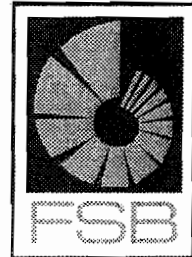

BOARD NOTICE

BOARD NOTICE 75 OF 2009**DIRECTIVE PF No. 4****Date issued: 8 June 2009****FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA****PENSION FUNDS ACT (ACT 24 OF 1956)****SECTION 28****VOLUNTARY DISSOLUTION OR PARTIAL DISSOLUTION OF A FUND****1. PURPOSE**

This Directive provides guidance in respect of the information that the Registrar will require from a fund and/or Liquidator in exercising his or her powers and functions under section 28 of the Pension Funds Act, No. 24 of 1956 ("the Act").

2. EXPLANATORY DEFINITIONS

"Authorised representative" means the person(s) appointed by the Registrar.

"Liquidator" means the Liquidator appointed by the board of fund, Section 26 appointed trustee or Authorised representative and whose appointment has been approved by the Registrar in terms of section 28(2) of the Act.

"Section 26 appointed trustee", means a person or persons appointed by the Registrar in terms of the provisions of section 26(2) of the Act.

3. APPLICATION TO BE LISTED ON THE PANEL OF APPROVED LIQUIDATORS FOR PENSION FUNDS

- 3.1 The purpose of the panel is to expedite the appointment of a Liquidator by a fund and approval of the appointment by the Registrar.
- 3.2 To be listed on the panel of liquidators, a Liquidator must submit an application in the format set out in **Form A**.

4. APPLICATION FOR THE APPROVAL OF THE APPOINTMENT OF A LIQUIDATOR UNDER SECTION 28(2) OF THE ACT

4.1 Once a Liquidator has been appointed by the fund and the Liquidator has accepted the appointment, an application must be made as follows:

- **Form B** must be completed by the board of the fund, Section 26 appointed trustee or Authorised representative;
- **Form C** must be completed by the appointed Liquidator; and
- A copy of the board resolution approving the liquidation of the fund and the appointment of the Liquidator must accompany the application.

4.2 The liquidation deems to commence on the date of the approval of the Liquidator by the Registrar.

4.3 Where for any reason a Liquidator has to be replaced, the appointed Liquidator or the responsible person of the administrator (appointed in accordance with section 13B of the Act), must submit an application in the format set out on **Form C** to the Registrar.

The following information must accompany such application:

- (a) the reasons for the replacement of the Liquidator;
- (b) a confirmation that the members have been informed of the replacement of the Liquidator;
- (c) a confirmation that the total remuneration paid to appointed Liquidators will not exceed the maximum prescribed remuneration as prescribed by Registrar by Board Notice; and
- (d) a confirmation that all the relevant documentation relating to the liquidation has been made available to the newly appointed Liquidator, where applicable.

5. REMUNERATION OF A LIQUIDATOR

The remuneration payable to a Liquidator is prescribed by Board Notice by the Registrar under section 28A of the Act.

6. APPLICATION UNDER SECTION 28(7A) FOR EXEMPTION FROM SECTIONS 28(6) AND 28(7) OF THE ACT

6.1 The Liquidator must submit an application as set out in **Form F** to the Registrar.

6.2 Together with **Form F**, the Registrar requires written declarations as set out in **Form E** by all members and beneficiaries. The declarations must state that all the members and beneficiaries are satisfied with the relevant liquidation and distribution accounts and approved the accounts accordingly.

6.3 Board Notice 72 of 2001 sets out the relevant matters that the Registrar will consider before exempting a fund from sections 28(6) and/or 28(7) of the Act.

7. APPROVAL TO MAKE INTERIM PAYMENTS UNDER SECTION 28(12A) OF THE ACT

- 7.1 The Liquidator must submit an application as set out in **Form H** to the Registrar.
- 7.2 The Registrar will, in assessing the application for approval to make of interim payments under section 28(12A) of the Act, consider the requirements as prescribed under Board Notice 73 of 2001.

8. APPLICATION UNDER SECTION 28(17) FOR EXEMPTION FROM THE PROVISIONS OF SECTION 28(12) OF THE ACT (SUBMISSION OF FINAL ACCOUNTS)

The Liquidator or responsible person (appointed in terms of section 13B of the Act) of the administrator, where the Liquidator cannot be traced, must submit an application in the format set out in **Form G** to the Registrar, confirming that the liquidation has been completed in accordance with the requirements of section 28 of the Act and that all benefits have been paid to the members and/or beneficiaries.

9. APPLICATION UNDER SECTION 28(17) FOR EXEMPTION FROM THE PROVISIONS OF SECTION 28 (OTHER THAN SECTION 28(12)) OF THE ACT

- 9.1 The fund must submit an application in the format set out in **Form D** to the Registrar.
- 9.2 The Registrar will only consider an application for exemption from the provisions of section 28 of the Act where, on the date that the fund takes a resolution to liquidate or partially liquidate the fund due to the withdrawal of a participating employer, the following conditions apply: -
- (a) the average benefit per member is less than R50 000;
 - (b) the fund or the relevant participating employer withdrawing does not have more than 50 members;
 - (c) the fund or the relevant participating employer has assets less than R50 million; and
 - (d) the surplus apportionment scheme or nil return has been approved or noted by the Registrar.
- 9.3 The following must be complied with where a fund or a participating employer withdrawing from a fund has been exempted from the provisions of section 28 of the Act:
- (a) the board of the fund, Section 26 appointed trustee or Authorised representative must inform the Registrar of the name and contact details of the person who will be responsible for managing the winding down process of the fund as set out in **Form D**;

- (b) The person responsible for managing the winding down process, must at least every 90 days, effective on the date on which an exemption is granted, submit a written report to the Registrar containing the following-
 - (i) method used to calculate benefits;
 - (ii) communication to members and/or beneficiaries;
 - (iii) any outstanding tax issues;
 - (iv) any deaths of members subsequent to the date on which the exemption was granted;
 - (v) how objections to the benefit calculations were resolved;
 - (vi) payments of benefits; and
 - (vii) unclaimed benefits, if any.
 - (c) All benefits must be paid to members and/or beneficiaries within 12 months from the date on which the Registrar granted the exemption.
 - (d) A declaration of nil assets, members and liabilities must be submitted to the Registrar within 30 days after the final distribution of member and beneficiary benefits and must be accompanied by an application for the cancellation of the registration of the fund or participating employer in terms of section 27 of the Act, as set out in **Form J**.
- 9.4 The Registrar may withdraw an exemption granted where the members and/or beneficiaries of a fund or withdrawing participating employer have been prejudiced as a result of the exemption granted or where the requirements outlined in paragraph 9.3 are not complied with.

10. OTHER INFORMATION THAT THE REGISTRAR WILL REQUIRE FROM A FUND AND/OR LIQUIDATOR IN EXERCISING THEIR POWERS AND FUNCTIONS UNDER SECTION 28

10.1 *Submission of financial statements*

- 10.1.1 Funds are required to prepare and submit financial statements up to the day preceding the date on which the appointment of the Liquidator is approved by the Registrar under section 28(2) of the Act or the date on which the Registrar granted an exemption from the provisions of section 28 under section 28(17) of the Act.
- 10.1.2 Where the period following the date on which the latest annual financial statements was submitted to the Registrar up to the date on which the appointment of the Liquidator is approved by the Registrar under section 28(2) of the Act or the date of exemption in terms of section 28(17) of the Act exceeds 6 months, separate financial statements must be submitted.
- 10.1.3 Where the period referred to in paragraph 10.1.2 is less than 6 months, the financial statements may be prepared together with the preceding period, for a maximum period of 18 months. Where the previous financial statements were finalised and the period between the prior year-end and the liquidation date does not exceed 6 months, no financial statements need to be submitted.
- 10.1.4 Where the fund has changed its financial period as set out in paragraphs 10.1.2 and 10.1.3, the rules of the fund need not be amended to provide for such a change in year-end.

10.2. *Surplus apportionment*

10.2.1 When making application to the Registrar for the approval of a Liquidator, the board of the fund, Section 26 appointed trustee or Authorised representative must declare whether or not a surplus apportionment scheme or a nil return has already been submitted or whether the Liquidator will be responsible for the submission of such scheme or nil return. Surplus apportionment schemes or nil returns must be submitted in respect of the following:

- where a fund was registered prior to 7 March 2002 and the liquidation commenced after 7 December 2001; or
- where the partial dissolution as a result of the withdrawal of a participating employer commenced after 7 December 2001 and the participating employer was participating in the fund prior to surplus apportionment date.

10.2.2 Where the Liquidator will be responsible for the submission of a surplus apportionment scheme or a nil return, the application for the approval of the appointment of the Liquidator must be accompanied by a declaration by the Liquidator that he or she is aware of this responsibility and that he or she has the relevant knowledge and skill to be able to give effect to this responsibility as set out in **Form C**.

11. **CANCELLATION OF THE REGISTRATION OF A FUND OR CONFIRMATION OF THE COMPLETION OF THE PARTIAL LIQUIDATION**

In order for the Registrar to cancel the registration of a fund or participating employer, the Liquidator or responsible person (appointed in terms of section 13B) of the administrator, must submit an application as set out in **Form I**.

12. **ADDITIONAL INFORMATION NOT PROVIDED FOR IN THIS DIRECTIVE**

The Registrar may request any additional information not provided for in this Directive to assist him or her in exercising his or her powers and functions under section 28 of the Act.

13. **ELECTRONIC SUBMISSION OF APPLICATIONS**

13.1 All applications must be made electronically. Any enquiries relating to applications made, may be forwarded to penliq@fsb.co.za and must contain the Registrar's case number.

13.2 The applications referred to in this Directive are available on www.fsb.co.za under the retirement funds section. (Retirement Funds/ Electronic submissions/ Retirement Fund on-line system)

Yours sincerely



JA BOYD
FOR: REGISTRAR OF PENSION FUNDS

FORM A			
APPLICATION TO ACT AS A LIQUIDATOR OF PENSION FUNDS			
I, hereby apply to be added to the panel of liquidators to perform liquidations in terms of section 28 of the Act.			
1.	Surname:		
2.	Full Names		
3.	Identity Number:		
4.	Postal address:		
5.	Registered address (<i>domiculum citandi et executandi</i>) where documents and records will be kept in safe custody or where legal documents can be served:		
6.	Telephone number:		
7.	Cell phone number:		
8.	E-mail address:		
		Yes/ No	Comments
9.	Are you fully conversant with the provisions of the Act, regulations and the Financial Institution (Protection of Funds) Act No. 28 of 2001 as well as the relevant requirements, policies and procedures in respect of the liquidation of pension funds?		
10.	Have you ever been convicted of an offence resulting from dishonesty, fraud or embezzlement? If so, give details:		

11.	Has your estate ever been sequestrated or a business in which you had a financial interest been liquidated? Are you a rehabilitated insolvent? If so, kindly provide details.		
12.	Have you been involved as a controlling shareholder or director of a company or close corporation at the time it was placed under judicial management or in liquidation?		
13.	Have you been subject to disciplinary proceedings by an employer or regulatory body? If so, kindly provide details.		
14.	Have you ever been barred from entry into any profession or occupation? If so, kindly provide details.		

A copy of my Curriculum Vitae in relation to pension funds is attached hereto.

I hereby certify that the abovementioned information is true, correct and complete and further undertake to advise the Registrar of any important changes to the above information.

I hereby agree that the Registrar may perform reference checks, verification of qualifications as well as obtain a police clearance certificate.

SIGNATURE OF APPLICANT		DATE
FULL NAMES IN BLOCK LETTERS		

FORM B**APPLICATION BY THE BOARD OF A FUND FOR THE APPROVAL OF A LIQUIDATOR OF SECTION 28(2) OF THE ACT**

Name of Fund:			
Fund Reference Number:			
Name of participating employer (where applicable):			
Reference number of participating employer (where applicable):			
Rule Reference number:			
Full Name of Liquidator:			
Identity number of Liquidator:			
		Yes/No	Comments
1.	Are the rules and all rule amendments, in respect of the fund or relevant participating employer registered?		
2.	Are all transfers in respect of the fund or relevant participating employer until the date of appointment of the Liquidator approved?		
3.	Are all valuation reports / regulation 2(e) certificates submitted?		
4.	Are all financial statements submitted?		
5.	Has the fund submitted a surplus apportionment scheme or a nil return as required in terms of section 15B of the Act?		
6.	Are there any arrear contributions or penalty interest outstanding?		
7.	Are there any Pension Fund Adjudicator cases against the fund or relevant participating employer pending? Record the relevant case numbers and progress report?		
8.	Are there any unclaimed benefits in the fund?		
9.	Are there any outstanding tax liabilities?		

10.	Are there any FSB fees, penalties or levies outstanding?		
11.	What is the average benefit per member of the fund or participating employer as at date of the application?		
12.	What is the number of members participating in the fund or participating employer as at date of the application?		
13.	What is the total value of the assets of the fund or participating employer as at date of the application?		
<p>Kindly provide any additional information, of which you are aware and which may be of assistance to the Registrar:</p> <p>.....</p> <p>.....</p> <p>We, the board, Section 26 appointed trustee or Authorised representative of the Fund hereby confirm that we have considered the fit and properness of the Liquidator and confirm that we are satisfied with such appointment.</p>			
SIGNATURE OF CHAIRPERSON/ SECTION 26 APPOINTED TRUSTEE/ AUTHORISED REPRESENTATIVE		SIGNATURE OF BOARD MEMBER	
FULL NAMES IN BLOCK LETTERS		FULL NAMES IN BLOCK LETTERS	
DATE		DATE	

Note: The duly signed board resolution by a properly constituted board of trustees, Section 26 appointed trustee or Authorised representative must be attached hereto.

FORM C

APPLICATION BY THE LIQUIDATOR TO BE APPOINTED TO A FUND OR PARTICIPATING EMPLOYER PARTICIPATING IN A FUND SECTION 28(2) OF THE ACT

Name of Fund:	
Fund Reference Number:	
Name of participating employer (where applicable):	
Reference number of participating employer (where applicable):	
Full Names of Liquidator:	
Identity number of Liquidator:	
1.	<p>I have not been involved in the management, administration, valuation or auditing of the abovementioned Fund/ participating employer, except for the following (where applicable):</p> <p>.....</p> <p>.....</p>
2.	<p>My appointment would not cause any conflict in interest in performing my duties as Liquidator of the Fund, except for the following (where applicable):</p> <p>.....</p> <p>.....</p>
3.	<p>I am aware of the provisions of section 28(3) of the Act, whereby I will be appointed in my personal capacity and will take responsibility for the Fund/participating employer in the place of the board of the Fund and undertake to safeguard the assets of the Fund;</p>
4.	<p>I will discharge my duty to the best of my ability and act in the best interest of members of the Fund / participating employer;</p>
5.	<p>I have been informed by the board of the Fund that a surplus apportionment scheme / nil return has / has not been submitted and approved by the Registrar and will / will not be responsible for the finalisation and submission of such scheme (if applicable);</p>
6.	<p>All information previously provided and my declaration made in respect of the application for</p>

approval as a Liquidator of funds has/has not materially changed. Provide details in respect of any material changes:		
I hereby certify that the abovementioned information is true, correct and complete and further undertake to inform the Registrar about any important changes to the above information.		
LIQUIDATOR AS APPLICANT		FULL NAMES IN BLOCK LETTERS
DATE		

FORM D			
APPLICATION FROM EXEMPTION IN TERMS OF SECTION 28(17) OF THE ACT			
Name of Fund:			
Fund Reference Number:			
Name of participating employer (where applicable):			
Reference number of participating employer (where applicable):			
Rule Reference number:			
		Yes/No	Comments
1.	Are the rules and all rule amendments, in respect of the fund or relevant participating employer registered?		
2.	Are all transfers in respect of the fund or relevant participating employer until the date of appointment of the Liquidator approved?		
3.	Are all valuation reports / regulation 2(e) certificates submitted?		
4.	Are all financial statements submitted?		
5.	Has the fund submitted a surplus apportionment scheme or a nil return as required in terms of section 15B of the Act?		
6.	Are there any arrear contributions or penalty interest outstanding?		
7.	Are there any Pension Fund Adjudicator cases against the fund or relevant participating employer pending? Record the relevant case numbers and progress report?		
8.	Are there any unclaimed benefits in the fund?		
9.	Are there any outstanding tax liabilities?		
10.	Are there any FSB fees, penalties or levies outstanding?		

11.	What is the average benefit per member of the fund or participating employer as at date of the application?		
12.	What is the number of members participating in the fund or participating employer as at date of the application?		
13.	What is the total value of the assets of the fund or participating employer as at date of the application?		

Kindly provide any additional information, of which you are aware and which may be of assistance to the Registrar:

.....

Details in respect of the person responsible for the winding down process of the Fund:

1.	Full names:	
2.	Identity Number:	
3.	Postal address:	
4.	Registered address (<i>domiculum citandi et executandi</i>) where documents and records will be kept in safe custody or where legal documents can be served:	
5.	Telephone number:	
6.	Cell phone number:	
7.	E-mail address:	

We, the board, Section 26 appointed trustee or Authorised representative of the Fund / participating employer hereby apply for exemption in terms of section 28(17) of the Act for the assets to be distributed under the supervision of the board of the Fund, Section 26 appointed trustee or Authorised representative.

We further confirm that we are aware that the board of the Fund, Section 26 appointed trustee or Authorised representative will remain responsible to ensure that the winding down of the Fund / participating employer is dealt with appropriately.

We hereby confirm that we have considered the fit and properness of the person mentioned below and confirm that we are satisfied with the appointment and undertake that all assets of the Fund/participating employer will be safeguarded and distributed in terms of the rules of the Fund.

SIGNATURE OF CHAIRPERSON/ SECTION 26 APPOINTED TRUSTEE/ AUTHORISED REPRESENTATIVE		SIGNATURE OF BOARD MEMBER
FULL NAMES IN BLOCK LETTERS		FULL NAMES IN BLOCK LETTERS
DATE		DATE

FORM E		
DECLARATION BY MEMBERS AND BENEFICIARIES – APPLICATION UNDER SECTION 28(7A) OF THE ACT FOR EXEMPTION FROM THE REQUIREMENT TO ADVERTISE AND ALLOW FOR THE INSPECTION OF LIQUIDATION ACCOUNTS		
Name of Fund:		
Fund Reference Number:		
Name of participating employer (where applicable):		
Reference number of participating employer (where applicable):		
Detail of Member/Beneficiary of the Fund:		
Full Name:		
Identity number:		
Contact number:		
Postal address:		
E-mail address:		
Liquidation benefit as per the liquidation account		
<p>I hereby have no objection to the Fund/participating employer being exempted from the requirement to advertise the relevant preliminary liquidation account.</p> <p>I hereby declare that I have examined the preliminary liquidation and distribution account of the above-mentioned Fund / participating employer and have no objection thereto and I accept the liquidation benefit amount as stated above as my full and final liquidation benefit.</p>		
MEMBER/BENEFICIARY		FULL NAMES IN BLOCK LETTERS
DATE		

Note: This form can be customized for bulk submissions without detracting from the content

FORM F		
APPLICATION FOR PARTIAL EXEMPTION IN TERMS OF SECTION 28(7A) OF THE ACT FROM THE REQUIREMENT TO ADVERTISE AND INSPECTION OF LIQUIDATION ACCOUNTS		
Name of Fund:		
Fund Reference Number:		
Name of participating employer (where applicable):		
Reference number of participating employer (where applicable):		
Full Names of Liquidator:		
Identity number of Liquidator:		
1.	All members and beneficiaries of the fund/participating employer have been included in the preliminary accounts furnished to the Registrar and the exemption, if granted, will not be to the prejudice of any member or beneficiary.	
2.	I have notified all members, beneficiaries and other interested parties of the contents of the said preliminary liquidation accounts and there were no objections to such accounts.	
3.	I have obtained all the declarations of members and beneficiaries confirming that they have no objection to the abovementioned fund/participating employer to the requirement not to advertise the relevant preliminary liquidation account and had no objection to the abovementioned accounts.	
I hereby declare that the abovementioned is true and correct.		
SIGNATURE OF APPROVED LIQUIDATOR		FULL NAMES IN BLOCK LETTERS
DATE		

FORM G	
DECLARATION BY THE LIQUIDATOR - APPLICATION FOR PARTIAL EXEMPTION FROM SUBMITTING FINAL ACCOUNTS IN TERMS OF SECTION 28(17) OF THE ACT	
Name of Fund:	
Fund Reference Number:	
Name of participating employer (where applicable):	
Reference number of participating employer (where applicable):	
Full Names of Liquidator:	
Identity number of Liquidator:	
I, hereby declare that, as the approved Liquidator of the abovementioned Fund/ Participating Employer, hereby declare that I have discharged all my duties in respect of the following:	
1.	The preliminary liquidation and distribution account and report, specified in sections 28(4) and 28(5) of the Act have been furnished to the Registrar and has been approved.
2.	The Registrar granted the relevant permission for the payment of benefits to member and beneficiaries in terms of section 28(8) or 28(11) of the Act and all benefit have been paid as such.
3.	The reason for the application for exemption from the submission of final accounts is:
I hereby declare that the abovementioned is true and correct.	
SIGNATURE OF APPROVED LIQUIDATOR / RESPONSIBLE PERSON IN TERMS OF SECTION 13B	FULL NAMES IN BLOCK LETTERS
DATE	

FORM H		
APPLICATION FOR INTERIM PAYMENTS IN TERMS OF SECTION 28(12A) OF THE ACT		
Name of Fund:		
Fund Reference Number:		
Name of participating employer (where applicable):		
Reference number of participating employer (where applicable):		
Full Names of Liquidator:		
Identity number of Liquidator:		
I hereby apply for the approval of interim payment/s of benefits to member/s and/or beneficiaries and declare that:		
1.	I have obtained sufficient information / reasons on the grounds on which the approval for interim payments is applied for. The reasons for the application are as follows:	
2.	The preliminary liquidation and distribution account and report, specified in sections 28(4) and 28(5) of the Act have been furnished to the Registrar and has been approved.	
3.	The interim benefit payments applied for will not exceed the lesser of: <ul style="list-style-type: none"> ■ The member's <u>own</u> contributions; or ■ 50% of the <u>liquidation benefit</u>. 	
I hereby declare that the abovementioned is true and correct.		
SIGNATURE OF APPROVED LIQUIDATOR		FULL NAMES IN BLOCK LETTERS
DATE		

FORM I		
APPLICATION FOR DE-REGISTRATION OR CONFIRMATION OF THE COMPLETION OF THE PARTIAL DISSOLUTION OF THE FUND IN TERMS OF SECTION 28(15) OF THE ACT		
Name of Fund:		
Fund Reference Number:		
Name of participating employer (where applicable):		
Reference number of participating employer (where applicable):		
Full Names of Liquidator:		
Identity number of Liquidator:		
Name of Approved Administrator ito section 13B		
Full Names of Responsible Person ito section 13B		
Identity Number of Responsible Person		
I, hereby declare that all benefits have been paid in terms of the liquidation accounts and that there are no assets, members and liabilities remaining in the fund / participating employer and the Fund/participating employer ceased to exist on .../...../ 20.....		
In the case of an application for cancellation by the responsible person where exemption has been obtained for the submission of final accounts in terms of section 28(17) of the Act, the abovementioned administrator hereby certify that should any valid claims arise as a result of the liquidation of the fund/participating employer, that such administrator will for a period of three years following the cancellation of the fund, take full responsibility for the payment of any such claims.		
I hereby declare that the abovementioned is true and correct.		
SIGNATURE OF APPROVED LIQUIDATOR / RESPONSIBLE PERSON IN TERMS OF SECTION 13B		FULL NAMES IN BLOCK LETTERS
DATE		

FORM J**APPLICATION FOR THE CANCELLATION OF THE REGISTRATION OF A FUND /
PARTICIPATING EMPLOYER WHICH HAS BEEN EXEMPTED
IN TERMS OF SECTION 28(17) OF THE ACT**

Name of Fund:	
Fund Reference Number:	
Name of participating employer (where applicable):	
Reference number of participating employer (where applicable):	
Full Names of person responsible for the winding down process of the Fund:	
Identity Number of person responsible for the winding down process of the Fund:	
I, hereby declare that all benefits have been paid in terms of the rules of the fund and that there are no assets, members and liabilities remaining in the fund / participating employer and the Fund/participating employer ceased to exist on .../...../ 20.....	
PERSON RESPONSIBLE FOR THE WINDING DOWN PROCESS OF THE FUND	FULL NAMES IN BLOCK LETTERS
DATE	
RESPONSIBLE PERSON IN TERMS OF SECTION 13B	FULL NAMES IN BLOCK LETTERS
DATE	