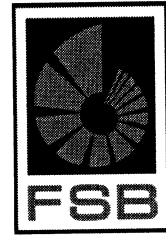


FINANCIAL SERVICES BOARD

Rigel Park 446 Rigel Avenue South Erasmusrand Pretoria 0181 South Africa
PO Box 35655 Menlo Park Pretoria 0102 South Africa
Tel +27 12 428 8000 Fax +27 12 347 0221 E-mail info@fsb.co.za
Toll free 0800 110443 Internet http://www.fsb.co.za



ENQUIRIES:	W MOKUPO	D. DIALLING NO.:	+27 12 428 8032
OUR REF:	12/12/1	FAX:	+27 12 347 8787
DATE:	11 JUNE 2007	E-MAIL:	wilmam@fsb.co.za

(To all funds, approved administrators, and insurers who underwrite pension funds)

CIRCULAR PF NO. 130

GOOD GOVERNANCE OF RETIREMENT FUNDS

PREAMBLE

1. The assets of a retirement fund are administered for the main purpose of providing the benefits promised in terms of the registered rules of that fund. The board of management (sometimes referred to as trustees) therefore holds fund assets in trust for those persons who will ultimately benefit from them. They stand in a position of trust or fiduciary relationship to funds and therefore must act with *integrity*. As fiduciaries, the board, its alternates and other persons duly appointed by the board to act on its behalf, have to deal with the assets or affairs of the fund in terms of pensions law, the common law, customary law, regulations, the (registered) rules of the fund, codes of conduct and policies that apply to the fund. Trustees may be required to exercise a degree of discretion in making decisions. Therefore, not all circumstances relating to the management and functions of the board may be circumscribed or clearly defined within a legal framework. This necessitates the introduction of governance measures. Governance therefore includes values and ethical principles which require a certain standard of behaviour of the board.
2. *The fundamental principle* is that the board shall at all time act with the *utmost good faith* towards the fund and in the best interest of all members. The board should always give full and proper effect to the rules of the fund and the board should deal with all matters relating to the fund and its members in accordance with their fiduciary duties, *fairly* and with respect.
3. The stakeholders in the governance of a fund are the fund's members (they include pensioners, former members and deferred pensioners), their dependants and, if applicable, nominees of the members (the dependants and nominees hereafter referred to as "the beneficiaries"). The other parties affected by the governance of a fund are the employer participating in the fund (other than with a preservation fund), the sponsor (if not the employer) and the Registrar (all of whom are collectively referred to as "the stakeholders").

Board Members Dr CDR Rustomjee (Chairperson) AM Sithole (Deputy Chairperson) BM Hawksworth
Ms JV Mogadime Ms AMM Mokgabudi Ms LM Mojela Prof PJ Sutherland Ms HS Wilton
Executive Officer RJG Barrow



4. Accordingly, the purpose of good governance in a fund is to ensure that –
 - 4.1. the benefits provided for in terms of the rules of the fund are actually delivered;
 - 4.2. the benefits are optimised and the associated investment risks are minimised, with these opposing concepts being appropriately balanced against each other;
 - 4.3. the process involved in the provision of the benefits and the administration of the fund warrants that the cost implications to members and beneficiaries, is *transparent* and quantifiable by the stakeholders.
5. The board of a fund, assisted by the principal officer, is *responsible* for the governance of a fund.
6. Fundamental to the governance of a fund is the extent of the *accountability* of the board and the principal officer. The principal officer is appointed by and *accountable* to the board, and the board is *accountable* to the members and beneficiaries and the Registrar for its governance of the fund. The board is secondarily also *accountable* to the employer participating in the fund and the sponsor of the fund because, in respect of an employer, the fund fulfils one of the employment promises made by the employer, which is to provide the benefits set out in the rules of the fund; and in respect of the sponsor (if different from the employer), because the sponsor set up the fund confirming provision of the benefits in terms of the rules. This accountability for the governance of a fund is very important due to the fact that the assets of a fund are required by members and beneficiaries to fulfill a vital need on retirement, withdrawal from service, death or disability. Members and beneficiaries require legal recourse or remedies should the benefits not be provided to them as stipulated in the rules of the fund.
7. The accountability requirement of the board means that collectively and individually the board members may be held liable for any breach of the governance which results in any loss to the fund and to the members or beneficiaries in the provision of benefits. The board should adhere to the rules of the fund and should institute disciplinary measures in the event of an alleged breach by a board member. Furthermore, members and beneficiaries may request the Pension Funds Adjudicator or a court of law to determine the liability of the board.
8. The board and the principal officer should ensure at all times that their governance of the fund complies with the requirements of the applicable legislation. This means that the rules of the fund should be adhered to, the applicable legislation followed and other legal or compliance requirements should be applied. The board should obtain expert advice where necessary for this purpose.
9. With the above as background, the *principles* of governance are set out below. These are under the following headings –
 - 9.1. the governance by the board of itself/ the governance structure;
 - 9.2. the governance by the board of the operations of the fund/ the governance mechanism; and

- 9.3. the management of relationships in the governance of the fund.
10. Every fund should have –
- 10.1. a code of conduct;
 - 10.2. an investment policy statement (IPS);
 - 10.3. a communication policy; and
 - 10.4. a performance assessment tool for trustees which should inform their education and training policy.
11. Reference should also be made in the annual financial statements of a fund to the fact that a fund has each of these documents in existence and that they have, during the period of those financial statements, been viewed by the board and are available to beneficiaries on request or accessible on the appropriate website or through the principal officer. Communication to the board and members should be done in an adequate, appropriate and cost-effective manner to afford all parties the opportunity to understand the information and make informed decisions.
12. Any annexure(s) added to this circular should be regarded as providing guidelines for creating appropriate policies and as flexible documents which may be amended from time to time. Funds may adapt these documents to suite their unique needs and circumstances without detracting from the principles contained therein, because good governance requires the application of appropriate and cost effective policies and processes to cater for the specific needs of different funds.

GOVERNANCE BY THE BOARD

Principle 1: Roles, Responsibilities and Accountabilities of the Board/ the Governance Structure
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THE BOARD

13. The board is *responsible* and *accountable* to the members for the administration of the fund, including the prudent investment of fund assets.
14. The board may, should the rules of the fund permit, delegate some of its functions to board sub-committees, employees of the fund and service providers; but such delegation does not relieve the board of accountability for the functions so delegated. The board may not abdicate from any of its functions and responsibilities.
15. The board members should act jointly. If the rules of a fund permit a decision of the board to be carried by a majority of its members voting in favour of it, then the minority should respect the majority decision. Strong objections may be minuted but the final decision should be recorded clearly. A deadlock breaking mechanism should be outlined in the rules.

16. Irrespective of whether board members are employer-appointed, member-elected, in the employment of the sponsor or independent board members, they –
- 16.1. should endeavour to work together;
 - 16.2. should trust each other and also be worthy of trust in return;
 - 16.3. owe a primary duty of care to the fund and the members and beneficiaries, and are not specifically *accountable* to or required to disclose any information to that group of persons or entities through whom they were appointed or elected as a board member. To this end the board should be sensitive to managing the diversity of the board effectively to ensure that any tension, fears, disagreements, influence, affiliations, special interests, etc. do not hinder decision-making.

THE CHAIRPERSON

17. The chairperson of the board is pivotal in creating the conditions for overall board and individual board member effectiveness. To this end the chairperson should –
- 17.1. proactively lead the board impartially, for example, without bias in favour of the sponsor, the employer or any service provider;
 - 17.2. confirm the agenda for board meetings, and review the draft minutes of such meetings;
 - 17.3. manage board meetings to ensure that sufficient time is allowed for discussion of complex or contentious issues;
 - 17.4. ensure that the performance of the board as a whole, the board sub-committees and the principal officer is reviewed and evaluated on a regular basis; and also to manage the performance of any board member or sub-committee that is not performing as required;
 - 17.5. meet regularly with the principal officer to monitor the operations of the fund;
 - 17.6. if required, act as spokesperson for the fund;
 - 17.7. proactively raise issues of concern, on behalf of the board, with the sponsor, the employer, the administrator and other service providers;

THE PRINCIPAL OFFICER

18. The role of the principal officer is vital for the proper performance of the board. The principal officer should not be the chairperson of the board and his or her duty to the fund overrides any responsibilities or obligations arising from being in the employment of or remunerated by the employer, the sponsor or any service provider. The principal officer's functions include -

- 18.1. ensuring that decisions of the board are executed;
- 18.2. ensuring that the fund complies with the formal requirements of the law, including directives from the Registrar, SARS and any other relevant regulatory authority;
- 18.3. liaising on behalf of the board with service providers to the fund, unless where there is direct contact between the board and the service provider;
- 18.4. contributing at board meetings even though, as principal officer, he or she does not have any vote in any decisions of the board if he/she is not a board member.

CONFLICTS OF INTEREST

19. The fiduciary duty owed by the board and the principal officer requires that they *avoid conflicts of interest*.
The following should be appreciated by the board and the principal officer in this regard –
 - 19.1. the proper resolution by the board of any conflict of interest is necessary for promoting the credibility of the governance of a fund; and enhances the trust of both members and beneficiaries and any stakeholders;
 - 19.2. the board should distinguish between conflicts of interest which may be structural, and therefore unavoidable, and those conflicts of interest which can be avoided or, if this does not compromise the credibility of the governance arrangements, managed appropriately;
 - 19.3. a structural conflict of interest may arise where a board member finds himself or herself in a position in which his or her duties as board member conflict with his or her direct or indirect personal financial interests or the financial interests of a stakeholder in the fund (such as the employer or the sponsor), of which he or she is an employee or in which he or she is a shareholder. In such circumstances the legislation is clear: the primary obligation of a board member is to act in the best interests of the fund and the members and beneficiaries. Where a board member finds himself/ herself in a structural conflict of interest situation one should act without regard for one's personal interests or those of the entity or persons through which he or she was appointed. This is to ensure one's actions in such a situation may, as far as possible, be demonstrated to be no different, as if the structural conflict did not exist;
 - 19.4. any conflict of interest other than a structural conflict should be avoided. The board should ensure, not only in relation to conflicts of interest as amongst the members of the board or the principal officer, but also in relation to any service provider to the fund, that a conflict of interest is removed or, if this is not possible, resolved *transparently* and defensibly. The mere disclosure of such a conflict of interest will rarely be an adequate resolution of a conflict of interest;

- 19.5. potential or perceived conflicts of interest are as serious as actual conflicts of interest;
- 19.6. any conflict of interest situation should be fully recorded in the board minutes, which should include details as to how the board has resolved the matter.
20. Members of the board should be able to demonstrate their *independence*. Such *independence* is essential also for the credibility of the governance arrangements, and is demonstrated by any discretion of the board being exercised in a manner which is impartial, fully informed and not influenced by inappropriate considerations. In particular the board should always consider what is in the best interests of the members, and should appreciate that the duty of good faith owed by the fund to the employer and the sponsor is subordinate to this requirement. In particular, the board should appreciate that it is not *responsible*, where the fund is an umbrella fund, preservation fund or a retirement annuity fund, for the viability of the business proposition of the sponsor in respect of such a fund.
21. Board members should respect the *confidentiality* of their functioning as a board and also the information pertaining to the fund. In particular, no board member may disclose information about the operations of the board or the fund unless authorised to do so by the board itself. Board members generally, but specifically board members in the employment of the sponsor of a fund, as well as independent board members, who may be members of various boards, need to be vigilant with respect to confidentiality.
22. Each board should have a *code of conduct* in which it outlines and confirms its duties and obligations. Every fund should also require of each board member that he or she completes an acceptance of duties form and, at least annually or at such greater frequency as the board may require, a declaration of interests. This should set out all financial and other interests as set out in the fund's codes of good practice/ code of conduct.

Principle 2: Composition and Competency of the Board and delegation through the use of sub-committees

23. Board members should have sufficient capacity to deal diligently and thoroughly with their duties and responsibilities. Where an employer has the power to appoint board members in terms of the rules of the fund, the employer should use this power appropriately to ensure that the board has, as far as possible, the necessary skills. To minimise conflict of interest, the employer should preferably not appoint persons to the board who would otherwise be involved in decisions on behalf of the employer in respect of the fund. In umbrella funds, preservation and retirement annuity funds, the credentials of independent board members should be verified with the various regulatory authorities and/ or licensing institutions to ensure that the independent board members appointed to the board have the necessary fitness and propriety and skills to exercise their governance responsibilities.
24. Large funds may benefit from professional trustees, namely independent board members from a particular profession such as registered attorneys, actuaries and chartered accountants where the costs are justified. It is recommended that at least 50% of the board of multiple-employer (umbrella) funds and retirement annuity and preservation funds should be independent.

25. Independent board member should not be employees of the employer participating in the fund and neither should they be controlled by, or in common control with the employer, the administrator or the sponsor of the fund. The independent board member should preferably not provide any other services to the fund or the employer or the sponsor, other than serving as a trustee to the fund. Any variations should be dealt with in the registered rules of the fund or in the code of conduct.
26. Sub-committees of the board may be established to exercise a specific oversight *responsibility* or to carry out, where the rules of the fund permit it, any board-delegated *responsibility*. Any such sub-committee should have an appropriate written mandate which sets out clearly its functions, scope and authority, as well as the criteria or membership requirements.
27. Clear terms of reference should be set by the board for the sub-committees which should be adhered to at all times. Sub-committees should operate within the set parameters.
28. The sub-committees appropriate for each fund will vary from fund to fund but may include, amongst others
 - 28.1. an audit and administration sub-committee;
 - 28.2. an investment sub-committee;
 - 28.3. a legal sub-committee;
 - 28.4. a communication and education sub-committee;
 - 28.5. a risk benefits sub-committee dealing with death and disability benefits;
 - 28.6. an actuarial sub-committee in the case of a defined benefit fund.
29. Each sub-committee should be required to advise the board on risks relating to the functions to be performed by that sub-committee, and the process or controls necessary to mitigate that risk.

Principle 3: Board Orientation and Education

30. New board members should, at the expense of the fund, post appointment and election, receive rigorous and comprehensive training on both the legislative and regulatory framework and governance principles in order to equip them to effectively carry out their functions as board members, and to enable them to minimise their risk of liability as well as to safeguard them against bad decision-making.
31. Board members should be educated on an ongoing basis about new matters relating to funds to ensure that they acquire and maintain an understanding of risk management, investment risks and strategies, benefit structures, legal issues, regulatory and compliance requirements, taxation, actuarial and reform issues. The cost of this information provision and training should be at the expense of the fund.

32. Training and education requirements for board members should be an ongoing process, with an emphasis placed on continuous and lifelong learning (this can be NQF aligned /SAQA approved).

Principle 4: Board Assessment and Breach of Code of Conduct

33. The board, the principal officer and the sub-committees of the board should be subject to an appraisal of their performance at least once every year. The sub-committees of the board should also be subject to appraisal. The purpose of the appraisal is to assess the effectiveness of the board, the principal officer and the sub-committees, and to highlight where improvements should be implemented.
34. Where a board member breaches the fund's code of conduct or acts in contravention of any of the responsibilities imposed upon him or her then the board should take such action as it considers appropriate, after consideration of any argument presented in defence of the board member concerned. This may, should the rules of the fund permit, be in the form of, *inter alia*, declaring that such trustee should vacate office; that such trustee is suspended from office for such period or in respect of such function as the board may decide, and subject to any appropriate terms and conditions imposed by the board. The objective of action by the board against a trustee is to preserve the integrity of the board and its governance role. Action against a board member should not be solely driven by whether or not the breach gave rise to financial or other reputational prejudice being suffered by the fund or any other stakeholder. Each matter should be assessed on the facts and merits of the situation, and an appropriate form of discipline should be imposed.

GOVERNANCE BY THE BOARD OF THE OPERATIONS OF THE FUND

Principle 5: Internal Controls/ Governance Mechanisms

35. The primary function of the board in relation to the business of a fund is to ensure that it (the board) exercises a rigorous oversight function. There should be a clear identification and assignment of operational responsibilities, either to persons with appropriate skills employed by the fund (where the fund is privately-administered), or by way of a written agreement to a licensed administrator or long-term insurer (where the fund is underwritten).
36. For the board to exercise its oversight role properly, those to whom functions are delegated should be required to report back regularly on such delegated functions and with sufficient and relevant information to enable board to make an informed performance assessment.
37. The board should ensure that there is adherence to and compliance with all statutory and regulatory requirements. In particular, the board should appreciate the rights and duties of those involved in the operation of the fund, others associated with the fund such as the employer and sponsor, as well as the members and beneficiaries of a fund.
38. In addition, the oversight *responsibility* of the board requires that there should be –

- 38.1. a regular assessment of the performance of the persons and entities involved in the operation of the fund in terms of service level agreements, mandates, performance contracts, etc.;
- 38.2. a regular review of services and fees and all costs associated with the operation of the fund in order to ensure that they are appropriate;
- 38.3. a regular review, preferably with the assistance of independent external advisers, of the information processes, operational software systems, and accounting and financial reporting systems involved in the operation of the fund;
- 38.4. the monitoring and resolution of actual, potential or perceived conflicts of interest amongst those involved in the operation of the fund;
- 38.5. the protection of confidential information of the fund;
- 38.6. regular review of compliance with regulatory and statutory requirements of the fund.

Principle 6: Expert Advisors

39. Board members are not obliged to have all the expert skills necessary for the day-to-day operation of a fund. It is reasonable for the board to engage professional accounting, actuarial, investment, legal and other experts for advice on issues which are the *responsibility* of the board, and to pay the professionals involved appropriately for that advice. However, the expert advice or opinions obtained by the board should be considered by the board and assessed independently and the board should always be free, to procure a second opinion where it is not comfortable with the advice that it has received.
40. The board should only make use of licensed/ registered/ accredited/ approved entities or professional advisors where regulators and/or independent standard setting bodies can attest to their fitness and propriety.
41. The function of an actuary in a defined benefit arrangement is of particular importance, and the board should appreciate the issues around the different assumptions and methodologies which are available for an actuary to use.
42. The board should satisfy itself that any expert advice obtained is independently given. Where the professional gives expert advice in respect of a service provider or the employer or sponsor to the fund then the board should satisfy itself that such advice is not compromised by the relationship of that professional or his or her firm to that service provider, employer or sponsor as the case may be.
43. The appointment of an expert adviser should be made by the board itself, even where it acts on the advice of another service provider, so that the board itself interacts and communicates with that external expert adviser that the board itself has appointed.

Principle 7: Risk Management

44. The management of risk in a fund is a vital component of the governance of a fund. Every fund should have in place a risk management policy which should be reviewed annually and should include, *inter alia*: –
- 44.1. the identification of risks facing the fund;
 - 44.2. the assessment of the impact of each such risk to the fund;
 - 44.3. the process or controls necessary to reduce the impact of key risks;
 - 44.4. the monitoring of the risk process or controls to ensure that they are appropriate; and
 - 44.5. the communication to the members and the stakeholders of the fund's risk management policy, including the identification of the key risks and the processes or controls in place to manage them. This may be outlined in the annual financial statements of a fund.
45. The types of risk will vary according to the type of fund. Thus, in a defined benefit fund, there will be risks associated with the actuarial valuation (such as the solvency ratio, the longevity assumptions and the post retirement interest rate) which may not be found in a defined contribution fund. A common type of risk found in categories of funds may have different consequences because of the nature of those funds; for example, the investment risk in a defined benefit fund will be different from the investment risk in a defined contribution fund, and the administration risk in a self-administered fund may be different from the more complex administration risks found in umbrella funds. It is important is that each type of risk is identified in the fund according to the nature of that fund and an applicable process or control put in place to manage it.
46. The risks to be identified should not be limited to those which have a financial consequence, but should include risks which relate to the governance of the fund and which may jeopardise the governance structure. Poor communication by the fund may not have a financial consequence but may impair the credibility of the provision of the benefits by the fund and the administration of the fund. Such risks which do not have a financial consequence are equally important in a fund's risk management strategy.
47. A fund is not expected to micro-manage the functions delegated to service providers, but those functions should, when delegated, contain sufficient detail to ensure that the service provider understands what is expected by the board. There should also be a reasonable right of recourse in the event that there is any breach of the delegated functions by the service provider.
48. In terms of pensions law a fund is required to take out fidelity cover. The purpose of this cover is to indemnify the fund against any loss suffered by the fund which cannot otherwise be recovered. The terms of this cover and the quantum should be carefully considered by the board to ensure that it is appropriate for the fund; where necessary, expert advice should be obtained in this regard. Such cover should include loss arising from negligence. Members of the board themselves should have indemnity insurance provided by the fund, or an indemnity from the sponsor of the fund. The board should also ensure that each service

provider has adequate malpractice cover in the form of professional indemnity and fidelity guarantee insurance so that the fund's right of recourse against that service provider, where required to be invoked, is safeguarded.

Principle 8: The Investment Performance of the Fund Assets

49. The investment performance of the fund assets is the most important factor in determining whether the fund will be able to deliver on the retirement benefits (in a defined benefit fund) or whether there will be a sufficient amount accumulated (in a defined contribution fund) for an adequate replacement of income. The proper management of the investments of the fund is a critically important component of the governance of a fund.
50. It is important that the board ensures that the mandates given to service providers clearly define the board's expectations and reporting requirements relating to the performance of the investments. The board should therefore not endorse mandates or agreements that are vague or ambiguous. Any contractual arrangement between a fund and an investment manager should set out clearly the benchmarks against which performance will be measured. Any contract should be on such terms and conditions that are acceptable to the fund, and may require independent legal advice being given to the fund in that regard.
51. A fund investment policy statement, (IPS) should be communicated to stakeholders, and reviewed annually (when considering the financial statements) to ensure it remains appropriate in terms of the member-profile and needs of the fund. The IPS should contain the following minimum information:-
 - 51.1 who the fund's investment advisers are;
 - 51.2 where applicable, who the custodian of the investments are;
 - 51.3 whether the fund has a socially *responsible* investment policy, and its definition of such investment type;
 - 51.4 whether the investments of the fund are in the form an insurance policy or a segregated mandate, and the reasons therefor;
 - 51.5 what the targeted performance benchmarks are in respect of each asset manager and asset class held by the fund, and what the previous year's actual performance was in relation to the fund's benchmarks, as well as the tracking error;
 - 51.6 the level of risk attributed to each asset class and asset manager;
 - 51.7 whether or not the fund exercises its ownership rights in respect of investments held by it (and if so, what the proxy voting policy is) and, if not, the reasons therefor.
52. Where a fund has member investment choice, the board is responsible for ensuring that the investment portfolios from which members may make their selection is appropriate for the profile of the fund

membership; if there is a default portfolio, it must be reviewed regularly for appropriateness in relation to the membership profile of the fund.

53. The board should not permit an investment arrangement to exist where the fund may not invest outside the investment offerings of the sponsor or any subsidiary or associated entity, other than in the case of preservation fund or retirement annuity fund, where such an investment arrangement is permissible. The rules of the fund, pensions law and applicable tax laws should be adhered to in respect of transfers. The board should exercise special care in relation to transfers to ensure that the rights of members are protected.
54. Where there is a balance of cost obligation owed by the employer (typically in a defined benefit fund) then the board should be mindful of the risk to the employer of any investment decision it makes. In particular, a board may not use the balance of cost obligation as an excuse to make investments of a nature which would not otherwise have been made had the balance of cost obligation not existed.
55. The appointment of the custodian of the fund investments should be made directly by the fund to enable the board to have direct access to the custodian information about the fund investments. It is inappropriate for the fund's custodian arrangement to be set up between the custodian and the fund's investment adviser alone. It is the board's sole *responsibility* to determine the terms of the relationship between the custodian and the fund. Similarly, the board should have direct access to all office bearers including the fund's auditors, actuary/ valuator and other appointed experts.

MANAGEMENT OF STAKEHOLDER RELATIONSHIPS

Principle 9: Communication and Access to Information
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56. Board members should have unfettered access to all relevant information relating to the fund to enable them to make informed decisions.
57. All information about the fund is confidential and may not be released to any person unless such person has a lawful right to such information, such as the rights of members to obtain the registered rules of the fund, actuarial valuations and audited financial statements. In particular, no person, other than board members and service providers, should have access to minutes of board meetings and membership details unless such information is required for a lawful purpose. The board should not, however, be obstructive in supplying information when the person requesting it has a lawful right to access such information.
58. The information about a fund, its membership and investments belongs to the fund and the board should ensure that where this information is held by a service provider, that it is returned to the fund should the relationship with that service provider be terminated.
59. A Communication Policy should be established for the disclosure of fund information to members and beneficiaries. Cognisance should be taken of the Registrar's prescribed minimum disclosure requirements

to members and beneficiaries. Other information may relate to the fund's investment policy statement, cash flow, the fund membership details, and any other information which the board considers appropriate, relevant or useful in order to carry out its functions. Such communication should be appropriate, timely, accurate, complete, consistent, cost-effective, useful, comprehensible and accessible. Communication to members and beneficiaries should be informative, *transparent* and *fair* and display *accountability*. This should include information in respect of the operations, administration and investments of the fund.

It is recommended that a Communication Policy should include (but is not restricted) to the following:

Operating activities:

- 59.1 Benefit calculations, method and timing of benefit payments;
- 59.2 Changes to the rules of the fund;
- 59.3 Important changes to regulatory requirements.

Funding activities:

- 59.4 Financial data and extracts from the annual financial statements;
- 59.5 Funding status and funding method of the fund;
- 59.6 Changes in investment strategy;
- 59.7 Fund return and measurement against benchmarks;
- 59.8 Name and contact details of the administrator

60. In funds that give members the option of individual investment choice, the inherent risks should be disclosed

Principle 10: Members and Beneficiaries (protection of rights)
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61. The board should communicate aspects of the operation of the fund, including the performance of the fund's investments, which are of relevance to members and which will assist the membership of the fund to assess the credibility and trustworthiness of the administration of the fund and the delivery of benefits. The fund should establish a communication policy reflecting the board's commitment to this and other aspects of disclosure decided by the board, which should be made available to the membership of the fund.
62. All communication with members, beneficiaries and the stakeholders should be responded to promptly by or on behalf of the board and with thoroughness and respect. In particular, complaints by members or any other person, which are directed to the fund, should be treated seriously at least and noted by the board.
63. Where a fund offers member investment choice, the details of the investments in respect of which members may make an election should be described setting out the severity of any associated risk and the performance benchmarks, as well as the underlying type of investments. Members should be able to make an informed decision from such information. Members should also be reminded periodically of the need to

review the investment choices made by them. In a defined contribution arrangement with individual investment choice, it should be made clear that the member bears the investment risk. In certain cases the fund may require that basic training be provided by the fund to ensure that the members understand the operations of the fund and investments. The fund should also communicate to stakeholders any Pension Fund Adjudicator determinations against the fund, regulatory issues raised by the Registrar, and all deviations from policy, rules, etc.

64. The board should consider holding an annual general meeting at which fund issues can be discussed, provided this is practical and cost-effective. It would be appropriate at such a meeting that the financial statements of the fund as well as the performance of the investments be tabled and discussed. Members should be reminded that they may not pass resolutions which bind the board. The meeting should preferably be chaired by the chairperson of the board.
65. The fund's investment performance, the average costs per member and also, in respect of any fund which has independent board members, the fees and disbursements paid to or in respect of them, must be communicated to members at least once a year. Members should also be aware of who the service providers of the fund are.

Principle 11: Employer and Sponsor

66. A fund owes the employer and sponsor (where different from the employer) a duty of good faith. The relationship
67. , accordingly, between the board and an employer and sponsor should be one marked by the *independence* and cooperation of the board. The board is independent of the employer / employee relationship.
68. Where the fund is an umbrella fund, a preservation fund or a retirement annuity fund, the communication by the board with the sponsor of such a fund should be distinguished from the communication by the board with any subsidiary of the sponsor which provides services (such as administration, investment or custodian services) to the fund.
69. The board should establish a channel of communication with the employer and sponsor which should not be through employer appointed board members or sponsor employed board members (in respect of umbrella, preservation and retirement annuity funds), but which should be through the chairperson of the board.

Principle 12: Approved Service Providers

70. When selecting and appointing service providers the board should be alert to possible conflicts of interest in acceptance of advice where for instance a consultant is also an employee of the investment administrator.

These conflicts of interest must be pro-actively identified and disclosed. Acceptable, workable policies and directives to deal with such situations must be determined.

71. Boards are held *accountable* for any actions and decisions taken by their mandated sub-committees, agents, office bearers and duties outsourced to service providers. As such, the members of the board of the fund can be held jointly and severally liable for the actions of their mandated agents.
72. A fund should have clear written rules and control processes in place for the financial management and funding, investment management and the safeguarding of assets, delegation of duties, outsourcing of functions and selection process to be followed in the evaluation and appointment of service providers.
73. No service provider should derive any benefit from the fund assets and resources or its association with the fund other than those terms contractually agreed to in the signed service level agreements.
74. A policy should be established which sets out the frequency of reporting by the administrators and service providers to ensure that the fund is administered and managed properly and responsibly as delegated by the board.
75. There are various factors to consider during a formal selection and ongoing assessment process of service provider(s) including, but not limited to, the following:
 - 74.1 Skills and competencies of service provider;
 - 74.2 Track record in terms of fulfillment of mandates, breaches, case law etc.;
 - 74.3 Fee-structure of service provider and how it is linked to performance standards/ delivery on its mandates;
 - 74.4 The internal policies, practices and procedures of service providers e.g. policy on conflict of interest;
 - 74.5 Independent reference checks with past and present clients of the service providers;
 - 74.6 Benchmarking against set standards as set in the service level agreement(s), mandates etc.

Principle 13: Regulatory Authorities/ Effective Supervision

76. The board should ensure that the requirements of any regulatory authority, particularly those of the Registrar, are complied with and that any query from such regulatory authority is dealt with expeditiously and thoroughly. Any complaint by any regulatory authority, including any correspondence from the Pension Funds Adjudicator, Magistrate or court official should be dealt with by the board itself and treated seriously and where necessary, independent, expert legal advice should be sought by the board directly.

77. It is reiterated that the annexure(s) added to this circular should be regarded as providing guidelines for creating appropriate policies and as flexible documents which may be amended from time to time. Funds may adapt these documents to suite their unique needs and circumstances without detracting from the principles contained therein, because good governance requires the application of appropriate and cost effective policies and processes to cater for the specific needs of different funds.



J.A. BOYD
DEPUTY REGISTRAR OF RETIREMENT FUNDS

Encl.