
FINANCIAL SERVICES BOARD

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CIRCULAR PF NO. 108

(To all self-administered funds, all fund administrators, and the administering insurers of funds exempted in terms of section 2(3)(a) of the Pension Funds Act, 1956)

PENSION FUNDS AMENDMENT ACT, 1997 (ACT 94 OF 1997), REGULATIONS AND NOTICES BY THE MINISTER AND THE REGISTRAR

1. Amendment to the Act
1. Attention is drawn to the amendments on sections 13A, 19(4) and 28 of the Pension Funds Act, 1956 and the insertion of section 28A contained in sections 1 to 4 of the abovementioned Amendment Act which came into operation on 2 April 2001 in terms of Proclamation No. 22, 2001 (Government Gazette No. 22194 of 2 April 2001).
2. The amendment of section 13A requires certain information to be furnished and provides time frames and responsibilities, more fully expanded in regulation 33 in section B hereof, for -
 - (a) Payment of contributions:
 - (i) payment of the contributions by the employer directly to the fund so as to have the fund receiving the contributions within 7 days after the month end for which the contributions was payable. The contributions must be banked the next day;
 - (ii) in the case of a section 2(3)(a) exempt fund, the insurer must receive the contributions within a likewise manner and period;
 - (iii) the liability in respect of contributions existing at any time before the date of a resolution to amend the rules to reduce contributions cannot be diminished by such a resolution. In terms of regulation 24, the resolution must be submitted to the registrar within 60 days of its passing.

- (b) Transfer of withdrawal benefits:

A benefit accruing to a person on his or her ceasing to be a member of one fund (other than in terms of sections 14, 28 or 29 of the Act) and becoming a member of another fund and allowed to transfer the benefit, shall be paid to such fund within 60 days from the date of such request by the person.

(c) Details of information to be furnished:

- (i) the employer has to furnish minimum information with regard to personal details of the member and the contributions made as prescribed in regulation 33 (1);
- (ii) if the information is not furnished with the relevant contributions, it must be submitted to the fund within 15 days.

(d) Monitoring and Compliance:

The persons responsible for monitoring and ensuring compliance as well as the manner and format are specified in regulation 33 (2) and the relevant time frames in regulation 33(3).

(e) Interest payable to the fund:

Interest of a penal nature will be levied by the fund at a rate prescribed by the **Minister in the Gazette**.

3. The amendment of section 19 (4) provides for -

- (a) The investment of up to 5% of the fair value of the assets of a fund in the business of an employer.
- (b) The investment of up to a further 5% with the approval of the registrar on application, provided that the members are consulted and support such an investment. Note that it must be illustrated that the investment is in the best interest of the fund.
- (c) Deeming all holding and subsidiary companies in the group to be part of the business of a single employer.

4. The amendment of section 28 provides for -

(a) Partial termination:

- (i) the distribution of a part of the assets of the fund to beneficiaries connected to the participating employer whose withdrawal from the scheme caused the partial termination (a definition of partial termination is given in paragraph (6));
- (ii) the necessary liquidation accounts attributable to members and beneficiaries connected to the withdrawing participating employer to be submitted to the registrar.

(b) Notice for Inspection:

- (i) the registrar shall direct the liquidator to publish the necessary notices in:
 - the Gazette
 - one English newspaper
 - one Afrikaans newspaper; and
 - if deemed necessary, in any other official language;

- (ii) the registrar may exempt the fund from the provisions in the Act of sections (6) (accounts to lie open for 30 days) and (7) (advertising of the inspection of the accounts), after having due regard to the rights of interested persons and the liquidator having met the conditions laid down by the registrar by **notice in the Gazette**.

(c) Provisional benefit payments:

The registrar may authorise the liquidator to make interim payments to members and beneficiaries before submission of the final accounts on good cause shown and subject to the conditions prescribed by the registrar by **notice in the Gazette**.

(d) Completion of partial termination:

On the completion of a partial termination, the registrar will confirm the completion of the partial liquidation of the fund (and not its cancellation of registration).

5. Insertion of section 28A

Remuneration of the liquidator:

- (a) the registrar shall determine the remuneration for the services of the liquidator by **notice in the Gazette**;
- (b) the registrar may reduce or increase the remuneration if satisfied on reasonable grounds that there is good reason for doing so; and
- (c) the registrar may disallow the remuneration because of any failure or delay to carry out the duties or carry them out properly and effectively.

6. Definition of “partial termination”

“Partial termination” in relation to section 28 of the Act means the dissolution of a part of a fund caused by the cessation of participation in the fund by an employer that is not the principal employer; the withdrawal of which may constitute a total dissolution or a reconstruction of the fund in terms of the rules of the fund. The portion of the fund to be dissolved is that part consisting of assets and liabilities attributable to:

- (a) members in the employment of the particular employer ceasing participation in the fund as at the date of such termination;
- (b) persons who had been in the employment of that participating employer before such date and were members as at such date or in respect of whom the fund held assets and liabilities at such date; and or
- (c) dependants and beneficiaries entitled to benefits as a result of the membership of the persons specified in (a) and (b) above, and in respect of whom the fund held assets and liabilities at such date.

The phrases “partial termination”, “partial liquidation” and “partial dissolution” shall have the same meaning.

Notes:

1. The definition makes it clear that it refers to section 28 of the Act and should not be used instead of a section 14 transfer.
2. The rules of the fund must specify the conditions for termination, reconstruction and reconstitution relative to the circumstances of the principal employer. The idea of permanence of the fund required in the Income Tax Act is protected and the process of partial termination cannot be used where a total dissolution is appropriate.
3. It is applicable to all funds with employer participation in addition to a principal employer.
4. The dissolution of a fund due to the principal employer terminating is excluded from partial termination and must be dealt with as presently stated in the Act and rules.

B. Addition of regulation 33 to the Regulations

Government Notice No R337, published in Government Gazette No 22210 of 6 April 2001, contains the addition of regulation 33 as well as the addition of Annexure D to Schedule K of the regulation, all of which will come into operation 90 days after publication except for sub-regulation (7).

Sec of the Act

1. Contributions

13A (2)

Minimum information to be furnished by employer:

(a) Initial contribution statement

- (i) personal details of member
- (ii) details of the employer; and
- (iii) details of contribution paid

(b) Subsequent contribution statement

- (i) details as in (a)(i) to (iii) above; or
- (ii) in respect of (iii) above -

sufficient details to reconcile contributions with members.

2. Responsible persons:

- (a) Responsible for checking the receipt of, electronic transfers in respect of contributions into the funds bank account. **13A(3)(a)(i)**

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- (b) Responsible for receiving contributions paid to the fund for banking. **13A(3)(a)(ii)**

- (c) Authorized by the insurer to account for contributions received on **13A(3)(a)(iii)**

behalf of funds.

- (d) Principal officer or authorised person referred to as the monitoring person. **13A(6)**

3. Reporting: (See attached Schedule A).

4. Effective dates -

- (a) Regulations except penalty interest : 90 days after publication **33 (4)(1)**

(i) Initial contribution statements:

- For funds established on or before 31.08.2001 : 90 days after commencement **33 (8)**
- For funds established after 31.08.2001 : within 15 days of the end of the period for which the first contribution is payable.

(ii) Subsequent contribution statements:

- 15 days after the end of the month in respect of which the contribution is payable. **33 (8)**

- (b) Penalty interest : 120 days after publication **33 (4)(2)**

The actual dates are set out on the attached Schedule B

5. Addition to Schedule K of Regulations:

Annexure D

Form for the registrar to forward to South African Revenue Services on the dissolution of a fund.

C. Notice in the Gazette by the Minister

Government Notice No R338, published in Government Gazette No 22210 of 6 April 2001, contains the Notice by the Minister which will come into operation simultaneously with regulation 33(7), taking effect 30 days after commencement of the rest of regulation 33.

Currently the maximum annual finance charge rate in accordance with section 2 (1) of the Usury Act 1968 (Act no. 73 of 1968) is 25% for a debt up to R10 000 and 22% thereafter. This Act is administered by the Department of Trade and Industry and the finance charge rate is subject to change from time to time.

D. Board Notices by the Registrar

Government Gazette No 22210, published on 6 April 2001 contains Board Notices 72, 73 and 74 (including Annexure A) of the registrar and will come into operation 90 days after publication. These Notices deals with -

1. Interim payments by the liquidator in terms of section 28 (12A) of the Act:
 - (a) preliminary liquidation accounts and other information acceptable to the registrar; and
 - (b) payment not exceed lesser amount of -
 - (i) members own contributions;
 - (ii) 50% of the liquidation benefit; or
 - (iii) other amount that registrar deems appropriate.
2. Remuneration and services of the liquidator in terms of section 28A (I) of the Act in Schedule P:
 - (a) the tariff of remuneration of the liquidator; and
 - (b) the services of the liquidator.
3. Conditions for exemption in terms of section 28 (7A) of the Act to give notice for the inspection of the liquidation accounts in respect of sections 28(6) and (7) of the Act, regarding:
 - (a) the number of members and beneficiaries;
 - (b) the assets of the fund;
 - (c) the cost implications; and
 - (d) steps to be taken by liquidator to communicate with members.

E. Withdrawal of Circular

Circular PF 74 issued in June 1991 is withdrawn from the date on which compliance with this Circular becomes operative.

Kindly hand a copy of this Circular to the fund's auditor.

Yours faithfully

REGISTRAR OF PENSION FUNDS

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Notes :

1. Circular PF 107 on the topic of accounting for investments was issued to self-administered funds, all fund administrators and the administering insurers of funds exempted in terms of section 2(3)(a) of the Pension Funds Act, 1956.
2. This Circular can also be found on the Financial Services Internet Site : <http://www.fsb.co.za> Departments, Retirement Funds Department, Circulars.

REPORTING DUTIES AND RESPONSIBILITIES

SCHEDULE A

	SUBJECT FOR REPORTING	BY WHO	TO WHOM	BY WHEN	REGULATION
1	- Any unresolved previously reported matter (aa) - Data not transmitted (bb) - Data cannot be reconciled with payment (cc) - Discrepancy of more than 2,5% (cc)	The person(s) mentioned in paragraph 2(a) to (c) above	Monitoring person mentioned in paragraph 2(d) above	15 days from month end in respect of which the payment of contributions payable (section 13A(2)(b))	33(2)(c)(i)
2	Contributions paid in terms of section 13A(1)	The person(s) mentioned in paragraph 2(a) to (c) above	Monitoring person mentioned in paragraph 2(d) above	15 days from the 7 th day in the new month following the end of the month in respect of which the payment of contributions were payable	33(2)(c)(ii)
3	Information and contributions not received	The monitoring person	Board of Management	7 days from date of receipt of the report in 2 above	33(3)
4	Failure to pay contributions within 7 days	The monitoring person	Members of the Fund Registrar	After the board received information in 3 above the board may delay this action till receipt of the next months report. Dates must be determined by the board	33(4)
5	Failure to transmit the contributions payable	The monitoring person	Attorney General Registrar	Within 14 days of the expiration of 90 days of the failure to transmit the contributions	33(5)

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6	Failure to transmit the contributions	The Registrar	Commissioner for South	At the discretion of the	33(6)
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	payable		African Revenue Services	Registrar	
7(a)	Compound interest on arrear contributions	The Fund	The Employer	End of second month following the month in respect of which the amount is received	33(7)
7(b)	Compound interest	The Fund	The fund that should make transfer	End of second month following the month in respect of which the amount is received	33(8)

1. Pension Funds Amendment Act, coming into operation : **02/04/2001**.
2. Regulation 33 published : **06/04/2001**.
3. Regulation (4.1) : Regulations come into operation (commence) - 90 days after publication : **05/07/2001**.
4. Regulation 33(8)

The initial contribution statement furnished:

- not later than 90 days (**05/10/2001**) after commencement for the **31/08/2001** deductions

in respect of each fund established

- on or before **31/08/2001**

in respect of each fund established

- thereafter (**01/09/2001**)
- 15 days (**15/10/2001**), of the end of the period that the first contribution (**30/09/2001**) is payable.

A subsequent contribution statement should be furnished

- within 15 days **15/11/2001** after the end of each month in respect of which contribution (**31/10/2001**) is payable.

5. Regulation 33(7) (Interest for late payment)
 - 120 days after commencement **05/11/2001**.