to grant lump sum payments as and when they consider it to be affordable, in such amounts as they consider to be affordable.

Pension enhancements

TSDBF and TPF shall continue to grant a minimum pension increase of 2% each year, at the usual time.

Pensioners will receive different pension increases depending on whether that pensioner is a member of (i) the TSDBF, the TSF or the PRASA sub-fund of the TPF; or (ii) the SAA sub-fund of the TPF.

These special pension increases will be granted in addition to the minimum pension increase of 2% granted each year.

Special increases for TSDBF, TSF and PRASA sub-fund pensioners:

Within two months of all the Conditions being met the funds will grant a special, across-the-board pension increase of 11% (eleven percent).

Approximately one year later, the funds will grant a second across-the-board pension increase of 7% (seven percent).

Approximately one year after the 7% increase, the funds will grant a third across-the-board pension increase of 4% (four percent).

Note that the PRASA sub-fund will need to amend its rules in order to be able to grant and pay the special increases to its Pensioners, and therefore the special increases to be granted by the PRASA sub-fund will not take effect unless and until such time as the relevant employer and Ministerial approval in respect of such rule amendments has been obtained by the fund.

Special increases for TSDBF, TSF and PRASA sub-fund pensioners:

Within two months of all the Conditions being met the Funds will grant a special, across-the-board pension increase of 11% (eleven percent).

Approximately one year later, the funds will grant a second across-the-board pension increase of 7% (seven percent).

Approximately one year after the 7% increase, the funds will grant a third across-the-board pension increase of 4% (four percent).

Note that the PRASA sub-fund will need to amend its rules in order to be able to grant and pay the special increases to its Pensioners, and therefore the special increases to be granted by the PRASA sub-fund will not take effect unless and until such time as the relevant employer and Ministerial approval in respect of such rule amendments has been obtained by the fund.

Special increases for SAA sub-fund pensioners

Within two months of all the Conditions being met the SAA sub-fund of the TPF will grant a special pension increase to each of its Pensioners to an amount determined by its valuator as the pension to which that Pensioner would have been entitled on the date the increase takes effect had that Pensioner received an annual pension increase, since the pension was first paid, equal to 70% of inflation (year-on-year changes in CPI).

Further pension increases

From the year following the special 4% increase, and going forward, the TSDBF’s and the TSF’s pension increase policies will target

pension increases of at least 70% (seventy percent) of CPI (including the 2% minimum increase in the calculation of 70% of CPI). The grant of targeted increases is subject to the increase being affordable and to the consent of the employer.

The PRASA and SAA sub-funds’ boards may grant increases to their Pensioners that are equal to or greater, but not less than, those special increases mentioned above.

The obligations of the relevant employer companies (Transnet, SAA and PRASA) in respect of the Funds, including the financial support obligations of these employers, continue to apply to the Funds and extend to the benefit enhancements contemplated by the settlement agreement.

Impact of the Class Action settlement on active members of the TPF

The active members of the TPF will not receive any immediate financial benefits in the form of the lump sum payments or immediate pension increases as described above. Active members who retire before the last benefit in terms of the settlement agreement falls due will benefit from those settlement benefits that fall due from their date of retirement. Active members who retire after the last benefit in terms of the settlement agreement falls due will benefit from any pension increases that their fund or sub-fund may grant in excess of 2% in accordance with the pension increase policy of the relevant fund.

Class’ Legal Costs

Transnet will cover the Class’ (pensioners’) legal and actuarial costs in respect of the Class Action Litigation on terms negotiated with the Class Legal Representative.

Settlement and termination of Class Action Litigation

Once all of the Conditions are met, the Class Legal Representative will obtain an order from the Court that the Class Action Litigation and the Class’ claims have been settled fully and finally and the Class Action Litigation is therefore terminated.

The settlement agreement, as confirmed in the High Court order, will dispose of any and all claims by any member of a Class against any person relating to the historical funding of the Funds (or their predecessors in title), the Funds’ abilities to grant pension increases greater than 2% per year historically, historical investment and other transactions that did affect or are perceived to have affected those abilities, and the existence or status of the so-called ‘legacy debt’ as referred to in the Class Action Litigation.

Financial restructuring affecting the Funds

Certain assets, as proposed by the actuaries of the Funds and agreed by the Funds, will be transferred from the TSF to the TSDBF to enable the TSDBF to make the necessary enhancements and payments as they fall due.

The Funds and Transnet may agree to consolidate the Funds and their memberships in the future, and none of the members or representatives of the Class may frustrate or prevent that.

Settlement approval hearing

The following information is applicable to members of the Class or any interested party with an interest in the settlement agreement.

- A hearing at which the High Court will consider whether to approve the proposed settlement agreement will be held on **14 APRIL 2020 (Return Day)** at the **High Court in Pretoria, Paul Kruger & Madiba St, Pretoria Central, Pretoria, at 10h00**.
- Any member of the Class or interested party who wishes to participate in the hearing on the Return Day, may address the High Court on whether the proposed settlement agreement is reasonable, fair and adequate, on the basis referred to below.

- Any member of the Class and any interested party who wishes to object to the proposed settlement agreement, or any part of it, must take the following steps to do so:

- Notice of appearance, based on the form that can be accessed on the Class Legal Representative’s website (www.geysercoetzee.co.za), must be delivered to the Class Legal Representative, and filed at the above High Court, by no later than **31 MARCH 2020**.

- A member of the Class or an interested party who files a notice of appearance and affidavit is referred to, in the remainder of this publication, as an **“Objecting Party”**.

- An Objecting Party must deliver to the Class Legal Representative, and file at the above High Court, an answering affidavit setting out the basis of objection by no later than **7 APRIL 2020**.

- Objecting Parties must deliver the documents referred to above (notice of appearance and answering affidavit) to the Class Legal Representative by hand or by fax or by email, and the details are:

GEYSER & COETZEE ATTORNEYS

The Class Legal Representative

9 Baobab Nook

Zwartkop x 4

Centurion

Ref: WW Coetzee

Tel: 012 663 5247

Fax: 012 663 5719

Email: wynanda@geysercoetzee.co.za

- Note that if no notices of appearance and answering affidavits are filed within the time periods stipulated above, then the matter will be set down for hearing on an **unopposed basis** on the Return Day (**14 APRIL 2020**)

- If the matter is opposed, then the Return Day will be postponed from **14 APRIL 2020** to **17 JUNE 2020** or such other or further date(s) as the High Court may direct.

- The Class Representative, the Funds and Transnet (collectively **“the Applicants”**) may file replying affidavits in response to any affidavits filed by Objecting Parties by no later than **4 MAY 2020**.

- The Applicants must file written submissions by no later than **18 MAY 2020**.

- Any Objecting Party must file written submissions on or before **25 MAY 2020**.

- The Applicants must file written submissions in response to the Objecting Parties by **2 JUNE 2020**.

- The Applicants will provide notice to the Objecting Parties of such other or further return day(s) and will publish a notice on the websites of the Class Legal Representative and Transnet.

- Once it has considered the submissions, the Court will direct, by no later than five (5) court days before the Return Day, whether oral submissions will be permitted. The Court’s direction will be published on the websites of the Class Legal Representative and Transnet.

- Service on any Objecting Party will be effected by e-mail to the e-mail address specified in such Objecting Party’s notice of appearance.

- **PLEASE** ensure that you regularly visit the websites of the Class Legal Representative and Transnet (www.transnet.net) for any updates and/or changes to the hearing dates.

- You can get a copy of the Court order, the settlement agreement and copies of the papers that have been filed at the High Court by the Class Legal Representative, Transnet and the Funds from the Class Legal Representative (contact details above).

- Electronic copies of these documents will be available on the Class Legal Representative’s website.

The final settlement

- If the Court approves the settlement, there will be publication in newspapers of a summary of the Court’s decision.

- The full terms of the Court’s decision and the final settlement will:

- be made available at the offices of Geysers & Coetzee Attorneys (address above);

- be posted on the the Class Legal Representative’s website and on Transnet’s website; and

- be sent to each Objecting Party.