FINANCIAL INSTITUTIONS OFFICE
Private Bag X238
PRETORIA

28 March 1974

Circular No. P.F. 23
(To all privately administered pension funds)

INVESTMENT IN FIXED PROPERTY

1. The Minister of Finance has reconsidered the policy in regard to the investment in fixed property by pension funds, as set out in Circulars P.F. 15 and 17, and has approved that a pension fund may henceforth invest up to 25% of its total assets in fixed property, provided an investment in a particular fixed property or fixed property company does not exceed 5% of the fund's total assets.

2. For the purpose of the 25% limit, the undermentioned investments are deemed to be investments in fixed property:

(a) A direct investment in fixed property where the pension fund concerned -
   (i) is the sole owner of the property concerned; or
   (ii) owns an undivided share of more than 1/20 (5%) in the property.

(b) An investment in the equity of a property company, if the investment exceeds 5% of the equity of the company concerned.

(c) A loan to a property company which is directly or indirectly controlled by the pension fund concerned or in which the latter holds more than 25% of the equity. Should such a property company also have obtained loans from sources other than -
   (i) the pension fund concerned, or
   (ii) another pension fund which holds more than 25% of the equity of the property company,

the loans from such other sources are also deemed to be investments by the pension fund concerned in fixed property for the purpose of the 25% limit, to an amount which bears the same ratio to the aggregate of loans from such other sources as the amount of the shareholding of the fund concerned bears to the total share capital of the property company.

(d) A loan to a joint owner of a fixed property of which the pension fund concerned is a joint owner of an undivided share of more than 25%, on security of a mortgage bond over the borrower's undivided share.

(e) A loan, secured by a mortgage bond, in respect of which the borrower has failed to meet his commitments and the underlying fixed property has been attached for sale in execution or been bought in by the fund.

3. For the purpose of this Circular -

(a) a company is deemed to be a "property company" if its main assets consist of fixed property and/or shares of, and/or loans to, such companies; and

(b) a loan to a property company, linked to the shares of that company, is deemed to be an investment in the equity of that company.

4. An investment in units of a "unit trust scheme in property shares" is not deemed to be an investment in fixed property for the purpose of applying the 25% limit.

5. Where a pension fund acquires or already owns a fixed property and takes over or obtains a mortgage loan over such property, the value of the property concerned may not, for the purpose of the 25% limit, be reduced by the amount of the loan because such a reduction would be tantamount to a circumvention of the limit. Moreover, it is not in the nature of pension fund business that the assets portfolio be built up out of borrowings.

6. An investment in fixed property will not, for the purposes of section 10 of the Act, be deemed to be the carrying on of "business other than pension fund business" if -

(a) the property has been acquired primarily for the pension fund's own use; or

(b) the property is leased to a limited number of financially strong undertakings over relatively long periods.

7. The earlier requirements that only funds with assets exceeding R1 000 000 may invest in fixed property and that investments in fixed property be submitted to this Office for approval, are hereby withdrawn. Where the rules of a fund

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require this Office's prior approval for property investments, the relevant rule will consequently have to be amended.

8. Although this Office's approval will no longer be required, trustees of funds are urged to bear the following in mind:

(a) Pension fund moneys are trust moneys and as such must at all times be invested safely and at a reasonable return.

(b) Generally investments in fixed property ought to be restricted to centrally situated urban properties which are used as shops, offices or for residential purposes.

(c) Investments in properties which are used for specialised purposes, such as, for example, industrial properties, ought to be made only if a long lease can be negotiated with a strong company.

(d) Speculative investments must be avoided and investments in vacant land be made only if a satisfactory viability study by an independent valuer shows a satisfactory return on the building to be erected.

(e) The sound principle of spreading investments must be adhered to not only in respect of particular properties but also within the fixed property sector of the economy and between that sector and others. In particular, funds should bear in mind that property investments are normally not easily realisable and if there is any possibility of a fund's having to realise assets, it should rather avoid property investments.

(f) Investments in leases _in longum tempus_ of fixed property should be avoided.

(g) The provisions of the Financial Institutions (Investment of Funds) Act, No. 56 of 1964, must be kept in mind, and in particular sections 2(a) and 3 thereof. It is imperative that the trustees of pension funds at all times observe the high standards of integrity, care diligence, impartiality and independence prescribed by the aforementioned Act, and ensure that the same high standards are maintained by the officials, agents and advisers of funds, so as

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to ensure that all transactions concluded on behalf of a fund are negotiated at arm's length and that no person gains any improper advantage at the expense of the fund.

9. Pension funds are urged to ensure when considering an investment in fixed property, that there are no statutory obstacles as, for example, the Group Areas Act, 1966 (Act 36 of 1966), in the way of their making the investment.

10. Every pension fund holding investments which in terms of paragraph 2 above are deemed to be investments in fixed property for the purpose of the 25% limit, is hereby requested to submit a return of such investment in the form of the Annexure to this Circular simultaneously with its annual financial statements.

11. Circulars No's P.F. 15 of March 1970 and P.F. 17 of 5 May 1971 are hereby withdrawn.

(SGD.) J.W. LOUW
REGISTRAR OF PENSION FUNDS
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