

# KEY COMPETENCY MATRIX FOR A PRINCIPAL OFFICER (PO)

# ANNEXURE A

| <br><b>Role</b>   | <br><b>Function</b>  | <b>STRATEGIC</b>  | <b>EXECUTIVE</b>  | <b>COMPLIANCE</b> | <b>GOVERNANCE</b> |
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| <b>1. GENERAL COMMENTS</b> <p>A fund's board of management must give strategic direction to the fund, appoint the chief executive officer and/or principal officer (PO) and ensure that succession is planned.</p> <p>The PO should assist the board to, by means of a SWOT (strengths, weaknesses, opportunities and threats) exercise, identify key risk areas and key performance indicators of the fund, and monitor these factors as part of a regular review of processes and procedures to ensure the effectiveness of its internal systems of control.</p> | <p><b>S8</b> of the Pension Funds Act (PF Act) requires the appointment of a "principal <b>executive</b> officer". Any natural person, who is resident in the Republic, qualifies to be a principal officer (PO). Membership of a fund, or being a trustee, is not a requirement for such an appointment.</p> <p>The PO's appointment is not subject to the Registrar's consent. The PF Act does not grant the PO any special management powers. The PO may not be the chairperson of the board of management.</p> <p>The duties and requirements of PO's are contained in a number of provisions in the PF Act. (See <b>annexure A1</b>), as well as the PF Act checklist (Appendix A) in the Toolkit for the Retirement Fund Trustee (KPMG, First edition).</p> <p>The statutory nature of the PO's role should be strengthened by measures aimed to protect the PO from being removed from office when s/he comes into conflict with the board members by virtue of the <b>execution</b> of his duties as "<b>guardian</b>" of good governance. This "guardian" role and the duties, responsibilities and powers of the PO should be stipulated clearly, together with the level of interaction that the board of management requires from the PO.</p> | <p>The PO constitutes a retirement fund's official contact person with the Registrar of Pension Funds for purposes of <b>compliance</b> with the PF Act. It is not clear from the PF Act whether the PO is considered purely a conduit for compliance or whether s/he actually assumes accountability for the documents which s/he is required to sign and submit to the Registrar.</p> <p><b>Compliance</b> relates directly to those requirements that are specifically set out in legislation and which, if not complied with, will be a transgression of the law.</p> <p>PF Circulars of the FSB and similar SARS practice notes represent a grey area.</p> <p>PF Circulars, in a narrow interpretation, does not constitute law. SARS practice notes, on the other hand, constitutes law.</p> <p>Through recognition of the power of the FSB to demand adherence to PF Circulars and the desire of the retirement fund industry for a collaborative approach, a fund which ignores PF Circulars will do so at its own peril.</p> | <p><b>The King II Report on Corporate Governance</b> was released on 26/03/2002 in South Africa. This Report's ultimate objective is to achieve "the triple bottom line" – better economic, social and environmental best practice in the market place which should translate into improved long term performance from local corporate entities. Although a retirement fund is not specifically mentioned in the King II Report, the same principles are likely to apply to a retirement fund as any other corporate entity.. In order to assist with this objective, a PO should ensure that his/her board of management has an ethics statement which should be reviewed annually.</p> <p>To achieve this objective stakeholder representation should be emphasised. It is considered valuable to let large stakeholders have representation on a board of management if such representation can extract value for the membership. The PO should ensure the right interaction between stakeholders and management (i.e. the entity or people involved in the day to day administration of the retirement fund).</p> <p>Although the board of management is the focal point of a corporate governance system, the PO has a pivotal role to play, in particular regarding organisation and management of the corporate governance system. The board is,</p> |                   |                   |

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|  |  |                  |                  | <p>however, ultimately accountable and responsible for the performance and affairs of the fund. Delegating authority to board committees or management does not in any way mitigate or dissipate the discharge by the board and its trustees of their duties and responsibilities.</p> <p><b>Governance</b> requires a wider view than pure compliance and involves examining what is good, proper and best practice, although this may not yet be an actual legal requirements. “Governance” often serves as the benchmark for identifying shortcomings in legislation, which then become “compliance” issues.</p> <p>Attached is “Best Practice”* principles which could be applied to the retirement fund industry (<b>Annexure A2</b>).</p> <p>* A discussion paper by Altemis Personal Development, a leading global firm of market practitioners.</p> |                   |

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| <p><b>2. ACTUARIAL</b></p> <p><b>Note:</b><br/>The PF Act defines –</p> <ul style="list-style-type: none"> <li>(a) “<b>valuator</b>” as “an actuary or any other person who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of this Act”; and</li> <li>(b) “<b>actuary</b>” as “any Fellow of the Institute of Actuaries of England or of the Faculty of Actuaries in Scotland or of the Society of Actuaries of America or of any other institute, faculty, society or chapter of actuaries approved by the Minister”.</li> </ul> <p>A retirement fund can appoint the same Elsebe – I don't think a fund has to appoint an actuary. The act requires that a fund has to appoint a valuator (i.e a statutory requirement – the fund may appoint an actuary and this usually happens with DC funds where no valuator is needed) person as actuary and valuator. (The PO should take note of the effect of Accounting Statement 116 – AC 116 encourages but does not require an employer</p> | <p>(a) PO needs to understand the actuarial process and understand the financial impact which this process has on a fund.</p> | <p>(a) Execute instructions of the board of management and report on actuarial matters.</p> | <p>(a) Every registered fund must (S9A) appoint a valuator, who must (S16) perform an investigation into the financial condition of the fund at least once in every cycle of three years (see difference between valuation exempt and non-exempt funds). A fund could only be exempted from valuation requirements if the benefits payable by the fund were either guaranteed by an insurer or linked to the investment performance in such a way that the fund's liabilities cannot exceed its assets. Appointment of the valuator must be made within 30 days of registration. Within 30 days of the appointment, the fund (the PO is not specified) must apply to the Registrar for approval of the appointment.</p> <p>(b) For surplus apportionment purposes, a valuation is required to be performed for all previously valuation exempt funds (essentially all DC funds) for the first fund anniversary date after 7/12/2001. Once the surplus apportionment exercise is completed, all previously exempt funds need to reapply for valuation exemption status.</p> <p>(c) Valuation requirements (S16) needs to be complied with by the valuator within 12 months</p> | <p>(a) Demand compliance from the actuary/valuator to the mandate entered into between the fund and the actuary/valuator and the Code of Ethics and Conduct for Service Providers (if applicable), as well as demanding that the actuary/valuator complies with his professional code for actuaries/valuators.<br/>(An example of a Code of Ethics and Conduct for Service Provider is available on the POA website.)</p> <p>(b) Ensure that the fund's control mechanisms are in place for reliance on the correctness of member information provided by the fund, which the valuator uses in his assumptions for the fund's actuarial valuation.</p> |
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| <p>to involve a qualified actuary in the measurement of all post employment benefit obligations).</p>  |                  |                  | <p>after the date to which the investigation/valuation relates. A fine of R50 per day for each day of default is payable by the fund to the FSB for the late submission of returns i.t.o. Reg. 26. The PO should liaise with the fund's actuary/valuator w.r.t. the requirements of the statutory valuation process.</p> <p>(d) If a fund is not in a sound financial condition the fund must, within 3 months from the date of any return that indicates a deficiency in the fund, submit (Reg. 18) a scheme to eliminate the deficiency, together with a report by the valuator, to the FSB.</p> <p>(e) Funding levels: The FSB's policy regarding funding levels below 100% is set out in PF 66.</p> <p>(f) Asset liability matching - PF 71 and PF72: The Valuator should certify that s/he is satisfied with the structure of the assets of the fund and that the matching of the assets with the liabilities of the fund is in his or her opinion adequate.</p> <p>(g) PF 98, par 4.5.2: Maintaining adequate financial resources, including liquidity, as well as maintaining effective risk management systems.</p> <p>(h) Note the statutory functions of the valuator regarding a soundness certificate with</p> |                   |

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|  |   |   | <p>(i) registration; rule amendments, amalgamations and transfers, termination of the fund; and surplus apportionment. PF Circulars 114 to 119 need to be applied w.r.t. a surplus apportionment exercise.</p> <p>(j) PF Act: Sec 7C(2)(b) requires that the board needs to act with due care, diligence and good faith which is required with consideration of every valuation of the fund.</p> <p>(k) PO should ensure that the fund deposit a copy of the valuation report with the registrar and send a copy of such report or a summary thereof (prepared by valuator) to every participating employer of the fund [S16(1)].</p> |  |
| <b>3. ACCOUNTING, FINANCIAL STATEMENTS AND AUDITING</b>  | <p>(a) Keep up to date with the legal requirements, specifically the format of financial statements, as prescribed in the Regulations to the PF Act.</p> <p>(b) Keep up to date with the important provisions contained in the Accounting statements issued by the SA Institute of Chartered Accountants and understand the effect that these may have on the financial condition of a fund, as reflected in the fund's financial statements.</p> <p>(c) Forwarding of summarised or abbreviated annual financial statements (concise Financial Reports) to stakeholders (including</p> | <p>(a) Ensure that proper accounts of the income and expenditure of the fund are kept and have these accounts audited by the external auditors. The accounts and summaries of the auditors and actuarial reports to accompany the fund's annual reports. The annual financial statements of the fund must be prepared in accordance with –</p> <ul style="list-style-type: none"> <li>(i) the provisions of the PF Act (or any other act i.t.o. which the fund has been established);</li> <li>(ii) the rules of the fund; and</li> <li>(iii) Generally Accepted</li> </ul> | <p>(a) Ensure that the audit function has unfettered access to all line and support functions.</p> <p>(b) Protected Disclosures Act, no 26 of 2000, is applicable (PO should blow the whistle when required to do so).</p>  | <p>(a) The PO should understand the limits of the fund's internal audit process.</p> <p>(b) PO should ensure that governance issues relating to the fund's accounting, financial statements and auditing are formalised with a clear indication of who is responsible for each function. A section in the fund's audit and compliance mandate could deal with such separation of duties, from which the PO could draft a delegation of authority framework to govern compliance to the fund's risk</p> |

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|  | <p>the fund membership), on condition that full sets of statements are available on request.</p> | <p>Accounting Practice (GAAP) applicable to retirement funds.</p> <p>(b) The PO should be aware that the board of management should approve and sign the financial statements prior to the auditor signing off the relevant audit reports. (By signing off the financial statements the board of management is confirming that the contents of the financial statement are "true and fair").</p> <p>(c) Execute instructions of the board of management and report to audit committee.</p> <p>(d) The PO must give the assurance to the board members that by signing the financial statements, they confirm that adequate accounting systems and internal controls have been established and maintained (by either the fund and/or its benefit administrator) w.r.t. -</p> <ul style="list-style-type: none"> <li>(i) the safeguarding of the fund's assets;</li> <li>(ii) the proper authorisation and execution of transactions; and</li> <li>(iii) the reliability of the financial information contained in the fund's books and records.</li> </ul> |                   | <p>management plans, policies and procedures.</p> <p>Integrated sustainability reporting: The PO should ensure that the fund's board of management identify its stakeholders and establish a policy for dealing with them.</p> <p>(d) Auditing of non-audit services: PO to ensure that the board of management clarify in a policy document whether its external auditors should or should not provide non-audit services. If external auditors provide non-audit services, PO should demand proper declaration from the external auditors in this respect.</p> <p>(e) PO should be instrumental in ensuring that the fund has proper information technology systems in place, as well as staff with the necessary skills to comply with legal requirements w.r.t. accounting standards and the like.</p> <p>(f) PO should ensure that business processes, which are fully supported by technology, are in place.</p> <p>(g) PO should be aware of the need for an internal audit division (if self administered) which can be outsourced, as well as possible audit firm/audit partner rotation.</p> |

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| <b>4. ADMINISTRATION</b><br><br><i>A generally accepted principle is that, where the administration of the fund is dealt with by an insurer, the fund is insured.</i> | <ul style="list-style-type: none"> <li>(a) To guide the board members in the formulation of an administration policy.</li> <li>(b) To assist in the creation of a fund structure that will ensure efficient administration and a top quality service.</li> </ul> | <ul style="list-style-type: none"> <li>(a) Execute instructions of the board of management and report to a fund's Administration/Executive Committee.</li> <li>(b) Supervise and control the keeping of financial, membership and other appropriate records for the successful operation of the Fund. (Refer to accounting section supra.)</li> <li>(c) Ensure that proper systems of internal control are being maintained by the benefit administrator of the fund.</li> <li>(d) The PO should ensure that the benefit administrator of the fund has adequate fidelity cover in place as required by the PF Act.</li> </ul> | <ul style="list-style-type: none"> <li>(a) Ensure that the Registrar approves the administrator/investment administrator of the fund i.t.o. S13B(1). This approval is not required where a fund is self-administered and has not appointed an administrator.</li> <li>(b) Although the PO is instrumental in the management and administration of a fund, the sole responsibility vests in the board of management, subject to the provisions of the PF Act and the rules of the fund.</li> </ul> | <ul style="list-style-type: none"> <li>(a) Good governance necessitates a system of management and administration based on principles of good practice and proper conduct. Ensure that the board of management applies sound management principles and practices in conducting the affairs of the fund.</li> <li>(b) Ensure that administration services are clearly documented</li> <li>(c) Ensure that a service agreement details the conditions for service deliveries, including timeframes, measurements and costs.</li> <li>(d) Ensure that the service provider signs a Code of Ethics and Conduct for Service Providers.</li> <li>(e) Ensure that management board meetings are held often enough to ensure effective fund management (S7A) and that those decisions and action items are monitored and reported upon. Reasons for board decisions should be recorded for future reference.</li> <li>(f) Fund management board competency (S7C): Ensure that board members obtain expert advice and/or assistance in order to carry out</li> </ul> |
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|  |  |   |   | their duties if required.   |
| <b>5. ASSET MANAGEMENT</b>   | <ul style="list-style-type: none"> <li>(a) Required a good understanding of the process to be followed in the formulation of an investment strategy for the Funds, including the setting of benchmarks and formulation of asset manager mandates.</li> <li>(b) Need to understand how the various components of the investment strategy relate to each other and to the ultimate objective of achieving acceptable investment returns.</li> </ul>  | <ul style="list-style-type: none"> <li>(a) Execute instructions of the board of management and ensure reporting to the investment committee of the fund.</li> <li>(b) Ensure that there is a control framework in place, which will ensure that the asset managers operate within the fund's investment policies and have adequate controls to ensure security of assets.</li> <li>(c) The PO should ensure that the benefit administrator of the fund has adequate fidelity cover in place as required by the PF Act.</li> </ul> | <ul style="list-style-type: none"> <li>(a) Supervise the implementation and monitoring of the investment strategy and asset manager mandates.<br/>(Reg 28 of PF Act and PF 98, par 4.4.2).</li> <li>(b) Maintain effective risk management systems taking into account the necessary margins for unexpected contingencies.<br/>(PF 98, par 4.5.2).</li> <li>(c) Monitoring investment performance.</li> </ul>   | <ul style="list-style-type: none"> <li>(a) Establish the need for socially desirable and/or ethical investments.</li> <li>(b) Deal with issues of shareholder activism.</li> </ul>  |
| <b>6. BENEFITS AND BENEFIT STATEMENTS</b>  | <ul style="list-style-type: none"> <li>(a) Guide board members on the impact on the fund of possible benefit changes being considered.</li> <li>(b) In terms of Sec 7C(2)(a) of the PF Act, guide the board members to ensure the protection of members' interests in terms of the rules of the fund and the provisions of the PF Act, especially during transfers, reduction of contributions to the fund by the employer, increase of fund contributions of members and withdrawal of an employer who participates in the fund.<br/>(PF 98, par 4.4).</li> </ul> | <ul style="list-style-type: none"> <li>(a) Act in the best interest of all the members of the fund with due care, diligence and utmost good faith, as instructed by the board members and in conformance with the fund rules.</li> <li>(b) Ensure that no individual or group of members is favoured at the expense of other members and that all are treated fairly.</li> </ul>  | <ul style="list-style-type: none"> <li>(a) Ensure annual drafting and distribution to members and pensioners of benefit statements within 6 months of the financial year-end of the fund.<br/>(PF 86 and PF 90).</li> <li>(b) Monitor payment of transfer and all exit benefits within the time frame required by the rules of the fund.</li> <li>(c) Monitoring the unclaimed benefits and where applicable provide assistance with the tracing of members.</li> </ul> | <ul style="list-style-type: none"> <li>(a) Disposition of death benefits (S37C):<br/>Ensure that beneficiary forms are regularly distributed and that mechanisms are in place for members to change their nominations with ease.</li> <li>(b) Ensure that the fund put a policy w.r.t. the provision of risk benefits and the impact of AIDS in place.</li> </ul> |

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| <b>7. COMMUNICATION</b> | <p>(a) Guide board members in the formulation of a formal communication strategy or policy for the fund to ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund (S7D) and in terms of applicable legislation.</p> <p>(b) The PO should guide the board in its duty to present a balanced and understandable assessment of the fund's financial position in reporting to stakeholders in the context that society now demands greater transparency.</p> <p>(c) Empower members to take responsibility for their retirement provision, especially in a DC environment.</p> | <p>(a) Execute instructions from the board of management w.r.t additional demand for newswashes when required.</p> <p>(b) Oversee road shows to the membership on the fund's benefit structures and other issues that might affect benefits.</p> <p>(c) Consider the need for issuing the membership of the fund with a fund booklet setting out all the important provisions contained in the rules of the fund.</p> | <p>(a) Ensure that timeous, relevant and meaningful communication takes place with all members and pensioners (including deferred members and dependants of deceased members) in a comprehensive manner as required by the PF Act and PF Circulars no's PF 86 and 90 to enable members to make balanced and informed decisions.<br/>(PF 98, par 4.4.1.3).</p> <p>(b) Application of the Promotion of Access to Information Act of 2000.</p> | <p>(a) A communications policy document should include guidelines on levels of confidentiality of information and to whom and under what circumstances such information may be released. The document should also include guidelines for release of information to any media body or representative. A PO should ask the chairperson of the board for guidelines if it is not clear as to whether or not information is confidential.</p> |
| <b>8. EDUCATION</b>     | <p>(a) Guide the board of management in the formulation of a formal education strategy for both the board members and the membership of the fund.</p>   | <p>(a) Execute instructions from the board of management w.r.t the need for additional education requirements, especially in funds where member investment choice is offered. Oversee road shows where membership education and training takes place.</p>   | <p>(a) The PO should appraise the board of management on its role and duties i.t.o. the PF Act and other legislation, as well as in terms of PF circulars.</p>  | <p>(a) It is a conditio sine qua non to keep your board members and membership well educated in accordance with a formal board policy.</p>  |

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| <b>9. COMPLAINTS</b>   | (a) Assistance to the board of management where determinations of the Pension Funds Adjudicator against the fund could have an impact on the fund's strategic objectives.   | (a) Respond to complaints in writing within 30 days and oversee process w.r.t. lodgement of complaints with the Pension Funds Adjudicator.   | (a) Ensure that records are kept of all complaints as required by the PF Act.<br><br>(b) Ensure reporting of Pension Fund Adjudicator determinations against the fund to the board of management.  | (a) Drafting of an explanatory booklet to members/pensioners on the process to be followed when they intend to lodge a complaint i.t.o. the PF Act falls within the spirit of good corporate governance. |
| <b>10. COLLECTION AND CONTROL OF CONTRIBUTIONS PAID</b><br><br>Contributions may be specified as either a percentage of pensionable salary or in accordance with a table of contributions. | (a) PO to ensure that strategic and business plan of the fund entails appropriate control mechanisms to ensure timeous collection of contributions and/or interest of late payments of contributions.   | (a) Take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with the PF Act and follow up where payment from participating employers has not been received.<br><br>(b) Comply with all reporting duties as set out in Regulation 33 of the PF Act. | (a) Monitor compliance with the requirements of the PF Act.<br><br>(b) Oversee reporting on receipt of contributions by the fund in terms of Sec 13A.<br><br>(c) The PO should stay abreast of changes in the Usury Act with respect to the interest rate applicable to late payment of contributions.   | (a) It is good corporate governance to establish a contribution policy in line with the PF Act and ensure that the provisions are adhered to.  |
| <b>11. LEGISLATION</b>   | (a) Guide the board members in their duty to ensure that the rules, operation and administration of the fund comply with the PF Act, the Financial Institutions (Protection of Funds) Act and all other applicable laws. (This requires a working knowledge of the most important applicable legislation – see <b>annexure A3</b> ).<br><br>(b) Conformance to legislation on Employment Equity and Black Economic Empowerment, as well as charters in this respect.<br><br>(c) Conformance to corporate and best practice governance guidelines. | (a) Work with and interpret the rules of the fund on an ongoing basis in the day-to-day issues submitted to the fund for action.   | (a) Drafting and preparing of the fund rules.<br><br>(b) Liaising with the various statutory authorities for the approval of the fund in terms of the PF Act and the Income Tax Act.<br><br>(c) Ensure that the fund rules and the policies and procedures of the fund continue to comply with all legal requirements.<br><br>(d) Other negotiations with the various statutory authorities, including the submission of annual returns, where required.<br><br>(e) Providing legal and tax advice | (a) Obtain expert advice, especially when required regarding legal and tax issues.   |

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|  |   |  | to the fund's membership in an administration setup where required.   |   |
| <b>12. MEETINGS</b>  | (a) Ensure proper meeting procedures and policies for record keeping of decisions.  | (a) Schedule meetings of the board members and Subcommittees in terms of the rules and the year planner of the fund.<br>(b) Oversee distribution of agenda documentation.<br>(c) Keep attendance records and ensure that minutes of all meetings are kept in such a way as to provide a clear and practical record of events and decisions (including reasons for decisions) for future.   | (a) Ensure compliance with requirements of the rules in respect of notice periods, meeting intervals and quorums.   | (a) It is good corporate governance to put a meeting procedure document in place (See the example on the POA website).  |
| <b>13. GENERAL</b>   | (a) Liaison between the board members and the Registrar of Pension Funds to ensure an open and co-operative relationship.<br>(b) Ensure representation of all Stakeholders on the board of management.<br>(c) Required an in depth understanding of the dynamics within the retirement fund industry.<br>(d) Advise board members on sufficient insurance for officers' and directors' liability. | (a) Act as the representative of the fund in legal proceedings.<br>(b) Maintain a record of all fund officers and board members as required by the PF Act and other applicable legislation.<br>(c) Oversee the process of appointing board members in terms of the rules of the fund.<br>(d) PO to ensure smooth liaison with all external and internal parties and stakeholders. It could, in certain fund scenarios, lead to the involvement of the PO in project management.<br>(e) Requires an ability to work with a wide range of personality profiles and to thrive within a fund environment of diversity. | (a) Ensure compliance with requirements of the PF Act (including other applicable legislation) and the fund rules in respect of the appointment, removal, resignation, etc of trustees.<br>(b) Co-ordinate activities and actions by all relevant stakeholders and external parties.<br>(c) Attempt to keep everyone "in the loop". | (a) Establish a code for the appointment and removal of board members, which could include the requirements for ethical behaviour of board members, possible rotation of board members and the use of independent board members.<br>(b) The PO could consider formulating an Educational Manual for board members highlighting the structure of the fund, the fund rules, the investment strategy and objectives to meet the fund strategy, as well as the most important duties and responsibilities of board members. |

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|      |          | (f) Ability to manage conflict between stakeholders with divergent interests.<br>(g) Ability to manage transition. |           |            |            |
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#2005 POA Nat Treas Competency matrix PO March

**ROLE AND DUTIES OF A PRINCIPAL OFFICER (PO)****1. RESPONSIBILITY AND ACCOUNTABILITY OF A PRINCIPAL OFFICER (PO)**

The Pension Funds (PF) Act makes one person, the principal officer (PO), specifically responsible and accountable for the performance of various duties in terms of the Pension Funds (PF) Act. W.e.f. 1 August 1994, all funds, including audit exempt (underwritten) funds are required to appoint principal officers i.t.o. S8 of the PF Act. To facilitate the Financial Services Board's (FSB's) regulatory function, it is the PO's duty to communicate certain information to the members, do reports and inform the FSB of certain developments. As far as the FSB is concerned, the PO is required to fulfil the function of a liaison or administrative officer. The PO should see to it that the fund is managed and administered in terms of the registered rules of the fund. The sole responsibility for the management of a fund, however, vests in the board of trustees of a fund. (Sec. 7C and 7D of the PF Act which deal with the object of a board and the duties of a board respectively.)

**2. COMPULSORY REGISTRATION**

- 2.1** A retirement fund, which qualifies as a "pension fund organisation" as per the definition in the PF Act, is required to register with the FSB i.t.o. S4 of the PF Act. Failure to register is a criminal offence (S31) and subject to a fine of R1000 or imprisonment of 12 months (S 37(1)(f)). The Income Tax Act distinguishes three types of pension fund organisations, namely, pension funds, provident funds and retirement annuity funds. The PF Act and the other Acts administered by the FSB, do not distinguish between these funds at all. The Income Tax Act restricts the benefits to be allowed by retirement funds to retirement benefits, death benefits, and withdrawal benefits. SARS has strict requirements w.r.t. disability benefits. Retirement funds may only make provision for disability benefits if it coincides with early retirement, i.e. due to ill-health (Disability would therefore have to be of a total and permanent nature).
- 2.2** Who should attend to the registration of the fund? The person managing the business of the fund for the time being or a person on behalf of the employer participating in the fund (Reg 8 and 18). The appointment of the PO only comes about w.e.f. the date of registration of the fund rules. The board of management must notify the Registrar of the name of the PO within 30 days of the registration of the fund (S8(3)).

**3. UNDERWRITTEN (AUDIT EXEMPT) FUNDS REDEFINED**

The requirements for underwritten funds are contained in S2(3)(a) read with Regulation 1 w.e.f. 1 April 1994.

#### 4. STATUTORY DUTIES OF A PRINCIPAL OFFICER (PO)

The PO has the following specific statutory duties as listed by GL Marx and K Hanekom in their book "The Manual on South African Retirement Funds and other Employee Benefits" (2003 Edition):

|            | <b>Duties and applicable Sections and Regulations of the PF Act</b>   |
|------------|---|
| <b>4.1</b> | <p><b>Amendment to Rules:</b> Under this item the PO must attend to the -</p> <ul style="list-style-type: none"> <li>(a) <b>notification to the FSB process</b> in terms of S12(2) and S21, and specifically in terms of Reg. 20, 21, 24(a), 24(a)(iii), of the PF Act, as well as Circular PF 81; and</li> <li>(b) <b>financial soundness requirements</b> (certificate by a valuator) in terms of S12(4) of the PF Act.</li> </ul>  |
| <b>4.2</b> | <b>Consolidation of rules:</b> Submission of a copy of the consolidated rules to the Registrar of Pension Funds in terms of Sec. 12(5) and Circular PF 81.  |
| <b>4.3</b> | Provision of a <b>summary of rule amendments</b> to the membership of the Fund in terms of Regulation 24(d) of the PF Act within six months after the end of the fund's financial year.   |
| <b>4.4</b> | <p><b>Valuation of fund assets and liabilities:</b> In terms of Sec. 16(8) the valuator's report shall be accompanied by a certificate by both the board of management and by the PO that -</p> <ul style="list-style-type: none"> <li>(a) the information furnished to the valuator for the purposes of the report was correct and complete in every material respect; and where applicable</li> <li>(b) a copy of the report (or a summary thereof) had been distributed to every participating employer.</li> </ul>  |
| <b>4.5</b> | <p><b>The signing of documents:</b> Any document (excluding a letter), other than the rules (Reg. 18) and the annual accounts and statements contained in Schedules C to 1 (Reg. 19), must be signed on the first page in accordance with Sec. 20.</p> <ul style="list-style-type: none"> <li>(a) Where the fund is administered/managed by one individual (please note that this is no longer permissible), by such individual and the PO, i.e. two signatories by two different individuals.</li> <li>(b) Where the fund is administered/managed by a board of management, by the chairperson of the board for the time being, one other board member, as well as the PO. The PO may also be a trustee, i.e. there must be three signatures by at least two different individuals.</li> </ul> |
| <b>4.6</b> | <p><b>Submission of financial statements and statistics (Reg. 12) to the Registrar</b> not later than six months after the fund's financial year-end under cover of a letter signed by the PO:</p> <ul style="list-style-type: none"> <li>(a) In respect of audit exempt funds: Schedule B to the Regulations.</li> <li>(b) In respect of non-exempt audit funds: Schedule C to I together with such other reports or annual reports or other statements presented to its members.</li> </ul>   |
| <b>4.7</b> | <p><b>Signing of annual accounts and statements:</b> In terms of the amended Reg. 19, the accounts and statements prescribed in Schedules C to I shall be regarded as one document and shall be signed as indicated in par. 10 of Schedule E for the purposes of S20. Par. 10 requires signing of these by the Chairman, a Trustee and the PO.</p>  |

|             |  |
|-------------|--|
| <b>4.8</b>  | <b>Appeals to the Minister:</b> In terms of the old Reg. 1 and the new regulations issued in terms of the Financial Services Board Act, read with S20 of the PF Act, any appeal against the decision of the executive officer (Registrar) must be signed by the PO.  |
| <b>4.9</b>  | <b>Certification of copies [S20(3)(b)]:</b> Where the fund is required by the Act to furnish to the Registrar a copy of any document, it shall furnish one copy thereof certified as correct by its PO.  |
| <b>4.10</b> | <b>Disclosure:</b> The name of the PO, as well as the date of appointment, must be disclosed in the trustee report (Schedule E) to be submitted by privately administered funds. It, however, needs not be contained in the new fund register prescribed in Reg. 31. |
| <b>4.11</b> | <b>Transfer of business:</b> The PO is required to sign certification as part of the documents required by Circular PF 78 for approval of transfers in terms of S14 of the PF Act.   |
| <b>4.12</b> | <b>Monitoring of payment of contributions:</b> Unless the board of management has authorised someone else, the PO must act as the fund's monitoring person for purposes of ensuring compliance with S13A of the PF Act.  |

There are other duties that are performed in terms of the Pension Funds Act which are not specifically link to the board of management or the PO, for example the payment of levies to the FSB, application of exemptions in terms of Sec 19(4), fidelity guarantee insurance, etc. This document does not reflect a list of these duties.

March 2005

#2005 POA Nat Treasury Annex A to Competency Matrix

## ANNEXURE A2

### BEST PRACTICE – THE TEN FUNDAMENTALS

1. **Best Practice must be defined:** A retirement fund needs to define specifically what it means by 'best practice' so that every member of the POA and the membership of a retirement fund can understand what best practice looks like. Best practice cannot be a vague intangible concept and in some cases awkward questions like the following need to be asked:
  - ✓ "What added value does the membership of a retirement fund believe their fund offers beyond retirement benefits?"
  - ✓ "What does the retirement fund have to do to increase the investment returns while maintaining or reducing administration cost to the benefit of the fund's membership?"
  - ✓ "What is success and what causes it to happen?"
2. **Best Practice must be measurable and measured:** If a retirement fund does not know how to measure best practice then they probably do not have it. Applying a measure forces the fund to define exactly what is meant and to recognise that performance may not always live up to the definition. A retirement fund thus requires a realistic view of the current situation along with an objective and plan for development. It is also critical that everyone believes that the objective is achievable.
3. **Implementing Best Practice does not guarantee a performance increase:** Implementing best practice in a retirement fund does not guarantee success and good investment returns, but it can, however, be shown to increase the chance of improved investment returns and increased retirement benefits for a retirement fund's membership. What tends to happen in practice is that the best practice retirement funds (performers) remain, in comparison with other retirement funds, as the top performers at about the same level as before. The real gain to the fund is that the average performance rises and if performance is plotted over a specific long term period one tends to get some form of normal distribution. The best practice process will move the average towards better performance.
4. **There is no single 'Best Practice Fund':** Best practice is not vested in one retirement fund. The generic best practice model that was developed by Altemis came about by looking at many entities. Entities are particularly effective at different things and they inevitably have stronger and weaker areas. The Altemis study also reflects that due to people movement, market evolvement, focus shifts, attitude changes and the like, entities are in a state of constant flux. The net result is that the most successful retirement fund of today is statistically unlikely to be the most successful entity of tomorrow. The cross-pollination between principal officers of various retirement funds might, via the POA, improve best practice principles and guidelines.
5. **Success today does not guarantee success tomorrow:** The retirement fund industry is constantly changing. The most vulnerable retirement funds are those whose boards of management and administrators fail to notice the slow changes around them until it is too late. Yesterday's best practice is unlikely to be effective today or tomorrow in the same way that today's best

practice must evolve to meet the demands of tomorrow. Today's success thus does not automatically lead to tomorrow's success.

6. **Talking is not the same as doing:** Talking about Best Practise in a retirement fund is not the same as doing it; just as **thinking** you have a Best Practice approach in place is very different from **knowing** you do. Knowing implies that best practice is defined and that we can all recognise it going on around us. Knowing involves having something tangible.
7. **Having is not the same as using:** Having a Best Practice model is also very different from **using** a Best Practice model. A common problem is that retirement funds with revised processes and systems that had been designed with best practice in mind yet are not always using the processes. They thus do not comply with what they have put in place.
8. **Best practise is not fixed:** A Best Practice model is not fixed, but will change as circumstances change and as new learning is gained. As referred to in Fundamental (5) above, Best Practice is a constantly evolving concept within the entity. In other words, it is likely that individuals and groups will discover advances to the current defined Best Practice approach as they comply with processes. There thus needs to be a mechanism in place to recognise these advances and to incorporate them into the overall model with the review of your Best Practice model.
9. **Best means best:** If everyone is adhering to Best Practice, then it is no longer Best Practise ... it is common practice! Having a clear Best Practise model that suits your fund's needs will ensure that Best Practice is defined for everyone and that the definition really does reflect **best**.
10. **Make it your own:** A Best Practice Model cannot be introduced by copying from someone else without adapting it to your circumstances. On the other hand, a fund does not have to start with a blank piece of paper and can accelerate a Best Practice process by starting with the above generic principles and adapting it to your fund's specific needs.

March 2005

Source: A discussion paper on "Best Practice – The Ten Fundamentals" by Altemis Personal Development, a leading global firm of market practitioners.

2005 POA Nat Treas Annex A2 to Competency Matrix

## ANNEXURE A3

### **LEGAL FRAMEWORK AND BEST PRACTICES FOR RETIREMENT FUNDS**

|           |   |   | Less important |    | Most important |   |   |
|-----------|---|---|----------------|----|----------------|---|---|
|           |   |   | 1              | 2  | 3              | 4 | 5 |
| <b>A</b>  | <b>CUSTOMARY LAW</b>  | Is defined as the customs traditionally observed among the indigenous African people of SA and which form part of the culture of those people. Example: The right of males to enter into a customary marriage with more than one woman.   |                |    |                |   |   |
| <b>B</b>  | <b>COMMON LAW</b>   | Most of SA's current legislation has the Roman-Dutch Law and English Law as foundation. Breach of Duty is part of the common law duty of a trustee. This principle maintains that should trustees fail to sustain a statutory or common law duty, and thereby cause loss to another, they may be sued jointly and severally for the loss in their own capacity. Ensure thus that your trustees have professional indemnity insurance cover; otherwise they will have to make good losses from their own personal estates. |                |    |                |   |   |
| <b>C</b>  | <b>MOST IMPORTANT APPLICABLE STATUTORY LAW AS PER THE FOLLOWING GROUPINGS</b> | Statutory law is the law passed by Government and promulgated in Government Gazettes. All SA legislation must comply with the provisions of the Constitution of SA. Trustees should always bear in mind the provisions of the Constitution when amending the rules of their fund or disposing of the benefits of the fund.  |                |    |                |   |   |
| <b>C1</b> | <b>REGULATORY</b>   |   |                |    |                |   |   |
| 1.        | Administration of Estates Act, No 66 of 1965                                  |   | ✓✓             | ✓✓ |                |   |   |
| 2.        | Divorce Act, No 70 of 1979  | Dictates the manner in which pension fund benefits can be paid to non-members on divorce.   | ✓✓<br>✓        | ✓  |                |   |   |
| 3.        | Estate Duty Act, No 45 of 1955  |   | ✓✓             | ✓✓ |                |   |   |
| 4.        | Financial Institutions (Protection of Funds) Act, No 28 of 2001               | Founding Acts of retirement fund industry and on how trustees must operate. This is a minimum piece of legislation which trustees need to be aware of as it governs their fiduciary duties. Self explanatory.   |                |    | ✓✓<br>✓✓       |   |   |
| 5.        | Financial Services Board Act, No 97 of 1990                                   | The FSB oversees the financial services industry, which includes the retirement fund industry. The Registrar of Pension Funds office is at the FSB and he has   |                |    | ✓✓<br>✓        | ✓ |   |

|                     |   |   |    |    |    |    |
|---------------------|---|---|----|----|----|----|
|                     |   | direct responsibility for the retirement fund industry and reports directly to Parliament on the annual activities of the FSB. Trustees need to understand the regulators powers and how to deal with appeals against FSB decisions, which must be made to the FSB's Board of Appeal. Funds are obliged to pay levies to the FSB.   |    |    |    |    |
|                     |   |   |    |    |    |    |
| 6.                  | Insolvency Act, No 24 of 1936                                       |   | ✓✓ | ✓✓ |    |    |
|                     |   |   |    |    |    |    |
| 7.                  | Inspection of Financial Institutions Act, No 80 of 1998             | This is a minimum piece of legislation which trustees need to be aware of as it governs the creation of the regulator and set out their powers.   |    | ✓  | ✓✓ | ✓  |
|                     |   |   |    |    |    |    |
| 8.                  | Maintenance Act, No 99 of 1998                                      | The Pension Funds Act lists this Act as exclusion to the section 37A provision that pension benefits are not reducible, transferable or executable.   |    | ✓✓ | ✓✓ |    |
|                     |   |   |    |    |    |    |
| 9.                  | Pension Funds Act, No 24 of 1956                                    | This Act is the founding Act of retirement fund industry. As it is the starting point for a fund, its trustees and their PO, the suggestion is that a synopsis and/or risk management plan be drafted for provision to your trustees. (See <b>attachment I</b> ).   |    |    | ✓✓ | ✓✓ |
|                     |   |   |    |    |    |    |
| 10.                 | Recognition of Customary Marriages Act, No 120 of 1998              | For deceased members.   | ✓  | ✓  |    | ✓✓ |
|                     |   |   |    |    |    |    |
| 11.                 | Trust Property Control Act, No 57 of 1988                           | For lump sum death benefits paid into trust.  | ✓✓ |    | ✓✓ |    |
|                     |   |   |    |    |    |    |
| 12.                 | Usury Act, No 73 of 1968  | This Act provides the rate for calculation of interest on late payment of contributions.  | ✓✓ | ✓✓ |    |    |
|                     |   |   |    |    |    |    |
| <b>C2 FRAMEWORK</b> |   |   |    |    |    |    |
|                     |   |   |    |    |    |    |
| 13.                 | Basic Conditions of Employment Act, No 75 of 1997                   | N/A to certain funds, therefore not important. If funds have employees, this Act determines the parties' rights and duties.   | ✓✓ |    | ✓✓ |    |
|                     |   |   |    |    |    |    |
| 14.                 | Broad-Based Black Economic Empowerment Act, No 53 of 2003 (BEE Act) | South Africa's first democratic government was elected in 1994 with a clear mandate to redress the inequalities of the past, including in the political, social and economic spheres. Government identified the need for drastic steps to be taken to increase participation of blacks in the economy, but government has been aware that any such steps taken have had to be taken within the parameters of the SA Constitution, which is the supreme law of the land. |    | ✓  |    |    |
|                     |   |   |    |    |    |    |

|     |   |  |     |     |     |   |     |
|-----|---|--|-----|-----|-----|---|-----|
| 15. | Constitution of SA, No 108 of 1996  | For benefit structures and the highest law in the land.  | √   |     |     |   | √/√ |
| 16. | Compensation for Occupational Injuries and Diseases Act, No 130 of 1993         |  | √/√ |     | √/√ |   |     |
| 17. | Employment Equity Act, No 55 of 1998  |  | √/√ | √   |     |   |     |
| 18. | Financial Advisory and Intermediary Service Act, No 37 of 2002                  | The Trustees of certain funds have insisted that they will only conduct business with organisations that have been registered with the FSB. They require confirmation from service providers that any employees giving advice to members are fit and proper and accredited.  | √   | √/√ | √   |   |     |
| 19. | Financial Intelligence Centre Act, No 38 of 2001                                | The trustees of certain funds have to comply with this legislation as it relates to their service providers.   | √/√ |     | √   | √ |     |
| 20. | Labour Relations Act, No 66 of 1995   | If funds have employees, to determine the parties' rights and duties. Also NB as far as retirement funding is seen as "benefits" and insofar as PFA has jurisdiction over participating employers.   | √   | √/√ |     | √ |     |
| 21. | Long-Term Insurance Act, No 52 of 1998  | Pension and provident fund business, be it investments, excluded from Regulation 28 of the Pension Funds Act, or administration, fall under this Act. The policyholder protection rules (PPR) under this Act are aimed at consumer protection and a fund's service providers should confirm on a regular basis that they comply with the PPR. The purpose of the PPR is to enable policyholders to make informed decisions in regard to long-term insurance products; and to ensure that insurers and intermediaries conduct business honestly and fairly with due care and diligence. | √/√ | √   |     | √ |     |
| 22. | Occupational Health and Safety Act, No 85 of 1993                               | N/A to certain funds, therefore not important.   | √/√ | √/√ |     |   |     |
| 23. | Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000 | NB as it applies to funds. Gives effect to constitutional prohibition against unfair discrimination in the fund arena. NB for access to information in the fund's possession and under its control.  | √/√ | √   | √   |   |     |
| 24. | Short-Term Insurance Act, No 53 of 1998   |  | √   | √/√ | √   |   |     |
|     |   |  |     |     |     |   |     |

|           |  |   |    |    |    |    |
|-----------|--|---|----|----|----|----|
| 25.       | Skills Development Act, No 97 of 1998            |   | /\ |    | /\ |    |
| 26.       | Unemployment Insurance Act, No 63 of 2001        |   | /\ |    | /\ |    |
| <b>C3</b> | <b>TAX</b>                                       |   |    |    |    |    |
| 27.       | Income Tax Act, No 58 of 1962                    | This Act has specific provisions that relate to the taxation of contributions, income and benefits from and belonging to pension and provident funds. The provisions are designed to provide incentives for taxpayers to contribute to these funds and to provide for their retirement. In order for an employer or members of a fund to obtain tax deductions in respect of the contributions that they pay into a fund, the fund needs to be approved by SARS. The fund rules thus need to be registered by SARS. I.t.o. SARS' current requirements the income tax reference number of the relevant fund is required to be printed on the employee's IRP5 certificate so that SARS can confirm that the tax deduction i.r.o. the contributions should be allowed. |    |    | /\ | /\ |
| 28.       | Marketable Securities Tax Act, No 32 of 1948     |   | /\ | /  | /  |    |
| 29.       | Regional Service Council Act, No 109 of 1985     | Governs payment of RSC levies by Funds.   | /\ | /\ |    |    |
| 30.       | Skills Development Levies Act, No 9 of 1999      | N/A to certain funds, therefore not important.  | /\ | /  | /  |    |
| 31.       | Stamps Duties Act, No 77 of 1968                 |   | /\ | /  |    |    |
| 32.       | Tax on Retirement Funds Act, No 38 of 1996       | Governs payment of tax (currently 18%) on net rental income and gross interest earnings by funds w.e.f. 1/3/1996. NB for practical operation of a fund and for payment of benefits. The onus for the calculation and payment of the tax rests with the administrator of the fund and the trustees should ensure that the administrator has taken the necessary steps to make the appropriate retirement fund tax payment. This tax is payable every 6 months with provisional payments being made in advance at each tax period together with the adjustment for the previous period.   |    |    | /\ | /\ |
| 33.       | Uncertificated Securities Tax Act, No 31 of 1998 |   | /\ |    |    |    |
| 34.       | Value Added Tax Act, No 89 of 1991               | N/A to certain funds, therefore not important.  | /  |    |    | /  |

|           |   |  |    |    |    |   |
|-----------|---|--|----|----|----|---|
|           |   |  |    |    |    |   |
| 35.       | South African Revenue Services Practice Notes and General Notes | Sets out SARS practice on issues - ignore at your peril. SARS Practice and general notes are legislation, not best practice as they are authorised in terms of the discretion afforded to SARS in the definitions of the Act. They are therefore law and MUST be obeyed.   | √  |    | √√ | √ |
| <b>C4</b> | <b>INVESTMENTS</b>  |  |    |    |    |   |
| 36.       | Bank Act, No 94 of 1990   |  | √  | √  | √√ |   |
| 37.       | Collective Investment Schemes Control Act, No 45 of 2002        | If Trustees contract with unit trusts they must ensure that such funds are appropriately registered.<br>The Collective Investment Schemes Act ("CISCA") was promulgated (March 2003), which act replaced the Unit Trust Controls Act and the Participation Bonds Act. The purpose of CISCA was to place all collective investment schemes under the regulatory authority of the FSB. Previously only trust based collective investments fell under the FSB's jurisdiction. One of the more significant impacts of the legislation was that many hedge funds, which were operated in the form of open-ended investment companies and so fell outside of the Unit Trust Controls Act, now satisfied the definition of collective investment scheme, and so fell to be regulated by the provisions of CISCA. It should be noted that not all hedge funds are established as a collective investment scheme, as defined in the Act, and such funds would, therefore, fall outside of the provisions of CISCA. While the FSB has entered into discussions with the hedge fund industry to discuss the conditions, under which such funds (both local and offshore) will be registered, these regulations will probably only be finalized in the next twelve months. | √√ | √√ |    |   |
| 38.       | Currencies and Exchange Act, No 9 of 1993                       |  | √  | √  | √√ |   |
| 39.       | Custody and Administration of Securities Act, No 85 of 1992     |  | √√ | √√ |    |   |
| 40.       | Financial Markets Control Act, No 55 of 1989                    | The Stock Exchanges Control Act, 1985 and the Financial Market Control Act, 1989 are repealed by the Securities Services Act, no 36 of 2004). Comment as for unit trusts.  | √√ | √  | √  |   |
| 41.       | Insider Trading Act, No 135 of 1998                             |  | √  | √  | √√ |   |
| 42.       | Property Valuers Profession Act, No 47 of 2000                  |  | √√ | √√ |    |   |

|                         |   |  |    |    |    |    |
|-------------------------|---|--|----|----|----|----|
| 43.                     | Rent Control Act, No 80 of 1976                               |  | ✓✓ | ✓✓ |    |    |
| 44.                     | Safe Deposit of Securities Act, No 85 of 1992                 |  | ✓  | ✓  | ✓  | ✓  |
| 45.                     | Sectional Titles Act, No 95 of 1986                           |  | ✓✓ | ✓✓ |    |    |
|                         | Securities Services Act, no 36 of 2004                        | See the Stock Exchanges Control Act, 1985 and the Financial Market Control Act, 1989   |    |    |    |    |
| 46.                     | Stock Exchange Control Act, No 1 of 1985                      | The Stock Exchanges Control Act, 1985 and the Financial Market Control Act, 1989 are repealed by the Securities Services Act, no 36 of 2004). See comment on unit trusts.  | ✓✓ | ✓✓ |    |    |
| <b>C5 INFORMATION</b>   |   |  |    |    |    |    |
| 47.                     | Electronic Communications and Transactions Act, No 25 of 2002 | For communication of fund matters does electronically.   | ✓  | ✓  | ✓  | ✓  |
| 48.                     | Promotion of Access to Information Act, No 2 of 2000          | This Act gives effect to the constitutional right of access to any information held by the State and any information that is held by a retirement fund or is under its control and that is required for the exercise or protection of any rights. Where a request is made i.t.o. this Act, the fund is obliged to release the information, except where the Act expressly provides that the information may or must not be released. The Act sets out the requisite procedural issues attached to such request. Trustees need to be aware of this Act's requirements as far as it pertains to the appointment of an information officer and when requested to provide information. I.t.o. S51 of this Act an Information Manual must be compiled and be made available. This Manual is intended to foster a culture of transparency and accountability within SA. In order to promote effective governance of private and public bodies, it is necessary to ensure that everyone is empowered and educated to understand their rights in terms of the Act in order for them to exercise their rights in relation to public and private bodies. |    |    | ✓✓ | ✓✓ |
| 49.                     | Protected Disclosures Act, No 26 of 2000                      | This is the "Whistle Blowers Act", which protects the person who wants to report an entity or person (whether he/she is a Trustee, the CEO, the PO, or any other person) to the Regulatory Authorities.  | ✓✓ | ✓✓ |    |    |
| <b>C6 MISCELLANEOUS</b> |   |  |    |    |    |    |
|                         |   |  |    |    |    |    |

|                         |   |  |          |    |    |    |   |
|-------------------------|---|--|----------|----|----|----|---|
| 50.                     | Companies Act, No 61 of 1973                                | If an administrator is a private company, such administrator needs to comply with this Act, as well as with the retirement fund industry related legislation.                                      | ✓        | ✓✓ |    | ✓  |   |
| 51.                     | Copyright Act, No 9 of 2002                                 |  | ✓✓       | ✓✓ |    |    |   |
| 52.                     | Legal Deposit Act, No 54 of 1997                            |  |          | ✓✓ | ✓✓ |    |   |
| 53.                     | Mine Health and Safety Act, No 29 of 1996                   |  | ✓✓       | ✓✓ |    |    |   |
| 54.                     | Medical Schemes Act, No 131 of 1998                         |  | ✓✓<br>✓✓ |    |    |    |   |
| 55.                     | Merchandise Marks Amendment Act, No 50 of 2001              |  | ✓✓       | ✓✓ |    |    |   |
| 56.                     | National Environmental Management Act, No 107 of 1998       |  | ✓✓<br>✓✓ |    |    |    |   |
| 57.                     | Occupational Diseases in Mines and Works Act, No 78 of 1973 |  | ✓✓<br>✓✓ |    |    |    |   |
| 58.                     | Trade Marks Act, No 194 of 1993                             |  | ✓✓       | ✓✓ |    |    |   |
| 59.                     | Prevention of Organised Crime Act, No 121 of 1998           | This has been superseded by FICA.  | ✓✓       |    |    | ✓  |   |
| <b>D BEST PRACTICES</b> |   |  |          |    |    |    |   |
| 1.                      | Financial Services Charter                                  | The implications for trustees need to be investigated and practical implementation guidelines presented.   |          | ✓✓ | ✓  | ✓  |   |
| 2.                      | King II on Corporate Governance                             | For obvious reasons.   |          |    | ✓✓ | ✓✓ |   |
| 3.                      | Financial Services Board Pension Fund Circulars             | Sets out FSB practice on issues. While the PF Circulars are not legally enforceable, the Registrar of Pension Funds looks more favourably upon funds that comply with the content of PF Circulars. |          |    | ✓  | ✓✓ | ✓ |

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2005 POA Legal Framework Revised ... March

## THE ROLE AND RESPONSIBILITIES OF A COMPLIANCE OFFICER (CO)

### 1. INTRODUCTION: ORGANISATION AND/OR COMPLIANCE STRUCTURE IN RESPECT OF ACCOUNTABILITY AND RESPONSIBILITIES WITH RESPECT TO A COMPLIANCE FUNCTION FOR A RETIREMENT FUND

The responsibility of managing a fund's business rests with the board of trustees of a fund, as well as with the Principal Officer (PO) of the fund. They are accountable to the Financial Services Board (FSB) for compliance with statutory and regulatory requirements applicable to a fund. In most funds' organisational structures, the PO, who reports to the board of trustees of a fund on compliance to legislative requirements, is also the Compliance Officer (CO) and also acts in this capacity.

In many retirement funds the responsibility lines and separation of functions with respect to statutory and regulatory requirements and compliance tend to be unclear. There can, for example, be an overlap in the responsibilities of more than one person with respect to the application of the Pension Funds Act due to confusion on the role of a "principal officer" (See definition in Act), a "principal executive officer" (Section 8(1) of Act) and an "authorized person" (Section 13A(6) of Act). Is this the same or different persons and is this person a CEO, a PO or a CO or all of them? This is indicative of the fact that a PO can assume responsibility for the duties of a CO and vice versa. Funds need to have clarity on compliance requirements.

Legislation should provide clear guidance to a board of trustees or the person(s) to whom they should delegate authority to ensure that a fund has a compliance function and process that clearly define responsibility lines within a fund's organisational structure.

### 2. OBJECTIVES OF A COMPLIANCE FUNCTION AND THE ROLE AND DUTIES OF A CO

2.1 The **objectives of the compliance function**, as part of an effective risk management framework, can include the following:

- (a) To assist a fund's executive and line management in discharging their responsibility to comply with applicable statutory, regulatory and supervisory requirements;
- (b) To enable the board of trustees to demonstrate to the FSB and other regulators that they are fit and proper to undertake their business;
- (c) To facilitate management of compliance risks and to link a fund's compliance function to an enterprise risk management process;
- (d) To avoid disciplinary action or sanctions by Regulators;
- (e) To minimise the possibility of civil and criminal actions against a fund.

## 2.2 Role of a CO

The role and responsibilities of the CO will differ from organisation to organisation and it could even differ within an organisation, depending on the fund's compliance structure and the position of the appointed compliance officer in the fund. In general, it can be expected that a group compliance officer's responsibilities will be more comprehensive than those of a compliance officer for a division or divisions. In a favourable compliance culture the general managers of the fund's various divisions will indirectly act as compliance officers to a certain extent and they will set the example to managers who report to them to adhere to legislation applicable to a fund in their divisions.

**2.2.1** The **primary role of the CO** is to facilitate the effective management of the compliance risk by a fund through, *inter alia*, the following:

- (a) Setting organisation wide policy and standards for compliance;
- (b) Providing advice on compliance related matters;
- (c) Compiling of a compliance manual with sufficient references to relevant operational manuals for the fund's divisions;
- (d) Establishing and maintaining a compliance culture, in conjunction with the fund's executive and line management, within the fund which contributes to the overall objective of prudent risk management of the fund;
- (e) Monitoring the level of compliance on an ongoing basis;
- (f) Establishing and maintain working relationships with relevant stakeholders and regulators;
- (g) Providing assistance to minimise the damage to a fund's reputation/image in cases where material transgressions occur;
- (h) Promoting a compliance culture through provision of effective compliance awareness information; and
- (i) Attend to requests from and report to the board of trustees, its subcommittees and the Regulatory Authorities.

**2.2.2** The following are examples of the **most basic or core responsibilities** that should be included in a job description of a group compliance officer and/or compliance officers (These responsibilities are adopted from Regulation 47 of the Banks Act, no. 94 of 1990, which sets out the first guidelines with respect to the responsibilities of a CO, and are slightly changed to utilise them in a retirement fund environment):

- (a) **Ensure compliance** within a fund in line with current laws, regulations and supervisory requirements or provisions;
- (b) **Report non-compliance** to laws, regulations and supervisory requirements to the PO, the board of trustees and the audit and compliance committee in a timely manner;
- (c) **Provide** the board of trustees and the audit and compliance committee with regular **information** as regards the level of compliance by the fund to laws, regulations and supervisory requirements;

- (d) **Ensure**, as far as possible, that **no conflict of interest** with/between other internal control functions exists;
- (e) **Establish a compliance culture** in the fund that contributes to the overall objective of prudent risk management by the fund;
- (f) **Establish a line of communication** to the PO in order to continuously monitor compliance to laws, regulations and supervisory requirements;
- (g) **Require of the fund's executive and management lines to monitor compliance** with laws, regulations and supervisory requirements as part of their normal operational duties within the fund's divisions;
- (h) Require **regulatory requirements to be incorporated** into operational procedure manuals where appropriate;
- (i) **Make recommendations** whenever necessary to ensure that laws, regulations and supervisory requirements are being complied with;
- (j) **Establish prompt mechanisms for reporting** and resolving non-compliance to laws, regulations and supervisory requirements;
- (k) **Document his/her findings**, including any remedial action, as part of a compliance monitoring programme;
- (l) **Ensure that the fund recruit sufficient staff** with appropriate qualifications in order to continuously monitor and test the fund's compliance to laws, regulations and supervisory requirements;
- (m) **Ensure that compliance staff are trained** on a continuous basis in order to ensure that they have adequate technical knowledge in order to understand the regulatory framework that applies to the fund, as well as the risks to which the fund is exposed to; and
- (n) Compile and maintain a **comprehensive compliance manual** for the fund.

**2.2.3** In striving to achieve the compliance objectives, the CO should act pro-actively and should constructively assist the fund and its executive management in running an efficient and profitable business, without violating statutory, regulatory and supervisory requirements. The CO should strive to gain the support of the board of trustees, without jeopardising their independence.

**2.2.4** The board and PO are accountable for ensuring that a fund complies with all applicable laws, regulations and supervisory requirements, but they will rely on the CO to assist them in discharging that accountability. Responsibilities for a CO can never be prescriptive, but the aforementioned responsibilities or at least elements thereof should be present in the **job description/Key Performance Areas (KPA's)** for a CO.

### 3. CONCLUSION

Based on the fact that Reg. 47 of the Banks Act defines the duties of a CO, there is a general trend to make retirement funds more aware of the necessity to have an individual tasked to attend to the compliance function. A PO can, depending on a fund's organisational structure, fulfil this function.