



NEWS FROM THE REGISTRAR OF PENSION FUNDS

1. FILLING A TRUSTEE VACANCY ON A BOARD OF TRUSTEES

The Registrar of Pension Funds ('the Registrar') has issued Notice 3 of 2016 and Information Circular 3 of 2016 which deals with boards of trustees.

NOTICE 3 OF 2016 (EFFECTIVE DATE 24 AUGUST 2016)

This Notice states that any vacancy on a board of trustees must be filled within 90 days from the date on which the position became vacant. If there is an existing vacancy on a board of trustees, this vacancy must be filled within 90 days from 24 August 2016.

INFORMATION CIRCULAR 3 OF 2016

This Circular discusses the validity of decisions made by boards which are not properly constituted. If a board wants to take a valid decision during the 90 day period whilst there is a vacancy on the board, the fund must continue to comply with the Act. The rules of the fund must provide for such a decision to be valid and a quorum must be present.

Section 7A states the following about the composition of boards of trustees:

Section 7A(1):

Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four members, at least 50% of whom shall be member elected trustees.

Section 7A (1A):

The composition of the board shall at all times comply with the requirements of the fund rules and any vacancy on the board shall be filled within 90 days.

2. RESPONSIBILITY TO SUBMIT ANNUAL FINANCIAL STATEMENTS ON TIME AND PENALTIES FOR THE LATE SUBMISSION OF ANNUAL FINANCIAL STATEMENTS

The Registrar has also issued Information Circular 4 of 2016 which serves to remind trustees of their duty to submit the fund's annual financial statements on time. The failure to do so can result in penalties being issued against the fund.

INFORMATION CIRCULAR 4 OF 2016

In this Circular, the Registrar has pointed out that:

- Funds must submit annual financial statements within 6 months after the fund's year end.
- Funds can apply for an extension to submit the financial statements.
- Failure to submit the financial statements on time is a breach of the Pension Funds Act and trustees' fiduciary duties.
- The Registrar of Pension Funds (the "Registrar") will be issuing penalty letters for funds that have not submitted their 2014 financial statements.
- The penalty will be R60 for each day that the financial statements are late.

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WHAT DOES THE PENSION FUNDS ACT SAY ABOUT THE SUBMISSION OF FINANCIAL STATEMENTS?

Section 15(1) of the Pension Funds Act ("the Act") requires a fund to submit its annual financial statements to the Registrar within 6 months of the expiration of its financial year.

When looking at financial statements, the trustees must remember their duties are to:

- act with due care, diligence and good faith in directing, controlling and overseeing the operations of a fund; and
- exercise a fiduciary duty to members and beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, and
- exercise their fiduciary duty to the fund to make sure the fund is financially sound and is responsibly managed and governed in accordance with the rules and the Act.

WHO IS RESPONSIBLE FOR THE SUBMISSION OF THE ANNUAL FINANCIAL STATEMENTS ON TIME?

It is the board of trustees who are responsible for the submission of the fund's annual financial statements to the Registrar. In the event that the fund is unable to submit the financial statements in the 6 month timeframe, they can apply to the Registrar for an extension.

WHAT ARE THE POSSIBLE CONSEQUENCES OF SUBMITTING FINANCIAL STATEMENTS LATE?

Late submissions of the financial statements are a contravention of the Act and could lead to the Registrar considering whether the trustees are fit and proper to hold office.

For the Registrar, the late submission of annual financial statements means it is difficult for the Registrar to perform his supervisory functions and it results in inaccuracies and delays in compiling industry statistics. Furthermore, the Registrar cannot compile and submit his annual report to the Minister of Finance in the required timeframe.

WHAT ARE THE PENALTIES?

Trustees are reminded that section 37(2) of the Act allows the Registrar to issue administrative penalties for the non-compliance with various sections of the Act. The Registrar may impose a penalty of not more than R1 000.00 for each day from the day after the annual financial statements were supposed to be submitted until the date of submission to the Registrar.

This Circular serves as notice to non-compliant funds that the Registrar will be sending out notification letters to the relevant funds shortly advising them of his intention to impose a penalty of R60 (sixty rand) per day for the late or non-submission of the 2014 annual financial statements. Funds will be provided an opportunity to respond to the notification as set out in the letters.

The Registrar has reminded funds to make provisions for penalties where applicable.