

## **CIRCULAR PF NO. 96**

(To all pension funds, retirement annuity funds and provident funds and administrators, which have been registered as pension funds in terms of the Pension Funds Act, 1956 (the Act). For convenience those shall be referred to as 'funds' in the body of this circular)

### **BOARDS OF MANAGEMENT**

#### **1. PREAMBLE**

The 1996 amendments to the Act introduced, among other things, the requirement that every fund should have a board.

This Circular lays down the FSB policy as to what should be included in fund rules relating to boards of management, for the purpose of registration of new funds and which old funds should adopt in amending their rules to comply with the Act.

Specific conditions of this circular that are additional to the specific requirements of the Act should, where applicable, be complied with by all funds by 15 December 1998.

#### **2. DEFINITIONS**

In this Circular, the following words shall be defined as indicated:

2.1 The Act : The Pension Funds Act, 1956, as amended.

2.2 Old Funds : All funds first registered before 19 April 1997.

2.3 New Funds : All funds first registered on or after 19 April 1997.

2.4 The Rules : The rules of funds.

2.5 Board : A board of management in terms of Sections 7A and 7B of the Act.

#### **3. BOARD OF THE FUND - S 7A (1)**

3.1 Every fund must have a board consisting of at least four members, at least 50% of whom the members of the fund shall have the right to elect.

All active members, pension members (inclusive of the dependants of deceased members receiving benefits depending on the provisions of the fund rules) and deferred pensioners shall have the right to elect the board. Where a fund purchases a pension from an insurer, in the name of a member and the liability passed on to the member, such person ceases to be a member of that fund, and is not eligible to elect members of the board.

3.2 Old funds must comply with these requirements by 15 December 1998.

3.3 The rules of new funds must contain the requirements of the Act relating to boards at the date of registration. The application for registration of a fund must include the names of the members of any then current board, who need not be elected board members. If the rules do not contain provisions compelling the initial board to enable the fund members within a specified period to exercise their right of election of members of the board, the application for registration must state the approximate date of such an election, if applicable.

#### **4. PROVISIONS IN TERMS OF THE ACT AND REGULATIONS RELATING TO THE BOARD MEMBERS TO BE INCLUDED IN THE RULES - S 7A (2)**

The rules must provide, apart from the requirements contained in regulation 30 (where applicable), for the following matters:

4.1 The minimum number of board members.

Although a chairperson may be appointed by the board, it is preferable that the chairperson be elected by the board. Whether appointed or elected the chairperson need not be a board member. However, a chairperson, with voting rights, who is not a board member must become one immediately on being co-opted, subject to the requirements of Section 7A(1) of the Act.

Any variation from the aforesaid stated preference should be explained when the relevant rules or rule amendments are submitted to this office for registration.

#### 4.2 The number of board members whom the members will have the right to elect.

- Board members need not be members of the fund, but the fund rules may require board members elected by the members to be members of the fund, if so agreed to by the appropriate employee negotiating forums.

#### 4.3 The election procedure for board members who are to be elected by members.

- The election procedure should clearly indicate whether the election will be on a poll, by ballot or some other method (objection approach).

#### 4.4 The filling of vacancies on the board.

#### 4.5 Term of office of a board member.

- The term of office should not be for a period exceeding 5 years.

While rules do not necessarily have to provide for such eventuality, it should be noted that any material change in the composition of fund membership may necessitate a change in the composition of the board.

#### 4.6 The procedures to be followed at board meetings

- Board members are entitled to proper notice of board meetings. Fund rules should preferably provide for at least 15 days notice for ordinary meetings of the board. Rules may provide for such notice period to be waived by all the board members.

Any variation from the stated preference should be explained when the relevant rules or rule amendments are submitted to this office for registration.

#### 4.7 The manner of reaching decisions at board meetings.

- The rules should specify the majorities required for decision making, for example, unanimous vote or majority vote.

#### 4.8 What constitutes a quorum at board meetings

- If the board consists of more than four members the quorum at board meetings should be structured in such a way that both member elected board members(if elected), and employer appointed board members (if appointed) are included in such arrangement or configuration ( this need not be in a 50/50 ratio but should take into account the majorities required for decision making at board meetings).

#### 4.9 The procedure to resolve deadlocks in the board

- The rules should specify whether or not the chairperson will have a casting vote, and the circumstances under which the casting vote will be exercised. (various other alternatives may be agreed upon).

#### 4.10 The powers of the board

- The rules must specify the powers of investment conferred on the board if any.
- The rules must provide for the powers of delegation of the board if needed.

4.11 The circumstances in which a board member may be removed and the procedure for their removal.

4.12 Whether or not board members will be paid, the basis of the remuneration, and how the remuneration will be calculated.

## **5. EXEMPTIONS FROM THE REQUIREMENT TO HAVE AT LEAST FOUR BOARD MEMBERS - S 7B (1)(a)**

5.1 The fund must apply to the registrar and it will have to prove that it is impractical or unreasonably expensive to have four board members.

5.2 The registrar will *prima facie* accept that if a fund has fewer than 50 members or its assets are valued at less than R2,5 million, it would be impractical or unreasonably expensive to have four or more board members

The registrar will take the following matters into consideration:

- The total assets of the fund, and the total number of fund members
- Geographical distribution of members and/or employers
- The funding method (defined benefit or defined contribution)

5.3 The applicant must satisfy the registrar on the following aspects:

- the standard of record-keeping, payment of benefits and general fund administration will not be adversely affected;
- the fund will have sufficient expertise to manage and invest its assets; and
- the fund will have sufficient internal control.
- Where a fund is administered by an administrator in terms of section 13B of the Act, it will be deemed to have fulfilled these requirements in this paragraph, in respect of the functions carried out by the administrator.

5.4 Funds which meet this criteria will not be automatically exempted. The registrar will issue an exemption on a case-by-case basis, and may call for such further information as is deemed fit, having regard to the particular circumstances of the fund.

5.5 Members still retain the right to elect at least 50% of the board.

5.6 Exemptions will be granted for a period not exceeding three years, provided that should the conditions on which the fund was exempted change materially, the fund must disclose the changes to the registrar, who will reconsider the position. On or before the date of expiration of the period of exemption, the fund shall be required to apply for an extension of the exemption.

5.7 There needs to be at least one board member who cannot be the principal officer.

## **6. EXEMPTION FROM THE REQUIREMENT THAT FUND MEMBERS HAVE THE RIGHT TO ELECT BOARD MEMBERS - S 7B(1)(b)**

6.1 All umbrella funds, preservation funds and retirement annuity funds which apply for this exemption must have at least one independent board member, and three other members. The quorum must be at least four and must always include the independent member.

- an umbrella fund is a fund with multiple participating employers which are not subsidiaries of a single holding company.
- an independent board member should not be an employee of the employer nor be controlled nor be in common control with the employer, the administrator or the sponsor of the fund. The independent board member should preferably not provide any other services to the fund or the employer or sponsor. Any variation from these stated preferences should be explained when the relevant rules or rule amendments are submitted to the office for registration.

6.2 The fund must apply to the registrar.

6.3 The applicant must satisfy the registrar on the following aspects:

- the standard of record keeping, payment of benefits and general fund administration will not be affected;
- the fund will have sufficient expertise to manage and invest its assets, and
- the fund will have sufficient internal controls.
- Where the fund is administered by an administrator who has been approved in terms of section 13B of the Act, it will be deemed to have fulfilled the requirements in this paragraph in respect of the functions carried out by the administrator.

6.4 Funds which meet this criteria will not be automatically exempted. The registrar will issue an exemption on a case-by-case basis and may call for such further information as is deemed fit, having regard to the particular circumstances of the fund.

- Exemption will be for a period not exceeding three years on condition that should the conditions upon which the fund was exempted change materially, the fund must disclose these changes to the registrar, who will reconsider the position. On or before the date of expiration of the period of exemption, the fund shall be required to apply for an extension of the exemption.

## **7. IMPLEMENTATIONS**

All funds should endeavour to comply with the above as soon as possible as a big rush is expected nearer the year end. Where funds are unable to comply with minor policy issues as stipulated in this circular, an undertaking must be given as to the date of compliance.

## **REGISTRAR OF PENSION FUNDS**

*This circular will also be available in Afrikaans, S. Sotho and Zulu*