



SECURING OUR
PENSIONERS' FUTURE
TODAY



Presentation to the Standing Committee on Finance

Presenter: Anne-Marie D'Alton

CEO, The Principal Officers Association of South Africa

www.poa.org.za /info@poa.org.za/+27118056340

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Who are we?

- Promote the interest of PEO's and trustees
- 425 members – 75% AUM
- DQP and AQP (QCTO)
- Occupational Qualification NQF 7
- Professional body (SAQA)
- Formal CPD programme for PEO's
- Facilitate a competency framework for trustees

Assumptions

- Fair and relevant in achieving its objectives;
- No additional or onerous administrative and costs burdens
- Provisions are practical, implementable and enforceable;
- Policy maker has indeed applied its mind

Assumptions

- Profile of the new generation PEO and Trustee
- Governance structure of fund pre-supposed in KING III:
- Board of trustees focal point
- Qualified, independent and access to resources
- Principal Executive Officer central
- Equally qualified to provide executive support
- Separation of roles and responsibilities

Assumptions

- Professionalisation of PEO role
- Consolidation - fewer funds
- Liability driven approach to managing funds
- Focus on individual member
- Focus on governance
- Role broader than compliance officer
- Role broader than company secretary
- Different resource requirement

Amendments affecting trustees

- Support compulsory training and CPD
- Support board power to delegate
- Whistleblowing for trustees
- Protection on issues related to joint and several liability will benefit trustees

Board power of delegation

- Paragraph 10.(c) with the addition of the following to S7D:
- **(b) The board is not divested or relieved of a function delegated under paragraph (a) and may, if necessary, withdraw the delegation at any time on reasonable notice.**

Suggested review: Board delegation

- Concerns relate 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
 - Giving **notice** as time will likely be of the essence.

Liability of board member

The following section is hereby inserted in the principal Act after section 7E:

7F. (1) In any proceedings against a board member in terms of this Act, other than for wilful misconduct or wilful breach of trust, the court may relieve the board member from any liability, either wholly or partly, on terms that the court considers just, if it appears to the court that—

(a) the board member has acted independently, honestly and reasonably;

or

(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.”

Section 8 PEO Absence

(b) 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.

Recommendation PEO absence

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

Recommendation PEO absence

- Section 8(3)(c) Any person who acts on behalf of the principal executive officer must meet the fit and proper requirement set out in the relevant section
- Given that the appointment is temporary the fund they should only be required to notify the registrar.
- 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) in the form and manner prescribed by the Registrar.

PEO Absence

- 3 Scenarios regarding absence of a PEO
 - Scenario 1 – absent from RSA
 - Scenario 2 – other reason
- Scenario 1 & 2 – temporary / short-term absence
- Should be an internal administrative matter
- Delegate to Acting PEO during any period of extended absence

PEO Absence

- Fit and proper requirement should always apply
- Notification Registrar sufficient
- Power to delegate - fund
- Scenario 3 – Directive 5



Appointment of Deputy Principal Officer

Paragraph 12. with the substitution of subsection (2) of S8, in particular the following:

(b) A registered fund may appoint a deputy principal officer.

(c) The board 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 such conditions that the board must determine.

Deputy Principal Officer

- 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.

Delegation of functions to Deputy Principal Officer

- Board cannot delegate a power that it does not have i.e. the principal officer's functions.
- Principal officer cannot be held accountable if he/she has no say about the delegation.

Recommendation: Delegation of functions

“The **principal executive officer** may, in writing and in accordance with a system of delegation set out in the rules, delegate any of his or her functions under this Act and the rules of the fund to the deputy principal officer, subject to such conditions that the **principal executive officer** must determine.”

Recommendation: Delegation to appoint Deputy Principal Officer

- Board can specify what responsibilities can be delegated; or
- Board can specify the framework within which such delegation to the deputy principal officer can take place but the principal officer must be the one who delegates.

Functions of the Deputy PEO

(b) by the substitution for subsection (2) of the following subsection:

“If a fund has appointed a deputy principal officer, the deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act until the fund formally in the manner directed in its rules appoints a new principal officer.”

Recommendation: Functions of the Deputy PEO

- Reader friendly
- “If a fund has appointed a deputy principal officer, the deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act **or** until the fund appoints a new principal officer.”

Withdrawal of delegation to Deputy Principal Officer

- (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.
- “Concerns relate 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
 - Giving **notice** as time will likely be of the essence.”

Recommendation on the withdrawal of delegation to Deputy Principal Officer

- Concerns relate to the use of the words “**if necessary**” and “**on reasonable notice**”
- If a delegation goes awry, the principal officer should be in a position to withdraw it without :
 - Having to prove that it is **necessary** to do so, and
 - Giving **notice** as time will likely be of the essence.

Other provisions on Deputy Principal Officer

- The deputy principal officer must be a fit and proper person and meet the criteria set out in the law and directives
- Rules might be less onerous in respect of reporting requirements to the Registrar
- Notification to Registrar should be sufficient
- Records available upon request
- Fund must be thorough in its recruitment, selection and appointment processes.
- Amendment of Directive 5

Other provisions not contained in amendments

Definition of Principal Officer

- There is no clear definition of a principal officer or principal executive officer
- 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.

Recommendation: Definition of Principal Officer

- 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
- Replace all reference to Principal Officer with Principal Executive Officer

Recommendation: Definition of Principal Officer

- Growing consciousness about the executive role of the new generation Principal Officer
- Collective management vest in PEO
- Executive authority to oversee legal affairs, financial management, secretarial services and operations of fund
- Alignment with professionalisation
- Alignment with KING III separation of duties

Define a Deputy Principal Executive Officer

- Deputy Principal Executive Officer means a person who assists the principal executive officer with exercising general executive control over and management of the business and activities of the Fund
- Replace all reference to Principal Officer with Principal Executive Officer

Codifying duties of the Principal Executive Officer

- Law stipulates a number of statutory duties
- Administrative in nature
- Limits the executive support
- New generation PEO fulfil different role
- Seek alignment with Companies Act
- Opportune time to affect the changes

What codification will achieve?

- Clearly delineate between of roles and responsibilities of the Board of Trustees and the Management of the Fund;
- Align governance structures of a retirement fund with best practices (KING III)
- Encourage and promote good corporate governance within retirement funds
- Supporting the Board of Trustees to give effect to the objectives of the Fund as provided for in Section 7C of the PFA.
- Enhance the accountability, transparency

DUTIES OF PEO TO BE INCLUDED

- Guide the Board of Trustees on strategy formulation and the implementation thereof;
- Develop and recommend to the Board of Trustees the yearly business plans and budgets that support the Funds long-term strategies
- Monitor and report to the Board of Trustees organisational performance and its conformance with compliance imperatives

DUTIES OF PEO TO BE INCLUDED

- Ensure that a secretarial service is provided to support the Board of Trustees
- Establish an organisational structure in order to deliver services, programmes and information beneficial to the members and as specified by the Board of Trustees;
- 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

DUTIES OF PEO TO BE INCLUDED

- Ensure that proper control systems are deployed as specified by the Board of Trustees
- Set the tone for ethical leadership and creating an ethical environment;
- Ensure that the Fund complies with the rules and the operations of the fund complies with all relevant laws and governance principles
- 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;

DUTIES OF PEO TO BE INCLUDED

- Advice the Board of Trustees on pertinent matters;
- Fulfill any statutory duties contained in law.
- Exercise delegations as specified by the Board of Trustees

Q & A

Thank you