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PENSION LAW
ASSOCIATION

Pensions Seminar
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An introduction to Pensions Law

Compliance; the Powers of the Registrar

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1. Sources of pensions law:
 - ◆ Companies Act 63 of 1971 – section 3
Applicable in s 28(13), 29(4), 30(1) of the Pension Funds Act.
 - ◆ Pension Funds Act, 24 of 1956
Common law: Fiduciary duties of board members;
section 36 of the Companies Act (ultra vires doctrine) – see also
section 10: No fund shall carry on any business other than the
business of a pension fund (strengthens ultra vires in pension
funds) example causes problems with investment spread based
on religious grounds – donations to unrelated charity. Registrar
cannot condone *ultra vires* transactions, not even for a worthy
cause.
 - ◆ Friendly Societies Act, 25 of 1956 – objects of a pension fund
 - ◆ Regulations in terms of section 36(1) of the Pension Funds Act.
Conflict between Act and Regulations – Act prevails.
 - ◆ Registered rules of a Fund. Conflict between rule and Act – Act
prevails.
 - ◆ PF Circulars – find at www.fsb.co.za. Explanation of Registrar's
requirements; does not have the force of subordinate legislation.
 - ◆ Information circulars issued by the Actuarial Department - find at
www.fsb.co.za.

2. Who is the Registrar?

Financial Services Board Act, 97 of 1990
Executive Officer, Deputy Executive Officer, Heads of Registration & Licensing, Prudential, Enforcement & Surveillance and Research & Policy. Chief Actuary, Pensions Specialist Actuary, section 14 transfer team, surplus team.

Pensions Department reorganised June / July 2005. More details about the present structure at www.fsb.co.za Retirement Funds

3. What does the Registrar do?

- ◆ Registers funds and rules (section 4) – provisional and final registration. Rules are public documents (ss 22, 35).
- ◆ Notes registered office (section 7).
- ◆ Grants exemptions in terms of section 7B – member-elected board members.
- ◆ Notes details of principal officer (section 8).
- ◆ Approves auditor, even though he/she is already a CA in public practice (section 9).
- ◆ Approves valuator, even though he / she is registered with ASSA as an actuary (section 9A).
- ◆ Considers, approves and registers all amendments, alterations, rescission or additions to the registered rules (section 12).
- ◆ Approves administrators of pension funds – benefit as well as investment administrators (section 13B).
- ◆ Considers and approves transfers of business from one fund to another (section 14).
- ◆ Considers and accepts or rejects annual financial statements. A part of the statements are open to view by members of the public (ss 15, 22, 35).
- ◆ Considers and approves surplus apportionment schemes, or refers scheme to a specialist tribunal (section 15B).
- ◆ Approves transfer of a portion of the employer surplus account from one fund to another (section 15E).
- ◆ Approves transfer of credit balance in an existing employer reserve account to the employer surplus account (section 15F).
- ◆ Approves use of employer surplus to prevent job losses (section 15J).
- ◆ Registrar approves panel of lawyers and actuaries from whom members of a specialist *ad hoc* tribunal may be selected by a fund (section 15K).
- ◆ Considers and approves tri-annual valuation report (section 16).
- ◆ Requires and considers business plan where Fund under funded (section 18).
- ◆ Prescribes investment spread; considers and grants exemptions (section 19, regulation 28).

- ◆ Prescribes what documents submitted to the office must look like (section 20).
- ◆ Applies to Court to alter basis of management of a fund (section 26).
- ◆ Cancels or suspends registration (section 27).
- ◆ Appoints liquidator in voluntary dissolution, considers accounts, gives instructions to liquidator, considers objections to accounts (section 28).
- ◆ Determines liquidator's remuneration (section 28A).
- ◆ Approaches court for liquidation of a fund if fund is in an unsound financial condition (section 29). Rare.
- ◆ Acts against unregistered funds (section 32).
- ◆ Declares practices or methods of conducting business irregular or undesirable (section 32A). Minister's consent is required.
- ◆ Grants extension of time periods (section 33).
- ◆ Submits Annual Report to Minister of Finance and publishes the report (section 34).
- ◆ Supplies copies of certain documents (section 22, 35).
- ◆ Drafts and submits pro forma regulations to the Minister for publication (section 36).
- ◆ Imposes and collects penalties for late submission of returns (section 37).

4. What do you do if you don't agree with the registrar?

- ◆ PAJA 3 of 2000 – High Court, 180 days, after exhausting internal remedies.
- ◆ But first Financial Services Appeal Board, established in terms of section 26 of the FSB Act – within 20 business days and R500 fee. Two-pronged approach – first reasons, then notice to continue. May apply to suspend registrar's decision, pending the outcome of the hearing.

5. Registrar's remedies if he or she doesn't agree with you:

- ◆ Request further details relating to certain applications and returns (section 21)
- ◆ Address enquiries to any registered fund, to which the fund must reply within 30 days (section 24).
- ◆ Penalty payment, if returns are submitted late.
- ◆ Require business plan to fund any deficit (section 18)
- ◆ Compliance visit.
- ◆ Instruct inspection in terms of the Inspection of Financial Institutions Act, 80 of 1998.
Inspection report - may be asked to comment on correctness of report, but not a requirement. Has no evidential value, only the findings of an impartial person.
- ◆ Apply to Court to alter basis of management of a fund (section 26)
- ◆ Cancel or suspend registration (section 27).

- ◆ Application for curatorship in terms of Financial Institutions (Protection of Funds) Act 28 of 2001.
Appointment, duties and powers of a curator.
- ◆ Recent developments – application in terms of section 26 for amendment of rules, appointment of independent trustees, with or without veto right.
- ◆ Liquidation.