

## Legal update

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### Notice on Valuation Exemption, 2014

#### A. Summary

The Registrar of Pension Funds has issued Board Notice 59 of 2014, setting out the requirements and conditions that a fund must comply with in order to qualify for an exemption from the provisions of section 9A and 16 of the Pension Funds Act (valuation exemption). This Board Notice replaces Board Notice 61 of 2011 with effect from 6 June 2014.

#### B. The Format and submission of an application for valuation exemption

- A valuation exemption means that the fund does not have to appoint a valuator or submit a valuation report on the financial condition of the fund to the Registrar every 3 years.
- The exemption is subject to certain conditions and the fund must comply with all those conditions for the entire period of the exemption.
- A valuation exemption is valid for a maximum period of 3 years. Thereafter the fund must reapply to the Registrar for the renewal of the exemption.
- The exemption must start on the same date as the financial year end of the fund.
- An application for a valuation exemption must contain the following documents:
  - A signed statement by the board applying for the exemption. In this statement, the board must confirm that the fund is properly administered in terms of its rules and that the fund does not operate any contingency accounts. The board must undertake to inform the Registrar, if in their opinion, the fund no longer qualifies for the exemption.
  - A certification by a valuator stating the start date of the exemption and confirming that the fund complies with the conditions as set out in the Board Notice.
  - If the fund is already valuation exempt and is applying for a renewal of the exemption, any valuator may complete and sign the certificate.
  - If the fund previously had to submit valuation reports and is applying for an exemption for the first time, then only the fund's valuator may complete and sign the certification.

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- Examples of the statement required by the Board and the certification required by the valuator have been included in the Board Notice as Annexures A and B respectively.
- The application must be submitted to the registrar electronically via the official website [www.fsb.co.za](http://www.fsb.co.za).

### C. Conditions for valuation exemption

- At the effective date of the exemption, the fair value of assets must equal or exceed the liabilities of the fund.
- All existing pension payments and any future pension payments must be fully secured by one or more annuity policies purchased from one or more registered long term insurers.
- The amount used to secure a living annuity for members upon retirement must be limited to the amount available per member in the fund at the date of the member's retirement and at any point thereafter. This means that at any given time a member will only be entitled to his share of the fund.
- All members of the fund, other than pensioners must belong to a defined contribution category of the fund.
- Where any benefit payable to a member exceeds the value of the member's individual account, the excess must be fully insured with one or more registered insurers.
- Where the fund has a contingency reserve account in terms of the rules of the fund, the rules must provide that such an account can never have a negative balance. This condition does not apply to a Processing Error Reserve Account.
- The fund must have complied with the provisions of section 15B of the Act. If the fund had to submit a surplus apportionment scheme to the registrar, then that scheme must have been approved or a nil scheme must have been noted before the exemption can be granted.
- Unless the fund was valuation exempt before its surplus apportionment date, the statutory actuarial valuation as at its surplus apportionment date must be accepted by the registrar.

### D. Withdrawal of Valuation Exemptions

- Annexure C of the Board Notice contains a list of valuation exempt funds and the dates on which their exemptions expire.
- The termination date reflected in Annexure C was calculated as follows:
  - If the date on which the valuation exemption expires was specified by the registrar in writing, then that is the date on which the valuation exemption will terminate.
  - If no expiration date was specified, the exemption will expire on the date after 1 January 2015 on which the earliest of 3, 6 or 9 or 12 years since the effective date of the amendment will expire.
  - However, if the fund was granted a valuation exemption and then amends its rules to change its financial year end date, the exemption will terminate on the initial year end date and not the new amended date. If that date has already passed, then the exemption will expire on the next financial year end.

For example: Fund A's financial year end date is 31 December.

Fund A applies for and is granted a valuation exemption effective from 31 December 2010.

The exemption letter does not specify the date on which the exemption will terminate.

Fund A then amends its rules to change its financial year end to 30 June.

The exemption will terminate on the earliest of the 3<sup>rd</sup>, 6<sup>th</sup>, 9<sup>th</sup> or 12<sup>th</sup> year from the effective date. In the case of Fund A, the 3<sup>rd</sup> year would already have ended on 31 December 2013. The 6<sup>th</sup> year ends on 31 December 2017. Fund A's valuation exemption will expire on 31 December 2017 and not 30 June 2018.

#### **E. Duty on the Board to notify the Registrar**

The board must notify the registrar without delay and in writing in the following circumstances:

- if the fund fails to comply with any of the conditions on which the exemption was granted;
- if any party (including the board, principal officer, chairperson, auditor, administrator or any other person acting in an advisory capacity) is of the opinion that the fund no longer complies with any of the conditions;
- if the fund amends its rules and no longer qualifies for a valuation exemption; or
- if the fund no longer requires a valuation exemption.

#### **F. When will the registrar withdraw a valuation exemption?**

- The registrar may withdraw a valuation exemption after receiving a notification from the board referred to in paragraph E above.
- The valuation exemption may be withdrawn where the registrar becomes aware of facts that demonstrate that the fund is no longer eligible for the exemption.

#### **G. Consequences of the Registrar withdrawing a valuation exemption**

- The registrar may withdraw wholly or in part any valuation exemption by notice on the FSB website.
- The valuation exemption will cease on the date it is withdrawn.
- The fund must within 90 days of the date of withdrawal appoint a valuator in terms of section 9A.
- The fund must submit a statutory actuarial valuation report as at the first financial year end following the date of withdrawal.

#### **H. Impact on FundsAtWork**

The FundsAtWork Umbrella Funds currently do not have valuation exemption. It is expected to get such exemption soon.

The valuation exemptions in respect of the FundsAtWork Preservation Funds are effective from 30 June 2013 until 30 June 2016.

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