

(1 March 2002 - to date)

PENSION FUNDS ACT 24 OF 1956

(Gazette No. 5679, Notice No. 839, dated 11 May 1956. Commencement date: 1 January 1958. [Proc. 330, Gazette No. 5971, dated 8 November 1957].)

CONDITIONS DETERMINED IN RESPECT OF ADMINISTRATORS ACTING ON BEHALF OF PENSION FUNDS

Board Notice 24 in Government Gazette 23153, dated 1 March 2002. Commencement date:

1 March 2002 (unless otherwise indicated).

The Registrar of Pension Funds has under section 13B of the Pension Funds Act, 1956 (Act No. 24 of 1956), determined conditions in respect of administrators acting on behalf of pension funds as set out in the Schedule.

(Signed)

J. van Rooyen,

Registrar of Pension Funds

SCHEDULE

CONDITIONS FOR ADMINISTRATION OF PENSION FUNDS, 2002

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Prepared by:

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1. Definitions

In this Schedule **“the Act”** means the Pension Funds Act, 1956 (Act No 24 of 1956), any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it, and, unless the context otherwise indicates

“administrator”, in relation to a pension fund, means any person who has been approved by the registrar under subsection (1) of section 13B of the Act, for the purposes of that section;

“auditor”, in relation to an administrator, means an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991);

“board”, in relation to a pension fund, means the board of the fund referred to in section 7A of the Act;

“exempted fund” means a pension fund exempted from certain provisions of the Act and the Regulations in terms of regulation 1 of the Regulations;

“pension fund monies” means contributions, investment income, amounts received upon the sale or realization of assets, transfers, commission or any other receipts of whatever nature;

“the Regulations” means the Regulations published by Government Notice No. R.98 of 26 January 1962, as amended by Government Notices Nos. R.99 of 26 January 1962, R.2144 of 28 September 1984, R.1790 of 16 August 1985, R.1037 of 28 May 1986, R.232 of 6 February 1987, R.1452 of 7 July 1989, R.1920 of 1 September 1989, R.2361 of 27 September 1991, R.201 of 12 February 1993, R.2324 of 10 December 1993 and R.141 of 28 January 1994, R.1838 of 24 November 1995, R.1677 of 18 October 1996, R.801 of 19 June 1998, R.1020 of 14 August 1998, R.1154 of 11 September 1998, R.1218 of 25 September 1998, R.1644 of 18 December 1998, R.853 of 9 July 1999, R.896 of 8 September 2000, R.337 of 6 April 2001 and R.100 of 1 February 2002;

“umbrella scheme” means a pension fund organization established for the benefit of employees of various employers which are not subsidiaries of a single holding company.

Compliance with Conditions by administrators

- 2.1** An administrator shall comply with the provisions of these Conditions as may be applicable to the administrator, unless, and to the extent that, the registrar has under section 13B(4) of the Act granted any exemption to the administrator.

- 2.2.1 The registrar shall, where it has been proved to the satisfaction of the registrar that an administrator has contravened or failed to comply with any provision of these Conditions, forthwith inform the administrator in writing thereof at the administrator's most recent official address, and require the administrator to furnish the registrar with written reasons within 30 days of the date of the notice why the approval as administrator shouldl/sic/ not be withdrawn.
- 2.2.2 The registrar may, where no satisfactory reasons have been furnished within the said period, by notice in writing, withdraw the approval of the administrator.
- 2.2.3 The provisions of Condition 13 of these Conditions shall with the necessary changes apply in respect of the former administrator's business after a withdrawal of approval under Condition 2.2.2.
- 2.2.4 An approval of an administrator by the registrar shall be deemed to have lapsed, without prejudice to any legal obligations still attaching thereafter to the former administrator in terms of the Act or these Conditions, if the administrator otherwise ceases to perform administration business, or the business of the administrator is dissolved or liquidated.

Agreement in respect of administration

- 3.1 Prior to the commencement of administrative functions with regard to a particular fund, an administrator shall enter into a written agreement with the relevant fund recording the specific arrangements for the required administration.
- 3.2 Any such agreement shall –
- (a) provide that the administrator shall on behalf of the relevant pension fund administer the investments of such a fund, or the disposition of benefits provided for in the rules of the fund, as the case may be, and shall particularise the powers of the board concerned, so to be exercised by the administrator on behalf of the relevant fund;
 - (b) in particular provide that the administrator shall ensure that all investments of the fund are made subject to and in accordance with the provisions of the Act;
 - (c) stipulate the basis on which the administrator is to be remunerated for conducting the administration: and
 - (d) empower each party to the agreement to terminate the agreement after notice in writing by one party to the other of a period of not more than 90 days.

- 3.3 Any amendment to the agreement shall be in writing and shall be effected by way of an addendum or new agreement between the administrator and the fund.

4. Termination of administration agreements

When notice of the termination of an administration agreement between a pension fund and an administrator is given, such administrator shall inform the registrar thereof within 30 days of receipt or giving of such notice of termination by the administrator, including in such communication the effective date of the termination and the name of the new administrator if known, and furnish a report to the registrar not later than 14 days after completion of such termination, confirming –

- (a) that all documents of title relating to assets, the assets register, minute books, members' records and other records pertaining to the fund have been delivered to the board or the new administrators, as the case may be, mentioning specifically the identities of such persons;
- (b) the date and address of such delivery ; and
- (c) what the name of the board or person at the new administrator is to whom the documents referred to in paragraph (a) have been delivered:

Provided that if an administrator is for some or other reason unable to comply fully or partially with this Condition, the said report shall contain full particulars regarding which documentation have not been delivered, the reasons therefor as well as a plan with the dates on which compliance will take place.

5. Appointment of auditor

An administrator shall appoint an independent auditor to –

- (a) determine whether the administrator is conducting the relevant business in accordance with the provisions of the Act, the Regulations and these Conditions;
- (b) determine whether in the auditor's opinion the administrator's annual financial statements fairly present, in all material respects; the financial position of the company (or other entity) at the year end and the results of its operations and cash flows for the year then ended in accordance with South African Statements of Generally Accepted Accounting Practice or generally accepted accounting practice, and in the manner required by the Companies Act in South Africa or other applicable legislation;
- (c) review the appropriateness of the accounting systems and policies represented to the auditor as having been applied in respect of the preparation of the annual financial statements of the administrator:

Provided that for an administrator wishing to administer an umbrella scheme or retirement annuity as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), the auditor shall, in addition to the requirements referred to in paragraphs (a) to (c), certify whether the administrator's bookkeeping, computer and control systems are in the auditor's opinion adequate for the size and complexity of the relevant business.

6. Indemnity and fidelity guarantee insurance

An administrator shall take out and maintain professional indemnity insurance and fidelity guarantee insurance from and up to such an amount as the administrator's auditor in consultation with the registrar may determine.

Maintenance of current assets and liquidity

7.1 For the purposes of this Condition -

7.1.1 **“annual expenditure”**, in respect of an administrator, shall be the expenditure set out in the most recent set of financial statements of the administrator for the year in question or, in the case of an administrator commencing an administration business, as determined with reference to the administrator's budgeted or other accounts, less staff bonuses, employees' and directors' shares in profits, other appropriation of profits to directors and emoluments of directors, partners or sole proprietor;

7.1.2 **“current assets”** means assets which are capable of being realised or recovered within a period not exceeding 12 months, but shall not include any fixed assets;

7.1.3 **“liquid assets”** means the total deposits with and balances in current and savings accounts with a bank or mutual bank in the Republic.

7.2 An administrator shall at any time maintain, in respect of all administration business, current assets which are at least sufficient to meet current liabilities, howsoever arising.

7.3 An administrator shall at any time maintain liquid assets equal to or greater than 8/52 of annual expenditure.

8. Depositing of pension fund moneys

An administrator shall deposit any pension fund moneys, not later than the business day following the date of receipt thereof, into a bank account opened in the name of the pension fund concerned or, in the case of exempted funds, in the bank account of the insurer involved.

9. Opening of trust accounts

Prepared by:

An administrator may with regard to the pension funds under administration of the administrator not exempted in terms of regulation 1 of the Regulations, deposit benefits payable to beneficiaries from those pension funds, into a trust account to enable the administrator to make use of electronic bank transfer facilities: Provided that the following conditions are complied with:

- 9.1 that an auditor registered in terms of the said Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), be appointed as auditor;
- 9.2 that a benefit be transferred to the account of the beneficiary on the same day on which the deposit in the trust account is made, on condition that any delay caused by the bank's automated clearing bureau, shall not be regarded as a contravention of this Condition;
- 9.3 that a deposit which is rejected by a bank immediately be repaid to the relevant pension fund's account;
- 9.4 that the trust account be audited annually by the auditor concerned; and
- 9.5 that the bank charges and interest be allocated annually to each pension fund administered by the administrator in such proportion as the annual amount deposited on behalf of a particular fund bears to the total annual amount deposited on behalf of all funds administered by the administrator.

10. Safe custody of documents of title

Whenever a document of title relating to assets held by a fund or to be held in custody on behalf of a fund by virtue of the fund's registered office being the address of an administrator, comes into possession of the administrator, the latter shall make adequate arrangements to ensure the continued safety of the assets held in safe custody and shall mark such document forthwith in a manner which will render it possible at all times to establish readily that the fund is the owner of such assets, and the administrator shall maintain a register in accordance with Annexure A to identify ownership of assets.

11. Annual report

Within six months after the end of the financial year of an administrator, the administrator shall furnish to the registrar a report by the auditor of the administrator in the form set out in Annexure B and Annexure C to these Conditions, as well as a letter by the management of the administrator in the form set out in Annexure D to these Conditions.

12. Furnishing of other information

An administrator shall furnish the registrar with such information concerning the shareholders, directors, members, partners or senior employees of the administrator as the registrar may from time to time require: Provided that any change in owners, directors, members or shareholders having the effect of a change of *de facto* control of the administrator in question, shall only take place with the prior approval of the registrar.

13. Ceasing, dissolution or liquidation of business

When an administrator ceases to conduct business or its business is dissolved or liquidated, the administrator's auditor shall furnish a report to the registrar confirming:

- (a) that all documents of title relating to assets, the assets register, minute books and other records pertaining to the pension funds under administration have been delivered to the board concerned or the new administrators, as the case may be, mentioning specifically the identities of such persons;
- (b) the date and address of such delivery; and
- (c) the name of the member of the board or other person at the administrator to whom the documents referred to in paragraph (a) have been delivered:

Provided that if an administrator is for some or other reason unable to comply fully or partially with this Condition, the report shall contain full particulars concerning the documents which have not been delivered, full reasons therefor as well as a plan with dates on which compliance will take place.

Commencement, repeals and short title

14.1 In this Condition –

- (a) “**commencement date**”, in relation to these Conditions, means the date of commencement of these Conditions envisaged in Condition 14.2.2;
- (b) “**previous Conditions**” means the Conditions made in respect of Administrators acting on behalf of Pension Funds, published by Board Notice 101 of 1995 in *Gazette* No. 16830 of 24 November 1995; and
- (c) “**promulgation date**”, in relation to these Conditions, means the date on which these Conditions are first published in the *Gazette*.

14.2.1 Condition 1 of these Conditions, and this Condition, come into operation on the promulgation date.

(Publisher's note - Numbering as published in the original Gazette)

14.2.2 All other provisions of these Conditions, excluding those mentioned in Condition 14.2.1, come into operation on a date three months after the promulgation date.

(Publisher's note - Numbering as published in the original Gazette)

14.3 The provisions of the previous Conditions are hereby repealed with effect from the commencement date.

14.4 These Conditions are called the Conditions for Administration of Pension Funds, 2002.

ANNEXURES TO THE CONDITIONS**ANNEXURE A****REGISTER OF ASSETS HELD ON BEHALF OF A PENSION FUND****[In terms of section 5(2) of the Pension Funds Act. 1956]**

Name of Administrator:

Name of Pension Fund

Ref No.: 12/8/

Description of Asset	Quantity	Document of Ownership	Dates Received/ Disposed	Checked	Remarks
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ANNEXURE B**REPORT OF THE INDEPENDENT AUDITOR TO THE MEMBERS OF**

We have audited the annual financial statements of (name of the administrator} for the year ended (date). The annual financial statements are the responsibility of the directors. Our responsibility is to express an opinion on these financial statements, based on our audit.

Scope

We conducted our audit in accordance with Statements of South African Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that the annual financial statements are free of material misstatement. An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessing the accounting principles used and Significant estimates made by management; and
- evaluating the overall financial statement presentation.

We believe that our audit provides a reasonable basis for our opinion.

Prepared by:

Audit opinion

In our opinion, the financial statements fairly present, in all material respects, the financial position of the company at (insert date) and the results of its operations and cash flows for the year then ended in accordance with South African Statements of Generally Accepted Accounting Practice, and in the manner required by the Companies Act in South Africa. (Refer note below.)

Name

Registered Accountant and Auditor

Chartered Accountant (SA)

Address

Date

Note:

- Where the administrator is a company, but the financial statements have not been prepared in accordance with South African Statements of Generally Accepted Accounting Practice, the guidance provided in SAICA Circular 8/99 should be followed.
- Where the administrator is not a company, the opinion paragraph should read as follows (refer Statement of South African Auditing Standards (SAAS) 700, Auditors' Report on Financial Statements):

In our opinion, the financial statements fairly present, in all material respects, the financial position of the entity at (insert date) and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice, and in the manner required by (insert reference to relevant legislation, if applicable).

ANNEXURE C

REPORT OF THE INDEPENDENT AUDITOR TO THE REGISTRAR OF PENSION FUNDS ("THE REGISTRAR") IN TERMS OF THE CONDITIONS DETERMINED UNDER SECTION 13B(1) OF THE PENSION FUNDS ACT, 1956 ("THE CONDITIONS")

1. System of internal financial control

We have reviewed the system of internal financial control of (name of the administrator) in respect of the administration of pension funds for the year ended (date). These controls are the responsibility of the directors. Our responsibility is to report on the system of internal financial control, based on our review.

Scope

We conducted our review in accordance with the Statements of South African Auditing Standards applicable to review engagements. These standards require that we plan and perform the review to obtain moderate assurance with regard to the system of internal financial control. A review is limited primarily to inquiries of personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit, and, accordingly we do not express an audit opinion.

Inherent limitations

Because of the inherent limitations of a system of internal control, including concealment through collusion or forgery, errors and irregularities may not be prevented or detected. Furthermore, projections of any evaluations of the system of internal financial control to future periods are subject to the risk that internal controls may become inadequate because of changes in circumstances, or that the degree of compliance with policies or procedures may deteriorate.

Opinion

Based on our review, nothing of significance has come to our attention that causes us to believe that the system of internal financial control is inadequate for the size and complexity of the business being conducted by (name of the administrator).

2. Compliance with the Conditions

Scope

As required by Condition 5 of the Conditions, we have performed certain agreed procedures, described below, with respect to the compliance by (the name of the administrator) with the Conditions. Our engagement was undertaken in accordance with the Statements of South African Auditing Standards applicable to agreed-upon procedures engagements. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed, is that of the Registrar. Our procedures were performed solely to assist the Registrar in evaluating the compliance by the administrator with the Conditions.

Agreed procedures and findings

Our agreed procedures and findings are as follows:

1. Based on an examination of the original policy documents, we report that the administrator has taken out an Employee's Fidelity Guarantee Policy, No , with

(name of insurer) and that such policy has been renewed for a period of months ending on the day of

2. Based on an examination of the original policy documents, we report that the administrator has taken out a Professional Indemnity Policy, No , with (name of insurer) and that such policy has been renewed for a period of months ending on the day of
3. With reference to the audited financial statements for the year ended (data), we report that at the year-end the administrator's current assets exceeded its current liabilities as contemplated in Condition 7.2 of the Conditions.
4. With reference to the audited financial statements for the year ended (date), we report that at the year-end the administrator's liquid assets exceeded the amount calculated in accordance with the formula set out in Condition 7.3 of the Conditions.
5. Based on enquiries from personnel responsible for financial and accounting matters and an examination of related correspondence (or based on representation from management), we report that no changes in ownership, directors, members or shareholders having the effect of a *de facto* change of control of the administrator in question took place during the year ended (date), without the approval of the Registrar.
6. On a test basis, we have examined administration agreements entered into with pension funds during the year ended (date) to ensure that they are in writing and conform to Condition 3 of the Conditions. We report that *no exceptions were noted / the following exceptions were noted. (Provide details of exceptions.)
7. Based on enquiries from personnel responsible for financial and accounting matters, we report that for the year ended (date), the administrator maintained an asset register as contemplated in section 5(2) of the Pension Funds Act, 1956, Condition 10 of and Annexure A to the Conditions.
8. Based on enquiries from personnel responsible for financial and accounting matters and an examination of related correspondence, we report that the following administration agreements were terminated during the year ended (date) and in respect of them Condition 4 of the Conditions have been complied with:
.....
9. Based on enquiries from personnel responsible for financial and accounting matters, we report that *the administrator had conducted its business within the limitations imposed in terms of section 13B(2) of the Pension Funds Act, 1956, and the Conditions made under section 13B(1) of the Act / except for the following matters, the administrator had conducted its business within

the limitation imposed in terms of section 13B(2) of the Pension Funds Act, 1956, and the Conditions made under section 13B(1) of the Act:

Name

Registered Auditor and Accountant

Chartered Accountant (SA)

Address

Date

* Delete if not applicable.

ANNEXURE D

MANAGEMENT REPRESENTATION LETTER

(Administrator's letterhead)

(To the Registrar of Pension Funds)(Date)

This representation letter is provided in connection with the financial statements of (name of the administrator) for the year ended (date) to enable the Registrar to evaluate whether or not (name of the administrator) has complied with the Conditions made under section 13B(1) of the Pension Funds Act, 1956 ("the Conditions"), and to evaluate the financial condition of the administrator.

We confirm, to the best of our knowledge and belief, the following representations:

- We had (quantity) registered and (quantity) unregistered funds under our administration at the year-end.
- The fidelity guarantee and professional indemnity insurance cover is adequate to cover the risks of losses due to fraud, dishonesty and negligence.
- We did not deposit any moneys of a pension fund into a bank account opened in the name of our business, except in the trust account as contemplated in the next paragraph.
- We have complied with Conditions 9.2 to 9.5 of the Conditions in respect of the trust account.
- Current assets exceeded current liabilities as contemplated in condition 7.2 of the Conditions.
- Liquid assets exceeded the amount calculated in accordance with the formula set out in Condition 7.3 of the Conditions.

Prepared by:

- No changes in ownership, directors, members or shareholders having the effect of a *de facto* change of control took place during the year ended (date), without the approval of the Registrar.
- Administration agreements entered into with pension funds during the year ended are in writing and conform to Condition 3 of the Conditions.
- We have maintained an asset register as contemplated in section 5(2) of the Pension Funds Act, 1956, Condition 10 of the Conditions and Annexure A to the Conditions.
- We conducted the business within the limitations imposed in terms of section 13B(2) of the Pension Funds Act, 1956, and the Conditions made under section 13B(1) of the Act.
- The system of internal control is adequate for the size and complexity of the business.
- We believe that the business will continue in operational existence for the foreseeable future.

.....
MANAGING DIRECTOR

.....
FINANCIAL DIRECTOR

.....
DATE

.....
DATE