FINANCIAL SERVICES BOARD

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To all approved administrators, privately administered funds and insurers who underwrite pension funds

CIRCULAR PF NO. 111

VOLUNTARY DISSOLUTION OF A FUND IN TERMS OF SECTION 28 OF THE PENSION FUNDS ACT, 1956 ("the Act").

Forms to be submitted by the liquidator

1. Before the voluntary liquidation of a fund can commence, the registrar must approve the appointment of a liquidator (section 28(2) of the Act). The following information must be submitted with the application for approval of the appointment of a liquidator:

    1.1 Questionnaire on the approval of the appointment as liquidator (Refer **Annexure A**).

    1.2 Declaration by a liquidator (Refer **Annexure B**).

2. For ease of reference, a copy of the Guidelines For the Voluntary Dissolution of Funds is attached as **Annexure C**.

Submission of financial statements

3. A fund which is liable to furnish annual financial statements in terms of section 15 of the Act, would be required to furnish such audited financial statements for the period from the previous annual financial statements submitted to the registrar until the date of the approval of the liquidator if the period from the previous financial statements and the appointment date exceeds a period of 6 months.

Surplus apportionment

4. If the registrar approves the appointment of a liquidator after 7 December 2001, the provisions introduced by the Pension Funds Second Amendment Act apply. If the Fund has actuarial surplus and a surplus apportionment scheme was not previously submitted to the registrar, a surplus apportionment scheme must be submitted by the liquidator. When applying for the approval of the liquidator, the Board of a Fund must declare whether or not the liquidator will submit a surplus apportionment scheme; if so

(a) the liquidator will assume the duties of the board of the fund (section 28(3));
(b) the liquidator will be responsible for submitting the scheme, and is therefore expected to acquaint himself / herself with the procedures to be followed in the apportionment process; and
(c) the registrar should be informed of the liquidator's willingness to perform this apportionment as part of the application for approval of the liquidator's appointment.

Liquidator's remuneration

5. The tariff for the remuneration of liquidators is set out in Annexure A to Board Notice 74 of 2001 ("Annexure A".)

6. The liquidator's remuneration is calculated as follows:

6.1 Where the apportionment of surplus forms part of the liquidation, the liquidation process will consist of two parts.

6.2. The first part of the liquidation will deal with the distribution of the actuarial liabilities to the current members of the Fund. The tariff for this distribution is set out in paragraph 1 of Annexure A of Board Notice 74 of 2001.

6.3. The second part of the liquidation will deal with the redrafting of the distribution account to include former members. For this, the liquidator will be entitled to R20 per member included in the distribution account. The liquidator's remuneration will not be based on the assets, as these assets would have been liquidated in the process preceding the first distribution.

Paragraph 2 of Annexure A (Board Notice 74 of 2001) provides that the liquidator's remuneration is an all inclusive fee and that all the costs incurred in connection with the liquidation will form part of the liquidator's remuneration, unless the registrar, on application by the liquidator, agrees otherwise. Paragraphs 3 and 4 of the said Annexure A provide that the costs incurred for the services of an actuary and those of obtaining legal advice will not form part of the remuneration and have to be reflected separately against the expense item "other" in Annexure B of Schedule K (regulation 29).

Where the apportionment exercise is undertaken by the liquidator as part of the liquidation, the additional costs (eg. Advertising, tracing of members, etc.) must be specified separately against the expense item "other" in Annexure B of Schedule K . These additional costs may not exceed the greater of R20 000 or 5 % of the value of the surplus in a fund.

Yours faithfully

REGISTRAR OF PENSION FUNDS

ANNEXURE A

Fund Name: ………………………………………………………….. (12/8/……………………)

Questionnaire for the approval of the appointment as liquidator

Section 28(2) of the Pension Funds Act, 1956, requires the registrar to approve the appointment of the liquidator. Before approval the registrar will, inter alia, consider in particular the diligence, experience and competence of the proposed liquidator.

The following information is required:

1. Full name ……….…………………………………………………………………………

2. ID Number ……………………………………………………………………………..

3. Name and address of employer: ……..…………………………………………………..

   …………………………………………………………………………………………………

4. E-mail address ……………………………………………………………………………

5. Are you aware of all legislation that impacts on pension funds and the requirements, policies and procedures in the liquidation of pension funds?

   ………………………………………………………………………………………………….

6. Are you familiar with the legal structures and relationships between pension funds, their members, board members and the employer?

   ……………………………………………………………………………………………….

7. Have you ever been convicted of a criminal offence? If so, give details:

   ………………………………………………………………………………………………

8. Has your estate ever been sequestrated or a business in which you had a financial interest been liquidated?

   ……………………………………………………………………………………………..

9. Enclose your Curriculum Vitae in relation to pension funds.

I certify that the abovementioned information is true, correct and complete.
I undertake to advise the registrar of any important changes to the above information.

APPLICANT	DATE

Notes:

1. On being approached by the fund to act as liquidator, you must declare your independence from the fund, participating employers and the administrator and show that there will not be a conflict of interest. Also confirm that the CV submitted to the registrar has not changed subsequent to your approval as a liquidator of a fund or indicate that you have informed the registrar of any changes to it.

2. Application must be made and the approval of your appointment by the registrar will be made in your personal capacity.

ANNEXURE B

…………………………………………………………………….Fund (12/8/…………………..)

DECLARATION BY A LIQUIDATOR

I ………………………………………………………………………………. hereby declare that:

I have never been involved in the management, administration, valuation or auditing of the ………………………………………………….. Fund (name and registration number of the fund), except ……………………………………………………………………………………………;

my appointment would not cause any conflict in interest in performing my duties as liquidator of the Fund;

in terms of section 28(2), on the approval of my appointment by the registrar, I will take responsibility for the Fund in the place of the board of management and will safeguard the assets of the fund;

I have been informed by the board of the Fund that there *is / is not an actuarial surplus in the fund. I am aware that surplus apportionment, where applicable, has to be performed in terms of section 15B of the Pension Funds Act, 1956 as amended;

I am not an unrehabilitated insolvent, my estate has never been sequestrated and no business in which I had a financial interest have ever been liquidated, except …………… ……………………………………………………………………………………..… (give full details)

______________________________ ______________________________

APPLICANT **DATE**

ANNEXURE C

GUIDELINES FOR VOLUNTARY DISSOLUTION OF FUNDS

The process of voluntary dissolution of funds, whether wholly or in part, is outlined in sections 28 and 28A of the Act together with the returns prescribed in regulation 29 and Schedule K. This guideline amplifies these requirements.

After considering the request for the approval of the appointment of the liquidator, this Office will confirm the approval in a letter to the Principal Officer. A copy of the letter of appointment is sent to the liquidator. All subsequent correspondence will be directed to the liquidator. The liquidator is required to quote the case number indicated on his letter of appointment on all correspondence and payments made to this Office.

The period of liquidation commences on the date of approval of the appointment by the registrar (section 28(2).

The application for the appointment of the liquidator should be accompanied by a certified copy of the resolution by the board of management appointing the liquidator, an indication of the rule in terms of which the fund is to be dissolved and the completed Annexures A and B (Circular PF. No.111).

No amendment to the rules of a fund, submitted after approval of the liquidator, will be considered for registration by the registrar, unless so ordered by a competent court.

The Pension Fund Second Amendment Act, Act 39 of 2001, applies to all liquidations where the liquidator's appointment was approved by the registrar on or after 7 December 2001.

If the liquidation commences on or after 7 December 2001 but prior to the surplus apportionment date, the liquidation advances the surplus apportionment date to the effective date of the liquidation. This means that the liquidator must perform a surplus apportionment, taking the place of the board in the application of section 15B of the Act.

The liquidator must deposit with this Office accounts in the format prescribed in regulation 29 and Schedule K of the Regulations (section 28(4). Annexures A and B of Schedule K should reflect assets and liabilities at the date of liquidation as well as all income and expenditure from the date of the last statutory audited accounts.

The liquidator must indicate how the provisions of section 28(4)(b) have been addressed.

The liquidator should indicate any discretion exercised in terms of the rules of a fund (item (a) - Basis of distribution of Annexure C of Schedule K). This must include the reasons and the period for including or excluding members whose membership had been terminated prior to the date of liquidation, from participating in the distribution.

Annexure D of Schedule K must be submitted in duplicate with the liquidation accounts.

Provision should be made in the preliminary realisation account for:

(a) the cost of placing notices in the Gazette and in one English newspaper, one Afrikaans newspaper and another official language, if required, circulating in the district in which the registered office is situated;

(b) levies payable to the Financial Services Board;

(c) the remuneration of the liquidator in terms of section 28A of the Act and Board Notice 74 of 2001. The calculation of the liquidator's remuneration must be submitted with the preliminary accounts.

The liquidator's remuneration is an all inclusive fee, based on the proceeds of the assets of the fund for services rendered in realising those assets, drawing up the liquidation accounts and distributing the proceeds to members and beneficiaries. The liquidator may use the services of an actuary to assist in the calculation of benefits and may obtain legal advice on any question of law affecting the liquidation of the fund. Such costs will not form part of the liquidator's remuneration and must be shown as a specific expense item in Annexure B of Schedule K. Remuneration for the apportionment of surplus is set out in Circular PF. No.

(d) taxation on retirement funds; and

(e) services rendered by the registrar in case of liquidation of a fund in terms of section 28 of the Act. The prescribed fee is set out in Schedule L to the Regulations and should be reflected in the preliminary account. The fee is payable by the liquidator prior to this Office's direction to complete the liquidation (section 28(8) or (11)). If this fee is paid by an electronic fund transfer, a copy of the confirmation of transfer must be forwarded to this Office.

After the approval of the preliminary accounts, notice must be given that the accounts shall lie open for inspection (section 28(7)) for a period of thirty days at the registered office of the fund, the Office of the Chief Magistrate in the district in which the registered Office is situated and this Office. The notice must be published in the Gazette and in one English newspaper, one Afrikaans newspaper and another official language, if required, circulating in the district in which the registered office is situated.

Specimens of such notices which meet with the requirements of this Office are available on request.

After publication, copies of the relevant pages of the Gazette and newspapers must be submitted to this Office. The copy of the accounts lodged with the Magistrate, bearing his stamp, must also be returned to this Office together with the Fund's certificate of registration.

If the registrar is satisfied on reasonable grounds that special circumstances exist which justify exemption from the provisions of sections (6) and (7) of the Act, he may exempt the fund from all or any of the provisions of those subsections. The conditions of exemption are set out in Board Notice 72 of 2001.

If no objections are received within the specified time, the liquidator will be instructed to complete the liquidation and submit final accounts. Objections will be investigated and the necessary action taken, depending on the nature of the objections.

Apart from paying for the aforementioned costs for advertisements, outstanding levies, taxation and pensions in payment, no distribution of funds may be made until this Office has given such directive in terms of either subsection (8) or subsection (11) of section 28 of the Act. The registrar may however, authorise the liquidator to make preliminary payments to the members and beneficiaries of a fund before submission of the final accounts, subject to the conditions set out in Board Notice 73 of 2001.