

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 7/2005

The Service Level Commitment (SLC) of the Departments at the Registrar's Office and the retirement funds industry. This SLC replaces previous SLCs

1 PURPOSE

This revised SLC needs to be kept in line with FSB objectives. The objective of the SLC is to define the roles and responsibilities of the parties with regard to services rendered by the parties **for the benefit of members of retirement funds**. Reference in this document to "the Departments" should be deemed to include both the Pensions and Actuarial departments. Reference to "the Act" shall mean the Pension Funds Act No 24 of 1956 (as amended).

2 AGREED PERIODS

This revised SLC applies to applications received by the Departments at the Registrar's Office from **1 January 2006**. This SLC will be reviewed annually thereafter in order to improve on the quality of applications, turnaround times etc.

The Departments at the Registrar's Office and the industry agreed on the periods set out in **Annexure A**.

On receipt of the response to a query or rejection the turnaround times contained in this SLC apply as if a new application was received at that date.

Separate arrangements must be made with the Departments at the Registrar's Office regarding turnaround times on existing backlogs, bulk applications and special projects. These matters will not form part of this SLC.

Board Members: Dr CDR Rustonjee (*Chairperson*) AM Sithole (*Deputy Chairperson*) BM Haworth Ms JV Mogadime
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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) are complete and correct in order to ensure a quality assessment of applications by the Departments at the Registrar's Office. **No applications will be processed without the prescribed fees or proof of payment.** For practical and efficiency purposes, the e-mail address and fax number of the contact person should appear on the covering letter to the application.

The applicant should use the Departments' **case number** on correspondence at all times until the case has been 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 to avoid strain on the Departments' resources. These applications will be marked "Returned to Sender: Incomplete" or "Returned to Sender: Insufficient Funds" whichever is applicable.

4 GENERAL PROVISIONS APPLICABLE TO FUNDS UNDER THE SLC

*If the Departments at the Registrar's Office do not receive a written response to enquiries from an applicant within **six months** from the date of the query letter, the application will be cancelled. In that case, a new application must be submitted to the Departments at the Registrar's Office containing all corrections required in the initial query letter. The Departments at the Registrar's Office will only be required to send two reminders within the six-month period. The old fee linked to the original application will not be refundable or re-usable in any way or form. The Departments at the Registrar's Office may consider an extension of the six-month period in extreme cases.*

With effect from **1 April 2006** the Departments will send a **final notification seven days** (before permanently canceling a case) to the principal officer of the relevant funds as well as the responsible person at the benefit administrator (duly licensed in terms of section 13B of the Act).

5 UNREGISTERED FUNDS AND UNREGISTERED SUB-FUNDS

5.1 Funds that conduct unregistered business for a period longer than twelve months will be regarded as unregistered funds for the purpose of this SLC. This includes unregistered funds as well as participating employers or sub-funds under umbrella funds. All unregistered funds and participating employers or sub-funds on implementation hereof will be required to apply for registration in terms of the Act by **1 April 2006**. These applications for registration should be submitted to the Pensions Department at the Registrar's Office and SARS simultaneously. Funds 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 or participating employers or sub-fund.

5.2 The following **minimum information** must be contained in a **declaration** accompanying an application for the registration of an unregistered fund, and where applicable, for the registration of participating employers or sub-funds (i.e. Type A umbrella funds):

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- 5.2.1 The fund or sub-fund has to-date been administered and managed in terms of the rules as submitted for registration to the Pensions Department at the Registrar's Office; and specifically that
- 5.2.2 Contributions have been received in terms of the rules of the fund or sub-fund; and
- 5.2.3 Benefits have been administered in terms of the rules of the fund or sub-fund.
- 5.2.4 The application should also be accompanied by the following documentation:
 - 5.2.4.1 Where applicable, the audited financial statements for the period from the commencement of the fund until the last year-end of the fund, 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); and
 - 5.2.4.2 Where the period from commencement date of the fund to date of application exceeds three years, a valuation report confirming that the fund is fully funded and/- or that the members' individual accounts are complete and accurate (see relevant circular regarding exemption requirements on the FSB website: www.fsb.co.za).
- 5.3 The agreed periods or turnaround times 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 Failure to submit unregistered fund rules before **1 April 2006** may cause the Pensions Department at the Registrar's Office to issue a penalty determined in terms of legislation. The fund will be responsible for the payment of the penalty but must then ensure that as much of this penalty, as possible, is recovered from the party/-parties who caused the delay in the application.

6 NEW RULES

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 be submitted within a period of **three months** from the date of provisional registration letter issued by the Pensions Department.

The minimum requirements for **provisional** registration of the rules are set out in **Annexure B** hereto. These requirements will also form part of the standard rules approved by the Pensions Department.

Funds must apply separately for final registration when addressing the Registrar's requirements contained in the provisional registration letter. Final registration for umbrella funds with special rules (Type A umbrella funds) will only be granted on registration of the amendment admitting the first participating employer or sub-fund, provided no other issues are outstanding on the umbrella fund rules. The general rules for Type A umbrella funds must therefore be accompanied by specimen-special rules on first application.

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7 STANDARD RULES

Each fund or 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. All standard rules need to be agreed upon between the administrator and the Pensions Department at the Registrar's Office. Regulation 30 to the Act, needs to be amended to reflect the principles to be contained in the standard rules. The Pensions Department at the Registrar's Office will prepare such principles and will be in a position to negotiate standard rules with each administrator awaiting such approval from time to time (see **Annexure B**).

New standard rules

Any changes to the standard rules needed by the administrator must be done in consultation with the Pensions Department at the Registrar's Office. A new (alpha-numeric) version number will be issued by the Pensions Department on approval of a new set of standard rules in order to ensure that each set of standard rules on the Registrar's database is separately identifiable and separately usable by administrators of funds.

The schedule(s) to standard rules:

When submitting new rules for registration only the schedule(s) or non-standard section is to be submitted to the Pensions Department at the Registrar's Office for consideration. The Pensions Department will attach these schedule(s) to the pre-approved standard rules version on the Registrar's database as requested by the fund in the Board Resolution and confirmed by the administrator in the covering letter to the application.

Prescribed fees and turnaround times for standard rules:

Approval of a schedule(s) 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 **once Schedule L to the regulations containing prescribed fees has been amended**. The reason is that the Pensions Department at the Registrar's Office need not scrutinise the standard section as this has been pre-approved as set out in this section.

8 AMENDMENTS TO THE RULES

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 rule changes or for the adoption of any additional rule.

Where an amendment is submitted with an effective date that is more than 60 days prior to the date of the resolution, such amendment must be accompanied by the reasons for the retrospective effective date.

Reductions in benefits will not be allowed where such retrospective amendment could negatively affect members' rights and reasonable benefit expectations in respect of past service.

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Amendments to rules should be consecutively numbered and a revised set of special rules should preferably be submitted when amendments are made to special rules as these are treated as a separate set of sub-rules in the case of Type A umbrella funds. The Pensions Department at the Registrar's Office will not accept an amendment application for an umbrella fund that contains amendments to both the general rules and special rules.

The Pensions Department at the Registrar's Office would prefer not to register in excess of ten amendment-documents. Funds are requested to submit consolidated rules or revised rules on or before a tenth rule amendment document is submitted for registration.

9 REVISED RULES

Any application to revise 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 adoption of the revised rules (same as point 8 above).

The Registrar requires revised rules in case a fund converts from a defined benefit arrangement to a defined contribution arrangement, or where a defined contribution category is created within a fund for new members where existing members are given an option to convert to the new category. The fund must submit a conversion report completed by the fund's valuator, as prescribed by the Registrar, together with the revised rules.

The fund cannot convert prior to the Registrar approving the revised rules that authorises such conversion.

Annexure A contains the turnaround times for revised rules dealing with conversions.

10 CONSOLIDATED RULES

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. **Funds are urged not to submit consolidated rules if the current rules contain provisions that are inconsistent with the Act at date of application.**

Should the Pensions Department at the Registrar's Office become aware that other changes have been made to these consolidated rules, may report the relevant administrator and/or board of fund to the Licensing Committee. In such a case, the approval of the administrator may be reviewed, or the Registrar may take any other action against the fund or administrator.

The board of the fund must sign a declaration stating that consolidated rules contain only the provisions of the registered rules and subsequent amendments previously registered. This declaration must accompany the application for the approval of the consolidated rules and form part of the board resolution.

The Pensions Department at the Registrar's Office will approve the consolidated rules **free of charge** for funds that have not consolidated their rules in the last ten years or rules that currently contain more than ten amendments on file with the Pensions Department at the Registrar's Office. In these instances, the consolidated rules need to reach the Pensions Department at the Registrar's Office **before 1 April 2006** (when moratorium on non-payment of fees to register consolidated rules will close).

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Consolidated rules should not contain any changes only a consolidation of already 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 where changes have been incorporated (see point 9 above).

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

Circular PF 120 outlines guidance on section 14 applications. **Annexure A** contains the turnaround times for transfer applications in terms of section 14 of the Act.

12 SURPLUS APPLICATIONS

In terms of section 15 of the Act, all registered funds are required to submit surplus schemes to the Registrar in terms of section 15 of the Act. The surplus scheme must be submitted to the Registrar within eighteen months of the surplus apportionment date of the fund.

The Registrar will consider extension requests for submission in line with Circular PF 91.

Annexure A contains the turnaround times for applications in terms of section 15 of the Act.

However, the provisions of Information Circular 5/2005 should be read as extensions will not be given lightly.

13 VALUATION REPORTS AND EXEMPTIONS RELATED THERETO

In terms of section 16 of the Act, every registered fund should submit a statutory actuarial valuation report completed by the fund's valuator at least once in three years.

This report should be submitted to the Registrar within 12 months after the valuation date. The Registrar will consider extension requests in line with Circular PF 91.

The Registrar acknowledges receipt of, but save as provided in other circulars, does not approve statutory actuarial valuation reports. However, if there are queries relating to a statutory actuarial valuation report, the Registrar may raise such queries in correspondence to the fund.

Funds may apply for exemption from valuation in terms of regulation 2, as amended. Annexure A contains the turnaround times for such applications.

14 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 between the receipt to finalisation of applications. Refer to the FSB website www.fsb.co.za for detailed information on electronic submissions.

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Where possible, all applications submitted after **1 April 2006** must be done electronically. Where a fund does not have access to electronic submission, hard copies will be accepted for registration.

15 CHANGE OF FUND TO OR FROM UNDERWRITTEN TO PRIVATELY ADMINISTERED STATUS

When a fund changes from underwritten to privately administered or vice versa, the rules must be amended to reflect the significant differences between the two types of funds. The application to amend the rules must be submitted to the Pensions Department at the Registrar's Office within sixty days after the date of passing the resolution for the rule changes (same as contained in point 8 and 9 above).

Annexure A contains the turnaround times for an amendment to a fund's underwritten or privately administered status.

16 TERMINATION OF ADMINISTRATION AGREEMENTS AND/OR DEREGISTRATION OF A FUND

In terms of Board Notice 24 of 2002 issued in terms of section 13B, fund administrators are required to notify the Registrar within 30 days of the receipt or giving of notice of termination of an administration contract (benefits and/or investments). Within 14 days of the termination date fund administrators should submit a report to the Registrar confirming the delivery of fund records to the new administrator. Where such notification has not been made, the Financial Services Board shall hold the last recorded administrator responsible for performing the expected duties (submission of financial statements, payment of levies, accountable for the information of the fund, etc.).

It is important for funds to ensure that the administration agreements entered into deal with the intermittent period between the termination of the administration agreement until the fund is fully operational under the new administrator. This is to ensure continuity and due diligence during the change of administration. Arrangements as to the ongoing payments of members' benefits, the payment of levies, submission of financial statements, valuations, surplus apportionment schemes and other statutorily required duties in terms of the Act must be incorporated in the agreement.

Funds that are in the process of transferring all their business to another fund in terms of section 14 are still obligated to meet the benefit payments to members and all statutory duties in terms of the Act such as the payment of levies, submission of financial statements, valuations, surplus apportionment schemes etc. until the section 14 approval has been granted and the assets transferred to the transferee fund.

Funds that have had all their assets and liabilities transferred in terms of section 14 but have not yet been de-registered in terms of section 27 or section 28 remain legally in-force and liable for statutory obligations in terms of the Act, as mentioned above.

Annexure A contains the turnaround time for acknowledgement of termination of a fund albeit in terms of section 27(1)(a) following a full transfer or section 28(15) on finalisation of a liquidation.

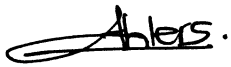
SLC SIGNATORIES FOR THE DEPARTMENTS AT THE REGISTRAR'S OFFICE:



F MOSOMA: HEAD - PENSIONS (LICENSING & REGISTRATION)



W MOKUPO: HEAD - PENSIONS (PRUDENTIAL)



C AHLERS: HEAD - ACTUARIAL (PENSIONS)

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AGREED PERIODS OR TURNAROUND TIMES (to be reviewed annually)

Task	Time required under the service level agreement	Time period for electronic submissions
New rules (individual rules)	30 calendar days	25 calendar days
Standard rules	30 calendar days	25 calendar days
Schedule to standard rules	30 calendar days	25 calendar days
Applications for the approval of special rules	30 calendar days if in line with specimen special rules	25 calendar days
Revised Rules	90 calendar days	85 calendar days
Consolidated rules	30 calendar days	25 calendar days
Conversions	90 calendar days	85 calendar days
Amendments to individual fund rules	35 calendar days	30 calendar days
Amendments changing fund to or from privately administered status	35 calendar days	30 calendar days
Amendments to schedule to standard rules	35 calendar days	30 calendar days
Insertion of new special rules	35 calendar days	30 calendar days
Transfers in terms of section 14 applications	30 calendar days	25 calendar days
Transfers in terms of section 15E and 15F	60 calendar days	None
Section 15B schemes, including nil schemes for small surpluses	60 calendar days	None
Correspondence, Enquiries and Complaints*	14 calendar days	None
Exemptions and Extensions	30 calendar days	
Termination of Administration Agreements in terms of section 13B	30 calendar days	None
Deregistration of Funds and participating employers	30 calendar days if all information is provided	None
Liquidations	30 calendar days	25 calendar days
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

- Note:
- A1

On receipt of the response to the query or rejection the turnaround times contained in this SLC apply as if it was a new application received at that date.
- A2

The Departments at the Registrar's Office must forward a copy of the certificate for the approval of a transfer and queries in respect of applications for transfers in terms of section 14 must be forwarded to both transferor and transferee funds. The details of both funds are provided on the covering page and must contain at least a fax and telephone number. Refer to Circular PF 120 that deals specifically with transfers, as this SLC cannot override the Circular(s).

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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 the public interest to give the members the protection of the provisions of the Act. Even though certain of the provisions do not necessarily comply with all the provisions of the Act, the Act will supersede the rules and will therefore be applied as if it forms part of the rules.

- B1.** The following requirements should be contained in the rules of the an **ordinary (free-standing) fund**:
- B1.1 The name of the fund
 - B1.2 Date of commencement
 - B1.3 Objectives of the fund
 - B1.4 Date of financial year-end and subsequent year-ends
 - B1.5 Physical and postal address of the registered office (i.e. where records are held) of the fund.
 - B1.6 Names and contact detail of the interim board of fund responsible for the submission of the rules for registration.
 - B1.7 Contribution rate(s)
 - B1.8 Eligibility requirements for membership
 - B1.9 Benefits payable
 - B1.10 Manner of making 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.
- B1.** The following *additional requirements* should be contained in the rules of an **umbrella fund**:
- B1.1 The word "umbrella" to appear in the name of the umbrella fund applying for registration
 - B1.2 A clause in the general rules that should there be a clash between the general rules and the special rules that the general rules shall prevail
 - B1.3 Physical and postal address of the registered office (i.e. where records are held) of the participating employer or sub-fund.
 - B1.4 Clarification on surplus matters pertaining to a particular participating employer where applicable
 - B1.5 That the rules allow for partial termination of a participating employer even where all participants subscribe to the general rules in the case of a Type B umbrella fund
 - B1.6 Any other requirements that the Registrar may need as contained in the legislation and the PF Circulars from time to time

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 not in the public interest

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