
FINANCIAL SERVICES BOARD

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CIRCULAR PF NO. 98

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

GENERAL GUIDELINES ON BOARDS OF PENSION FUNDS AND THEIR OBJECTS AND DUTIES

1. Preamble

The purpose of this circular is to amend paragraphs 3.1 and 4.1 of Circular PF No 96 of 30 June 1998 and to clarify the Financial Services Board's view on the objects and duties of boards of management in order to provide guidelines to such boards for the good governance of funds. Certain aspects will be further elaborated on in specific circulars. PF 98 should not be regarded as either an exhaustive or a definitive account of the fiduciary duties of boards of management. This Circular supplements PF 96.

2. Definitions

- 2.1 The Act : The Pension Funds Act, 1956 as amended.
- 2.2 The Rules : The rules of funds.
- 2.3 Board : A board of a pension fund referred to in section 7A of the Act.

3. Amendment of Circular PF No 96 : Boards of pension funds

3.1 Substitute paragraph 3.1 with the following paragraph:

All active members, pension members and deferred pensioners shall have the right to elect the board as contemplated in section 7A(1) of the Act. Where a fund purchases a pension from an insurer, in the name of a member and the liability passed on to the member, such person ceases to be a member of that fund, and is not eligible so to elect members of the board.

3.2 Substitute paragraph 4.1 with the following paragraph:

It is preferable that the chairperson be elected by the board. The chairperson need not be a board member. However, a chairperson, with voting rights, who is not a board member must become one immediately on being co-opted, subject to the requirements of section 7A(1) of the Act.

4. Object of Board - Section 7C

- 4.1 In terms of section 7C(1) of the Act, the object of a board shall be to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund.
- 4.2 The board acts in a fiduciary capacity and in order to properly execute its duties, it should be familiar with and understand the laws which affect its position. The board should be fully acquainted with the Pension Funds Act, the Regulations thereto and the rules of the relevant fund, together with other legislation which affects its functions such as the Financial Institutions (Investment of Funds) Act, 1984 (Act No 39 of 1984).
- 4.3 One of the most important duties of the board is to give effect to the rules of the relevant fund insofar as these do not conflict with the law. The rules set out the objects of the fund and how these are to be attained. The board is bound by these rules, and may vary them only in accordance with the amendment provisions set out in the Act and rules. In making amendments, the board must have regard to the other fiduciary duties governing its conduct.

In pursuing its object, the board shall -

- 4.4 In terms of section 7C(2)(a) of the Act, ensure the protection of members' interest in terms of the rules of the fund and the provisions of the Act especially during amalgamations and transfers, splitting of a fund, termination or reduction of contributions to the fund by the employer, increase of contributions of members and withdrawal of an employer who participates in a fund.
 - 4.4.1 In order to deal with the above situations effectively, the board should, subject to section 7D of the Act:
 - 4.4.1.1 ensure that it is fully aware of all the facts of a relevant situation and that it fully understands the facts;
 - 4.4.1.2 obtain expert advice when needed from professional advisers such as actuaries and auditors;
 - 4.4.1.3 bear in mind that at all times it should act in the best interest of all fund members and that timeous, relevant and meaningful communication takes place with all members in a comprehensive manner to enable members to make balanced and informed decisions;
 - 4.4.1.4 ensure that all decisions by the board in these circumstances comply with the appropriate fund procedures relating to decision making which must be fully documented in the rules.
 - 4.4.2 The board should ensure that assets and contributions of the fund are invested in accordance with the rules of the fund. The board should draw up a document setting out the investment policy for the fund, including delegation to investment managers and custodians,

where required, with the procedures necessary for monitoring investment performances and the appropriateness of investments to the provision of benefits in terms of the rules. The board should declare its voting policy with regard to investments held by the fund.

- 4.5 In terms of section 7C(2)(b) of the Act, the board shall act with due care, diligence and good faith.
 - 4.5.1 The board has a duty to act in good faith and to avoid misleading and deceptive acts or representations. The board should not seek to exclude or restrict any duty or liability to a member which is imposed on it by any law. It should not seek to rely unreasonably on any provision seeking to exclude or restrict such duty or liability.
 - 4.5.2 The board has a duty to act diligently and with due care with regard to all actions between itself and its members and customers. These concepts imply that board members should discharge those duties as can reasonably be expected from a prudent person in a like position and under similar circumstances. 'Prudence' requires the board not to assume risks without taking due account of the possible consequences. This includes maintaining adequate financial resources, including liquidity, as well as maintaining effective risk management systems. 'Adequate' implies the taking into account of the necessary margins for unexpected contingencies.
 - 4.5.3 The board should invest the monies and manage the assets of the fund so that they yield a return by way of income and capital appreciation which is more than adequate if judged in relation to the risks of the investments and the liability structure of the fund.
- 4.6 In terms of section 7C(2)(d) of the Act, the board shall act with impartiality in respect of all members and beneficiaries of the fund.
 - 4.6.1 The board should not only have the interest of active members at heart, but also those of pensioners, deferred pensioners and beneficiaries. The board should ensure that no individual or group of members is favoured at the expense of other members, and that all are treated fairly.
 - 4.6.2 Investments and allocation of surplus should be made in the best interest of the present and future members and beneficiaries of the fund; impartiality between different classes of members, beneficiaries and the interests of the employer (where it has obligations relating to the fund) should be practised.
- 4.7 Relationship with Registrar
 - 4.7.1 The board should deal with the Registrar of Pension Funds in an open and co-operative manner. The board should ensure that an effective compliance programme is in place that meet the Registrar's requirements.

5. Duties of Board - Section 7D of the Act

The duties and responsibilities of a board member are contained in statutory law, common law principles and the rules of the relevant fund.

The following duties have been outlined in section 7D of the Act:

5.1 To ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board:

5.1.1 This is interpreted as meaning that the board should ensure that proper accounts of the income and expenditure of the fund are kept and, if the fund is not audit-exempt in terms of section 2(3)(a) of the Act, have these accounts audited by a professionally qualified auditor. The accounts and, where applicable, meaningful summaries of the auditor's and actuarial reports should accompany the board's annual report. Boards must also keep minutes of their meetings and record decisions taken by them.

5.1.2 Books and records must be kept showing *inter alia*:

- membership records with details and dates of joining and leaving the fund;
- contributions received;
- payments of pensions and benefits;
- any movement of assets from the fund to any other person, or any movement of assets within the fund from one investment manager to another;
- the receipt or payment of money or assets in respect of transfers in and out of the scheme; and
- payments made to a member of the fund leaving the scheme other than on transfer.

5.1.3 Proper meeting procedures must be followed and written minutes of board meetings must be kept stating, *inter alia*:

- the date and place of the meeting;
- the names of the members of the board who attended and those who did not;
- the names of all the members of the board invited to any special meeting of the board; and
- the decisions made.

- 5.1.4 The fund's books and records should be retained for periods dictated by prudent fund management or by any law, but not less than 5 years from the end of a fund's financial year to which the books and records relate.
- 5.2 To ensure that proper control systems are employed by or on behalf of the board:
 - 5.2.1 The board must ensure that proper internal control systems are in place which may vary depending on the size and complexity of the relevant controlled activities.
 - 5.2.2 The board should ensure the setting of standards, review, monitoring and strengthening of internal controls, as and when necessary, and that policies and procedures of the audit relevant function are complied with.
 - 5.2.3 The board should require that these controls address accounting procedures, reconciliation of accounts, control lists, information for management, and address checks and balances (the 'four eyes' principle) with regard to segregation of duties, cross-checking, dual control of assets, double signatures and safeguarding of assets.
 - 5.2.4 The board should ensure that an Audit Committee and Actuarial Committee are in place with the necessary terms of reference and reporting responsibility to those committees and the board where relevant.
 - 5.2.5 The board should ensure that the audit function has unfettered access to all line and support functions.
 - 5.2.6 The board should ensure that the risks with regard to all outsourced activities are identified and properly supervised.
 - 5.2.7 The board should ensure that clearly defined investment guidelines and performance benchmarks are in place by taking account of the investment policy. The responsibilities of investment managers should be clearly defined in a written agreement.
 - 5.2.8 The board should be satisfied that there is a control framework in place which ensures that the investment manager operates within the fund's investment policy, and has adequate controls to ensure the security of the assets.
- 5.3 To ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund.

- 5.3.1 On admission to a fund, a new member should be furnished with an explanatory pamphlet within three months of joining. In addition, the fund is required to furnish each member with an annual benefit statement, within 6 months after the financial year-end of the fund. Both the annual benefit statement and the explanatory pamphlet are required to contain information which has been set out in Circular PF No. 86.
- 5.3.2 The board must ensure that it complies with PF No 90. The disclosure to pensioners, deferred pensioners and beneficiaries.
- 5.3.3 The board should pay due regard to the information needs of the members concerned and communicate relevant meaningful information in a timely and comprehensive manner to enable members to make balanced and informed decisions.
- 5.4 To take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with the Act.
 - 5.4.1 The board is responsible for ensuring that contributions are paid into the fund in accordance with the Act. The employer is required to pay in full to the fund any contribution deducted from the members remuneration and any contribution for which the employer is liable to pay in terms of the fund rules. Both employer and employee contributions have to be paid over not later than seven days after the end of the month for which they are due, either to the fund's account, the fund or to an insurer in the case of an audit-exempt fund.
- 5.5 To obtain expert advice on matters where board members may lack sufficient expertise.
 - 5.5.1 Examples of this duty relate to actuarial matters, investment decisions and issues requiring legal advice. Where a board takes such advices, it must be careful before endorsing it as the board remains responsible for the final decision.
- 5.6 To ensure that the rules and the operation and administration of the fund comply with the Act, the Financial Institutions (Investment of Funds) Act, 1984 (Act No 39 of 1984), and all other applicable laws.
 - 5.6.1 The board needs to be aware of the statutes and common law which apply to its functions in order to be able to effectively carry out its responsibilities and functions. The following statutes in particular should be taken into consideration:
 - The Pension Funds Act , 1956 (Act No 24 of 1956)
 - The Financial Institutions (Investment of Funds) Act, 1984 (Act No 39 of 1984)

- The Income Tax Act, 1962 (Act No 58 of 1962)
- The Divorce Act, 1979 (Act No 70 of 1979)

5.6.2 There are other statutes that may affect board members responsibilities in specific circumstances. It is important that the board be familiar with all these statutes, together with the fund rules, and should ensure compliance with the Constitution of the Republic of South Africa, 1996.

REGISTRAR OF PENSION FUNDS

Notes :

1. This Circular can also be found on the Financial Services Internet Site : <http://www.fsb.co.za> Departments, Retirement Funds Department, Circulars.