
**THE PRINCIPAL OFFICERS ASSOCIATION OF SOUTH AFRICA (POA) WRITTEN
SUBMISSION TO THE STANDING COMMITTEE ON FINANCE ON THE DRAFT FINANCIAL
SERVICES LAWS AMENDMENT BILL, 2012.**

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1. Introduction

- 1.1 At the outset, the Principal Officers Association, (“the POA”), as a major player in the retirement fund industry welcomes the invitation by the Standing Committee on Finance to give input to and comment on the proposed changes to the Pension Funds Act, 1956 as set out in Part 1 of the Financial services Laws General Amendment Bill, 2012, (‘the Bill’), as part of an ongoing initiative by the National Treasury to improve oversight and regulation of financial services in South Africa in accordance with the policy paper, *A safer financial sector to serve South Africa better*.
- 1.2 The POA expresses its appreciation for the opportunity to comment and does so herein.

2. Purpose

- 2.1 The purpose of this submission is to comment on comment on the practical implementation of Part 1 of the Bill, Clause 11 – Amendment to section 7 an 8 of Act 24 of 1956, as amended by:
 - 2.1.1 Section 30 of Act 104 of 1993; and
 - 2.1.2 Section 6 of Act 22 of 1996; and
 - 2.1.3 Section 4 of Act 22 of 2008.
- 2.2 The POA also wish to suggest additional changes which have not been provided for in the Bill:

- 2.2.1 Review the definition of Principal Officer.
- 2.2.2 Codify the duties of a Principal Executive Officer.

2.3 This submission is based on our understanding and assumption that the intention of the legislator is:-

- 2.3.1 to ensure that proposed amendments are fair and relevant in achieving its objectives; and
- 2.3.2 not to place additional and more onerous administrative and costs burdens on the Funds concerned, and
- 2.3.3 to pass legislation that it is practical and implementable; and
- 2.3.4 to pass legislation that is enforceable;
- 2.3.5 that the National Treasury has indeed applied its mind to the matter.

3. Background

3.1 Who is the POA?

3.1.1 The POA is a non-profit organisation that aims to promote the common interests of Principal Executive Officers of retirement funds, beneficiary funds and associate members of retirement funds. As such it is the only of its kind in South Africa. The POA was registered as an Association Incorporated under Section 21 of the Company's Act, 1973 in August 2002.

3.1.2 A Board of Directors is responsible for the legal aspects of the company. The Board is supported by sub committees as well as regional committees.

- 3.1.3 A Secretariat, headed by a Chief Executive Officer, attends to the day-to-day activities of the organisation.
- 3.1.4 The POA aims to:
- 3.1.4.1 improve the general standard of governance of retirement funds;
 - 3.1.4.2 provide a forum for direct interaction between Principal Officers;
 - 3.1.4.3 collaborate with the regulatory authorities to develop practical measures that will facilitate more effective management and supervision of retirement funds;
 - 3.1.4.4 be the voice of Principal Officers when consulting with the National Treasury and the Regulators;
 - 3.1.4.5 raise issues and concerns with the appropriate industry bodies, trade unions and other relevant stakeholders;
 - 3.1.4.6 oversee that continuous learning, up skilling and self development of its members takes place on an ongoing basis.
- 3.1.5 The POA has a membership of **425** Principal Executive Officers and other associate members. The majority of the top 100 funds are members. The total assets under management run into billions of rands.
- 3.1.6 The Principal Officers Association has made significant strides in registering the organisation as a professional body to promote the interests of Professional Principal Executive Officers. The aim is to issue

an appropriate professional designation once certain criteria in respect of training and education have been met.

3.2 What is the profile of the new generation principal executive officer?

3.2.1 The principal executive officer as chief executive

3.2.1.1 The new generation Principal Executive Officer is required to exercise and participate in a material degree in the general executive control over and management of the business and activities of the retirement fund. The role of the Principal Executive Officer compares favourably to that of a Chief Executive Officer of a company in the corporate world.

3.2.1.2 The key drivers for the expansion of the role of the Principal Executive Officer are changes to the legislation, occupational growth, industry reforms and societal changes.

1) Changes to the legislation

- (a) The role and function of Principal Executive Officer's have been expanded through legislative interventions in the following way:
- (b) The law introduced the fit and proper requirements for Principal Executive Officer's. It formalises the appointment and termination requirements of Principal Executive Officers as well as their whistle-blowing responsibilities.
- (c) The Pension Fund Circular, 130 (PF130) as well as the King III Code of Good Governance for South Africa place increasing demands on Principal Executive

Officers to be accountable, transparent and to conduct themselves in an ethical way.

- (d) Similarly, the governance structures of the new generation retirement fund presupposed in the King III Code is one that is headed by boards of trustees who are appropriately qualified, independent, and who have access to resources that enable them to conduct their responsibilities effectively. The Board of Trustees is the focal point of the governance system.
- (e) The role of the Principal Executive Officer within the governance system is central in the proper performance of the Board of Trustees. Therefore, an equally qualified Chief Executive or Principal Executive Officer should provide the necessary executive support.

2) **Occupational growth**

- (a) Historically the role of a Principal Executive Officer was compared to that of a company secretary and/or a compliance officer. However, the transformation of the retirement industry, developments within the governance environment, especially as contained in the King Code for Corporate Governance for South Africa forced retirement funds to relook the role of the Principal Executive Officer.
- (b) There are four overarching roles that became more evident and are set out hereunder:

- i. **Strategic role**

The Principal Executive Officer forms the hub of the management structure of a retirement fund. In this context the Principal Executive Officer ensure

that agenda's for trustee meetings cover all strategic issue, which require consideration and decision in fulfillment of the requirement of Section 7C of the Pensions Fund Act. The Principal Executive Officer should be in a position to also provide guidance to the trustees on these issues.

ii. Executive role

The collective responsibilities of management vest in the Principal Executive Officer. The Principal Executive Officer is expected to manage the day to day business of the fund and thus have executive authority i.e. financial management, legal affairs, secretarial services and retirement fund operations. The Principal Executive Officer is the person who must ensure that the fund operates effectively and that it meets its objectives as set out in the rules and its obligations to its members.

iii. Governance role

It is the responsibility of the Principal Executive Officer to show leadership by putting governance high on the board of trustee's agenda. The Principal Executive Officer plays a vital role fostering a culture that promotes sustainable ethical practices, encourages individual integrity.

iv. Compliance role

This role refers to those requirements that are specifically set out in the legislation to which registered funds are subject. The Principal Executive Officer has statutory obligations to ensure that all aspects of legislation are complied with and to report directly to the FSB should non-compliance be detected.

3) Industry Reforms

The retirement industry is transforming at different levels and intervals as can be seen by the changes to the taxation provisions, promotion of compulsory preservation, focus on trustee training and the implementation of a National Social Savings Fund. The new generation Principal Executive Officer will have to step up, to be more professional, independent, accountable, transparent and ethical in their behavior.

4) Societal changes

It is the business of a retirement fund to provide retirement and ancillary benefits for the beneficiaries of the fund by deploying capital. Retirement fund members requires and expects funds to operate within sound governance standards, reduced risk of non-compliance, and a client centric service that is efficient, swift and current. The Principal Executive Officer fulfills a vital role in ensuring that fund administrators and other service providers deliver on their mandates whilst maintaining legislative compliance.

4. Comments and recommendations

Firstly, the POA will make recommendation in respect of provisions related to the role and function of the Principal Executive Officer that have not been addressed by the Bill. Secondly the POA will comment on specific amendments contained in the Bill.

Recommendations regarding issues not addressed in the Bill

4.1 Recommendation 1: Define “Principal Executive Officer.”

4.1.1 Replace the definition of “Principal Officer” with the following: “Principal Executive Officer” means a person who exercises general executive control over and management of the business and activities of the Fund;

4.1.2 Replace all references to *“Principal Officer”* within the legislation with *“Principal Executive Officer”*.

4.1.3 View of the POA on the definition of the Principal Executive Officer

4.1.3.1 The PFA defines a “Principal Officer” as an officer referred to in Section Eight. Section 8(1) stipulates that every registered fund must appoint a Principal Executive Officer. This is the only reference to the executive role of the Principal Officer. Elsewhere, the Act refers to this specific Officer as a Principal Officer. Section 8 then continues to address issues relating to the absence of the Principal Officer, the appointment, termination and duty to report issues.

4.1.3.2 There is thus no clear or appropriate definition of a Principal Officer or a Principal Executive Officer. It is assumed that by referring to a Principal Executive Officer in Section 8(1) the legislator intended to delineate between the two governance structures evident in a retirement fund i.e. that of the Board of Trustees who has strategic oversight and that of the “Chief Executive” that has management oversight.

4.1.3.3 There is a growing consciousness about the executive role of the new generation Principal Officer. In light of the key drivers mentioned above the POA

recommends that the PFA provides for a single definition that appropriately encompasses the functions, roles and responsibilities of this important officer i.e. the Principal Executive Officer.

4.2 Recommendation 2: Duties of Principal Executive Officers

4.2.1 Insert a new Section 8(2) that provides for a list of the duties of the Principal Executive Officer as well as the power to delegate authority:

Section 8(2) The duties of a Principal Executive Officer shall be to -

- (a) Guide the Board of Trustees on strategy formulation and the implementation thereof;
- (b) Develop and recommend to the Board of Trustees the yearly business plans and budgets that support the Funds long-term strategies
- (c) Monitor and report to the Board of Trustees organisational performance and its conformance with compliance imperatives
- (d) Establish an organisational structure in order to deliver services, programmes and information beneficial to the members and as specified by the Board of Trustees;
- (e) Ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passes by the board in a form and format specified by the Board of Trustees
- (f) Ensure that proper control systems are deployed as specified by the Board of Trustees
- (g) Ensure that a secretarial service is provided to support the Board of Trustees

- (h) Set the tone for ethical leadership and creating an ethical environment;
- (i) Ensure that the Fund complies with the rules and the operations of the fund complies with all relevant laws and governance principles
- (j) Act as the liaison between the Board of Trustees the members, sponsoring employers and external parties subject to any disclosures requirement that may be prescribed;
- (k) Advise the Board of Trustees on pertinent matters;
- (l) Fulfill any statutory duties contained in law.
- (m) Exercise delegations as specified by the Board of Trustees

4.2.2 View of the POA on the duties of the Principal Executive Officer

4.2.2.1 As indicated earlier in the submission the Principal Executive Officer is required to exercise and participate in a material degree in the general executive control over and management of the business and activities of the retirement fund. The PFA is silent on the non-statutory duties of the Principal Executive Officer which impact on his or her ability to offer a comprehensive service to the Board of Trustees, beneficiaries and all other stakeholders.

4.2.2.2 Providing for the duties of the Principal Executive Officer in the same way than for a Board of Trustees as set out in Section 7 D will achieve the following:

- 1) Clearly delineate between of roles and responsibilities of the Board of Trustees and the Management of the Fund;
- 2) Align governance structures of a retirement fund with best practices as set out in the King II report on good governance;
- 3) Encourage and promote good corporate governance within retirement funds

- 4) Supporting the Board of Trustees to give effect to the objectives of the Fund as provided for in Section 7C of the PFA.
- 5) Enhance the accountability, transparency

COMMENTS ON PROPOSED AMENDMENTS

4.3 Comment 1: Appointment of Acting Principal Executive Officers

PROPOSED AMENDMENT CONTAINED IN THE BILL:

“11. Section 8 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) The principal officer of a registered fund shall be an individual who is resident in the Republic, and if [he] the principal officer is absent from the Republic or unable for any reason to discharge any duty imposed upon [him] the principal officer by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person [within thirty days] to be its principal officer within such period as may be prescribed by the registrar, after the commencement of a continuing absence or inability to discharge any duty by the principal officer.

Given the proposed amendments to Section 8(2) and other proposed amendments still to be discussed will require a renumbering of the Section 8:

PROPOSED AMENDMENT BY POA

4.3.1 "Section 8(2)(a) The principal executive officer of a registered fund shall be an individual who is resident in the Republic.

4.3.2 Section 8(2)(b) if **[he]** the principal executive officer is absent from the Republic or unable for any reason to discharge any duty imposed upon **[him]** the principal executive officer by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person **[within thirty days]** to be its principal officer

4.3.3 Section 8(3)(c) Any person who acts on behalf of the principal executive officer during periods of absenteeism must meet the fit and proper requirement set out in Section xxxx.

4.3.4 Section 8(3)(d) The fund must notify the registrar about the appointment of the principal executive officers as provide for in Section 8(2)(b)

4.3.5 View of the POA on the appointment of an "Acting" Principal Executive Officer

4.3.5.1 Section 8(2) provides for eventualities where the Principal Executive Officer is absent whether planned or unplanned. In this instance the Principal Executive Officer is away for a short period and expected to return to his or her position. There is no expectation of an extension or permanent employment in the position as far as the acting person is concerned. Such an appointment is a temporary solutions to achieve a short-term operational objective, namely for signing documents, arranging board meetings and other meetings, etc.

4.3.5.2 Furthermore, it should be sufficient that the board of trustees in accordance with system of delegation as provided for in Section 7D makes the appointment and that the registrar is only notified thereof. The board of trustees must also ensure that the acting principal executive officer is a fit and proper person.

4.3.5.3 Given that the appointment is done by the Fund and the short term nature of the appointment the Fund should only be required to notify the registrar.

4.4 Comment 2: Proposed Amendment: Delegation of authority

PROPOSED AMENDMENT CONTAINED IN THE BILL:

Section 8(2)(c) The board_{with} may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the board must determine.

PROPOSED AMENDMENT BY POA

Section 8(2)(c) Replace The board with The Principal Executive Officer may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the Principal Executive Officer must determine.

4.4.1 View of the POA on the delegation of Authority to the Principal Executive Officer

4.4.1.1 According to the suggested amendment, the fund is given the power to appoint a deputy principal officer, the board is given the power to delegate the principal officer's functions to the deputy principal officer, yet the principal officer remains accountable for the functions so delegated.

4.4.1.2 The POA is of the view that is Board of Trustee Board cannot delegate a power that it does not have i.e. the principal officer's functions.

4.4.1.3 The collective responsibility for the management of a retirement fund is vested in the Principal Executive Officer, in the same way as in a big corporation. The Board of Trustees delegates to management via the Principal Executive Officer and the Principal Executive Officer delegates to those who are reporting to him or her.

4.5 Comment 3: Proposed Amendment: Delegation of authority

PROPOSED AMENDMENT CONTAINED IN THE BILL:

Section 8(2)(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the board may, if necessary, withdraw the delegation at any time on reasonable notice.

PROPOSED AMENDMENT BY POA

Section 8(2)(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the principal executive officer may, if necessary, withdraw the delegation at any time on reasonable notice.

4.5.1 View of the POA on the delegation of Authority to the Principal Executive Officer

The POA wishes to highlight a concern related to the use of the words “**if necessary**” and “**on reasonable notice**”. If a delegation goes awry, the board should be in a position to withdraw it without having to prove that it is **necessary** to do so, and without giving **notice** as time will likely be of the essence.

This view holds true for the delegation of authority to trustees as well.

5. COMMENTS IN RESPECT OF TRUSTEES

- 5.1 The POA has noted the suggest amendments of section 7 that relate the roles and responsibilities of trustees and their boards. The POA welcomes the fact that trustees will be required to blow the whistle should they become aware of any material matter that might prejudice the fund and its members.
- 5.2 The establishment of an appropriate delegation of authority framework will go a long way to bring about administrative and operational efficiencies.
- 5.3 The POA supports the inclusion of compulsory training and Continuous Development requirements for trustees.
- 5.4 The amendment on joint and several liabilities brings relieve to concern of trustees however the amendment that relates to Section 7F(1)(b) requires clarification since the part underlined in the text below does seem to make sense:

(b) having regard to all the circumstances of the case, including those connected with the appointment of the board member, it would be fair to excuse the board member.”.

8. Contact details

This submission was prepared by Anne-Marie D’Alton, Chief Executive Officer of The Principal Officers Association of South Africa on behalf of its Board of Directors.

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