

FINANCIAL SERVICES BOARD

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(To all self-administered funds, fund administrators, valuers, and administering insurers of funds exempted in terms of section 2(3)(a) of the Pension Funds Act, 1956)

INFORMATION CIRCULAR 2/2004

The Service Level Commitment (SLC) of the Pensions Department at the Registrar's Office and the retirement funds industry

1 PURPOSE

The Income Tax laws applicable to retirement funds need to be changed by the South African Revenue Services (SARS) to allow for a one-stop registration of rules by the Pensions Department at the Registrar's Office. This Service Level Commitment (SLC) will be refined accordingly once these laws have been amended to allow for one-stop registration. This commitment needs to be kept in line with FSB objectives. The object of the SLC is to define the roles and responsibilities of the parties with regard to services rendered for by the parties for the benefit of members of funds.

2 AGREED PERIODS

This commitment will apply to applications received by the Pensions Department at the Registrar's Office from **1 October 2004**.

The Pensions Department at the Registrar's Office and the industry agreed on the periods set out in **Annexure A**. The parties will review the contents of the SLC and Annexure(s) in six months after implementation date and annually thereafter. Separate arrangements will be made regarding existing backlogs.

This SLC and agreed periods will not be applicable where the Pensions Department at the Registrar's Office rejected or queried any application. Only on receipt of the response to the query or rejection does the turnaround times contained in this SLC apply as if it was a new application received at that date.

Bulk applications and special projects will be dealt with separately between the applicant and the Pensions Department or Team.

3 APPLICATIONS AND ACCOMPANYING FEES

It is the responsibility of the applicant to ensure that all submissions (covering letters, rules, financial statements and other documents lodged) are complete and correct in order to ensure a quality assessment of applications by the Pensions Department at the Registrar's Office. The Pensions Department's **case number** reflected on subsequent correspondence between the applicant and the Pensions Department at the Registrar's Office should be used at all times until the case is finalized or cancelled. The case number also serves as a *tracking number* for enquiries and follow-ups. Incomplete applications will be returned without any further correspondence being entered into to avoid strain on the Pensions Department's resources. These applications will be marked "Returned to Sender: Incomplete" or "Returned to Sender: Insufficient Funds" where applicable.

Different fees will be payable in future (once the Regulations have been amended) for applications for registration of *priority* applications and *standard rules* as follows:

- 3.1 Applications with a request of high *priority* will be processed at an additional premium of 50 % of the normal application fee. The number of urgent applications will be limited to 10 % of all applications made per administrator per month based on the average of submissions made in the preceding year. Where a query has been raised by the Pensions Department at the Registrar's Office, the application will again be prioritised on receipt of the response from the fund by the Pensions Department. Only on receipt of the response to the query or rejection, the turnaround times contained in this SLC will apply as if it was a new priority or urgent application received at that date. The Pensions Department at the Registrar's Office agrees to refund the *additional* portion of the fee on priority or urgent applications where the Pensions Department does not meet the agreed turnaround time;
- 3.2 *Standard rules* will attract a lesser fee compared to individual or customised rules because standard rules are pre-approved by the Pensions Department at the Registrar's Office. In this regard, only the variable or non-standard section to the standard rules need to be submitted on application with reference to the standard rule version applicable to a particular administrator contained in the board resolution accompanying the schedules for registration.

4 GENERAL PROVISIONS APPLICABLE TO FUNDS UNDER THE SLC

Any enquiries or written requests from the Pensions Department at the Registrar's Office not responded within six months from the date of the enquiry letter will result in the initial application having prescribed and will result in the cancellation of the application. A new application must be submitted to the Pensions Department at the Registrar's Office containing all corrections required in the Pensions Department's initial response. The Pensions Department at the Registrar's Office will only be required to send two reminders (one by registered mail) within the six-month period. The old fee linked to the original application would not be refundable or re-usable in any way or form. A maximum of a two-month extension on the six-month period may be considered by the Pensions Department at the Registrar's Office in extreme cases.

The above will apply equally to cases submitted prior to the commencement of this SLC except that the six months period will only commence from the date after the commencement of this SLC that a follow up enquiry is sent from the Pensions Department at the Registrar's Office.

5 UNREGISTERED FUNDS

5.1 All unregistered funds on implementation hereof will be required to apply for registration in terms of the Pension Funds Act and a consideration for approval in terms of the Income Tax Act within 6 months after implementation hereof. Thereafter all applications for the registration of unregistered funds will be regarded as urgent applications. These applications for registration and approval should be submitted to the Pensions Department at the Registrar's Office and SARS simultaneously and a fund will then be responsible to submit proof to SARS that the Pensions Department at the Registrar's Office has provisionally or finally registered the fund.

5.2 The application for registration by the Pensions Department at the Registrar's Office must be accompanied by a declaration by the board of the fund stating that:

5.2.1 The fund was administered and managed in terms of the rules as submitted to the Pensions Department at the Registrar's Office for registration.

5.2.2 Contributions have been received in terms of the rules of the fund.

5.2.3 Benefits have been administered in terms of the fund,

and the declaration should be accompanied by the following:

5.2.4 Audited financial statements for the period from the commencement of the fund until the date of application, provided that the period between

the date of commencement of the fund and the financial year end must not exceed a period of eighteen months to be in line with GAAP (Generally Accepted Accounting Practice).

- 5.2.5 Where the commencement date of the fund to date of application exceeds 3 years, a valuation report confirming that in the case of a defined benefit (DB) Fund qualifying for valuation exemption, the fund is fully funded and in the case of a defined contribution (DC) Fund, that the members' individual accounts are complete and accurate.
- 5.3 The periods agreed will commence on receipt of the application or request on condition that the application or request includes all the prescribed documentation and prescribed fees.
- 5.4 Where a fund has applied for been provisional or final registration for the first time within 6 months after the implementation of this SLC, no retrospective levy or penalty for the non-submission of financial statements will be payable.
- 5.5 Failure to submit the unregistered rules within 6 months after the implementation hereof, will cause the Pensions Department at the Registrar's Office to issue a penalty determined in terms of section 37 of the Pension Funds Act. The Fund will be responsible for the payment of the penalty but must then ensure that this penalty is recovered from the party/parties who caused the delay in the application as far as possible.
- 5.6 Administrators must within three months after the effective date of the SLC submit a list of unregistered funds to the Pensions Department at the Registrar's Office as well as proposed dates when it is expected to submit these applications. Application for extension of time could be made to the Head of the Pensions Department at the Registrar's Office.

6 STANDARD RULES

Each administrator who wishes to register a standard set of rules must agree on the format and the content of the standard rules as well as on the schedule to the standard rules before submission.

The general principles as well as the quality of standard rules will be determined by the Pensions Department at the Registrar's Office and it is expected that all standard rules be to be agreed upon between the administrator and the Pensions Department at the Registrar's Office. Regulation 30 of the Regulations made under the Pension Funds Act, will be need to be amended to reflect the principles to be contained in standard rules. The Pensions Department at the Registrar's

Office will prepare such principles and would be in a position to negotiate standard rules with each administrator awaiting such approval from time to time (see **Annexure B**).

6.1 The Schedule to standard rules:

When submitting new rules for registration only the Schedules (non-standard section) needs to be submitted to the Pensions Department at the Registrar's Office for consideration. These will be attached to the pre-approved standard rules version as indicated by the fund in the Board Resolution and confirmed by the administrator in the covering letter to the application.

6.2 Amendments to standard rules:

Amendments to standard rules will only be registered after the Pensions Department at the Registrar's Office has agreed to such changes. A separate fee will be charged for the approval of the schedule to the standard rules.

If a fund wishes to use the standard rules, only the amendment, inclusive of a reference to the specific version of standard rules applicable to the fund will be submitted and the Pensions Department at the Registrar's Office would only be required to scrutinise the schedule to the standard rules.

6.3 Prescribed Fees and Turnaround times to standard rules:

Approval of a schedule to the standard rules will be processed at a lower rate and a shorter turnaround time as set out in **Annexure A** to this document.

7 NEW RULES

With effect from the effective date of this SLC, should the Pensions Department at the Registrar's Office not be in a position to grant final registration to a fund, the Pensions Department may issue a provisional registration on condition that the necessary changes will be made and submitted to the Pensions Department within a period of three months from the date of provisional registration having been issued by the Pensions Department.

The minimum requirements to provisionally register the rules are set out in **Annexure B** hereto. These requirements will also form part of the standard rules approved by the Pensions Department at the Registrar's Office. The Fund / administrators will be responsible to ensure that such amendments or outstanding information be submitted within the three month period.

When [a broker, consultant or administrator] advising a client or trustees regarding establishing a fund, it is the administrator's responsibility to ensure that the board of the fund is duly aware of the six and three month periods. The Pensions Department at the Registrar's Office will have the power to extend these periods

but extension will not be granted in the following circumstances:

- Valuator unable to certify financial soundness;
- Delay in drafting the rules;
- Board of the fund not able to approve the rules or changes to the rules, unless it is duly motivated by the board of fund; and
- Failure to submit a board resolution

8 AMENDMENTS TO THE RULES

- 8.1 Any application to amend the rules as required in terms of section 12 of the Pension Funds Act must be submitted to the Pensions Department at the Registrar's Office within 60 days after the date of passing the resolution for the alteration or rescission of any rule or the adoption of any additional rule.
- 8.2 Retrospective amendments beyond the 60 days period defined in the Act will not be allowed from the effective date of the SLC.
- 8.3 Not more than one effective date per amendment will be allowed.
- 8.4 The effective date of such resolution will not precede the beginning or the month of the date of the resolution, except where the board of the fund can prove (to the satisfaction of the Pensions Department at the Registrar's Office) that the retrospective amendment's aim is to correct a *bona fide* error previously registered. Retrospective reduction in benefits will not be allowed where such retrospective amendment would negatively impact on members' rights and reasonable benefit expectations. The implementation of such unregistered amendments to rules will be void and it would be assumed that the fund was not managed and administered in terms of its registered rules. This could have legal implications for the administrator and/or the board of the fund.
- 8.5 Amendments to rules or special rules should be consecutively numbered and special rules for purposes of amendments would be regarded as a separate set of sub-rules of the fund. Therefore, the Pensions Department at the Registrar's Office will not accept an amendment, which contains amendments to both the main rules and special rules in one application.
- 8.6 The Pensions Department at the Registrar's Office will not approve any amendments to funds in excess of ten amendments. A fund will be obliged to submit consolidated rules or revised rules (if preferred) on or before ten amendments have been made to the rules. See paragraph 9 below for details.

9 REVISED RULES

9.1 Amendments to standard rules:

Any amendments or revisions to the standard rules must be done in

consultation with the Pensions Department at the Registrar's Office and will be allocated a different version number to ensure that the standard rules applicable to every version is determinable.

In the application for an amendment to standard rules, any amendments made should be indicated on the covering letter accompanying the amendment. If it is found that any changes have been made to the standard rules which were not indicated to the Pensions Department at the Registrar's Office approval for the standard rules the administrator's approval in terms of section 13B will be reconsidered and referred to the Licensing Committee because for this a new version of standard rules will need to be submitted for approval.

9.2 Consolidated rules containing amendments:

Any amendments made should be indicated in the board resolution and not the covering letter accompanying the amendment.

Any application to rules as required in terms of section 12 of the Pension Funds Act must be submitted to the Pensions Department at the Registrar's Office within 60 days after the date of passing the resolution for the alteration or rescission of any rule or the adoption of any additional rule.

If the revised rules include the consolidation of amendments previously registered, this should be indicated in the board resolution and not the covering letter.

9.3 Conversions:

Conversions from underwritten fund to privately administered fund and vice versa:

There is nothing additional needed from an actuarial perspective

Conversions from defined benefit to defined contribution and vice versa:

Firstly in all cases the Pensions Department needs amendments or revised rules. Secondly, if this triggers a surplus apportionment then a scheme needs to be prepared and submitted to the Pensions Department at the Registrar's Office. Thirdly depends if the conversion is within the fund or outside the fund: if within the fund then nothing else is needed and in due course the change will be picked up in the next actuarial valuation. If however the conversion is outside the fund, namely a transfer to a another fund, then section 14 applications is needed.

Conversions from valuation to valuation-exempt by funds and vice versa:

A certificate is required from the valuator. There is currently no standard certificate but one may submit a form such as FORM A3 in PF Circular 115 suitably amended to fit the circumstances of the particular case.

10 CONSOLIDATED RULES

Funds would be allowed to amend their rules with **ten amendments** where after these amendments need to be consolidated into the main body of the rules. All funds with an existing set of registered rules containing **ten or more amendments** must submit consolidated rules within 6 months from the commencement date of the SLC. The Pensions Department at the Registrar's Office will approve the consolidated rules without a service fee payable for funds that have not consolidated their rules in the last 10 years or rules that currently contain more than 10 amendments on file with the Pensions Department at the Registrar's Office. The consolidated rules in these instances need to reach the Pensions Department at the Registrar's Office by no later than 6 months from the implementation of this SLC for no fee to be payable (*an information letter will be circulated in this regard to remind funds of the moratorium and the deadline*).

The consolidation should consist only of the rules and amendments already approved by the Pensions Department at the Registrar's Office. No further amendments may be incorporated. Should the Pensions Department at the Registrar's Office become aware that other changes have been made to these consolidated rules, the Pensions Department will report the relevant administrator and/or board of fund to the Licensing Committee which may lead to the approval of an administrator to be reviewed or other action deemed necessary by the Pensions Department at the Registrar's Office be taken against the Fund.

Consolidated rules should not contain any other changes that require registered amendments. If the fund wishes to make amendments at the same time as the consolidation of the rules, the fund should submit revised rules for registration indicating which amendments have been incorporated (see point 9 above).

The board of fund must sign a declaration setting out the previous set of registered rules and the amendments previously registered and should state that only those have been included in the consolidated rules. This declaration must accompany the application for the approval of the consolidated rules and form part of the Board Resolution as far as possible.

11 APPLICATIONS FOR TRANSFERS IN TERMS OF SECTION 14 OF THE PENSION FUNDS ACT

Section 14 of the Act will be amended to make provision that section 14 applications have to be submitted to the Pensions Department at the Registrar's Office within 120 days of the effective date of the transfer. Section 37 will be amended accordingly and the fund will be liable for penalties.

Even though the Pension Funds Act requires the transferee fund submits the application and in so doing is responsible to pay the fees in respect of the application to transfer in terms of section 14, where it is otherwise agreed between the parties, the Pensions Department at the Registrar's Office has no objection to such agreement. However, in case of dispute, the transferee fund will be held liable for the fee by the Pensions Department in terms of the law.

Section 14 certificates will be forwarded to the party who applied for the transfer in terms of section 14. The applicant is obliged to make a copy of the certificate available to the other fund involved in the transfer application.

12 ELECTRONIC SUBMISSION OF APPLICATIONS TO THE PENSIONS DEPARTMENT AT THE REGISTRAR'S OFFICE

The Pensions Department at the Registrar's Office is in the process of finalising the development and testing of the electronic submission of all documentation. This will expedite the process and will enable the Pensions Department at the Registrar's Office to shorten the period from receipt to finalisation of applications.

Where possible, all applications submitted after 6 months from the commencement date of the SLC must be done electronically. Where a fund does not have access to electronic submission, hard copies will be accepted for registration. Applications for approval by SARS will not be affected by this and should be submitted in hard copy only.

13 DEADLINES TO IMPLEMENTATION OF THE SLC

<u>Function</u>	<u>Deadline</u>	<u>Details</u>
Effective date of the SLC	1 October 2004	Also the implementation date
Revision Date of the SLC	1 April 2005	Annually thereafter
Agreed periods/ Turnaround times to be achieved by Registrar	1 October 2004 Review date: 1 April 2005	Note prescription of applications (6 months from date of Registrar's first query letter)
Lists of unregistered funds	Lists to be submitted before 1 January 2005	Administrators submit lists of all unregistered business
Unregistered funds applications	Apply before 1 April 2005	Thereafter moratorium ends for provisional registration
Standard Rules	Applicable mainly to large administrators	Consult Rules Specialist of FSB
New Rules	Annexure B applies from 1 October 2004. Corrections to be submitted within 3 months of provisional registration for final registration.	Note prescription on applications (6 months from date of Registrar's first query letter)
Amendments to rules (Max 10 amendments per fund thereafter consolidate or revise)	Submit within 60 days of date of resolution (see the Act)	Retrospective reduction in benefits will be queried. Note prescription on applications (6 months from date of Registrar's first query letter)
Revised Rules	1 October 2004	Note prescription on applications (6 months from date of Registrar's first query letter)
Conversions	1 October 2004	Note prescription on applications (6 months from date of Registrar's first query letter)
Consolidated Rules	Submit before 1 April 2005 for fee moratorium to apply, see FSB website for reminder	From 1 April 2005 fees will apply on consolidate rules submitted
Transfers	1 October 2004 Submit within 120 days from the effective date of transfer	Note prescription on applications (6 months from date of Registrar's first query letter)
Electronic submissions (See LOA Project for details on FSB Website)	Financials: Starting 6 months of year-end of fund Rules: 1 January 2005 use LOA project facility as far as possible	Financial statements: All funds 6 months of year-end Rules: Large funds & large administrators

AGREED PERIODS OR TURNAROUND TIMES (to be reviewed)

Task	Time required under the service level agreement	Time period for urgent applications (Urgent max 10%)	Time period for electronic submissions (Non-urgent)	Time period for electronic submissions (Urgent 10%)
New rules (individual rules)	60 calendar days	45 calendar days	50 calendar days	40 calendar days
Standard rules	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Schedule to standard rules	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Applications for the approval of special rules	30 calendar days if in line with specimen special rules	20 calendar days	25 calendar days	20 calendar days
Revised Rules	90 calendar days	None	85 calendar days	80 calendar days
Consolidated rules	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Conversions	90 calendar days	None	85 calendar days	None
Amendments to individual fund rules	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Amendments to schedule to standard rules	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Amendment of special rules of umbrella schemes	45 calendar days	35 calendar days	40 calendar days	30 calendar days
Transfers in terms of section 14 applications	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Transfers in terms of section 15E	60 calendar days	None	55 calendar days	None
Transfers in terms of section 15F	60 calendar days	None	55 calendar days	None
Correspondence, Enquiries and Complaints*	14 calendar days	None	None	None
Exemptions and Extensions	30 calendar days	None	None	None
Cancellations of Funds	30 calendar days if all information is provided	None	None	None
Liquidations	30 calendar days	20 calendar days	25 calendar days	20 calendar days
Copies	30 calendar days per task	None	None	None
Approval of administrators in terms of section 13B	Subject to Licensing Committee meetings if all documentation have been submitted and an on-site visit has been completed.	None	None	None

Note:

- A1** These turnaround times/ deadlines should be achieved within 6 months of the commencement date of the SLC and reviewed annually thereafter.
- A3** Electronic submissions will reduce the turnaround time by approximately 5 working days as the applications are not required to pass through the FSB's mailroom, the Finance department for fee processing and the internal scanning process because the application reaches the Pensions Department at the Registrar's Office with the prescribed fee, in an electronic format.
- A4 Complaints will be forwarded to the Fund or the Employer in terms of legislation for investigation within the prescribed period.
- A5 Schedule L service fees to the regulations should be amended to make priority applications easily identifiable
- A6 *No priorities* will be allowed in instances where further consultations and/or legal opinions may be required or where time & resources may not allow
- A7 An administrator or applicant will not be allowed to submit more than 10% of its applications as *priority applications*. Any priority applications received after this maxima will be treated as normal applications and refunds will be issued accordingly. This is to allow the Pensions Department at the Registrar's Office to plan his/her operations and resources accordingly.

**Requirements prescribed by the Registrar in terms of
Section 4(3) of the Pension Funds Act.**

Section 4(3) requires that:

“The Registrar shall, if the fund has complied with such requirements as he may have prescribed and he is satisfied that the registration of the fund is desirable and in the public interest, register the fund provisionally and forward to the applicant a certificate of provisional registration.”

It should be considered whether the provisional registration of a fund is in public interest to give the members the protection of the provisions of the Act. Even though certain of the provisions does not necessarily comply with all the provisions of the Act, the Act will super cede the rules and will therefore be applied as if it forms part of the rules.

The following has to be satisfied:

B1. The following requirements should be contained in the rules of the fund:

- B1.1 The name of the Fund
- B1.2 Date of commencement
- B1.3 Objects of the Fund
- B1.4 Date of financial year-end and subsequent year ends
- B1.5 Physical and postal address of the registered office of the fund and the participating employer/s.
- B1.6 Names and contact detail of the interim board of fund responsible for the submission the rules for registration.
- B1.7 Contribution rate
- B1.8 Eligibility requirements of membership
- B1.9 Benefits payable
- B1.10 Manner of rule amendments
- B1.11 Custody of assets
- B1.12 If applicable, confirmation that the fund is administered by an administrator approved in terms of section 13B of the Act
- B1.13 That the records of the members will be maintained as required in terms of regulation 31.

B2. The Pensions Department at the Registrar's Office will not consider the provisional registration in the following cases:

B2.1 Where the participating employer's permission is required to make amendments to the rules of the fund or where the participating employer is in control of the fund, excluding where the amendment would impact on the financial position of the fund.

B2.2 If the types of benefits payable do not comply with the requirements of the Act.

B2.3 The rules containing provisions that are against the provisions of the Constitution or common law principles.

B2.4 Where the employer becomes entitled to all benefits on liquidation of the fund and

B2.5 Other considerations that are said to be in the public interest

The Pensions Department at the Registrar's Office will take whatever action deemed necessary to protect members' rights.

**W MOKUPO: HEAD - PENSIONS
FOR THE PENSIONS DEPARTMENT AT THE REGISTRAR'S OFFICE**