

FINANCIAL SERVICES BOARD

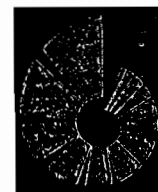
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Enquiries:

Our ref:

Date: 12/12/1

October 1993



FSB

CIRCULAR PF NO. 81

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

Rule Amendments in terms of Section 12(2) and Consolidated Rules

in terms of Section 12(5) of the Pension Funds Act, 1956

In order to promote efficiency and improve communication, we wish to explain the provisions of the Act and Regulations relating to rule amendments.

1. Amendments

In terms of section 12(2), the Registrar must be furnished with a copy of the resolution passed by the trustees. Section 12(2) also requires the rules to be certified as set out in that subsection. At present this office is receiving proposed rule amendments which contain a certificate but no copy of the resolution. Strictly speaking two documents must accompany an application in terms of section 12(2), ie. a resolution and a certification. The two requirements may however easily be combined. Should you wish, the attached example of a resolution incorporating a certificate marked "A" may be used.

2. Consolidated Rules

Section 12(5) makes provision for the registration of consolidated rules ie. re-registration of previously registered rules but now in consolidated form. As no new amendments are involved, it is obvious that no resolution or certificate is necessary. It must however correspond strictly to the rules and amendments already registered by this office. As far as fees are concerned, the R75,00 amendment fee shall be payable unless this office requests the consolidation to facilitate its own administration.

3. Consolidation of Rules including Amendments ("Revised Rules")

Where rules are consolidated but amendments are also made, or where a set of rules is redrafted, such amendments are made in terms of section 12(2), as the Pension Funds Act, 1956 does not make provision for "revised rules" as such. As it is very cumbersome for a pension fund to revise rules by way of numerous amendments, this practice will be allowed to continue, provided that the procedure set out in paragraph 6 is followed closely. Although two procedures are combined, only one fee of R75,00 will be payable. A resolution with a certificate as required by section 12(2) must be furnished. An example of this is attached marked "B" which you may use.

4. Replacement pages

Several requests have been received by the industry to allow the registration of replacement pages to obviate the necessity of later having to consolidate the rules. Provided that the resolution is drafted correctly, it is quite possible to register replacement pages in a legal way. An example of an acceptable resolution has been attached hereto marked "C" for your convenience. Please note that in this instance the procedure referred to in paragraph 6 should be followed strictly.

5. Conversions

5.1 Underwritten Funds

The conversion of a fund from an underwritten fund to a privately administered fund or vice versa amounts to a consolidation with amendments (revised rules) as set out in paragraph 3. Please note that the fund should not be terminated and no new application for provisional registration should be made. Where an underwritten fund converts to a privately administered fund, this Office merely withdraws the exemption granted to the fund in terms of section 2(3)(b) of the Act. This also does not involve the transfer of business in terms of section 14. When a privately administered fund converts to an underwritten fund exemption in terms of section 2(3)(a)(ii) will only be granted if certain requirements are met. Amendments will then, of course, have to be effected.

5.2 Benefit Structure

The conversion of a fund from a defined contribution to a defined benefit fund or vice versa or from a pension fund to a provident fund or vice versa also amounts to a consolidation with amendments. In this instance it is also not necessary to terminate the fund and to establish a new fund.

6. Procedures

- (a) All amendments must be marked clearly in bold print or in such other way as may be agreed with the Registrar, where replacement pages or "revised rules" are being submitted. Deletions may be indicated with an asterix. Where it is not practical to show all the amendments, special arrangements must be made beforehand with this Office.
- (b) In terms of regulation 24(a)(iii) of the Regulations, reasons must be furnished for every rule amendment. A practice has developed whereby this office only requests reasons in exceptional cases. This has led to an unnecessary administrative burden and for this reason you are required to comply strictly with the above regulation. The reasons may be concise but must explain the purpose of the amendment.
- (c) In terms of section 12(2), all applications for amendments or "revised rules" must also be certified by the person managing the business of the fund as follows:

"Certified that the resolution attached hereto has been adopted in accordance with the provisions of the rules of the Fund."

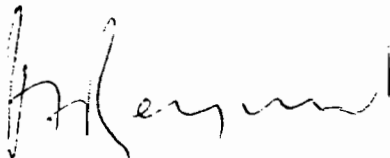
For your convenience, this requirement has been combined with the resolution in the examples attached hereto.

- (d) In terms of section 12(2) read with section 20(2) of the Act, all documentation submitted to this office must be signed by the following persons:
 - (i) the principal officer; and
 - (ii) where the fund is managed by an individual, by that person; or

- (iii) where the fund is managed by a committee or trustees, by the chairman and one other member thereof.
- (e) In the case of underwritten funds, until the exemptions from the Act are withdrawn, documentation may in terms of section 20(2)(c) be signed by the employer and the underwriter.
- (f) Two copies of the resolution, signed and certified as indicated above, should be furnished to enable this office to return one endorsed copy to you.
- (g) Where any amendment affects the financial condition of the fund, a certificate of a valuator as to the financial soundness should be furnished in terms of section 12(3). If the method of funding is such that triennial investigations by a valuator is unnecessary then the Principal Officer (or Underwriter) must certify financial soundness.

We trust that the above will be of assistance to you and that our suggestions could be implemented to our mutual benefit not later than 1 January 1994.

Yours faithfully



REGISTRAR OF PENSION FUNDS

(Sien keersy vir Afrikaans)

"A"

Rule Amendment No.

..... Fund

Extract from the minutes of a meeting of the Trustees/Management Committee of the held at on

Resolved:

That rule of the rules of the above fund with effect from be amended as follows:

The reasons for the amendment are:

Certified that the above resolution has been adopted in accordance with the provisions of the rules of the fund.

PRINCIPAL OFFICER

CHAIRMAN

MEMBER OF TRUSTEES/COMMITTEE

"B"

Revised Rules

..... Fund

Extract from the minutes of a meeting of the Trustees/Management Committee of the held at on

Resolved:

That the set of rules of the above fund be substituted with effect from by the set of rules attached hereto and initialled for identification purposes in which amendments, omissions and/or additions (delete whichever is not applicable) to the following rules have been effected:

The reasons for the substitution are:

Certified that the above resolution has been adopted in accordance with the provisions of the rules of the fund.

PRINCIPAL OFFICER

CHAIRMAN

MEMBER OF TRUSTEES/COMMITTEE

"C"

Rule Amendment No.

..... Fund

Extract from the minutes of a meeting of the Trustees/Management Committee of the held at on

Resolved:

That page(s) of the rules of the above fund be substituted by the attached page(s) containing amendments, omissions and/or additions (delete whichever is not applicable) to rule(s) with effect from

The reasons for the amendments are:

Certified that the above resolution has been adopted in accordance with the provisions of the rules of the fund.

PRINCIPAL OFFICER

CHAIRMAN

MEMBER OF TRUSTEES/COMMITTEE