

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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Case number: 25370/21

On this the 12th day of August 2021

Before the Honourable Judge Sardiwalla

In the *ex parte* application of:

DENEL SOC LIMITED

Applicant

In re:

VARIATION OF THE TRUST DEED OF THE DENEL MEDICAL BENEFIT TRUST

DRAFT ORDER

HAVING read the papers filed of record and having considered the matter and heard counsel for the Applicant, the following order is granted:

1. This matter is heard as one of urgency as contemplated in terms of Rule 6(12) of the Uniform Rules of Court and non-compliance with the ordinary rules and procedures for applications is condoned to the extent necessary.
2. A rule *nisi* is issued calling on the Trustees of the Denel Medical Benefit Trust (the "**Trustees**"), the "Employee beneficiaries" as defined in the Trust Deed of the Denel Medical Benefit Trust, including dependants of deceased "Employee beneficiaries" who are recognised by the Applicant and the Trustees as continuation and widow(er) members of the Denel Medical Benefit Trust (collectively the "**Employee**

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Beneficiaries”), and any other interested parties to show cause at **10h00 on Thursday, 24 February 2022** why a final order should not be made in the following terms:

2.1. In terms of section 13 of the Trust Property Control Act 57 of 1988, the Trust Deed of the Denel Medical Benefit Trust is varied in accordance with the amendments contained in the table that is attached as “A”;

2.2. Directing any party who opposes the relief sought in terms of paragraph 2.1 above to pay the Applicant's costs;

(the “*rule nisi*”).

3. The Applicant is granted leave to serve the *rule nisi* and the application on the Trustees, the Denel Retired Employees Medical Scheme Forum (“**DREMS Forum**”), the Employee Beneficiaries, and other interested parties by way of substituted service as follows:

3.1. on the Trustees, by emailing a copy of the *rule nisi* and the application (including the founding affidavit, its annexures, and other supporting affidavits) to the email address of the Principal Officer of the Denel Medical Benefit Trust;

3.2. on the DREMS Forum, by emailing a copy of the *rule nisi* and the application (including the founding affidavit, its annexures, and other supporting affidavits) to the email address of the Chairperson of DREMS Forum, Mr Paul Roux Botha at the following email address ‘paultjie@gmail.com’;

3.3. on the Employee beneficiaries:

3.3.1. by email where the Applicant has an email address on record for an Employee beneficiary, which email must contain:

3.3.1.1. the *rule nisi*;



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- 3.3.1.2. the notice of motion;
- 3.3.1.3. an internet link where the rule *nisi*, the notice of motion, the founding affidavit, and the annexures to the founding affidavit can be accessed and downloaded;
- 3.3.1.4. the contact details of Applicant's attorneys of record;
- 3.3.1.5. an invitation to the Employee beneficiary to contact the Applicant's attorneys of record if the Employee beneficiary wants a copy of the rule *nisi*, the notice of motion, and the founding affidavit and the annexures to the founding affidavit to be made available for collection free of charge; and
- 3.3.1.6. a written offer in respect of each Employee beneficiary that will:

3.3.1.6.1. record the amount of the subsidy that Denel is obliged to provide, as at a date specified in the offer, in respect of that Employee beneficiary;

3.3.1.6.2. describe the benefits and other terms of an individual annuity policy that will be issued to the Employee beneficiary if the Employee beneficiary accepts the offer of the individual annuity policy; and

3.3.1.6.3. set out all of the other terms and conditions of the offer (the "Individual Annuity Policy Offer");



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3.3.2. where the Applicant has a postal address on record for an Employee beneficiary but no email address or where the Applicant receives no "read receipt" from emails sent to an Employee beneficiary in accordance with paragraph 3.3.1 above, service of the following documents shall take place by sheriff:

3.3.2.1. the rule *nisi*;

3.3.2.2. the notice of motion;

3.3.2.3. an internet link where the rule *nisi*, the notice of motion, the founding affidavit, and the annexures to the founding affidavit can be accessed and downloaded;

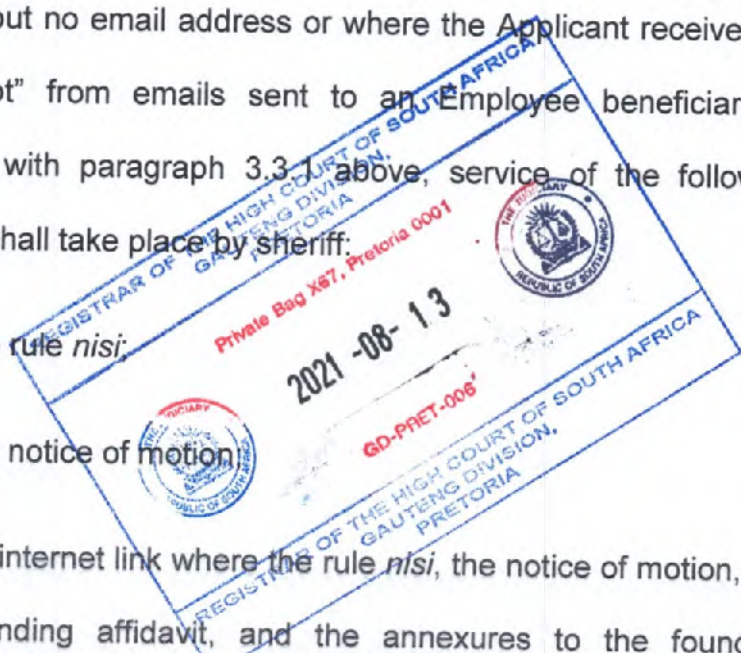
3.3.2.4. the contact details of the Applicant's attorneys of record;

3.3.2.5. an invitation to the Employee beneficiary to contact Denel's attorneys of record if the Employee beneficiary wants a copy of the rule *nisi*, the notice of motion, and the founding affidavit and the annexures to the founding affidavit to be made available for collection free of charge; and

3.3.2.6. the Individual Annuity Policy Offer for that Employee beneficiary.

3.4. In addition to paragraphs 3.1 and 3.3 above, the Applicant will:

3.4.1. send the following SMS to each Employee beneficiary for whom the Applicant has a mobile phone number on record:



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"Denel SOC Limited has applied to the High Court of South Africa, Gauteng Division, Pretoria, for an Order amending the trust deed of the Denel Medical Benefits Trust.

The Court has ordered Denel to send this message to you to notify you of the proceedings and its Order. Further documentation is available at an internet link where the rule nisi, the notice of motion, the founding affidavit, and the annexures to the founding affidavit can be accessed and downloaded or by calling Denel's attorneys of record on 021 410 2500 between the hours of 09:00 to 16:00 on any day other than a Saturday or Sunday or public holiday

3.4.2.

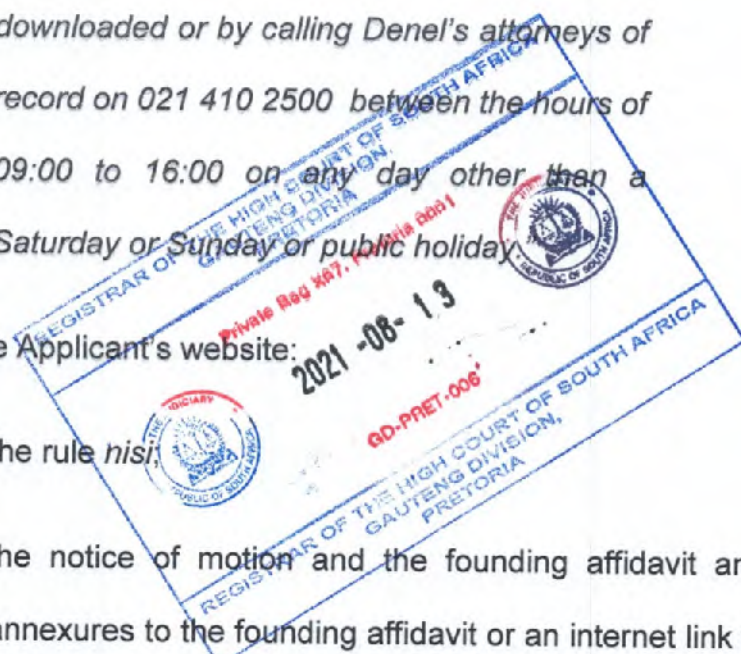
post on the Applicant's website:

3.4.2.1. the rule nisi;

3.4.2.2. the notice of motion and the founding affidavit and the annexures to the founding affidavit or an internet link where they can be accessed and downloaded;

3.4.2.3. the contact details of the Applicant's attorneys of record; and

3.4.2.4. an invitation to contact Denel's attorneys of record if an Employee beneficiary or any other interested party wants a copy of the rule nisi, the notice of motion, and the founding



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affidavit and the annexures to the founding affidavit to be made available for collection free of charge.

- 3.4.3. cause the following notice to be published in the legal notices section of three consecutive editions of two newspapers with national circulation:

“Denel SOC Limited has applied to the High Court of South Africa, Gauteng Division, Pretoria, for an Order amending the trust deed of the Denel Medical Benefits Trust. Further documentation is available at an internet link where the rule nisi, the notice of motion, the founding affidavit, and the annexures to the founding affidavit can be accessed and downloaded or by calling Denel’s attorneys of record on 021 410 2500 between the hours of 09:00 to 16:00 on any day other than a Saturday or Sunday or public holiday.”

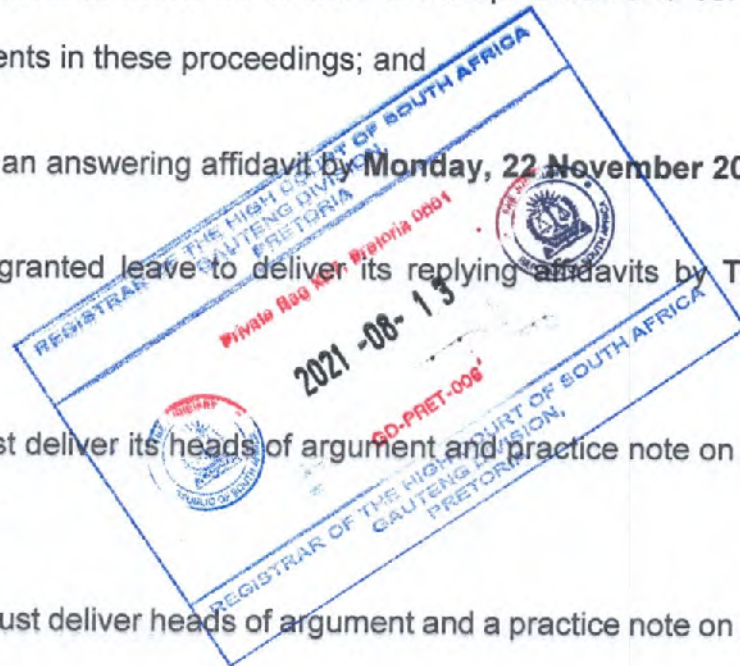


4. The Applicant will complete the process of substituted service of the application as contemplated in paragraph 3 above by no later than **Monday, 18 October 2021**.
5. If the application is opposed, it will be enrolled for hearing at **10h00 on Thursday, 24 February 2022**, and the following procedure will apply:
- 5.1. Any Trustee, DREMS Forum member, Employee beneficiary, or other interested party who wishes to oppose the relief to be sought in terms of the rule *nisi* or

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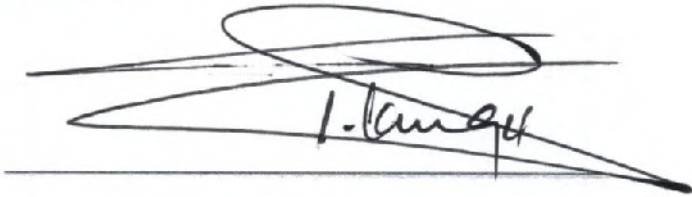
otherwise to participate in the hearing, must take the following steps in order to do so:

- 5.1.1. Give notice of his or her intention to oppose to the Applicant's attorneys of record by **Monday, 25 October 2021** and, in the notice, appoint an address within 15 kilometres of the office of the Registrar of this court at which he or she will accept notice and service of all documents in these proceedings; and
- 5.1.2. Deliver an answering affidavit by **Monday, 22 November 2021**.
- 5.2. The Applicant is granted leave to deliver its replying affidavits by **Thursday, 20 January 2022**.
- 5.3. The Applicant must deliver its heads of argument and practice note on **Monday, 31 January 2022**.
- 5.4. Any respondent must deliver heads of argument and a practice note on **Monday, 14 February 2022**.
- 5.5. The Applicant must deliver an affidavit confirming service in accordance with paragraph 3 above, which affidavit will attach "read receipts" in respect of the emails as contemplated in paragraph 3.3.1 above as well as a report confirming that the SMS'es contemplated in paragraph 3.4.1 above were delivered and read, by no later than **Thursday, 17 February 2022**.
6. If the application is unopposed, it will be enrolled for hearing at 10h00 on Thursday, 25 November 2021, and the Applicant must deliver an affidavit confirming service in accordance with paragraph 3 above by no later than **Thursday, 11 November 2021**.



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BY ORDER OF THE COURT



I. Lang

REGISTRAR OF THE HIGH COURT, PRETORIA

Attorneys for the Applicant: ENSafrica (S Mbatha / T Modubu)

(011) 269 7600

smbatha@ensafrica.com

tmodubu@ensafrica.com

Counsel for the Applicant: Alfred Cockrell SC

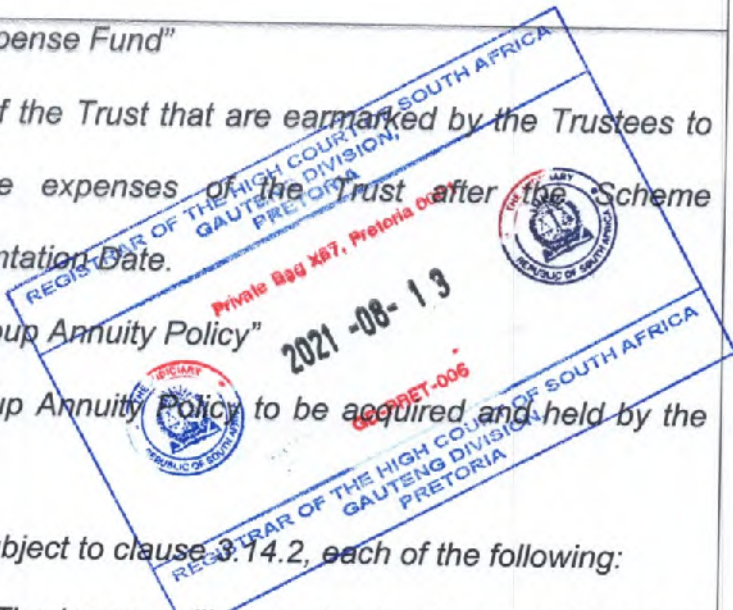
Jason Mitchell



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ANNEX 'A'

Trust Deed Amendments	
Deletions.	Clause 7.3 and Clause 11.2.2 of the Trust deed are deleted without any consequential changes in the clause numbering.
<p>Clause 3.1. The addition of the following new definitions:</p>	<p>3.12 "Expense Fund" <i>Assets of the Trust that are earmarked by the Trustees to meet the expenses of the Trust after the Scheme Implementation Date.</i></p> <p>3.13 "Group Annuity Policy" <i>The Group Annuity Policy to be acquired and held by the Trust.</i></p> <p>3.14.1 Subject to clause 3.14.2, each of the following:</p> <p>3.14.1.1 <i>The insurer will be an insurer that is identified by the Trustees and approved in writing by Denel, provided that Denel's approval of the insurer will not be required if the insurer is one of Old Mutual Life Assurance Company (South Africa) Limited, Momentum Metropolitan Life Limited and Sanlam Life Insurance Limited.</i></p> <p>3.14.1.2 <i>The benefits under the policy will be paid in respect of all of the Employee beneficiaries (including Recognised Dependants) that are named in the policy.</i></p> <p>3.14.1.3 <i>The benefits under the policy will be an annuity equal to 120% of the benefits that are required to be paid in</i></p>



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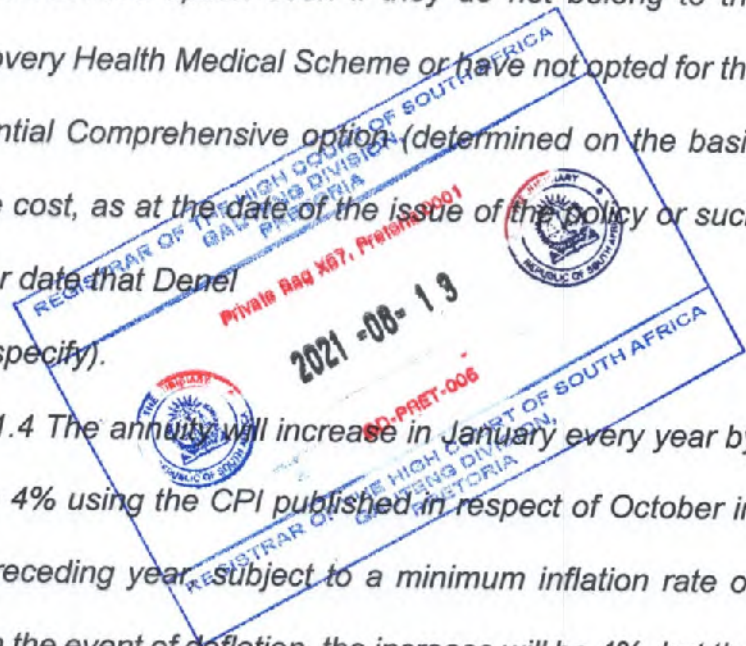
terms of Denel's current subsidy policy on the basis that all beneficiaries are on the Discovery Health Essential Comprehensive option even if they do not belong to the Discovery Health Medical Scheme or have not opted for the Essential Comprehensive option (determined on the basis of the cost, as at the date of the issue of the policy or such earlier date that Denel may specify).

3.14.1.4 The annuity will increase in January every year by CPI + 4% using the CPI published in respect of October in the preceding year, subject to a minimum inflation rate of 0%. In the event of deflation, the increase will be 4%, but the cumulative increases since date of the issue of the policy will not exceed CPI + 4% p.a. This means that the insurer will "clawback" the impact of setting inflation at a minimum of 0% where there has been deflation.

3.14.1.5 The annuity and the annual increases are to be guaranteed by the insurer.

3.14.1.6 The policy must confer on the policyholder (the Trust or, pursuant to a transfer of these rights by the Trust, Denel) a right to surrender the entire policy or part of the policy insofar as it relates to an Employee beneficiary.

3.14.1.7 The rights of the policyholder under the policy in respect of each Employee beneficiary will be capable of transfer by the Trust to Denel in one or more transfers from



time to time, without any requirement that the insurer consents or agrees to that transfer.

3.14.1.8 The policy will provide for an individual annuity policy to be issued to the relevant Employee beneficiary if this is required by the policyholder (the Trust or, pursuant to a transfer of these rights by the

Trust, Denel). The individual annuity policy will not include a right to surrender the individual annuity policy.

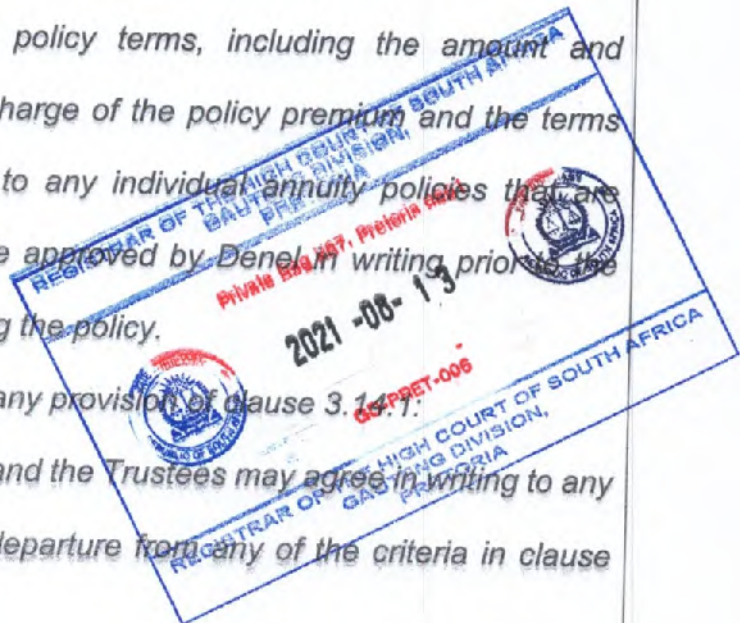
3.14.1.9 No subsequent marriage or remarriage will be provided for. Except for disabled children, the children's subsidy will cease at an age of 25 years.

3.14.1.10 The policy terms, including the amount and manner of discharge of the policy premium and the terms that will apply to any individual annuity policies that are issued, must be approved by Denel in writing prior to the Trust concluding the policy.

3.14.2 Despite any provision of clause 3.14.1:

3.14.2.1 Denel and the Trustees may agree in writing to any variation of or departure from any of the criteria in clause 3.14.1; and

3.14.2.2 once Denel gives the approval that is contemplated in clause 3.14.1.10, the policy that is acquired by the Trustees shall be deemed to comply with all of the criteria in clause 3.14.1.



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3.15 "Group Annuity Policy Acquisition Date"

A date specified by Denel and notified to the Trustees as the date by which the Trust must have acquired the Group Annuity Policy and discharged the obligation to pay the premium to the insurer under the Group Annuity Policy. The date specified by Denel shall not be less than 10 calendar days from the date of Denel's notice to the Trustees and shall not be less than 30 calendar days after the amendment to the Trust deed to include this clause 3.15 takes effect. The date so specified may be extended from time to time by Denel by notice to the Trustees.

3.16 "Recognised Dependant"

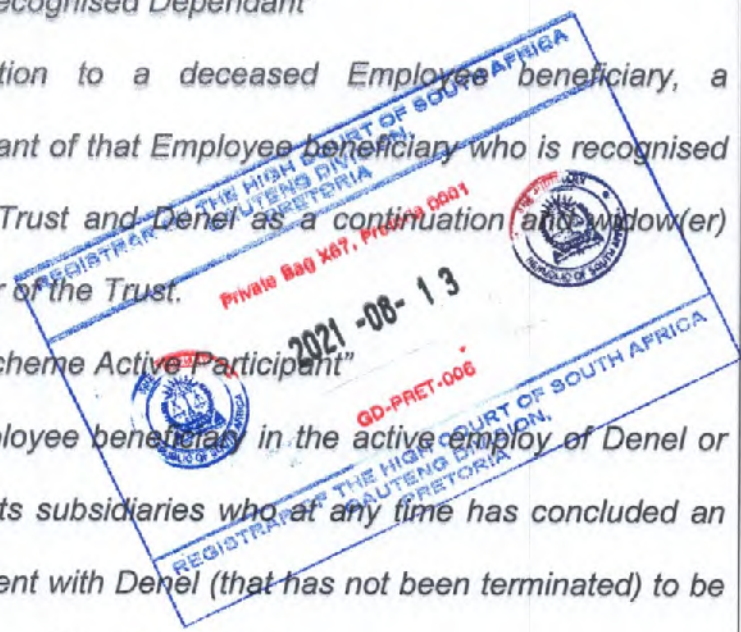
In relation to a deceased Employee beneficiary, a dependant of that Employee beneficiary who is recognised by the Trust and Denel as a continuation (and widow(er) member of the Trust.

3.17 "Scheme Active Participant"

An Employee beneficiary in the active employ of Denel or one of its subsidiaries who at any time has concluded an agreement with Denel (that has not been terminated) to be a Scheme Active Participant under the Trust deed..

3.1518 "Scheme Implementation Date"

A date specified by Denel and notified to the Trustees as the Scheme Implementation Date under clause 7.8 of the Trust deed. The date specified by Denel shall not be less than 5



calendar days after the Group Annuity Policy Acquisition Date. The date so specified may be extended from time to time by Denel by notice to the Trustees.

3.19 "Scheme Non-Participants"

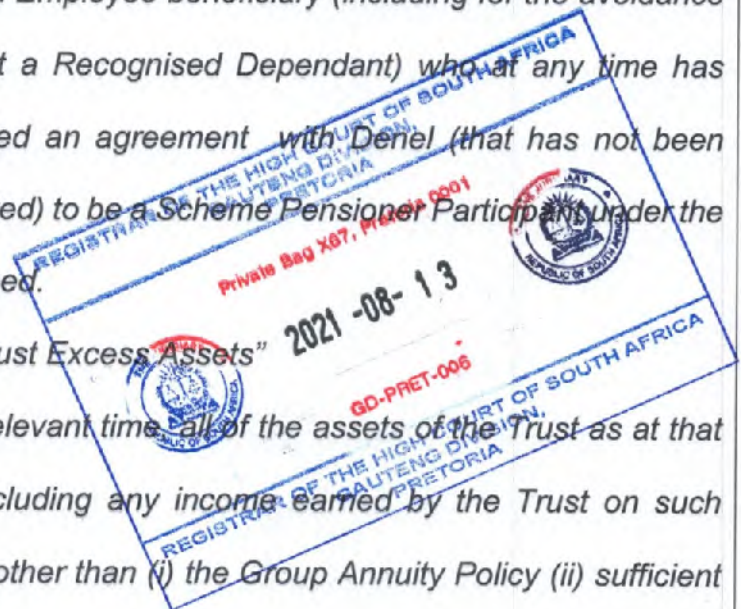
An Employee beneficiary (including for the avoidance of doubt a Recognised Dependant) who at any relevant time is neither a Scheme Pensioner Participant nor a Scheme Active Participant.

3.20 "Scheme Pensioner Participant"

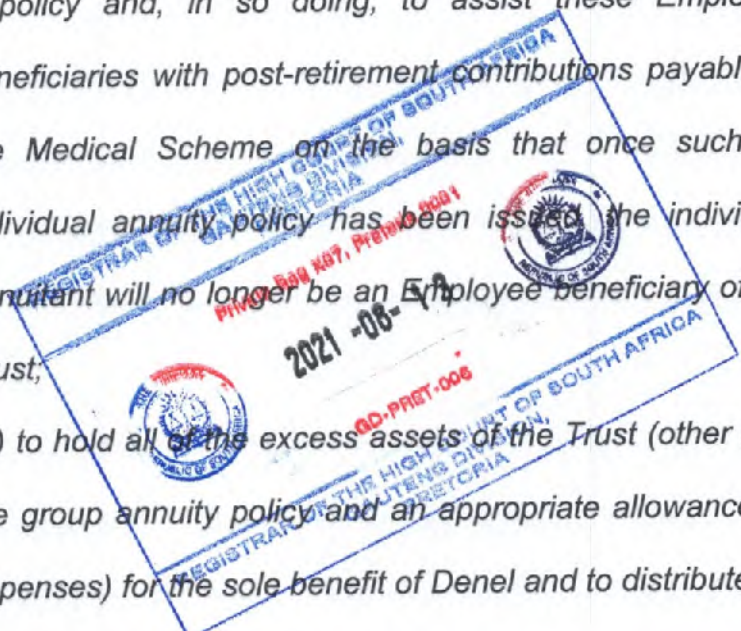
A retired Employee beneficiary (including for the avoidance of doubt a Recognised Dependant) who at any time has concluded an agreement with Denel (that has not been terminated) to be a Scheme Pensioner Participant under the Trust deed.

3.21 "Trust Excess Assets"

At the relevant time all of the assets of the Trust as at that time, including any income earned by the Trust on such assets, other than (i) the Group Annuity Policy (ii) sufficient cash or securities designated by the Trustees as being required to restore the balance of the Expense Fund to R20 million or such other amount as may be agreed in writing between Denel and the Trust and (iii) sufficient cash or securities designated by the Trustees acting on the advice of an actuary appointed by the Trust as being required to fund any liabilities of the Trust as at the relevant date other than any liabilities or obligations that are funded or insured



	<p><i>under the Group Annuity Policy or to be discharged from the Expense Fund. For this purpose, the Group Annuity Policy will be regarded as fully funding any obligations of the Trust in respect of Scheme Active Participants and Scheme Non-Participants.</i></p>
<p>Clause 5. The addition of the following further paragraphs after the current paragraph:</p>	<p><i>The further main objectives of the Trust are:</i></p> <p><i>(i) to hold, as an asset of the Trust, a group annuity policy to give effect to the original main objective of the Trust (as set out in the first paragraph of clause 5 of the Trust deed) in respect of all of the Employee beneficiaries (including for the avoidance of doubt Recognised Dependants);</i></p> <p><i>(ii) to ensure the issue of an individual annuity policy to Employee beneficiaries (including for the avoidance of doubt Recognised Dependants) who choose to receive such a policy and, in so doing, to assist these Employee beneficiaries with post-retirement contributions payable to the Medical Scheme on the basis that once such an individual annuity policy has been issued the individual annuitant will no longer be an Employee beneficiary of the Trust;</i></p> <p><i>(iii) to hold all of the excess assets of the Trust (other than the group annuity policy and an appropriate allowance for expenses) for the sole benefit of Denel and to distribute the excess assets to Denel.</i></p>



Clause 7. The addition of the following new sub-clauses.

7.7 Despite any other provisions in this Trust deed, the Trustees shall have all of the powers required to give effect to the remaining provisions of this clause 7.

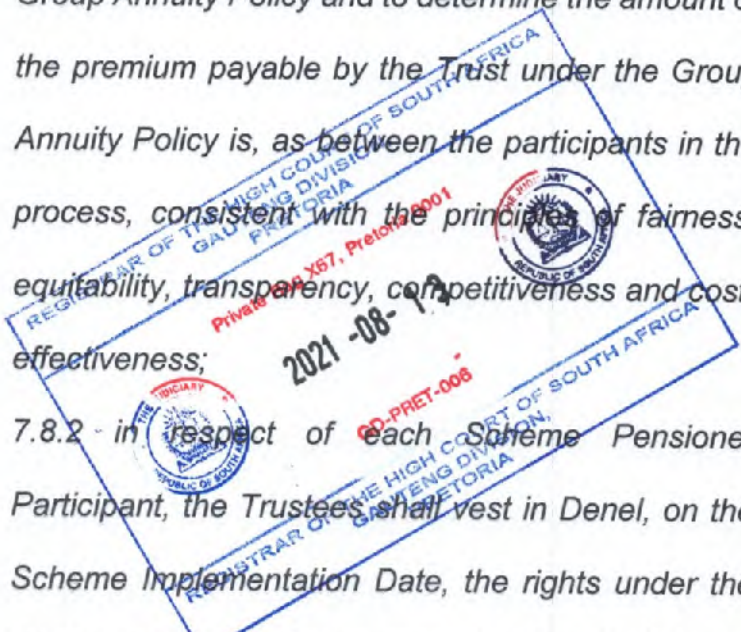
7.8 The Trustees shall exercise these powers to give effect to the main objectives of the Trust. This shall include (but not be limited to):

7.8.1 the Trustees shall ensure that they acquire the Group Annuity Policy and discharge the obligation to pay the premium to the insurer prior to the Group Annuity Policy Acquisition Date and that:

7.8.1.1 the benefits and other terms of the Group Annuity Policy are consistent with the Group Annuity Policy Criteria, the main objectives of the Trust and the other provisions of this Trust deed; and

7.8.1.2 the process to select the insurer under the Group Annuity Policy and to determine the amount of the premium payable by the Trust under the Group Annuity Policy is, as between the participants in the process, consistent with the principles of fairness, equitability, transparency, competitiveness and cost-effectiveness;

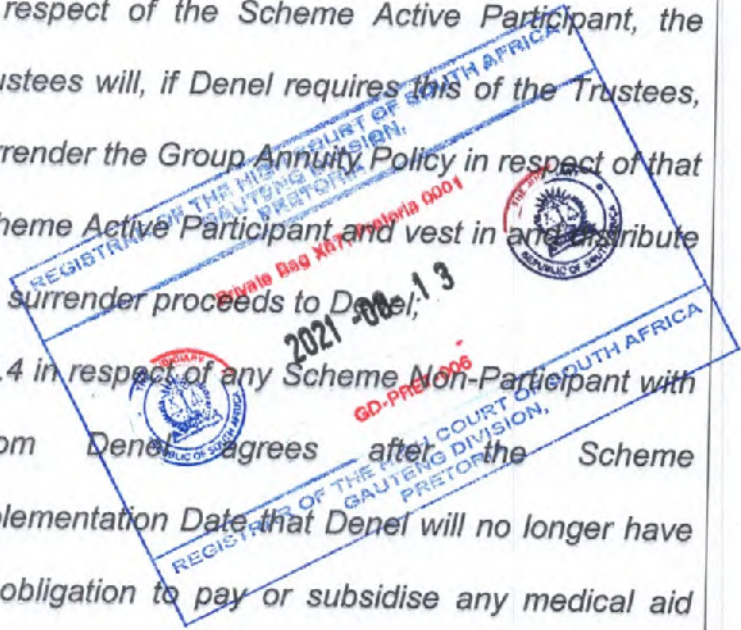
7.8.2 in respect of each Scheme Pensioner Participant, the Trustees shall vest in Denel, on the Scheme Implementation Date, the rights under the Group Annuity Policy in respect of each Scheme Pensioner Participant and shall transfer those rights,



by cession, to Denel with effect from the Scheme Implementation Date;

7.8.3 in respect of each Scheme Active Participant, the Trustees shall vest in Denel, on the date on which a Scheme Active Participant retires or on any other date agreed to by Denel and the Scheme Active Participant and notified to the Trustees, the rights under the Group Annuity Policy in respect of the Scheme Active Participant and shall transfer those rights, by cession, to Denel with effect from that date, provided that if Denel and the Scheme Active Participant agree that Denel will no longer have an obligation to pay or subsidise any medical aid costs in respect of the Scheme Active Participant, the Trustees will, if Denel requires this of the Trustees, surrender the Group Annuity Policy in respect of that Scheme Active Participant and vest in and distribute the surrender proceeds to Denel;

7.8.4 in respect of any Scheme Non-Participant with whom Denel agrees after the Scheme Implementation Date that Denel will no longer have an obligation to pay or subsidise any medical aid costs in respect of the Scheme Non-Participant, the Trustees shall either, as Denel may require of the Trustees:



7.8.4.1 surrender the Group Annuity Policy in respect of that Scheme Non-Participant and vest in and distribute the surrender proceeds to Denel; or

7.8.4.2 vest in Denel, on a date specified by Denel, the rights under the Group Annuity Policy in respect of that Scheme Non- Participant and shall transfer those rights, by cession, to Denel with effect from that date;

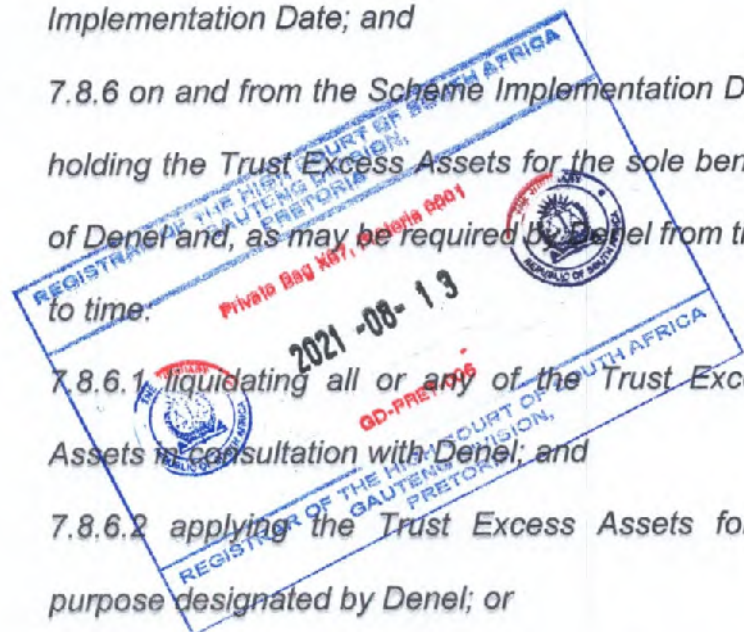
7.8.5 identifying, prior to the Scheme Implementation Date, the Trust Excess Assets as at the Scheme Implementation Date; and

7.8.6 on and from the Scheme Implementation Date holding the Trust Excess Assets for the sole benefit of Denel and, as may be required by Denel from time to time.

7.8.6.1 liquidating all or any of the Trust Excess Assets in consultation with Denel; and

7.8.6.2 applying the Trust Excess Assets for a purpose designated by Denel; or

7.8.6.3 vesting in, and distributing to Denel, as a beneficiary of the Trust, all or any of the Trust Excess Assets on and with effect from the Scheme Implementation Date, provided that Denel may designate any one or more dates after the Scheme Implementation Date as the date on which any such vesting or distribution is to occur or take effect.



7.9 The Trustees shall, in respect of all Employee beneficiaries of the Trust (including for the avoidance of doubt Recognised Dependants) that are Scheme Non-Participants, continue to administer the Group Annuity Policy in respect of all Scheme Non-Participants in accordance with the original main objective of the Trust as set out in the first paragraph of clause 5 of the Trust deed and in accordance with the other provisions of this Trust deed. The Trust shall terminate once there are no longer any Scheme Non-Participants that are beneficiaries of the Trust.

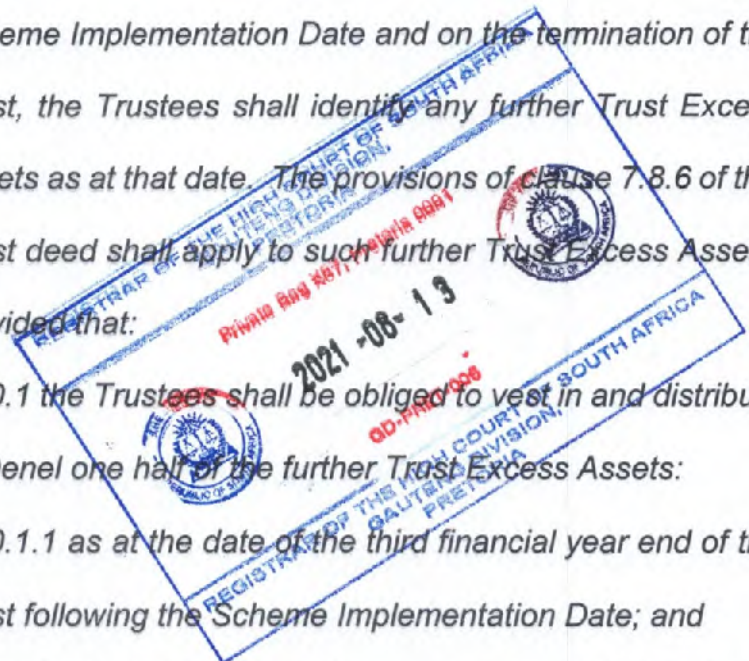
7.10. As at each financial year end of the Trust following the Scheme Implementation Date and on the termination of the Trust, the Trustees shall identify any further Trust Excess Assets as at that date. The provisions of clause 7.8.6 of this Trust deed shall apply to such further Trust Excess Assets, provided that:

7.10.1 the Trustees shall be obliged to vest in and distribute to Denel one half of the further Trust Excess Assets:

7.10.1.1 as at the date of the third financial year end of the Trust following the Scheme Implementation Date; and

7.10.1.2 thereafter every three years as at the relevant financial year end of the Trust; and

7.10.2 once the Trust terminates, the Trustees shall be obliged to vest in and distribute to Denel all of the remaining Trust Excess Assets; and



7.10.3 in addition to the obligations of the Trustees in clause 7.10.1 and clause 7.10.2, the Trustees shall have a discretion, acting on the advice of an actuary appointed by the Trust, to vest in and distribute to Denel all or any of the further Trust Excess Assets as at each financial year end of the Trust.

7.11 On the winding up of the Trust following its termination, all of the assets remaining after discharging the Trust's liabilities and the expenses incurred in the winding-up of the Trust, including any balance in the Expense Fund, shall be paid to Denel.

