

**Reg 28 second draft amendments goes some - but not all - the way****Author: Jason Lightfoot, Portfolio Manager @ Futuregrowth****Date: 25 November 2021**

National Treasury released its second draft amendments to Regulation 28 of the Pension Funds Act on 2 November 2021. The purpose of the second draft is to respond to comments from the market, following the release of the first draft amendments in February 2021.

The purpose of the proposed amendments is to make it easier for pension funds to invest in infrastructure. Futuregrowth supports the aim of this initiative and believes it is important to highlight the active role the pension fund industry can play in assisting economic growth through infrastructure investment.

**WE SUMMARISE SOME KEY CHANGES AND OUR VIEWS ON THESE BELOW:****1. Definition of infrastructure expanded**

We are pleased that National Treasury has listened to the market where the definition of infrastructure is concerned. However, the expanded definition in the second draft could have some unintended consequences.

The definition of infrastructure is no longer tied to the definition set out in the Infrastructure Development Act of 2014 and now defines infrastructure as "*any asset class that entails physical assets constructed for the provision of social and economic utilities or benefit for the public*". This therefore recognises both public and private investment in infrastructure (which the first draft amendments did not).

It is not clear if the intention is to count listed infrastructure-related investments under this definition (for example, listed shares or debt in issuers such as MTN, Vodacom, Netcare, etc.). If so, the proposed overall infrastructure limit could land up restricting rather than increasing investment.

**2. Limit of 45% on combined infrastructure investment across all asset classes**

This is inconsistent with the first draft, where infrastructure in Africa was excluded in the 45% overall limit. Notwithstanding this, we continue to believe that the 45% limit is too low, more so now, given the wider definition of infrastructure. If listed instruments are included in this limit, it is quite likely that pension funds will very quickly hit this ceiling.

In addition, this could preclude pension funds from making investments in true infrastructure opportunities - which are usually unlisted in nature and would then fall under the overall existing 35% unlisted limit (across all asset classes).

We continue to believe that the overall infrastructure limit should either be increased meaningfully or removed entirely, allowing the individual asset class limits to dictate the level of risk that a pension fund is able to take. In the latter option, the overall existing 35% unlisted limit would need to be increased if the intention is to allow for meaningful investment in the true infrastructure space.

**3. Infrastructure sub-limits removed, but new reporting requirements added**

The second draft amendments have done away with the infrastructure sub-limits (which were confusing and unnecessary) but retirement funds now need to report on their top 20 infrastructure investments.

**4. Investment in crypto currency prohibited**

The second draft amendments have now included a definition of crypto-assets and prohibit pension funds from investing in any crypto-assets either directly or indirectly.

We are largely in agreement that crypto currency should not form part of any pension fund and therefore support its exclusion. However, this should not be conflated to preclude investment in all block-chain-based holdings. These could become a means of safe custody for actual investments, which allow investors to own a share of a particular investment.

## **THE WAY FORWARD**

We are well aware of the infrastructure funding shortfall over the next two decades, and pension funds can play a meaningful role in that regard - particularly those that haven't made much investment in this sector ([Read a recent update on infrastructure investment - SIDSSA 2021: Light at the end of a dark and crumbling tunnel?](#)). This, however, needs to be supported by simplified and unambiguous legislation that does not have inadvertent consequences.

We are pleased that National Treasury has broadly listened to the advice of the market but believe that more engagement needs to take place to iron out the concerns raised above – if meaningful pension fund investment in infrastructure is to be facilitated.

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