

FINANCIAL SERVICES BOARD

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INFORMATION CIRCULAR PF NO. 2 OF 2015

IMPLEMENTATION OF THE APPOINTMENT OF A PRINCIPAL OR DEPUTY PRINCIPAL OFFICER IN TERMS OF SECTION 8 OF THE PENSION FUNDS ACT, 1956

1. Introduction

- 1.1. The proposed Notice and Explanatory Memorandum in respect of the appointment of a principal officer were published for comment on 29 July 2014.
- 1.2. As stated in the Explanatory Memorandum, the Financial Services Laws General Amendment Act, 2013, Act No. 45 of 2013 ("the Act") has amended various clauses of the Pension Funds Act, No 24 of 1956 ("the PFA"), amongst others, section 8.
- 1.3. The purpose of this Information Circular is to provide clarity in relation to some matters addressed in comments received on the draft Notice.

2. Replacement of principal officer

- 2.1. Section 8(2)(a) of the PFA provides that:

"The principal officer of a registered fund shall be an individual who is resident in the Republic, and if the principal officer is absent from the Republic or unable for any reason to discharge any duty imposed upon the principal officer by any provision of this Act, the fund shall in the manner directed by its rules, appoint another person to be its principal officer within such period as may be prescribed by the registrar, after the commencement of a continuing absence or inability to discharge any duty by the principal officer."

Board Members: AM Sithole (Chairperson) H Wilton (Deputy Chairperson) Z Bassa JV Mogadime
Prof PJ Sutherland FE Groepe D Turpin HMH Ratshefola D Msomi I Momoniat O Makhubela (Alternate)
Executive Officer: DP Tshidi

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2.2. The registrar has prescribed in Notice 57 of 2015, which was published on 10 March 2015 that, if, to the knowledge of the board of a fund, its principal officer is going to be absent from the Republic or unable for any reason to discharge any duty imposed on him or her in terms of the PFA for a period of more than one month, the fund must-

2.2.1. within a period of 90 days after the date on which it becomes or became aware of that fact; and

2.2.2. in the manner directed by its rules, appoint another person (who may be its deputy principal officer, if it has one) to be its principal officer.

2.3. Naturally, even though the Notice provides for a 90 day period, the board of a fund must replace a principal officer within a reasonable period to ensure that, the absence or inability of the principal officer to discharge any duty imposed upon him or her does not hamper the efficient administration and management of a fund which could result in prejudice of the fund and/or its members. The 90 day period that the registrar proposes to prescribe will thus be the maximum period within which the principal officer must be replaced and may not be treated as always the appropriate period.

3. Appointment of Deputy Principal Officer and delegation of powers and functions

3.1. Section 8(2)(b) to (e) has been inserted in section 8 to authorise the board of a fund to appoint a deputy principal officer and to authorise the fund's principal officer to delegate functions to that deputy subject to appropriate conditions.

3.2. Section 8(2)(b) to (e) provides that:

"(b) A registered fund may appoint a deputy principal officer.

(c) The principal officer may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the principal officer must determine.

(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the principal officer may withdraw the delegation at any time.

(e) If a fund has appointed a deputy principal officer, the deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act, until the fund formally in the manner directed in its rules appoints a new principal officer."

3.3. Accordingly, the board of a fund may only appoint a deputy principal officer if the rules of the fund explicitly provide for such an appointment and the delegation by the principal officer to the deputy principal officer of some or all of the powers and functions ordinarily exercised or fulfilled by the principal officer.



- 3.4. No such delegation is required for the purpose of authorising the deputy principal officer to exercise the powers and functions of the principal officer in place of the latter in terms of subsection (2)(e) of section 8 of the Act.
- 3.5. As section 8(2)(e) allows a deputy principal officer to act as principal officer in the circumstances contemplated in that subsection, the fund must ensure compliance by the deputy with Directive 5 and the standards required a principal officer when acting in that capacity.
- 3.6. The PFA does not state that this office must be informed-
- 3.6.1. when a fund appoints a deputy principal officer; or
- 3.6.2. when a deputy principal officer is acting in place of the principal officer.
- 3.7. Nonetheless the registrar requests that, whenever a deputy principal officer is likely to be acting in place of a fund's principal officer for a period in excess of 30 days, the board of the fund informs this office in writing of that fact and of the deputy principal officer's name and contact details. This should assist us to minimise delays in communication with the fund which may result from the unavailability of the principal officer.

Yours faithfully



ROSEMARY HUNTER
DEPUTY EXECUTIVE OFFICER: RETIREMENT FUNDS