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INFORMATION CIRCULAR PF NO. 2 OF 2017

PENSION FUNDS ACT, 1956

CLARIFICATION ON THE CANCELLATION OF REGISTRATION OF A FUND IN TERMS OF SECTION 27(1) AND THE TERMINATION OF PARTICIPATION OF A PARTICIPATING EMPLOYER IN AN UMBRELLA FUND

1. Introduction

This information circular provides clarity on the requirements for the cancellation of the registration of a fund in terms of section 27(1) of the Pension Funds Act, 1956 ('the Act') and for the termination of participation of an employer in an umbrella fund.

The pre-requisites for a fund to have ceased to exist are that it no longer has any assets, liabilities or members or any pending litigation against it. Similarly, the participation of a participating employer in an umbrella fund would terminate when an umbrella fund no longer has any assets, liabilities or members or any pending litigation against it in respect of the participating employer. All of this only eventuates after the relevant information is provided to the Registrar so that the Registrar is able to make a decision in terms of section 27(1) of the Act in cases requiring the cancellation of a fund's registration or through informing the Registrar and effecting the appropriate rule amendments in cases where a participating employer's participation in an umbrella fund has ended. A fund ceases to exist and an employer's participation in an umbrella fund ends only after the requirements in the Act are met and this is confirmed by the Registrar.

2. Cancellation of the registration of a fund

It is expected of a board, the administrator of a fund or an employer that participated in a fund to apply for the cancellation of the registration of a fund where the fund has ceased to exist. Sufficient information must be provided to enable the Registrar to satisfy himself that the fund has ceased to exist as contemplated in section 27(1)(a) of the Act. This could be as a result of the following -

2.1 Transfer in terms of section 14

Where a fund has given effect to an approved section 14 transfer where such transfer has the effect that all assets, liabilities and members are transferred to another fund, leaving the transferor fund without any assets, liabilities and members;

2.2 An exemption from the provisions of section 28

Where a fund has been exempted from the provisions of section 28 of the Act in terms of section 28(17) and the person responsible for the winding-up of the fund has complied with all the requirements and conditions in respect of the exemption;

2.3 Exit of the last member

Where a fund ceases to exist due to members receiving their benefits from the fund and the fund has no remaining assets, liabilities and members or any pending litigation against it;

2.4 A fund registered that never commenced business as a fund

As provided for in section 27(1)(b) of the Act, where the Registrar and the fund agree that the fund was registered but never commenced fund business, in circumstances not amounting to fraud.

In each of the circumstances referred to in paragraphs 2.1 to 2.4 at least the information for the cancellation as set out in **Annexure A** must be included in the application for the cancellation of the fund's registration. The Registrar may request further information in cases where this is considered necessary.

3. Termination of the participation of an employer in an umbrella fund

When a participating employer terminates its participation in an umbrella fund, the board of the umbrella fund should, within 60 days inform the Registrar of the termination of the participation of the employer and where applicable, submit a rule amendment to the registered rules or special rules of the fund which records the termination of participation in the fund of the participating employer. Termination of participation of an employer in an umbrella fund may eventuate as a result of the following -

3.1 Transfer in terms of section 14

Where a fund has given effect to an approved section 14 transfer of all the assets, liabilities and members of the relevant participating employer to another fund, leaving the umbrella fund with no remaining assets, liabilities and members in respect of that participating employer;

3.2 An exemption from the provisions of section 28

Where a fund has been exempted from the provisions of section 28 of the Act in terms of section 28(17) in respect of the liquidation of a participating employer, and the person responsible for the winding up has complied with all the specific requirements and conditions;

3.3 Exit of the last member

Where the participation of an employer terminates due to members receiving their benefits from the fund and the fund has no remaining assets, liabilities and members in respect of that participating employer;

3.4 Special rules being registered for an employer that never commenced participation in the fund

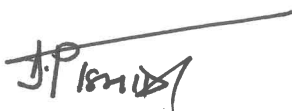
Where the Registrar and the fund agree that the special rules in respect of the participating employer should not have been registered as the participating employer never commenced its participation in the fund;

An umbrella fund must, in each of the circumstances referred to in paragraphs 3.1 to 3.4 above, include at least the information for the termination of participation of the employer as set out in **Annexure B**. The Registrar may request further information where this is considered necessary.

4. The Registrar will, prior to the cancellation of the registration of a fund, publish a notice of the intention to cancel the registration of the fund in accordance with the requirements of the Promotion of Administrative Justice Act, 2000, as well as the Financial Services Board website for a period of 30 days. During this period any person aggrieved by the intended cancellation of registration of the fund may submit an objection to the proposed cancellation, which the Registrar will consider and thereafter make a decision as to whether to proceed with the cancellation of the fund's registration. The aggrieved person/s will be informed of the Registrar's decision.

5. Conclusion

- 5.1 Applications for the cancellation of the registration of funds or the termination of participation of an employer in an umbrella fund already submitted to the Registrar will continue to be processed. However, where there is a need for additional information to satisfy the Registrar that the fund has ceased to exist or that an employer has ceased participation in an umbrella fund, this must be provided.
- 5.2 In order to assist the Registrar to satisfy himself that a fund has ceased to exist or the participation of an employer in an umbrella fund has terminated, it is recommended that applications for the cancellation of the registration of a fund or the termination of participation of an employer in an umbrella fund comply with the requirements set out herein. Applications must be submitted electronically to the Registrar on the Retirement Funds On-line System.



D.P TSHIDI
REGISTRAR OF PENSION FUNDS

Minimum information that must be submitted with an application for the cancellation of the registration of a fund:

1.	Name and registration number of the Fund	
2.	Full names and contact detail of person lodging the application	
3.	Capacity of the person lodging the application	
4.	Commencement date of the fund	
5.	Indication of the reason for termination:	
	Full section 14 transfer	
	Last member exited the fund	
	Fund never commenced business	
	Exemption from the provisions of section 28	
6	Depending on the reason for termination, the relevant documentation –	
6.1	Full transfer in terms of section 14(1) or 14(8)	
	6.1.1	Effective date of the full transfer
	6.1.2	Date of physical transfer of assets, liabilities and members
	6.1.3	Declaration by at least two of the following persons, (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C1) • A former member of the board of the fund; • The principal officer of the fund; • A member of the board of the fund; • The fund's valuator; • The fund's auditor; • A representative of the fund's sponsor; or • A representative of the fund's administrator or former administrator
	6.1.4	Disclosure of all transactions subsequent to the effective date of the transfer, in respect of at least the following- • fees, costs, charges; and • investment income.
	6.1.5	Reconciliation of the assets, liabilities and members as per the approved section 14 transfer with the actual transfer of such assets, liabilities and members to the transferee fund or a copy of Form G as prescribed in Directive 6, where applicable;
	6.1.6	Confirmation by the transferee fund that such assets and membership as indicated on the reconciliation have been received by it or a copy of Form G (Directive 6), where applicable;
	6.1.7	FSB case number of the full transfer if approved in terms of section 14(1);
	6.1.8	Form H and J as prescribed in Directive 6 in the case of a section 14(8) transfer; and
	6.1.9	Proof that the fund does not have any further assets, where applicable- • investment statement(s) confirming that all assets have been disinvested and such proceeds paid to the fund; and • bank statement(s) confirmation that the bank account(s) was closed

6.2	Where the last member received their benefits causing the fund to cease to exist	
	6.2.1	The date on which the last benefit was paid.
	6.2.2	A declaration by at least two of the following persons (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C3) • A former member of the board of the fund; • The principal officer of the fund; • A member of the board of the fund; • The fund's valuator; • The fund's auditor; • A representative of the fund's sponsor; or • A representative of the fund's administrator or former administrator
	6.2.3	Proof that the last member(s) have received their full benefits and the fund has no further assets and liabilities
	6.2.4	Proof that the fund does not have any further assets, where applicable- • investment statement(s) confirming that all assets have been disinvested and such proceeds paid to the fund; and • bank statement(s) confirmation that the bank account(s) was closed
6.3	The Fund never commenced business	
	6.3.1	Declaration by at least one board member confirming that the fund did not commence (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C4).
	6.3.2	Declaration by the administrator confirming that the fund did not commence (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C4).
	6.3.3	Proof that the fund does not have any assets, where applicable, a bank statement(s) confirmation that the bank account(s) was closed
6.4	Exemption from the provisions of section 28	
	6.4.1	Declaration by the person responsible for the winding up of the fund (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C5); or Where the person responsible for the winding up of the fund is no longer available or cannot be reached, such declaration must be done by at least two of the following persons- • A former member of the board of the fund; • The principal officer of the fund; • A member of the board of the fund; • The fund's valuator; • The fund's auditor; • A representative of the fund's sponsor; or • A representative of the fund's administrator or former administrator
	6.4.2	Proof that the fund does not have any further assets, where applicable- • investment statement(s) confirming that all assets have been disinvested and such proceeds paid to the fund; and • bank statement(s) confirmation that the bank account(s) was closed
7	Case number of the prescribed annual financial statements indicating that there are no assets, liabilities and members remaining in the fund (nil financial statements).	

	Note: The last financial statements (nil financial statements) may not cover a period of more than 18 months from the end of the preceding financial statements to the date the winding up of the fund has been completed, the date of the physical transfer of all assets, liabilities and members or the effective date of the last member exiting the fund.
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Minimum information that must be submitted with an application for the termination of the participation of an employer in an umbrella fund:

1.	Name and registration number of the Fund	
2.	Participating employer's registered name (in terms of the Rules of the umbrella fund)	
3.	Participating employer's registration number (FSB registration number)	
4.	Commencement date of employer's participation in the fund	
5.	Date on which the employer's participation in the fund terminated	
6.	Indication of the reason for termination:	
	Full section 14 transfer	
	Last member exited the participating employer's section of the fund	
	Participation of employer never commenced	
	Exemption from the provisions of section 28	
7	Depending on the reason for termination, the relevant documentation –	
7.1	Full transfer in terms of section 14(1) or 14(8)	
	7.1.1	Effective date of the transfer of the relevant participating employer
	7.1.2	Date of physical transfer of assets, liabilities and members of the relevant participating employer
	7.1.3	Declaration by chairperson of the umbrella fund confirming that the participation of the employer terminated and that all assets have been transferred to the transferee fund (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C2);
	7.1.4	Disclosure of all transactions subsequent to the effective date of the transfer, in respect of at least the following- • fees, costs, charges; and • investment income
	7.1.5	Reconciliation of the assets, liabilities and members in respect of the relevant participating employer as per the approved section 14 transfer with the actual transfer of such assets, liabilities and members to the transferee fund or a copy of Form G as prescribed in Directive 6, where applicable;
	7.1.6	Confirmation by the transferee fund that such assets and membership as indicated on the reconciliation have been received by it or a copy of Form G as prescribed in Directive 6, where applicable;
	7.1.7	FSB case number of the full transfer if approved in terms of section 14(1); and
	7.1.8	Forms H and J as prescribed in Directive 6 in the case of a section 14(8) transfer.
7.2	Where the last member received their benefits causing the participation of the employer to terminate –	
	7.2.1	The date on which the benefit of the last member in respect of a participating employer was paid

	7.2.2	Declaration by the chairperson of the umbrella fund confirming that the participation of the employer in the fund terminated (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C3);
	7.2.3	Proof that the last member(s) have received all their benefits and that the portion of the fund relating to the participating employer has no further assets, liabilities and members.
7.3	Participation of employer never commenced	
	7.3.1	Declaration by the participating employer confirming that its participation never commenced (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C4); and
	7.3.2	Declaration by the chairperson of the umbrella fund confirming that the participation of the relevant employer never commenced (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C4).
7.4	Exemption from the provisions of section 28	
	Declaration by the chairperson of the umbrella fund and the person responsible for the winding up of the participating employer in the umbrella fund (example setting out the minimum information to be contained in such declaration is attached hereto as Annexure C6); or Where the person responsible for the winding up of the fund is no longer available or cannot be reached such declaration must be done by at least two of the following persons- • A former member of the board of the fund; • The principal officer of the fund; • A member of the board of the fund; • The fund's valuator; • The fund's auditor; • A representative of the fund's sponsor; or • A representative of the fund's administrator or former administrator	
8.	Where an employer participates in terms of registered special rules, a resolution by the board applying to the Registrar to withdraw the registration of the special rules for the relevant employer.	

Declaration by the relevant person in the application for cancellation of

..... (fund) (Ref No.:.....) (persons refer to in item 6.1 of Annexure A)

I, the undersigned

[Full names]

[SA Identity number / passport number]

in my capacity as hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of the fund and confirm that all assets and liabilities have been accounted for in the full transfer to the(fund).

I further confirm that –

1. the fund is to be cancelled as all assets, liabilities and members have transferred in terms of section 14;
2. I have verified all transactions from the effective date of the transfer until the date of actual transfer of assets, liabilities and members;
3. I have verified the reconciliation of the assets, liabilities and members from the effective date until the actual date of transfer as submitted to the Registrar and the transferee fund;
4. there are/are no* outstanding contributions due to the fund;
5. there are/are no* other outstanding debtors, creditors or benefits payable by the fund;
6. there are/are no* unresolved complaints in respect of the fund as at the date of the submission of this declaration;
7. there is/is no* pending litigation against the fund; and
8. I am not aware of any possible prejudice that may be incurred by any member or beneficiary of the fund.

I hereby declare that the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

PRINT NAME:

DATE

*Delete the statement which is not applicable

Declaration by the chairperson of the board of the
(Umbrella Fund) (Ref No.:.....)

I, the undersigned

[Full names]

[SA Identity number / passport number]

as the appointed chairperson of the

[Fund name].

I hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of [name and reference number of participating employer] and confirm that all assets and liabilities have been accounted for in the full transfer to the(fund).

I further confirm that –

1. the abovementioned employer's participation is to be terminated as all assets, liabilities and members have transferred in terms of section 14;
2. I have verified all transactions from the effective date of the transfer approved by the Registrar until the date of actual transfer of assets, liabilities and members;
3. I have verified the reconciliation of the assets, liabilities and members from the effective date until the actual date of transfer as submitted to the Registrar and the transferee fund;
4. there are/are no* outstanding contributions due by the abovementioned participating employer;
5. there are/are no* other outstanding debtors, creditors or benefits payable by the fund in respect of the abovementioned participating employer;
6. there are/are no* unresolved complaints in respect of the abovementioned participating employer as at the date of the submission of this declaration;
7. there is/is no* pending litigation against the fund in respect of the participating employer; and
8. I am not aware of any possible prejudice that may be incurred by any member or beneficiary in respect of the abovementioned participating employer.

I hereby declare that the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

PRINT NAME: _____

DATE _____

*Delete the statement which is not applicable

Declaration by the relevant person in the application for the cancellation of

..... (fund) (Ref
No.:.....)
(Name and ref no.
of participating employer)

I, the undersigned

[Full names]

[SA Identity number / passport number]

in my capacity as hereby declare that I have taken all reasonable steps to ensure that all benefits due to members have been paid and that the abovementioned fund / participating employer* has no further assets, liabilities and members.

I further confirm that –

1. I have verified all transactions from the latest annual financial statements until the date that all benefits were paid causing the fund to cease to exist/the participating employer to terminate its participation*;
2. there are/are no* outstanding contributions due to the fund/by the abovementioned participating employer;
3. there are/are no* other outstanding debtors, creditors or benefits payable by the fund/in respect of the abovementioned participating employer;
4. there are/are no* unresolved complaints in respect of the fund/the participation of the abovementioned participating employer*;
5. there is/is no* pending litigation against the fund/the fund in respect of the participating employer*; and
6. I am not aware of any possible prejudice that may be incurred by any member or beneficiary of the fund/in respect of the abovementioned participating employer.

I hereby declare that the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

PRINT NAME: _____

DATE _____

*Delete the statement which is not applicable

Declaration by the relevant person in the application for the cancellation of the

..... (fund) (Ref No.:.....) /

..... (Name and ref no. of participating employer)

participating in the (fund)*

I, the undersigned

[Full names]

[SA Identity number / passport number]

in my capacity as hereby declare that I have taken all reasonable steps to ensure that the fund / the abovementioned employer participating in the umbrella fund* did not commence business as a retirement fund / commence its participation in the abovementioned umbrella fund*. I further declare that I am not aware of any possible prejudice that may be incurred by any member or beneficiary of the above fund/in respect of the abovementioned participating employer, by the cancellation of the registration of the fund/the termination of participation of the employer in the fund.

I hereby declare that the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

CAPACITY
PRINT NAME:

DATE

*Delete the statement which is not applicable

Declaration by the relevant person in the application for the cancellation of the

..... (fund) (Ref No.:
.....)

I, the undersigned

[Full names]

[SA Identity number / passport number]

as the person responsible for the winding up of the fund in terms of section 28(17) hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of the fund and confirm that all assets and liabilities have been accounted for in the distribution of the assets and liabilities of the (fund).

I further confirm that –

1. I have complied with all requirements as determined by the Registrar in my appointment letter dated
2. I have complied with all the reporting requirements as determined by the Registrar in my appointment letter dated
3. I have verified the reconciliation of the assets, liabilities and members from the latest financial statements until the date of winding up of the fund and confirm that all assets have been accounted for during the winding up process;
4. the fund has distributed all assets to such members and beneficiaries who were entitled to such benefits in terms of the rules of the fund;
5. there is/is no* pending litigation against the fund; and
6. I am not aware of any possible prejudice that may be incurred by any member or beneficiary of the fund.

I hereby declare that the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

**PERSON RESPONSIBLE FOR THE
WINDING UP OF THE FUND**
PRINT NAME:

DATE

Declaration by the relevant person in the application for termination of the participation of(name and ref no. of participating employer) in the (fund)
(Ref No.:)

I, the undersigned

[Full names]

[SA Identity number / passport number]

and I, as the chairperson /

[Full names]

[SA Identity number / passport number]

As the person responsible for the winding up of the participation of the above employer in the umbrella fund in terms of section 28(17) I hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities relating to the participating employer in the fund and confirm that all assets and liabilities have been accounted for in the distribution of the assets and liabilities of the (fund).

I further confirm that –

1. I have complied with all requirements as determined by the Registrar in my appointment letter dated
2. I have complied with all the reporting requirements as determined by the Registrar in my appointment letter dated
3. I have verified the reconciliation of the assets, liabilities and members from the latest financial statements until the date of winding up of the participation of the employer in the fund and confirm that all assets have been accounted for during the winding up process;
4. the fund has distributed all assets to such members and beneficiaries of the participating employer who were entitled to such benefits in terms of the rules of the fund;
5. there is/is no* pending litigation against the fund in respect of the participating employer; and
6. I am not aware of any possible prejudice that may be incurred by any member or beneficiary in respect of the abovementioned participating employer.

I hereby declare that the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

CHAIRPERSON
PRINT NAME:

DATE

PERSON RESPONSIBLE
PRINT NAME:

DATE