

ROLE OF TRUSTEES



FINANCIAL
SERVICES
BOARD

INTRODUCTION

The Financial Services Board (FSB), as regulator of the non-banking financial services sector, also administers the Pension Funds Act, No.24 of 1956 through the Office of the Registrar of Pension Funds. The Office of the Registrar of Pension Funds as a supervisor of the retirement fund industry in collaboration with the Consumer Education Department developed this booklet to help trustees understand their basic roles and responsibilities.



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DEFINITIONS

Accrued tax

The tax on deferred pension benefits.

Assets

Something that adds value, such as a house.

Deferred pensioner

A member who has not yet retired but has left the service of the employer concerned prior to normal retirement date, as defined in the rules, leaving in the fund the member's rights to such benefits as may be defined in the rules.

Employer-sponsored Fund

A fund sponsored by the employer for the benefit of its employees.

Fund administrator

A company registered with the Registrar of Pension Funds at the FSB in terms of the Pension Funds Act No 24 of 1956 to manage the administration of the fund.

Indemnity clause

A provision in a contract that frees the other party from liability.

INSETA

Insurance Sector Education and Training Authority. Their function is to promote and represent the training and development interests of the insurance and related financial services sector of the economy in terms of the skills development legislation.

Judgment

The decision arrived at by a court of law or tribunal.

Juristic person

Anybody or an entity that has legal capacity.

Legal capacity

Ability to act on behalf of someone or enter into a contract.

Pension Funds Adjudicator (PFA)

The PFA resolves pension funds related complaints.

Note: Any person who is or was a member of a pension fund has the right to complain in writing to the Pension Funds Adjudicator (PFA). The PFA cannot make decisions about complaints dealing with the surplus apportionment schemes of retirement funds and complaints relating to the liquidation of a fund. Any decision by the PFA is the same as a judgment of any court of law. If any party is not happy with the Adjudicator's decision, he or she may appeal to the High Court.

Principal Officer

An individual appointed by the trustees as a principal executive officer to act as main liaison amongst all the stakeholders of the funds.

Quorum

Minimum number of trustees required for a valid meeting.



Social security

A right to be assisted by the Government in the event a person is unable to support himself or herself.

Specialist tribunal

A group of experts entrusted with the responsibility of resolving problems relating to the distribution of the surplus of the retirement fund.

Surplus Apportionment Scheme

A report that must be compiled and submitted to the Registrar of Pension Funds for approval before any surplus can be distributed.

CHAPTER 1: TYPES OF RETIREMENT FUNDS

1.1 **PENSION FUND**

Under a pension fund at least two thirds of the benefit must be paid as a pension for the rest of the pensioner's life. A maximum of one third of the fund benefit may be taken as a lump sum, in cash.

1.2 **PROVIDENT FUND**

Under a provident fund the full amount of the benefit may be taken in a lump sum.

1.3 **PRESERVATION FUND**

A preservation fund is a pension or provident fund to which a fund member can have his or her paid up pension or provident benefits transferred.

This fund not only preserves the member's accrued tax status but also can allow the fund member to take out some money as a once off withdrawal (in part or in full).

1.4 **RETIREMENT ANNUITY FUND**

A retirement annuity fund is set up by an administrator or insurer to provide retirement benefits when the member retires. The Income Tax Act allows for retirement from as early as age 55 for this purpose.

Note: *all of the above are defined in the tax laws.*

CHAPTER 2: TRUSTEES

2.1 WHO IS A TRUSTEE?

A member of at least four individuals which holds or manages and invests assets for the benefit of retirement fund members.

2.2 ROLES AND RESPONSIBILITIES OF TRUSTEES

2.2.1 Management of retirement funds and compliance with the requirements that apply to these funds:

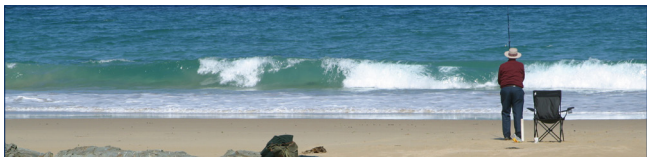
- Manage retirement funds;
- Ensure that all decisions and actions are taken according to the retirement fund laws and rules of the fund.

2.2.2 Acting in the best interest of the members of a fund (i.e. to ensure the best returns by making sure that employers do what is expected of them):

- Ensure that members receive the best return on their invested funds by asking questions and making sure that trustees make wise investments.

2.2.3 Making sure that the assets they are responsible for are not abused and that they themselves do not become open for bribery:

- Keeping a close watch over administrators to ensure members' assets are managed properly according to the law. Trustees must not accept bribes/ gifts/ presents/ discounts in exchange for votes.



2.2.4 Raise understanding of trusteeship:

- Teaching others about the work of trustees and letting others know why the role of trustees is so important.

2.2.5 The board of trustees, its committees, duties and fiduciary responsibilities:

- The job of a trustee as a member of the board of trustees is to carry out his or her responsibilities for the benefit of members, and not for personal gain.

2.2.6 Governance and stakeholder relationships:

- Ensure that the fund is managed in a transparent and fair manner, that there is adherence to the rules of the fund, and that the rules are in line with the relevant legislation.

2.2.7 Playing a constructive role in ensuring the role of trustees is well understood:

- Keep up to date with trends, developments and topical issues in the retirement funds industry to improve on self-development as a trustee and share own knowledge with others, especially fellow-trustees and fund members.

2.2.8 Exploring different investment strategies and policies:

- Look for the best ways to invest members' funds;
- Look at various plans for investing member's funds and find ones that are most suitable in order to provide the benefits contained in the registered rules.

2.3 *THE BOARD OF THE FUND AND TERM OF OFFICE*

Section 7A

In respect of the Board members (appointed and elected) the rules of a retirement fund must make provision for the constitution of the board, the election procedure of the members, the appointment and term of office, the procedures at meetings, the voting rights of members, the quorum at a meeting (if a board consists of four board members or less, all the members shall constitute a quorum at a meeting), the breaking of deadlocks and the powers of the board.

Section 7B

The Registrar may on written application and subject to such conditions as may be determined by the Registrar:

- (a) authorise a retirement fund to have a board consisting of less than four board members if it would be impractical or unreasonably expensive for a board to consist of four members. In this event the members still have the right to elect at least 50% (fifty per cent) board members.
- (b) exempt a retirement fund from the provision of the Pension Funds Act which requires the members to elect at least 50% (fifty per cent) of the board members, if the retirement fund-
 - was established for the benefit of employees of different employers;
 - is a retirement annuity;
 - is a beneficiary fund; or
 - is a pension preservation fund or a provident preservation fund.



2.4 APPOINTMENT OF TRUSTEES (HOW AND WHO)

Section 7A (1) of the Pension Funds Act requires the following:

Every fund must have a board of at least four members. The members of the fund have the right to elect at least half of the members of the fund board. The following people have a right to elect at least half of the members of the fund board:

- All active members;
- Pension fund members (including the dependants of fund members who have died and who are receiving benefits. This will depend on the rules of the fund);
- Deferred pensioners;
- Pensioners.

NOTE: *If a fund buys a pension from an insurer, in the name of a member of that fund then the liability is passed on to the member, and such a person is no longer a member of that fund , and cannot elect members of the fund board.*

2.5 WHAT A TRUSTEE NEEDS TO KNOW BEFORE ACCEPTING AN APPOINTMENT

Ask the Principal Officer to give you the information below. It is very important for you to learn and understand this information and know it well. It will help you to know how a fund is managed.

- A copy of the rules of the Fund as registered by the Registrar;
- Signed copies of all minutes of Trustee meetings that took place before you were appointed as a trustee;
- Get a copy of the Pension Funds Act 24 of 1956 (as amended).

2.6 TYPES OF TRUSTEES

2.6.1 Member-elected trustees

Member-elected trustees are those trustees elected by the fund members.

2.6.2 Employer-appointed trustees

Employer-appointed trustees are those trustees appointed by the employer.

2.6.3 Independent trustees

Independent trustees are those trustees that are not employed or controlled by the employer or its employees or any organization which acts on behalf of members of the fund.

2.6.4 Professional trustees

Professional trustees are those trustees that give expert advice on matters where board members may lack sufficient expertise.

Note: *that once trustees have taken up office they can be held jointly and severally liable for the decisions of the fund despite being elected or appointed as stated above.*

CHAPTER 3: LAWS

3. *IMPORTANT LAWS FOR TRUSTEES TO KNOW*

3.1. *THE PENSION FUNDS ACT 24 OF 1956 (AS AMENDED)*

All pension funds must be registered with the Registrar of Pension Funds at the FSB. Some retirement funds like the Government Employees Pension Fund (GEPF) , Transnet and other government sponsored funds are not registered with the FSB.

As soon as the fund is registered, a board of trustees must be established.

If the head office of the employer is outside South Africa , the Pension Funds Act does not apply . However the Registrar of the Pension Funds will only allow this kind of fund to follow the Pension Funds Act under the following conditions:

If the rules of the fund that apply to members who live in South Africa are just as favourable as the rules of those funds that apply to members who live outside South Africa. The Registrar will ensure that sufficient provision is made for when South African citizens are ready to retire while working for a branch of the company operating in South Africa. This is to ensure that foreign companies operating in South Africa who provide pensions do so responsibly.

Although a chairperson may be appointed by the board, it is preferable that the chairperson be elected by the board.



When a pension fund is registered, it becomes a juristic person capable of suing and being sued in its corporate names.

All documents (excluding letters) issued by the fund must be signed by the chairperson of the board of trustees, a member of the board of trustees and the principal officer.

It is the duty of the trustees to take out an insurance policy to indemnify the pension fund in case of misappropriation of money, dishonesty or fraud by any of the officials of the fund.

Any person who is or was a member of a pension fund has the right to complain in writing to the Pension Funds Adjudicator (PFA). The PFA cannot make decisions about complaints dealing with the surplus apportionment schemes of retirement funds. The PFA will also not consider complaints relating to the liquidation of a fund. Any decision by the PFA is the same as a judgment of any court of law. If any party is not happy with the PFA's decision, he or she may appeal to the High Court.

3.2 LABOUR RELATIONS ACT 66 OF 1995

The purpose of the Labour Relations Act is to advance economic development, social justice, labour peace and democracy in the workplace by providing a framework within which employees and their trade unions, employers and employer's organisations can collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest.

The Pension Funds Act is administrative in nature. It does not dictate the extent of benefits and is not involved with issues of fairness. These issues are dealt with in the Basic Conditions of Employment Act and the Labour Relations Act.

Whereas the Pension Funds Act allows an employer to establish a fund and sets out the basic subjects that need to be included in the rules, for example the nature and extent of benefits (see regulation 30(2) of the Act), it does not state what type of benefits would be fair. Membership in a fund usually forms part of the employee's conditions of service.

3.3 SOUTH AFRICAN REVENUE SERVICES (SARS)

The trustees must know that members' benefits must be taxed by the South African Revenue Services before any benefit that's due to the member is paid out.

3.4 THE CONSTITUTION OF SOUTH AFRICA

The Constitution stipulates that every person has the right of access to social security. The Constitution is the supreme law of the country.

3.5 GENERAL KNOWLEDGE

Basic knowledge of accounting, actuarial, investment and legal principles will go a long way in laying a strong foundation for trustee's skills.

3.6 ADDITIONAL INFORMATION

Information contained in a copy of the rules of the fund as registered by the Registrar of Pension Funds, signed copies of all minutes of trustee meetings that took place before you were appointed as a trustee will help the trustees in determining the following:

- How do the fund and its administrative procedures work?
- How many members does the fund have?
- Who is the administrator of the fund ?
- How much money does the fund have and how is it invested?
- What kinds of decisions can a trustee of a fund make about investments and what is contained in the mandates given to service providers?
- Does the fund have an indemnity clause for losses it may suffer because of wrong/poor/bad decisions by the board of trustees?

CHAPTER 4: FREQUENTLY ASKED QUESTIONS (FAQs)

1. Q: *What qualifies one to be a trustee?*

A: No formal qualification is needed but any person who can understand the requirements of the Pension Funds Act can be a trustee. However, the rules of the fund can disqualify a person from being a trustee if the person is guilty of having:

- A criminal record;
- Misused funds;
- Committed fraud;
- Been found guilty of dishonesty or theft.

2. Q: *Who appoints trustees?*

A: The employer appoints employer trustees.

The members elect employee trustees. Section 7A of the Pension Fund Act provides for a 50 /50 representation in the running of the affairs of every fund.

3. Q: *What are the duties of a trustee?*

A: The duties of trustees are to:

- Ensure that proper registers, books and records of the procedures of the fund are well kept;
- Ensure that proper control systems are in use on behalf of the board of trustees;
- Make sure that enough and correct information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund;
- Take all reasonable steps to ensure that contributions are paid on time to the fund;
- Obtain expert advice on matters where board members may lack sufficient expertise;

- Ensure that the rules and the operation and administration of the fund comply with the Pension Funds Act, and any other applicable laws.

4. Q: *Who is the representative body for trustees?*

A: No representative body or organisation exists at the moment, but the FSB maintains a register of independent trustees. There are a few bodies operating in the industry to which trustees and principal officers and pension lawyers belong.

5. Q: *Who regulates the activities of trustees?*

A: The Registrar through the Pensions Department at the FSB.

6. Q: *How long can one serve as a trustee?*

A: The term of office for trustees should not be for a period of more than five (5) years depending on the rules.

7. Q: *Are trustees paid for their services?*

A: The rules dictate what trustees can and cannot be remunerated for. The Registrar keeps an eye on all the fund's expenses in the annual financial statements submitted.

8. Q: *Which institutions offer trustee training?*

A: Tertiary institutions and industry bodies. It is always important to verify accreditation of courses with INSETA and SAQA.

9. Q: *How does the fund employ the services of an independent trustee?*

A: The FSB is populating a database of independent trustees, liquidators, valuers, auditors and principal officers. (The board makes the selection and appointments of service providers).

10.Q: *Can trustees be held liable for their wrong decisions?*

A: Trustees may be held personally or jointly and severally liable for damages resulting from negligent conduct. However, a trustee is protected by the fund's fidelity cover and professional indemnity insurance that the FSB insists funds should have in place.

11.Q: *How do I contact my fund?*

A: Members are encouraged to keep contact details of their principal officer, trustees and administrators safely. Contact details are found in the annual benefit statements circulated to members by the fund administrator.

12.Q: *How can I be sure that the trustees of my fund are acting in my best interest?*

A: For peace of mind, members must nominate and elect people that they can trust. Members are also encouraged to make it their duty to check the benefit statements that they receive annually or to request the latest financial statements to monitor the performance of their fund.

13.Q: Where can I complain if I have a problem with my trustees?

- A: You can complain directly to the fund or the employer. The fund must respond in writing to the complaint within 30 days of receipt of the complaint. If the complainant is not satisfied with the reply or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Pension Funds Adjudicator whose contact details are as follows:

PHYSICAL ADDRESS

Ground & 1st Floors
Corporate Place
Cnr. Fredman Drive &
Sandown Valley Crescent
Sandton
2196

POSTAL ADDRESS

P.O Box 651826
Benmore, 2010

TEL 087 942 2700

FAX 087 942 2644

EMAIL enquiries-jhb@pfa.org.za

On regulatory issues you may complain to the FSB on these toll free numbers:

08002020 87 / 0800110443 or

e-mail: info@fsb.co.za.

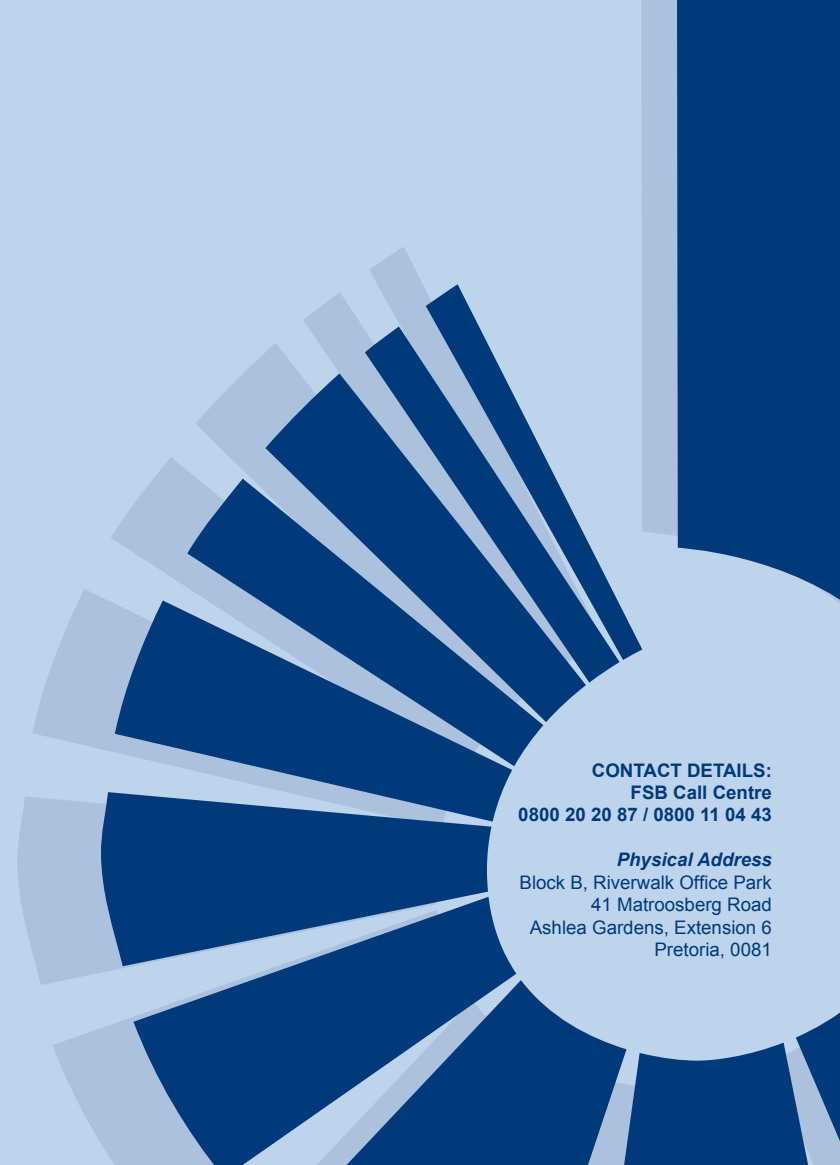
Physical address:

Block B, Riverwalk Office Park
41 Matroosberg Road, Ashlea Gardens
Extension 6
Pretoria
0081



NOTES

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CONTACT DETAILS:
FSB Call Centre
0800 20 20 87 / 0800 11 04 43

Physical Address
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens, Extension 6
Pretoria, 0081