



## EXPLANATORY MEMORANDUM

### APPOINTMENT OF A VALUATOR

#### IN TERMS OF SECTION 9A OF THE PENSION FUNDS ACT, 1956

#### INTRODUCTION

1. Section 9A of the Pension Funds Act, 1956 ('the Act') deals with the appointment of a valuator to a fund. It provides that:

- "(1) Every registered fund which in terms of section 16 is required to have its financial condition investigated and reported upon by a valuator, shall appoint a valuator.*
- "(2) The provisions of section 8, excluding the provisions of subsections (1) and (2), apply with the necessary changes to the appointment of a valuator under this section.*
- "(3) The valuator of a registered fund must be a natural person who is resident in the Republic, and if the valuator resigns the appointment or is unable for any reason to discharge any duty imposed upon a valuator by any provision of this Act, the fund shall appoint another person to be its valuator within such period as prescribed."*

2. The provisions of section 8 of the Act, which apply with the necessary changes to the appointment of a valuator under section 9A, are as follows:

- "(3) Every fund must within 30 days after the registration of a fund or within 30 days after the appointment of a [valuator] give the registrar written notice of the appointment by furnishing the registrar with the prescribed information in respect of the appointee.*
- "(4) Despite anything to the contrary in any law or in any agreement, the appointment by a fund of a [valuator] is subject to the condition that the appointment may be terminated under subsection (5)(b) and the fund must make any appointment subject to this condition.*

(5)

- (a) *The registrar, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), may, if the registrar reasonably believes that a [valuator] is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the [valuator] holds or continues to hold such office, object to the appointment of a [valuator], stating the grounds for the objection, and provide such to the chairperson of the board and to the appointee.*
- (b) *If the registrar objects to an appointment in terms of paragraph (a), the board must terminate the appointment within 30 days of the registrar informing the board of the finalisation of the processes and procedures provided for in the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).*
- (c) *The registrar may for purposes of assessing if a [valuator] is not, or is no longer, a fit and proper person in accordance with paragraph (a), have regard to-*
  - (i) *the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and type of fund;*
  - (ii) *the diligence with which the person concerned is likely to fulfil those responsibilities;*
  - (iii) *previous conduct and activities of the person in business or financial matters; and*
  - (iv) *any evidence that the person-*
    - (aa) *after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, 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;*
    - (bb) *has 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;*
    - (cc) *has contravened the provisions of any law the object of which is the protection of the public against financial loss;*
    - (dd) *is a former [valuator] of a fund and whose actions contributed to that fund's inability to pay its debts or caused financial loss to its members;*
    - (ee) *has 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*
    - (ff) *has taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgement.*

- (d) *The registrar may request any person to assist him or her in assessing whether a person is fit and proper to act as a [valuator] of a fund.*
- (6) *A [valuator] of a fund must*
  - (a) *within 21 days of his or her appointment being terminated, other than in accordance with the condition referred to in subsection (5)(b), submit a written report to the registrar detailing the [valuator's] perceived reasons for the termination; and*
  - (b) *on becoming aware of any matter relating to the affairs of the pension fund which, in the opinion of the [valuator], may prejudice the fund or its members, inform the registrar thereof in writing.*

## **EXPLANATION**

3. The registrar is required to prescribe-
  - 3.1. in terms of section 9A(2), read with section 8(3), the information which must be furnished to the registrar in respect of a valuator appointed to a fund; and
  - 3.2. in terms of section 9A(3), the time period within which a fund must appoint a valuator after the termination of the appointment of the fund's valuator.
4. This draft *Notice on the appointment of a Valuator, 2015*, intends to revise and replace the *Notice on the appointment of a Valuator, 2014*, and addresses the issues the registrar must prescribe.
5. In this explanatory memorandum the registrar explains the reasons for the revision of the notice.

### *Termination and appointment of a valuator*

6. Once the board of a fund is satisfied that a valuator meets the necessary requirements, and has appointed him or her, the board must notify the registrar of the appointment. The proposed format in which that notice will be required to be given appears in the annexures to the notice. In particular, Annexure A has been revised to include details relating to the termination of the appointment preceding the appointment of a replacement valuator, or in the case of a fund whose valuation exemption has expired, the appointment of a valuator. The revision will enable the registrar to verify that the time periods prescribed in the notice have been complied with.

### *Professional indemnity insurance*

7. In terms of the revised notice, valuers must be covered under a policy of insurance for professional indemnity. In most instances where valuers are employed by a firm, they are covered under such policy of insurance as taken out by the firm. In instances where valuers work independently, they must be covered by a policy of insurance issued in their names.
8. The registrar acknowledges that for valuers who offer their services independently (sole practitioners), professional indemnity insurance may not be available, or where it is available, the cost does not justify the benefit. Therefore, a valuator who offers his or her services independently may apply to the registrar to be exempted from this requirement by submitting a fully motivated written application, supplemented by –
  - 8.1. a copy of the disclosure, in writing, to the board of the fund, stating that he or she is not covered by professional indemnity insurance and the reasons therefore; and
  - 8.2. a copy of the letter of acceptance by the board of the fund in which it consents to the valuator not being covered by professional indemnity insurance for the reasons stated.

## CONCLUSION

9. You are invited to submit any comments, queries and/or proposals in relation to this draft notice by e-mail to [Alta.Marais@fsb.co.za](mailto:Alta.Marais@fsb.co.za) on or before close of business on Friday, 14 August 2015.

Yours faithfully



DUBE TSHIDI

REGISTRAR OF PENSION FUNDS