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PRESCRIBED TRAINING FOR MEMBERS OF BOARDS OF FUNDS IN TERMS OF SECTION 7A OF THE PENSION FUNDS ACT, 1956

1. Introduction

1.1. Section 7A of the Pension Funds Act, 1956 (the PFA) was amended in terms of the Financial Services Laws General Amendment Act, 2013, with effect from 28 February 2014 by amongst other things, the substitution of subsection (3) by a new subsection (3) as set out below:

(1) *Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least 50% of whom the members of the fund shall have the right to elect.*

(1A) ...

(2) ...

(3)

(a) *A board member appointed or elected in accordance with subsection (1), must attain such levels of skills and training as may be prescribed by the registrar by notice in the Gazette, within six months from the date of the board member's appointment.*

(b) *A board member must retain the prescribed levels of skills and training referred to in paragraph (a), throughout that board member's term of appointment.*

1.2. The registrar of pension funds has consulted numerous people and organisations with an interest in how retirement funds are governed on the standards to be prescribed by the registrar in terms of section 7(3)(a). Those consulted have included representatives of organised labour, employer

bodies, the sector education and training authority for the insurance industry (INSETA), professional bodies, retirement industry associations and international standards setting bodies.

2. The purpose for which the registrar has been given the power to prescribe standards relating to the knowledge and skill of members of the boards of funds

2.1. The purpose of the power given to the registrar in terms of section 7A(3) is to improve the governance of retirement funds, not to replace elected or appointed board members with “professional” board members.

2.2. Mindful of both–

2.2.1. the importance of the right that members of registered funds (other than those granted exemptions in terms of section 7B) have to elect as members of their boards persons whom the members believe are best able to ensure that their needs and interests are taken into account when those boards take decisions affecting them; and

2.2.2. the importance of ensuring that registered funds are governed by boards comprising persons who, between them, have the knowledge, skills, experience and other attributes necessary to enable them to fulfil their duties properly,

the registrar intends to exercise his power in terms of section 7(3)(a) in a manner that does not undermine members’ rights to elect board members or the sound governance of their retirement funds.

2.3. The registrar recognises that the sound governance of a fund requires that the members of the board of the fund **together** must have appropriate knowledge and skills in regard to matters such as –

2.3.1. the retirement funding and, if applicable, risk cover needs of the members of the fund, taking into account the profile(s) of its membership as a group and the nature and needs of other stakeholders in the fund;

2.3.2. the ways in which those needs may best be fulfilled by the fund

taking into account its available resources and any limits on the powers which may be exercised by the board; and

2.3.3. measures that it would be appropriate for the fund to adopt to ensure-

2.3.3.1. its sound governance and compliance with applicable laws;

2.3.3.2. the fair treatment of its members and other stakeholders;

2.3.3.3. the appropriate and effective management of its risks;

2.3.3.4. the effective financial management and administration of a fund;

2.3.3.5. appropriate and effective communication with members and other stakeholders;

2.3.3.6. effective oversight by the board over the exercise of powers and fulfilment of functions delegated by the board to others; and

2.3.3.7. the policies and strategies that it would be appropriate for the fund to adopt in relation to the investment of its assets, and the manner in which those strategies may be implemented effectively.

2.4. It is not necessary for the sound governance of a fund that each board member must have the same knowledge and skills in regard to each of these matters.

2.5. Nonetheless, to ensure that a board is not over-dependent on the knowledge and skills of only one or a few board members when making decisions in regard to a specific matter, each board member should have not less than the minimum levels of knowledge and skills so that he or she may properly engage in discussions on the matter before the board makes its decisions in regard to all matters of substantial importance to the fund and its members.

3. The registrar's decision to delay the exercise of his power to prescribe these requirements

3.1. After consultations with industry stakeholders, including organised labour, the registrar of pension funds has decided that it would not be appropriate for him **now** to exercise his power in terms of section 7C of the Pension Funds Act to prescribe-

3.1.1. the minimum skills that a board member must be able to demonstrate that he or she has; and

3.1.2. the training that the board member must undergo for the purpose of acquiring such of those skills as he or she does not already have

within a period of six months after the date with effect from which he or she became a board member.

3.2. In the registrar's opinion, no useful purpose will be served by prescribing-

3.2.1. the minimum knowledge and skills required of a board member;

3.2.2. the manner in which a board member's relevant and applicable prior learning and/or experience may be recognised as sufficient for compliance with the prescribed standards; and

3.2.3. the training, if any, that a board member may be required to undergo to acquire such prescribed levels of knowledge and skills as he or she does not already have,

unless and until there is an objective measure against which the knowledge and skills of a board member may be assessed by an independent assessor recognised by the registrar as having the qualifications and experience required for the purpose of conducting the assessments;

4. Progress towards the establishment of a new set of knowledge and skills measurements standards

4.1. After consultations with representatives of stakeholders in the retirement funds industry (industry stakeholders), the registrar has decided that such an objective measure would best be provided by a special purpose occupational

qualification¹ accredited by the South African Qualifications Authority (SAQA) on the recommendation of the Quality Council for Trades and Occupations (QCTO) and set at NQF level 5² in terms of the National Qualifications Framework Act, 2008.

4.2. It has been agreed between the registrar and the QCTO that the Financial Services Board (FSB) will be the development quality partner (DQP) with responsibility for -

4.2.1. co-ordinating and funding the qualification development process;

4.2.2. developing an 'occupational profile' on which the proposed new board member qualification would be based;

4.2.3. together with expert practitioners and Batseta, the agreed Assessment Quality Partner (AQM),³ designing a qualifications verification process;

4.2.4. with the assistance of expert practitioners, developing curricula for training modules for specific subjects to be canvassed in prescribed

¹ The term 'occupational qualification' is defined in the Skills Development Act as:

'a qualification associated with a trade, occupation or profession, resulting from work-based learning and consisting of knowledge unit standards, practical unit standards and work experience unit standards'.

All occupational qualifications are assessed externally through a nationally standardised integrated summative assessment.

The purpose of an occupational qualification is to qualify a learner to engage in

- an occupation that is reflected in the Organising Framework for Occupations (OFO); or
- an occupational specialisation related to an occupation that is reflected on the Organising Framework for Occupations (OFO).

² NQF stands for National Qualifications Framework, a framework for levels of competencies determined in terms of the National Qualifications Framework Act, 2008. Each level has a 'level descriptor' for the purpose of ensuring 'coherence in learning achievement in the allocation of qualifications and part qualifications to particular levels, and to facilitate the assessment of the national and international comparability of qualifications and part qualifications.' See http://www.saga.org.za/docs/misc/2012/level_descriptors.pdf. There are ten such levels. The learning achievements or outcomes regarded by SAQA as appropriate for a qualification at NQF level five.

³ In this capacity Batseta will be authorised to

- develop assessment instruments and measures;
- evaluate training courses offered by training providers to determine whether they meet the minimum standards to be prescribed by the registrar;
- evaluate and accredit assessors who will then be authorised to conduct assessments of the skills and knowledge of board members;
- manage and report on the summative assessment of board members who complete such courses to determine whether they have achieved the prescribed standards of knowledge and skills.

board member training.

4.3. In its capacity as DQP, the FSB has been engaged in a process of consultations with industry stakeholders and the QCTO with a view to-

4.3.1. identifying the minimum knowledge, skill and/or experience which should be required of a board member;

4.3.2. determining minimum training and assessment standards including-

4.3.2.1. criteria, processes and instruments for the assessment of a board member's knowledge and skills including prior learning and/or experience; and

4.3.2.2. curricula which training providers may be required to follow in providing training intended to meet prescribed requirements.

4.4. To date six draft training modules have been prepared, canvassing

4.4.1. the governance, strategic direction and control of a fund;

4.4.2. primary and subordinate legislation and the common law applicable to the governance, management and operation of a fund;

4.4.3. the rules and operations of a fund;

4.4.4. the governance of a fund's assets;

4.4.5. requirements for compliance with financial soundness, financial management, and financial reporting standards and laws; and

4.4.6. the management of a fund's risks.

4.5. Draft knowledge, 'practical skills' and 'work experience' modules have also been prepared.

- 4.6. To promote willing compliance with the new standards once they are prescribed, the registrar considers it appropriate to conduct further consultations in regard to the proposed qualification and training standards before the proposal is submitted by the QCTO to SAQA for its consideration. These consultations will include consultations with representatives of employers, labour and the community in the National Economic Development and Labour Council (NEDLAC).
- 4.7. Provided that SAQA approves the proposed new qualification before then, the registrar expects that he will be in a position to prescribe at least some standards in regard to the knowledge, skills and training of fund board members by the end of 2015. **These prescribed standards may be limited to only some elements of the proposed requirements for the achievement of the proposed new qualification**

5. Trustee Toolkit

- 5.1. To assist board members to acquire appropriate knowledge of the principles of sound fund governance and governance policies and practices designed to ensure compliance with those principles, the FSB has created the Trustee Toolkit, a free on-line training course available on at www.trusteetoolkit.co.za. The course includes tutorials, practical guidelines, case studies and assessments and access to on-line support. A hard copy set of the course materials may be obtained from the FSB.
- 5.2. Once the new qualification for board members has been registered by SAQA, the Trustee Toolkit will be submitted for assessment with a view to having it accredited as training material for the governance components of the qualification.

Yours sincerely

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DEPUTY EXECUTIVE OFFICER: RETIREMENT FUNDS