

# FINANCIAL SERVICES BOARD

Riverwalk Office Park Block B 41 Matroosberg Road Ashlea Gardens Extension 6  
Pretoria South Africa 0081 PO Box 35655 Menlo Park Pretoria South Africa 0102  
Tel +27 12 428 8000 Fax +27 12 346 6941 E-mail info@fsb.co.za  
Toll free 0800 110443/0800 202087 Website: www.fsb.co.za



ENQUIRIES:	Alta Marais	D. DIALLING NO.:	012 4288065
OUR REF:	12/12/25	FAX:	
DATE:		E-MAIL:	Alta.Marais@fsb.co.za

## INFORMATION CIRCULAR PF NO. XX OF 2017

### PENSION FUNDS ACT, 1956

#### CLARIFICATION ON THE CANCELLATION OF REGISTRATION OF A FUND IN TERMS OF SECTION 27(1); THE TERMINATION OF PARTICIPATION OF A PARTICIPATING EMPLOYER IN AN UMBRELLA FUND; AND THE APPOINTMENT OF PERSONS TO THE BOARD OF A FUND BY THE REGISTRAR IN TERMS OF SECTION 26(2)

### 1. Introduction

This information circular seeks to provide clarity on the requirements for the cancellation of the registration of a fund in terms of section 27(1) of the Pension Funds Act, 1956 ('PFA') and the termination of participation of an employer in an umbrella fund. Lastly, the Registrar provides clarity on the making of appointments to the board of management of a fund ('board') by the Registrar in terms of section 26(2) of the PFA.

A fund will have ceased to exist where such fund no longer has any assets, liabilities or members or any pending litigation against it. The participation of a participating employer will have terminated when an umbrella fund no longer has any assets, liabilities or members or any pending litigation against it in respect of the participating employer.

Where a fund intends to apply to the registrar for the cancellation of its registration as envisaged in terms of section 27(1)(a) of the PFA, or for the withdrawal of the participation of an employer who terminated its participation in an umbrella fund, guidance regarding information required, to enable the registrar to be satisfied that a fund has ceased to exist, is set out in this information circular below.

## **2. Cancellation of the registration of a fund**

It is expected of a board, the administrator of a fund or any stakeholder in a fund to apply for the cancellation of the registration of a fund where the fund has ceased to exist by providing sufficient information, satisfying the registrar that the fund has ceased to exist as contemplated in terms of section 27(1)(a) of the PFA. A fund normally ceases to exist as a result of the following -

### **2.1 A full transfer in terms of section 14**

Once a fund has given effect to an approved section 14 transfer where such transfer had the effect that all assets, liabilities and members are transferred to another fund, leaving the transferee fund without any assets, liabilities and members;

### **2.2 An exemption from all the provisions of section 28**

Where a fund has been exempted from all the provisions of section 28 of the PFA in terms of section 28(17) and the registrar is satisfied that all the requirements and conditions in respect of the exemption have been complied with;

### **2.3 An exit of the last member**

Where a fund ceases to exist as envisaged in terms of section 27(1)(a) of the PFA as a result of the last member receiving his/her benefits from the fund leaving the fund with no assets, liabilities and members;

### **2.4 A fund registered by mistake as the fund never commenced business as a fund**

As provided for in section 27(1)(b) of the PFA, where the registrar and the fund agree that the fund was registered by mistake due to such fund never commencing fund business, in circumstances not amounting to fraud;

a fund must, in each of the circumstances referred to in paragraphs 2.1 to 2.4 above, include at least the information for the cancellation as set out in **Annexure A**. Where deemed necessary and relevant by the registrar, he may require further information.

## **3. Termination of the participation of an employer in an umbrella fund**

It is expected of a board of an umbrella fund to inform the registrar that the participation of an employer has terminated and where applicable, apply for the withdrawal of the registered special rules of such participating employer. Participation of an employer in an umbrella fund normally terminates as a result of the following -

### **3.1 Transfer in terms of section 14**

Once the fund has given effect to an approved section 14 transfer of all the assets, liabilities and members of the relevant participating employer to another fund leaving the relevant participating employer without any assets, liabilities and members following the transfer;

### **3.2 An exemption from all the provisions of section 28**

Where the fund has been exempted in terms of section 28(17) from all the provisions of section 28 of the PFA in respect of the liquidation of a participating employer and the registrar is satisfied that all the requirements and conditions in respect of the exemption have been complied with;

### **3.3 An exit of the last member**

Where the participation of an employer terminates in the fund as a result of the last member of the employer receiving his/her benefits from the fund leaving the fund with no assets, liabilities and members in respect of that employer;

### **3.4 Special rules being registered for an employer by mistake as such employer never commenced participation in the fund**

Where the registrar and the fund agree that the special rules in respect of such participating employer was registered by mistake as such participating employer never commenced its participation;

an umbrella fund must, in each of the circumstances referred to in paragraphs 3.1 to 3.4 above, include at least the information as set out in **Annexure B**. Where deemed necessary and relevant by the registrar, he may require further information.

## **4. APPOINTMENTS IN TERMS OF SECTION 26(2) of the PFA TO THE BOARD OF A FUND**

Section 26(2)(a) provides that the registrar may make appointments to the board of a fund in the circumstances contemplated in section 26(2). Section 26(2)(b) empowers the registrar to assign such duties as he deems expedient to the board appointed in terms of section 26(2)(a).

### **4.1 Management of a fund**

- 4.1.1 From a regulatory perspective, it is necessary that a fund has a functional board, as without a functional board, the members, beneficiaries and creditors of the fund may be prejudiced.
- 4.1.2 The purpose of section 26(2) is to empower the registrar to put in place a functional board where a fund for whatever reason does not have such a board so as to ensure that the members, beneficiaries and creditors of the fund are not prejudiced.

## 4.2 Duties of a section 26(2) board

The duties of a section 26(2) board are determined by the PFA in section 7D, as well as by the registrar according to the circumstances of the fund. These duties may include, for example –

- 4.2.1 constituting a board in terms of the rules of the fund;
- 4.2.2 management of the fund;
- 4.2.3 ensuring compliance with all applicable laws;
- 4.2.4 applying for exemption in terms of section 7B;
- 4.2.5 submitting rule amendments to the registrar for approval;
- 4.2.6 entering into or renewing contracts and service level agreements with service providers;
- 4.2.7 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;
- 4.2.8 collecting of outstanding contributions or schedules from any participating employer;
- 4.2.9 opening a bank account in the name of a fund;
- 4.2.10 taking investment decisions in accordance with the investment policy of the fund;
- 4.2.11 providing members with annual benefit statements;
- 4.2.12 transferring of assets, liabilities and members to other funds;
- 4.2.13 paying benefits in terms of the rules of the fund;
- 4.2.14 maintaining fidelity cover for the fund and its officers; and
- 4.2.15 in the event that a valid board in terms of section 7A cannot be established -
  - apply to the registrar for the approval of the appointment of a liquidator;
  - or
  - apply for the cancellation of the fund.

## 5. Conclusion

- 5.1 Applications for the cancellation of the registration of funds already submitted to the registrar will continue to be processed. However, where there is a need for additional information to satisfy the registrar that the fund has ceased to exist or that an employer has ceased participation in an umbrella fund, this must be provided.
- 5.2 In order to assist the registrar to satisfy him that a fund has ceased to exist or the participation of an employer in an umbrella fund has terminated, it is recommended that applications for the cancellation of the registration of a fund or the termination of participation of an employer in an umbrella fund complies with the requirements set out in herein. Such applications must be submitted electronically to the registrar on the retirement funds on-line system.
- 5.3 Boards/board members that are or have been appointed in terms of section 26(2) must perform any additional duties as determined in their appointment letters which may, in the discretion of the registrar, be supplemented or altered in terms of section 26(2)(b).

- 5.4 The registrar will prior to the cancellation of such fund, publish a notice for the intention to cancel such fund, in accordance with the requirements of Promotion of Administrative Justice Act, 2000 and on the Financial Services Board website for a period of 30 days, during which period any person may submit reasons to the registrar on why such fund should not be cancelled.

**D.P TSHIDI**  
**REGISTRAR OF PENSION FUNDS**

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## Annexure A

### Minimum information that must be submitted with an application for the cancellation of the registration of a fund:

1.	Name and registration number of the Fund	
2.	Full names and contact detail of person lodging the application	
3.	Capacity of the person lodging the application	
4.	Commencement date of the fund	
5.	<b>Indication of the reason for termination:</b> Full section 14 transfer Last member exited the fund Fund never commenced business Exemption from the provisions of section 28	
	Depending on the reason for termination, the relevant documentation –	
5.1	<b>Full transfer in terms of section 14(1) or 14(8)</b>	
5.2	Effective date of the full transfer	
5.3	Date of completion of transfer of assets, liabilities and members	
	5.3.1	Declaration by at least two of the following persons, (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C1</b> ) <ul style="list-style-type: none"> <li>• A former member of the board of the fund;</li> <li>• The principal officer of the fund;</li> <li>• A member of the board of the fund;</li> <li>• The fund's valuator or actuary who was the fund's valuator immediately before the termination of the fund;</li> <li>• The fund's auditor;</li> <li>• A representative of the fund's sponsor; or</li> <li>• A representative of the fund's administrator or former administrator</li> </ul>
	5.3.2	Disclosure of- <ul style="list-style-type: none"> <li>• All transactions subsequent to the effective date of the transfer;</li> <li>• Any changes in membership and assets or asset values;</li> </ul>
	5.3.3	Reconciliation of the assets, liabilities and members as per the approved section 14 transfer with the actual transfer of such assets, liabilities and members transferred to the transferee fund;
	5.3.4	Confirmation by the transferee fund that such asset value and membership as indicated on the reconciliation has been received by it.
	5.3.5	FSB case number of the full transfer approved in terms of section 14(1);
	5.3.6	Forms H and J, in the case of a section 14(8) transfer;
	5.3.7	Forms F and F1; and
	5.3.8	Nil bank statement and confirmation from the bank that the bank account was closed, if applicable.
5.4	<b>Where the last member received his/her benefits causing the fund to cease to exist</b>	

	5.4.1	The date on which the last benefit was paid whereby the fund terminated
	5.4.2	<p>A declaration by at least two of the following persons (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C3</b>)</p> <ul style="list-style-type: none"> <li>• A former member of the board of the fund;</li> <li>• The principal officer of the fund;</li> <li>• A member of the board of the fund;</li> <li>• The fund's valuator or actuary who was the fund's valuator immediately before the termination of the fund</li> <li>• immediately before the termination of the fund;</li> <li>• The fund's auditor;</li> <li>• A representative of the fund's sponsor; or</li> <li>• A representative of the fund's administrator or former administrator</li> </ul>
	5.4.3	Proof that the last member(s) have received all their benefits and the fund has no further assets and liabilities
	5.4.4	Nil bank statement and confirmation from the bank that the bank account was closed, if applicable.
5.5	<b>The Fund never commenced business</b>	
	5.5.1	Declaration by at least one board member confirming that the fund did not commence (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C4</b> ).
	5.5.2	Declaration by the administrator confirming that the fund did not commence
	5.5.3	Nil bank statement and confirmation from the bank that the bank account was closed, if applicable.
5.6	<b>Exemption from the provisions of section 28</b>	
	5.6.1	<p>Declaration by the person responsible for the winding up of the fund (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C5</b>); or</p> <p>Where the person responsible for the winding up of the fund is no longer available or cannot be reached such declaration must be done by at least two of the following persons-</p> <ul style="list-style-type: none"> <li>• A former member of the board of the fund;</li> <li>• The principal officer of the fund;</li> <li>• A member of the board of the fund;</li> <li>• The fund's valuator or actuary who was the fund's valuator immediately before the termination of the fund;</li> <li>• The fund's auditor;</li> <li>• A representative of the fund's sponsor; or</li> <li>• A representative of the fund's administrator or former administrator</li> </ul>
	5.6.2	Resolution by the person responsible for the winding up of the fund confirming that the winding up of the fund has been completed as approved by the registrar and request for the registration to be cancelled; and
	5.6.3	FSB case number of the completed liquidation exemption process
	5.6.4	Nil bank statement and confirmation from the bank that the bank account was closed, if applicable.
6.	Case number of the prescribed annual financial statements indicating that there are no	

assets, liabilities or members remaining in the fund (nil financial statements).

**Note:** The last financial statements (nil financials) may not exceed a period of 16 months from the previous financial statements to the date of liquidation, effective date of the transfer of effective date of the cancellation, i.e. last member exiting the fund.

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## Annexure B

### Minimum information that must be submitted with an application for the cancellation of the participation of an employer in an umbrella fund:

1.	Name and registration number of the Fund	
2.	Participating employer's registered name	
3.	Participating employer's registration number (FSB registration number)	
4.	Commencement date of employer's participation in the fund	
5.	<b>If the employer's participation in the fund has terminated-</b>	
5.1	Date on which its participation in the fund terminated; and	
6.	<b>Indication of the reason for termination:</b> Full section 14 transfer Last member exited the participating employer section of the fund Participation of employer never commenced Exemption from section 28	
7	<b>Depending on the reason for termination, the relevant documentation –</b>	
7.1	<b>Full transfer in terms of section 14(1) or 14(8)</b>	
	7.1.1	Effective date of the transfer of the relevant participating employer
	7.1.2	Date of completion of transfer of assets, liabilities and members of the relevant participating employer
	7.1.3	Declaration by chairperson of the umbrella fund confirming that the participation of the employer terminated and that all assets have been transferred to the transferee fund (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C2</b> );
	7.1.4	Disclosure of- <ul style="list-style-type: none"> <li>• All transactions subsequent to the effective date of the transfer;</li> <li>• Any changes in membership and assets or asset values;</li> </ul>
	7.1.5	Reconciliation of the assets, liabilities and members in respect of the relevant participating employer as per the approved section 14 transfer with the actual transfer of such assets, liabilities and members transferred to the transferee fund;
	7.1.6	Confirmation by the transferee fund that such asset value and membership as indicated on the reconciliation has been received by it;
	7.1.7	FSB case number of the full transfer approved in terms of section 14(1); and
	7.1.8	Forms H and J, in the case of a section 14(8) transfer.
7.2	<b>Where the last member received his/her benefits causing the participation of the employer to terminate –</b>	
	7.2.1	The date on which the benefit of the last member in respect of a participating employer was paid causing the participation of the employer to terminate
	7.2.2	Declaration by the chairperson of the umbrella fund confirming that the

		participation of the employer in the fund terminated (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C3</b> );
	7.2.3	Proof that the last member(s) have received all their benefits and the fund has no further assets and liabilities
7.3	<b>Participation of employer never commenced</b>	
	7.3.1	Declaration by the participating employer confirming that its participation never commenced (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C4</b> );
	7.3.2	Declaration by the chairperson of the umbrella fund confirming that the participation of the relevant employer never commenced
7.4	<b>Exemption from the provisions of section 28</b>	
	7.4.1	<p>Declaration by the chairperson of the umbrella fund and the person responsible for the winding up of the participating employer (example setting out the minimum information to be contained in such declaration is attached hereto as <b>Annexure C6</b>);</p> <p>Where the person responsible for the winding up of the fund is no longer available or cannot be reached such declaration must be done by at least two of the following persons-</p> <ul style="list-style-type: none"> <li>• A former member of the board of the fund;</li> <li>• The principal officer of the fund;</li> <li>• A member of the board of the fund;</li> <li>• The fund's valuator or actuary who was the fund's valuator immediately before the termination of the fund;</li> <li>• The fund's auditor;</li> <li>• A representative of the fund's sponsor; or</li> <li>• A representative of the fund's administrator or former administrator</li> </ul>
	7.4.2	Resolution by the board and person responsible for the winding up of the participating employer confirming that the winding up of the participating employer has been completed as approved by the registrar; and
	7.4.3	FSB case number of the completed liquidation exemption process.
8.	Where an employer participates in terms of special rules registered, a resolution by the board applying to the registrar to withdraw the registration of the special rules for the relevant employer	

**Declaration by the person lodging the application for cancellation of .....**  
**..... (fund) (Ref No.:.....) (persons refer to in item 6.1 of**  
Annexure A)

I, the undersigned

**[Full names]**  
**[SA Identity number / passport number]**

in my capacity as ..... hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of the fund and confirm that all assets and liabilities have been accounted for in the full transfer to the .....(fund).

I further confirm that –

1. the fund has terminated as all assets, liabilities and members have transferred in terms of a full transfer in terms of section 14;
2. I have verified all transactions from the effective date of the transfer until date of actual transfer of assets, liabilities and members;
3. I have verified the reconciliation of the assets, liabilities and members from the effective date until actual date of transfer as submitted to the registrar and the transferee fund;
4. there are/are no\* outstanding contributions due to the fund;
5. there are/are no\* unresolved complaints in respect of the fund; and
6. I am not aware of any possible prejudice that may be incurred by any member or beneficiaries of the fund.

I am competent to depose to this declaration and the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

\_\_\_\_\_  
**DEPONENT**  
**PRINT NAME:**

\*Delete if not applicable

## Annexure C2

**Declaration by the chairperson of the board of the .....**  
**(Umbrella Fund) (Ref No.:.....)**

I, the undersigned

**[Full names]**

**[SA Identity number / passport number]**

is the appointed chairperson of the

**[Fund name].**

I hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of ..... [name and reference number of participating employer] and confirm that all assets and liabilities have been accounted for in the full transfer to the .....(fund).

I further confirm that –

1. the abovementioned employer's participation has terminated as all assets, liabilities and members have transferred in terms of a full transfer in terms of section 14;
2. I have verified all transactions from the effective date of the transfer approved by the registrar until date of actual transfer of assets, liabilities and members;
3. I have verified the reconciliation of the assets, liabilities and members from the effective date until actual date of transfer as submitted to the registrar and the transferee fund;
4. there are/are no\* outstanding contributions due by the abovementioned participating employer;
5. there are/are no\* unresolved complaints in respect of the abovementioned participating employer; and
6. I am not aware of any possible prejudice that may be incurred by any member or beneficiaries in respect of the abovementioned participating employer.

I am competent to depose to this declaration and the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

**DEPONENT**

**PRINT NAME:**

\*Delete if not applicable

## Annexure C3

Declaration by the person lodging the application for cancellation of .....

..... (fund) (Ref No.:.....)

.....(Name and ref no. of participating employer)

I, the undersigned

**[Full names]**

**[SA Identity number / passport number]**

*in my capacity as* ..... hereby declare that I have taken all reasonable steps to ensure that all benefits due to members have been paid and that the abovementioned fund / participating employer\* has no further assets, liabilities and members.

I further confirm that –

1. I have verified all transactions from the latest annual financial statements until the date that all benefits were paid causing the fund to cease to exist;
2. there are/are no\* outstanding contributions due by the abovementioned participating employer;
3. there are/are no\* unresolved complaints in respect of the abovementioned participating employer; and
4. I am not aware of any possible prejudice that may be incurred by any member or beneficiaries in respect of the abovementioned participating employer.

I am competent to depose to this declaration and the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

**DEPONENT  
PRINT NAME:**

\*Delete if not applicable

## Annexure C4

Declaration by the person lodging the application for cancellation of

..... (fund) (Ref No.:.....) /

..... (Name and ref no. of participating employer)

participating in the ..... (fund)\*

I, the undersigned

**[Full names]**

**[SA Identity number / passport number]**

in my capacity as ..... hereby declare that I have taken all reasonable steps to ensure that the fund / the abovementioned employer participating in an umbrella fund\* did not commence business as a retirement fund / commenced its participation in the abovementioned umbrella fund\*. I further declare that I am not aware of any possible prejudice that may be incurred by any member or beneficiaries in respect of the abovementioned participating employer, by the cancellation of the registration of the fund or the termination of participation of the employer in the Fund.

I am competent to depose to this declaration and the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

**DEPONENT  
PRINT NAME:**

\*Delete if not applicable

Declaration by the person lodging the application for cancellation of .....

..... (~~fund~~-fund)(Ref No.:  
.....)

I, the undersigned

**[Full names]**

**[SA Identity number / passport number]**

as the person responsible for the winding up of the fund or participation of an employer in an umbrella fund\* in terms of section 28(17) hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of the fund and confirm that all assets and liabilities have been accounted for in the distribution of the assets and liabilities of the ..... (fund).

I further confirm that –

1. I have complied with all requirements as determined by the registrar in my appointment letter dated .....
2. I have complied with all the reporting requirements as determined by the registrar in my appointment letter dated .....
3. I have verified the reconciliation of the assets, liabilities and members from the latest financial statements until the date of winding up of the fund and confirm that all assets have been accounted for during the winding up process;
4. the fund has distributed all assets to such members and beneficiaries who were entitled to such benefits in terms of the rules of the fund;
5. I am not aware of any possible prejudice that may be incurred by any member or beneficiaries of the fund.

I am competent to depose to this declaration and the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

\_\_\_\_\_  
**PERSON RESPONSIBLE FOR THE  
WINDING DOWN OF THE FUND  
PRINT NAME:**

## Annexure C6

Declaration by the person lodging the application for cancellation of .....

..... (~~fund~~-fund)(Ref No.:

.....)(name and ref  
no. of participating employer)

I, the undersigned

**[Full names]**

**[SA Identity number / passport number]**

as the chairperson /

**[Full names]**

**[SA Identity number / passport number]**

As the person responsible for the winding up of the fund or participation of an employer in an umbrella fund\* in terms of section 28(17) hereby declare that I have taken all reasonable steps to identify and locate all assets and liabilities of the fund and confirm that all assets and liabilities have been accounted for in the distribution of the assets and liabilities of the ..... (fund).

I further confirm that –

6. I have complied with all requirements as determined by the registrar in my appointment letter dated .....
7. I have complied with all the reporting requirements as determined by the registrar in my appointment letter dated .....
8. I have verified the reconciliation of the assets, liabilities and members from the latest financial statements until the date of winding up of the fund and confirm that all assets have been accounted for during the winding up process;
9. the fund has distributed all assets to such members and beneficiaries who were entitled to such benefits in terms of the rules of the fund;
10. I am not aware of any possible prejudice that may be incurred by any member or beneficiaries of the fund.

I am competent to depose to this declaration and the facts set out in this declaration are to the best of my knowledge and belief, true and correct.

\_\_\_\_\_  
**CHAIRPERSON**  
**PRINT NAME:**

\_\_\_\_\_  
**PERSON RESPONSIBLE**  
**PRINT NAME:**



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