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

CIRCULAR PF NO. 121

General Guidance on Surplus Schemes

INTRODUCTION

1. This circular sets out general guidance from the Registrar in respect of surplus schemes submitted in terms of section 15B of the Pension Funds Act, Act 24 of 1956 (“the Act”).

2. All registered funds that have actuarial surplus at their surplus apportionment date are required to submit a surplus apportionment scheme to the Registrar. Funds that do not have actuarial surplus at their surplus apportionment date are requested by the Registrar to submit a “nil” surplus scheme. Funds should refer to the relevant PF Circulars for guidance.

3. In the case of funds that were previously valuation exempt, such exemptions expired as at the first year-end or scheme anniversary following 7 December 2003 (refer to Regulation 36 of the Act). Even these funds are required to submit an actuarial valuation report in terms of section 16 of the Act as at this date.

4. No surplus apportionment date of any fund can precede 7 December 2001.

5. A statutory actuarial valuation report as at the surplus apportionment date must be submitted before, or in conjunction with a surplus scheme.

6. A fund has to submit its surplus scheme to the Registrar within 18 months of its surplus apportionment date. In terms of section 37(1)(b) and (2) of the Act, read with Regulation 26, the Registrar may impose a penalty on any person who fails to make a return or transmit or deposit any document when required to do so in terms of the Act. Alternatively, in terms of section 15B(10) or 15K(1), the Registrar shall require the board of a fund to refer the surplus scheme to a special *ad hoc* tribunal to perform the functions of the board set out in section 15B of the Act.

7. The rules of a fund must be amended to comply with its method of operation as at and after the fund's surplus apportionment date. More specifically, the operation of any reserve accounts, e.g. contingency reserve accounts, must be in line with its rules.

STATUTORY ACTUARIAL VALUATION AS AT SURPLUS APPORTIONMENT DATE

8. As set out in paragraph A of Circular PF115, Form 2 will in certain cases be deemed acceptable as an actuarial valuation report for the purpose of a surplus scheme provided that the Registrar is satisfied with the contents thereof.

9. Please take note of Section 2 of PGN205, issued by the Actuarial Society of South Africa ("ASSA") with effect 1 January 2005. This guidance note deals with the consistency of valuators' actions – both in relation to different funds and over time.

10. The standards for valuations to determine the actuarial surplus at the surplus apportionment date are set out in Circular PF117. This circular also provides guidance on the establishment of contingency reserve accounts.

11. PGN201, issued by ASSA, par. 5.14 regards an analysis of the change in surplus (or deficit) since the previous statutory valuation as an essential component of a valuation report. Section 10 of PGN201 elaborates further on the matter.

12. In the case of Defined Contribution funds, in order for the Registrar to assess whether interest or bonus distributions were reasonable or whether surplus was distributed in this way along with actual returns, a table should be included in the valuation report indicating the rates of return actually earned on the assets of the fund as well as the rates of interest declared. Should this be omitted, the Registrar may require such information subsequently. (Also refer to par. 19 below).

13. Pension increases granted should be motivated in the valuation report in line with the established pension increase policy of a fund.

SURPLUS APPORTIONMENT SCHEMES

14. The prescribed formats of standard forms are contained in Circulars PF114 and PF115. Applicants are required, as far as is possible, to adhere to the prescribed formats and not deviate from them when submitting surplus schemes.

15. Where the surplus apportionment date of a fund has been advanced, the reasons for this decision must be explained.

16. Should a fund not reflect an actuarial surplus as at the surplus apportionment date, a “nil” surplus scheme must be submitted to the Registrar stating this fact. Circulars PF114 and PF115 provide guidance with regards to the submission of a “nil” scheme.

17. All submissions for “nil” surplus schemes must comply with the conditions stated in Circulars PF114 and PF115:

    17.1 Circular PF114 requires submission of at least three Appendices (B; B1 and B3). In addition, Appendices D and E may also be required.

    17.2 Circular PF115 requires submission of three Forms (i.e. Forms 1, 2 and 3 of either section A, B or C).

18. Any tables presented in the surplus schemes must be checked and should be sensible (e.g. the numbers must add up; all headings must be consistent with the actual figures quoted). The values quoted must correspond to the values in the actuarial valuation report as at the surplus apportionment date.

19. Where a fund has distributed surplus during an inter-valuation period through bonus declarations or pension increases that are not in line with established practice, this must be explained comprehensively as it could have amounted to an unauthorised distribution of surplus.

20. In the case of improper use of surplus, detailed information must be included in the surplus scheme. Guidance and standard forms are included in Circulars PF114 and PF115. The valuator should refer to PGN208 issued by ASSA with effect from 1 January 2005.

21. A fund that submits a “nil” surplus scheme in terms of Circular PF114 will not be valuation exempt from the surplus apportionment date onwards. A valuator is thus required to complete Appendix B1.

22. The Registrar will consider “bulk” applications in terms of Circular PF115 by registered life insurance companies who underwrite pension funds. Details are provided in Circular PF122.

SURPLUS APPORTIONMENT AND SECTION 14 APPLICATIONS

23. Section 14 applications are independent of submissions of surplus schemes in terms of section 15B of the Act. However, a surplus scheme is required for all registered funds, irrespective of whether or not an application was lodged for a full transfer in terms of section 14 of the Act. The Registrar will only consider approval of a full transfer once the Registrar is satisfied with the surplus scheme submitted by the transferor fund.

24. The Registrar will not allow any transfer of surplus before a surplus scheme in terms of section 15B of the Act has been approved. Until such time, the Registrar will only consider the approval of a transfer of accrued liabilities.

25. Regulation 36 deals, inter alia, with the withdrawal of valuation exemption from all funds that were previously valuation exempt. These funds are required to appoint an approved valuator to complete any document required of the valuator for submission of the surplus scheme. Until such time as a fund has been granted valuation exemption after the surplus apportionment date, an approved valuator is required to complete and sign the special reports of a section 14 application. In the event where the transferor or transferee fund may be a retirement annuity fund, the Registrar will also accept the application if the special reports are completed by the statutory actuary of a registered life insurance company.

SURPLUS APPORTIONMENT AND UMBRELLA FUNDS

26. In an umbrella fund, each sub-fund that has a surplus must submit its own surplus apportionment scheme. For each other sub-fund that does not have any surplus to apportion, a combined “nil” surplus scheme may be submitted.

27. An umbrella fund can submit a single surplus scheme encompassing all the sub-funds provided that each sub-fund included in the submission does not have the ability to accumulate surplus and provided that each sub-fund included in the submission complies with the requirements for valuation exemption as set out in Regulation 2, as amended.

28. For an umbrella fund where a sub-fund has the ability to accumulate surplus or where a sub-fund is unable to comply with the requirements for valuation exemption as set out in Regulation 2, as amended, each such sub-fund must submit its own surplus scheme.

29. After the completion of its surplus apportionment exercise (i.e. the Registrar has forwarded a certificate to the fund/sub-funds in terms of section 15B(9)(i) of the Act, or has recorded a "nil" surplus for all sub-funds), each umbrella fund must submit a schedule to the Registrar, with these details of every sub-fund as at the surplus apportionment date. The fund must confirm that the surplus apportionment exercise has been completed (as set out above) for all sub-funds and the board of the fund must certify this.

30. Valuation exemption will be granted at a fund level provided the fund complies with the requirements as set out in Regulation 2, as amended and the Registrar has received the schedule referred to in par. 29.

FOR REGISTRAR OF PENSION FUNDS