FINANCIAL SERVICES BOARD

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INFORMATION CIRCULAR PF NO. 3 OF 2017

PENSION FUNDS ACT, 1956

THE APPOINTMENT OF PERSONS TO THE BOARD OF A FUND BY THE REGISTRAR IN TERMS OF SECTION 26(2)

1. Introduction

This information circular provides clarity on the requirements for the appointment of persons to the board of management of a fund ('board') by the Registrar in terms of section 26(2) of the Pension Funds Act, 1956 ('the Act').

2. Appointment of a person(s) to the board of a fund

Section 26(2)(a) provides that the Registrar may make appointments to the board of a fund in the circumstances contemplated in section 26(2). Section 26(2)(b) empowers the Registrar to assign such duties as he deems expedient to such board.

2.1 Management of a fund

2.1.1 From a regulatory perspective, it is imperative that a fund has a functional board, as without a functional board, the members, beneficiaries and creditors of the fund may be prejudiced. The Act also envisages that a board direct, control and oversee the operations of a fund in accordance with applicable laws and the rules of the fund. These functions cannot lawfully be performed if there is no properly constituted board and the Registrar must therefore act in such circumstances.

2.1.2 The purpose of section 26(2) is to empower the Registrar to establish a functional board where a fund, for whatever reason, does not or no longer has a properly constituted board.

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

SABS ISO 9001

2.2 **Duties of a section 26(2) board**

The duties of a board appointed in terms of section 26(2) are determined by the Act in section 7D, the fund's rules, common law and other legislation applicable to board members, as well as by the Registrar, based on the circumstances of the fund. These duties may include, for example –

2.2.1 constituting a board in terms of the rules of the fund;
2.2.2 management of the fund;
2.2.3 ensuring compliance with all applicable laws;
2.2.4 applying for exemption in terms of section 7B;
2.2.5 submitting rule amendments to the Registrar for approval;
2.2.6 entering into or renewing contracts and service level agreements with service providers;
2.2.7 the approval and submission of outstanding annual financial statements, actuarial valuations, surplus apportionment schemes, regulation 28 quarterly reports and reports required by the South African Reserve Bank;
2.2.8 collection of outstanding contributions or schedules from any participating employer;
2.2.9 opening a bank account in the name of a fund;
2.2.10 taking investment decisions in accordance with the investment policy of the fund;
2.2.11 providing members with annual benefit statements;
2.2.12 transferring assets, liabilities and members to other funds in accordance with the processes prescribed in section 14 of the Act;
2.2.13 paying benefits in terms of the rules of the fund, including the equitable distribution of death benefits;
2.2.14 maintaining fidelity cover for the fund and its officers; and
2.2.15 in the event that a valid board in terms of section 7A cannot be established -
- applying to the Registrar for the approval of the appointment of a liquidator; or
- applying for the cancellation of the fund, if appropriate.

3. Conclusion

Boards/board members that are or have been appointed in terms of section 26(2) must perform the duties as determined in their appointment letters which may, at the discretion of the Registrar, be supplemented or altered in terms of section 26(2)(b).

Yours sincerely

D.P TSHIDI
REGISTRAR OF PENSION FUNDS