



## FSB Information Circulars PF No. 1 to 4 of 2017

The FSB has issued four Information Circulars in 2017, namely:

- Information Circular PF No. 1 of 2017: Responsibility for submission of annual financial statements and penalty notice notification for the late submission and non-submission of 2015 annual financial statements.
- Information Circular PF No. 2 of 2017: Pension Funds Act, 1956 – Clarification on the cancellation of registration of a fund in terms of section 27(1) and the termination of participation of a participating employer in an umbrella fund.
- Information Circular PF No.3 of 2017: Pension Funds Act, 1956 – The appointment of persons to the board of a fund by the Registrar in terms of section 26(2).
- Information Circular PF No. 4 of 2017: Pension Funds Act, 1956 – Conditions for the temporary exemption from transfer periods for the transfer of business in terms of section 14 of the Pension Funds Act, 1956.

This legal update gives a summary of these Information Circulars.

### **A. Information Circular PF No. 1 of 2017: Responsibility for submission of annual financial statements and penalty notice notification for the late submission and non-submission of 2015 annual financial statements**

Section 15(1) of the Pension Funds Act (the Act) requires a fund to submit its annual financial statements to the Registrar of Pension Funds within six months of the end of the fund's financial year. If the Registrar has not granted an extension, the failure of the board of a fund to submit the annual financial statements to the Registrar within the six month period is a contravention of the Act, and a failure to comply with the objects and duties of the board.

The Registrar may impose an administrative penalty for failure to submit any document required in terms of the Act, including where some but not all of the documents have been submitted to the Registrar, and within the prescribed period. The administrative penalty may be up to R1 000 for every day that the failure continues.

The Registrar will give notice to non-compliant funds of his intention to impose a penalty of R60 per day for the late submission of annual financial statements for 2015.

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## **B. Information Circular PF No. 2 of 2017: Pension Funds Act, 1956 – Clarification on the cancellation of registration of a fund in terms of section 27(1) and the termination of participation of a participating employer in an umbrella fund**

For a fund to no longer exist, it must be shown that it no longer has assets and liabilities, has no members or pending litigation against it. The requirements are the same for the termination of the participation of an employer in an umbrella fund. Section 27(1) of the Act requires that the Registrar must confirm that these requirements have been met.

To satisfy the Registrar that a fund no longer exists or an employer's participation in an umbrella fund has come to an end, sufficient information must be provided to the Registrar. As a minimum, the information set out in Annexure A (fund) or Annexure B (participating employer) of the Information Circular must be included in the application for cancellation of registration of a fund or termination of participation of an employer respectively. Applications that have already been received will continue to be processed. Where additional information is needed, this must be provided.

When submitting the application through the Retirement Funds Online System, the following process must be used:

- Fund Cancellation - To be used if the fund terminated as a result of:
  - Full section 14 transfer;
  - Last member left the fund, or
  - Fund didn't commence business.
- Participating Employer Termination - To be used if the participating employer terminated as a result of:
  - Full section 14 transfer;
  - Last member left the participating employer, or
  - Participation of employer never commenced business.
- Funds and participating employers exempted from the provisions of section 28 - If a fund or participating employer was exempted from the provision of section 28, the documents set out in Annexure A (par 6.4) or Annexure B (par 7.4) must be submitted online. This must be done using the 'Feedback/Response' process with the case number allocated for the "liquidation exemption" application.

## **C. Information Circular PF No.3 of 2017: Pension Funds Act, 1956 – The appointment of persons to the board of a fund by the Registrar in terms of section 26(2)**

Section 26(2) of the Act gives the Registrar the power to appoint a board of a fund (referred to as a section 26(2) board) under the circumstances provided for in the Act. The Registrar also has the powers to assign duties to the board as he deems necessary.

A section 26(2) board has duties that are imposed on it in terms of the Act, the fund's rules, common law, and other legislation that applies to the board as well as by the Registrar depending on the circumstances of the fund. Examples of such duties include:

- Ensuing compliance with applicable laws.
- Submitting rule amendments to the Registrar for approval.
- The approval and submission of outstanding annual financial statements, actuarial valuations, surplus apportionment schemes, regulation 28 quarterly reports and reports required by the South African Reserve Bank.
- Providing members with annual benefit statements.

Section 26(2) boards must perform the duties determined in their appointment letters, which may be supplemented or altered at the discretion of the Registrar.

#### **D. Information Circular PF No. 4 of 2017: Pension Funds Act, 1956 – Conditions for the temporary exemption from transfer periods in relation to the transfer of business in terms of section 14 of the Pension Funds Act, 1956**

The Act requires that a transfer in terms of section 14(1) of the Act must be completed within 60 days from the date on which the Registrar issued the certificate of approval. Likewise, a transfer in terms of section 14(8) of the Act must be implemented within 180 days of the effective date of transfer.

Changes to the tax directive system were introduced by amendments to the Income Tax Act on 1 March 2017 and funds are now required to apply for a tax directive for all section 14 transfers. Funds are experiencing practical problems in meeting the payment deadlines prescribed by legislation, for those transfers that were already in progress when the changes were introduced or those transfers that were already approved but not yet paid to the receiving fund.

The following measures have been introduced to assist with the above:

- For transfer applications submitted **after 6 July 2017**, funds must make sure that they have all the necessary member information to allow them to apply for a tax directive before including the member in the scheme of transfer. This has to be certified by the fund in the transfer application.
- For section 14(1) transfers that were **approved on or after 1 January 2017** but were **unpaid on 1 March 2017**, the Registrar has granted an exemption from the 60-day requirement, provided that the transfer is completed by 31 August 2017 and the fund return is added to the final transfer amounts.
- For section 14(8) transfers that have **effective dates of 1 September 2016** but were **unpaid on 1 March 2017**, the Registrar has granted an exemption from the 180-day requirement, provided that the assets and liabilities are transferred by 31 August 2017 and fund investment return is added to the final transfer amounts.
- If the Registrar has not yet approved a transfer that has been submitted for approval as at **6 July 2017**, funds must assess whether they have all the member information needed to apply for a tax directive for those members. Funds will have to submit revised or amended applications for those cases where they would not be able to transfer the members.
- The Registrar will consider applications for withdrawal or amendment of an approved scheme of transfer if submitted by 31 August 2017.

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