

FINANCIAL SERVICES BOARD

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

CIRCULAR PF NO. 125

USE OF EMPLOYER SURPLUS TO PREVENT JOB LOSSES (SECTION 15J OF THE PENSION FUNDS ACT, ACT 24 OF 1956)

1. This Circular is issued to provide clarity on the prescribed manner required by the Registrar for an application in terms of section 15J of the Act. This applies only to funds with a single participating employer. Where a fund has more than one participating employer, the proposed course of action should first be discussed with the Registrar's Office.
2. The applicant in a section 15J application must submit:
 - 2.1 Proof of negotiations in terms of section 189 of the Labour Relations Act, Act 66 of 1995 ("the LRA");
 - 2.2 Certification by an auditor that there is a need for retrenchment.
 - 2.3 Proof of full disclosure (when, where, how) to members of:
 - 2.3.1 the current financial position of the fund;
 - 2.3.2 the proposed distribution to the employer;
 - 2.3.3 the need of the employer for additional capital in order to maintain employment;
 - 2.3.4 the report of the auditor; and
 - 2.3.5 such information as the members may require in order to exercise their rights under the LRA.

Board Members: Dr CDR Rustomjee (*Chairperson*) AM Sithole (*Deputy Chairperson*) BM Hawksworth Ms JV Mogadime
Ms LM Mojela Ms AMM Mokgabudi Prof PJ Sutherland Ms HS Wilton
Board Secretary: SB Makgalemele
Executive Officer: RJG Barrow



- 2.4 Proof that members had reasonable opportunity to consider the proposal.

Factors influencing what would constitute reasonable opportunity would include the number of members of the fund, the geographical distribution of the members (centralised operation vs multiplicity of branch operations), the level of sophistication of the workforce, etc.

- 2.5 Proof that at least 75 per cent of the fund members currently employed by the employer, have approved the proposal in writing.

- 2.6 Proof that negotiations in terms of section 189 of the LRA have confirmed the need to retrench more than 10 per cent of the membership of the fund at the previous financial year-end if the payment is not made.

3. It is not anticipated that many applications of this nature will be received. At the same time it is realised that section 15J can only effectively be used to prevent job losses if every effort is made to deal with each such an application on a relatively speedy basis. Close liaison with the Registrar's Office, combined with short turnaround times by all parties, will therefore be essential.



FOR REGISTRAR OF PENSION FUNDS