

NOTICE 27 OF 2011

DIRECTIVE PF No. 5

Date issued: 10 December 2010

FINANCIAL SERVICES BOARD

REPUBLIC OF SOUTH AFRICA

PENSION FUNDS ACT (ACT 24 OF 1956)

**SECTION 8 – THE APPOINTMENT AND THE TERMINATION OF
APPOINTMENTS OF PRINCIPAL OFFICERS OF PENSION FUNDS****1. PURPOSE**

The purpose of this Directive is to:

- provide clarity on the procedure with regard to the appointment of a principal officer of a fund;
- set out the information to be provided to the Registrar of Pension Funds ("the Registrar") when he is notified of the appointment of a principal officer of a fund in accordance with section 8(3) of the Pension Funds Act, No. 24 of 1956 ("the Act");
- require that boards of funds have an ongoing duty to provide information to the Registrar concerning the fitness and propriety of principal officers of funds; and
- set out the duties of the principal officer to report irregularities and the reasons for the termination of his/her appointment as determined in terms of section 8(6) of the Act.

2. APPOINTMENT OF THE PRINCIPAL OFFICER BY THE BOARD OF FUND**2.1 Role of the Board**

The board of a fund is responsible for the appointment of a principal officer to a fund and must therefore ensure that the appointee, *inter alia*:-

- 2.1.1 has the relevant qualifications and expertise relating to the management and oversight of retirement funds, specifically to the particular office and type of fund in question;
- 2.1.2 is fit and proper to hold such appointment; and
- 2.1.3 has been informed of his/her duties and responsibilities in terms of the applicable legislation.

Once the board of a fund is satisfied that an appointee meets all the above minimum criteria, the board must notify the Registrar of the appointment in the format attached hereto as **Annexure A**, which must be accompanied by a duly signed copy of **Annexure B**.

The board must annually review the fitness and propriety of the appointed principal officer to ensure that such principal officer is still fit and proper to hold such position.

2.2 Role of the Registrar

It is the intention of the Registrar to see that principal officers have the necessary skills, knowledge and experience to perform their duties and have the relevant personal characteristics of honesty and integrity.

The Registrar will consider the information contained in **Annexures A and B** in the assessment of the fitness and propriety of the appointee; boards of funds and appointees must therefore at all times be candid and forthright when disclosing information that might have a bearing on the Registrar's decision. This also applies to any additional information that is not specifically required in **Annexures A and B**. If necessary the Registrar may request further information to assist with his assessment.

Boards of funds and principal officers have an ongoing duty to inform the Registrar of anything that might adversely affect the status of the principal officer.

3. **AGREEMENT/CONTRACT FOR THE APPOINTMENT OF THE PRINCIPAL OFFICER**

Any contract/agreement between a principal officer and a fund should make provision for the fact that the Registrar may object to the appointment as contemplated in section 8(5)(b) of the Act.

4. **OBJECTION TO THE APPOINTMENT OR CONTINUED APPOINTMENT OF THE PRINCIPAL OFFICER**

Where the Registrar, after having considered the information as provided in **Annexures A and B**, and/or any other relevant information, is of the opinion that -

- 4.1 the principal officer is not, or is no longer, a fit and proper person to hold that office; or
- 4.2 it is not in the public interest that the principal officer holds or continues to hold such office,

the Registrar may, subject to the Promotion of Administrative Justice Act, No. 3 of 2000 ("PAJA"), object to the appointment or continued appointment. The chairperson of the board and the appointee must be provided with reasons for such objection.

5. **TERMINATION OF APPOINTMENT**

Where the Registrar objects to the appointment or continued appointment of the principal officer as set out in paragraph 4 above, the board must terminate the appointment within 30 days of the Registrar informing the board and the appointee of his decision.

Should a principal officer or fund not agree with the decision of the Registrar, they may, in terms of section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) appeal against such decision to the Appeal Board.

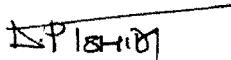
6. NOTIFICATION TO THE REGISTRAR OF TERMINATION OF THE APPOINTMENT AS PRINCIPAL OFFICER

Section 8(6)(a) of the Act requires that a principal officer of a fund must, within 21 days of his or her appointment being terminated, for reasons other than where the appointment is terminated as a result of the Registrar objecting to such appointment as set out in section 8(5), submit a written report to the Registrar detailing his/her perceived reasons for the termination of the appointment. The minimum information to be provided to the Registrar is set out in **Annexure C**.

7. DUTY TO REPORT

Section 8(6)(b) of the Act requires a principal officer to inform the Registrar in writing where he/she becomes aware of any matter relating to the affairs of the pension fund which, in the opinion of the principal officer, may prejudice the fund or its members.

Yours faithfully



DP Tshidi
REGISTRAR OF PENSION FUNDS

ANNEXURE A

**NOTIFICATION OF THE APPOINTMENT OF A PRINCIPAL OFFICER
IN TERMS OF SECTION 8(3) OF THE ACT**

I, as chairperson of the board of the Fund ("the Fund"), duly authorised by the board of the fund, hereby declare that the board has duly considered and resolved to appoint, with effect from as principal officer of the fund. The board has considered the relevant information and is satisfied that he/she is fit and proper to act as such after taking into account that he/she—

- (i) has the relevant competence, skill, experience and soundness of judgment for the fulfilment of the responsibilities as principal officer relevant to the fund;
- (ii) has the diligence required to fulfil the relevant duties and responsibilities;
- (iii) is appropriate for such appointment, based on an assessment of his/her qualifications, retirement fund experience, references, police clearance and previous conduct and activities in business or financial matters, as set out in **Annexure B**.

We as the board further undertakes to immediately inform the Registrar in writing where we believe that he/she is no longer fit and proper to hold such position.

CHAIRPERSON OF THE BOARD

DATE

NAME

ANNEXURE B

**DECLARATION BY THE APPOINTED PRINCIPAL OFFICER
IN TERMS OF SECTION 8(3) OF THE ACT**

Fund Name			
Fund Reference Number			
DETAIL OF THE PRINCIPAL OFFICER			
Full names			
Surname			
Identity Number			
Contact Number			
Cellular Number			
E-mail address			
Physical Address			
Postal Address			
Qualifications:	Qualification 1	Qualification 2	Qualification 3
Institution/School:			
City/Address:			
Date obtained:			
Student No.: (if available)			
Certificate No.: (if available)			
Exam No.: (if available)			
Certified copy of Degree/ Certificate/ Diploma obtained? (Yes/No)			
Relevant retirement funds experience:			

1. I, hereby confirm that I have not -
 - (a) been convicted, after 27 April 1994, in the Republic of South Africa or elsewhere of theft, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), or any offence involving dishonesty;
 - (b) been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect and sentenced to imprisonment without the option of a fine;
 - (c) contravened the provisions of any law, the object of which is the protection of the public against any financial loss;
 - (d) been a former principal officer of a fund and whose actions contributed to that fund's inability to pay its debts or caused financial loss to its members;
 - (e) taken part in any business practices that, in the opinion of the Registrar, were deceitful, prejudicial or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business; or
 - (f) taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgment.
2. I have not, within a period of five years preceding the date of this appointment, been found guilty in any criminal proceedings or liable in any civil proceedings by a court of law (whether in the Republic or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty.
3. I have not, within a period of five years preceding the date of this appointment, been found guilty by any statutory professional body or voluntary professional body (whether in the Republic or elsewhere) of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn my honesty and integrity.
4. I have not within a period of five years preceding the date of appointment:
 - (a) been found guilty by any regulatory or supervisory body (whether in the Republic or elsewhere); or
 - (b) had my authorisation to carry on business refused, suspended or withdrawn by any such body;on account of an act of dishonesty, negligence, incompetence or mismanagement sufficiently serious to impugn his/her honesty and integrity.
5. I have not at any time prior to the date of appointment been disqualified or prohibited by any court of law (whether in the Republic or elsewhere) from taking part in the management of any company or other statutorily created or regulatory body, notwithstanding such disqualification having since been lifted.
6. My estate has never been sequestrated nor have I been a director, shareholder or otherwise involved in a business which at the time was placed under judicial management or liquidation. If so, I have been rehabilitated on
7. I have not been barred from entry into any profession or occupation.

8. I am aware that as principal officer, I would be required to report the following to the Registrar:

- (a) In terms of section 8(6)(a), I must within 21 days of my appointment being terminated, other than where the appointment is terminated as a result of the Registrar objecting to the appointment in terms of section 8(5)(b), submit a written report to the Registrar detailing my perceived reasons as principal officer for such termination; and
- (b) Section 8(6)(b) requires that where I become aware of any matter relating to the affairs of the pension fund which, in my opinion, may prejudice the fund or its members, must inform the Registrar thereof in writing.

PRINCIPAL OFFICER

DATE

ANNEXURE C

**NOTIFICATION OF THE TERMINATION OF OR RESIGNATION
OF THE APPOINTMENT OF A PRINCIPAL OFFICER
IN TERMS OF SECTION 8(6) OF THE ACT**

Fund Name	
Reference Number of Fund	
Date of resignation	
Date of termination of appointment	
DETAIL OF THE PRINCIPAL OFFICER	
Full names	
Surname	
Identity Number	
Contact Number	
Cellular Number	
E-mail address	
Postal Address	
Have you resigned as principal officer or has your services been terminated by the board of the abovementioned fund?	
Kindly provide detail of your perceived reasons for the termination of your appointment as principal officer:	

PRINCIPAL OFFICER

DATE