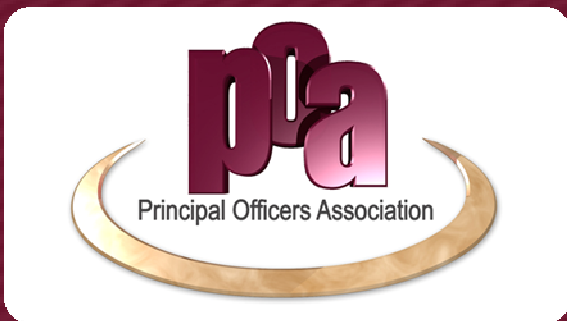
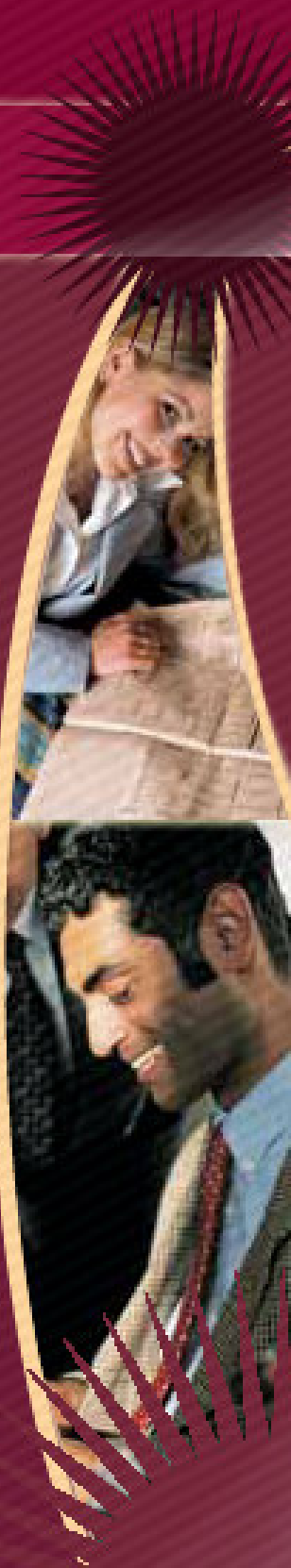


# Overview of the Fit and Proper Requirements for Principal Officers

SECTION 8 OF THE PENSION FUNDS ACT, ACT 24 OF 1956, AS AMENDED BY  
THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT ACT, ACT NO.  
22 OF 2008



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## Overview of the Fit and Proper Requirements for Principal Officers

### Definitions:

<b>Act</b>	The Pension Funds Act, Act 24 of 1956
<b>Principal Officer</b>	The Principal Executive Officer of a pension fund organization, who is appointed in terms of section 8 of the Act
<b>Registrar</b>	The Registrar of Pension Funds
<b>Retirement Fund/Fund</b>	A Pension Fund Organization, as defined in the Pension Funds Act

### Purpose

The purpose of this document is to set out the rules that apply to the appointment of Principal Officers, the fit and proper requirements that Principal Officers must comply with, the whistle-blowing responsibilities of Principal Officers, and the procedure to be followed when a Principal Officer's contract is terminated, as prescribed by law.

### Target audience

1. The following people must be familiar with the provisions of the Act: incumbent Principal Officers, new and aspiring Principal Officers, Trustees of retirement funds filling appointments for new Principal Officers, retirement fund administrators, auditors, valuers, fidelity and professional indemnity insurers, the FSB and the National Treasury.

### Scope

2. The fit and proper requirements set out in section 8(5)(c) of the Act apply to all Principal Officer appointments.
3. The whistle-blowing duties apply to all Principal Officers. They apply if the Principal Officer becomes aware of a matter relating to the affairs of a fund which could prejudice the fund or its members.

## Key points

4. Every registered Fund is required to have a Principal Executive Officer who is resident in the Republic of South Africa.
5. A Fund may not appoint a person as a Principal Officer unless the applicant for the position is a fit and proper person to occupy that position.
6. The Fund must give written notice to the Registrar of the appointment by providing the Registrar with information prescribed by the Registrar from time to time.
7. The Registrar may then object to the appointment if the Registrar reasonably believes:
  - 8.1 that the Principal Officer is not, or is no longer, a fit and proper person to hold that appointment, or
  - 8.2 it is not in the public interest for the Principal Officer to hold or continue to occupy the position .
9. If the Registrar objects to the appointment he is required to comply with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) by:
  - 9.1 notifying the Fund and the Principal Officer of his objection in writing,
  - 9.2 stating the grounds for his objection,
  - 9.3 providing the chairperson of the board of trustees of the Fund as well as the proposed appointee with his grounds of objection, and
  - 9.4 giving the Fund and the proposed appointee the opportunity to be heard before a final decision is taken.

## Definition "Fit and Proper"

10. An appointee is generally considered to be fit and proper if he or she is of good character, is competent, honest, financially sound, reputable and reliable, and discharges or is likely to discharge his or her duties fairly.

## Assessing fitness and propriety

11. In assessing whether a person is fit and proper, the following should be taken into account:
  - 11.1 good character i.e. honesty, integrity, fairness and reputation;



11.2 competence, diligence, capability, soundness of judgment; and

11.3 personal financial soundness.

## Good character

12. Good character i.e. honesty, integrity, fairness and reputation, are qualities that are demonstrated over time. In determining the appropriateness of an applicant's good character to be appointed as principal officer, the Fund should consider all relevant and appropriate factors, including, but not limited to:

12.1 whether the person has been convicted of a criminal offence relating to dishonesty, fraud or a financial crime;

12.2 whether the person has been convicted or found guilty in proceedings of a disciplinary or criminal nature;

12.3 whether the person has been the subject of adverse findings or any settlement in civil proceedings, particularly in connection with financial business, misconduct or fraud;

12.4 whether the person or any business in which he has a controlling shareholding or has a controlling interest or exercises significant influence, has been investigated and disciplined or suspended by a regulatory or professional body, a court or a tribunal, whether publicly or privately;

12.5 whether the person has been the owner, manager or a director of a company, partnership or other organization that has been refused registration, approval, membership or a licence, to conduct trade, business or profession, or has had that registration, approval, membership or licence revoked, withdrawn, or terminated as a result of wrongdoing;

12.6 whether, as a result of the refusal or withdrawal of the licence, registration or approval, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other approval;

12.7 whether the person has been a director, partner, or otherwise involved in the management of a business that has gone into curatorship, insolvency or liquidation while the person was connected with the organization, or within a reasonably short period after the person's departure from the organization;



- 12.8 whether the person has been dismissed, asked to resign or resigned from employment, or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity;
- 12.9 whether the person has been disqualified from acting as a director or serving in a managerial capacity because of wrongdoing;
- 12.10 whether the person has not been fair, truthful and forthcoming in dealings with customers, superiors, auditors, and regulatory authorities within the past ten years and has been subject to any justified complaint relating to regulated activities; and
- 12.11 whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory authorities, and any other legal regulatory or professional requirements and standards.

## Competence and capability

13. The person must demonstrate the knowledge, competence and ability to understand the technical requirements of the operations of the business of a fund, its inherent risks, and the management process required to conduct its operations effectively with due regard for the interests of all stakeholders.
14. In assessing the knowledge, competence and capability of a person, all relevant factors should be considered, including but not limited to:
  - 14.1 whether the person has demonstrated, through qualifications and experience, the capacity to undertake the responsibility of the position successfully;
  - 14.2 whether the person has sound knowledge of the responsibilities of the position;
  - 14.3 whether the person has ever been disciplined by a professional, trade or regulatory body, or dismissed, or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement.



## Financial soundness

15. As an indication of an applicant's capacity to contribute to the soundness of the operation of a retirement fund and the protection of the interests of all stakeholders, the applicant should demonstrate a prudent management of his own financial affairs.
16. In determining a person's financial soundness, all relevant factors should be taken into account, including but not limited to:
  - 16.1 whether the person has been the subject of any judgment or award that remains outstanding or was not satisfied within a reasonable period;
  - 16.2 whether the person has made any arrangement with his creditors, filed for bankruptcy, had assets confiscated or has been involved with proceedings relating to any of the aforementioned.

The fact that a person may be of limited financial means will not in itself affect the person's ability to satisfy the financial soundness criteria.

## The recruitment and selection process by the Fund

17. Each Fund making an appointment of a Principal Officer in terms of section 8 of the Act must ensure that any agreement with an applicant incorporates the application of these fit and proper requirements. Each Fund must also ensure that that the agreement incorporates the right of the Fund to terminate the appointment of the Principal Officer if the Registrar notifies the fund following a hearing into the Principal Officer's fitness and propriety that the appointee is not a fit and proper person to occupy the position.

## Procedural fairness in appointing a Principal Officer

18. The fit and proper requirements affect the interests of various people involved with a Fund. Therefore fit and proper requirements should be applied in a manner that is transparent and procedurally fair. A Fund should therefore ensure that:
  - 18.1 all advertisements, notices, websites and other related documents that provide information about the process leading to the appointment of a Principal Officer clearly indicate:

- 18.1.1 that any applicant for the position of Principal Officer will be subject to the fit and proper requirements; and
- 18.1.2 which clauses will be incorporated into the rules, letters of engagement and employment contracts with the Principal Officer;
- 18.2 all documents relating to the fit and proper requirements, including forms and information sheets, are readily available to an applicant for the position of Principal Officer.
- 18.3 a special questionnaire and declaration form is completed by any person who applies for the position of a Principal Officer. (See Annexure B: Personal Questionnaire and Declaration Form.)

### Principal Officer contracts

19. The Fund must incorporate provisions in Principal Officer contracts, and other related documents, that allow the Fund:
- 19.1 to terminate the appointment if the Principal Officer no longer meets the fit and proper requirements;
- 19.2 to address any issues about conflicts of interest (or potential conflicts of interest) that an applicant or the Fund may have;
- 19.3 to ensure that any changes in the status of the Principal Officer that may be relevant to the Principal Officer's fitness and propriety are disclosed by the Principal Officer;
- 19.4 to provide such fit and proper requirement information about a Principal Officer as may reasonably be required by the Registrar on request.

### Handling documents

20. Information provided as part of the fit and proper requirements is subject to the definition "personal information" as it appears in the Promotion of Access to Information Act, Act 2 of 2000. For this reason it must be treated in accordance with the provisions of that Act.
21. The Fund should ensure that all information collected as part of the fit and proper requirements for Principal Officers is used only for the purposes of determining whether the

applicant or appointee complies with the fit and proper requirements. The documents appended hereto provide for the sharing of information within the FSB for the purpose determining whether the fit and proper requirements have been met. The information may not be used otherwise or disclosed to third parties without the consent of the applicant or appointee, unless so authorized or required by law.

### **Accuracy of the information provided**

22. There is an obligation on both applicants for the position of Principal Officer as well as the Fund to provide truthful and accurate information.
23. If a Fund becomes aware that an applicant or any other party has provided false or misleading information, then the applicant shall be disqualified for the position of Principal Officer.

### **Other fit and proper requirements**

24. A Fund should consider whether there are additional fit and proper requirements that would be appropriate for its needs. A Fund that undertakes additional assessments of fitness and propriety beyond the scope of the Act should obtain legal advice on the appropriateness of those assessments.

### **Notification to the Financial Services Board**

25. Every fund must within 30 days after the registration of a new fund or within 30 days after the appointment of a Principal Officer give the Registrar written notice of the appointment by furnishing the Registrar with the prescribed information in respect of the appointee.
26. The information provided to the Registrar should be as comprehensive as possible. The notification of the appointment of a Principal Officer must be completed and forwarded to the Registrar. (See Annexure B: Notification of the Appointment of a Principal Officer.)

## Fit and proper criteria to be applied by the Registrar

27. In assessing the fitness and propriety of a person to hold the position of Principal Officer, the Registrar may, in terms of sub-section 5(c) of section 4 of the Act have regard to the following factors:
- 27.1 the competence and soundness of judgement of the appointee for the fulfillment of the responsibilities of the particular office and type of fund;
  - 27.2 the diligence with which the appointee is likely to fulfil the responsibilities;
  - 27.3 previous conduct of the appointee in business or financial matters;
  - 27.4 evidence that the appointee:-
    - ✱ after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004, an offence under the Prevention of Organised Crime Act, 1998 or any offence involving dishonesty;
    - ✱ has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993, took effect, and sentenced to imprisonment without the option of a fine;
    - ✱ has contravened the provisions of any law the object of which is the protection of the public against financial loss;
    - ✱ is a former principal officer of a fund, and whose actions contributed to that fund's inability to pay its debts or caused financial loss to its members;
    - ✱ has taken part in any business practices that, in the opinion of the Registrar, were deceitful, prejudicial, or otherwise improper (whether unlawful or not), or which otherwise brought discredit to that person's methods of conducting business; or
    - ✱ has taken part in or been associated with any other business practices or conduct that casts doubt on his or her competence and soundness of judgement.
28. Where the Registrar objects to the appointment of the Principal Officer, the notice of objection from the Registrar must be addressed to the chairman of the board of trustees that made the appointment, and the Principal Officer affected by such objection.

29. Section 8(5)(a) of the Act declares that the Registrar's objection to the appointment of a Principal Officer amounts to administrative action which must comply with the provisions of the Promotion of Administrative Justice Act, (Act no. 3 of 2000), ("PAJA").

### Promotion of Administrative Justice Act

30. In its Preamble, PAJA describes some of its its objects as being to create a culture of accountability, openness and transparency in the public administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.

### Procedural fairness in administrative action

31. Provision is made in section 3 of PAJA for certain minimum requirements any administrative act must comply with in order to be procedurally fair. In terms of section 3(1) thereof, when administrative action materially and adversely affects the rights and legitimate expectations of any person, then that administrative action must, in order to be valid, be procedurally fair. The fairness or otherwise depends on the circumstances of each case and section 3(2)(b) provides that the following are minimum requirements for procedural fairness:

- (a) adequate notice of the nature and purpose of the proposed administrative action;
- (b) a reasonable opportunity to make representations;
- (c) a clear statement of the administrative action;
- (d) adequate notice of any right of review or internal appeal, where applicable; and
- (e) adequate notice of the right to request reasons in terms of section 5.

32. Section 3(3) of PAJA further provides that in order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her own discretion, give the person an opportunity to:

- (a) obtain assistance and in some serious and complex cases, legal representation;
- (b) present and dispute information and arguments;
- (c) appear in person.

## Steps to oppose the decision of the Registrar

33. If the Principal Officer is not happy with a decision of the Registrar that he is not a fit and proper person, he may, on payment of the fees prescribed by the Minister by regulation, lodge an appeal with the Appeal Board of the Financial Services Board in accordance with section 26 of the Financial Services Board Act, (Act No. 97 of 1990).

## Appeal to the Appeal Board of the Financial Service Board

34. The Principal Officer or the Fund aggrieved by the decision of the Registrar shall lodge an appeal by submitting a "Notice of Appeal" to the secretary of the Appeal Board. The appeal must be lodged within 30 days of the Principal Officer or the Fund becoming aware of, or ought to have become aware of, the Registrar's decision.
35. The Appeal Board of the Financial Services Board shall look at all the evidence presented by the Registrar and the Principal Officer, including new evidence, if any. Thereafter it will make a determination on the decision of the the Registrar, either by confirming it or setting it aside or referring the matter back to the Registrar for reconsideration.
36. If any one of the Registrar, the Fund or the Principal Officer is not happy with the decision of the Appeal Board, they may take the Appeal Board's decision to a high Court for review.
37. In terms of section 8(5)(b) of the Act, the board of trustees of the Fund affected by the Registrar's decision must terminate the appointment of a Principal Officer within 30 days of the Registrar informing the board of the finalization of the inquiry in terms of PAJA into the fitness of the Principal Officer to hold office. This is provided that following that process, the Registrar still holds the view that the Principal officer is not fit and proper to occupy that position or it is not in the public interests for such a person to remain a Principla Officer.

## Termination of service

38. If the appeal process is not successful or if the Principal Officer or the Fund do not challenge the Registrar's decision to object to the appointment of a Principal Officer, the Principal Officer's appointment must be terminated by the board of trustees.

39. If the Principal Officer's appointment is terminated for reasons other than the objection by the Registrar, the Principal Officer must submit a written report to the Registrar giving details of his or her perceived reasons for the termination. The Principal Officer must complete the Notification of Termination Form (see Annexure).

### Whistle-blowing

40. If the Principal Officer becomes aware of any matter relating to the affairs of the Fund which, in his or her opinion, could prejudice the Fund or its members, the Principal Officer must inform the Registrar in writing. Principal Officers are advised to sign a declaration, accompanying their communication to the Registrar, in which they state that they make the declaration without prejudice to their rights, without admission to liability and in good faith.
41. If there is no employee-employer relationship between the Principal Officer and the Fund, the Principal Officer ought to seek legal assistance before communicating to the Registrar in this manner. The reason for this is that Principal Officers who do not qualify as employees as defined in the Protected disclosures Act, Act 200 of 2000, will not be protected by that Act and may be victimized by the board of their Funds for making disclosures to the Registrar.

### Penalties for non-compliance

42. **Funds:** Funds that do not comply with the provisions of section 8 of the Act may be referred to the Financial Services Enforcement Committee ("Enforcement Committee") established in terms of the Financial Services Board Act, Act 97 of 1990. The Enforcement Committee has the power to impose an administrative penalty against a Fund that fails to comply with the provisions of the Act.
43. A Fund that fails to comply with the provisions of section 8 of the Act may also be referred to the High Court in terms of section 6 of the Financial Institutions Protection of Funds Act and the High Court can order it to comply with the provisions of the Act.
44. **Principal officer:** A Principal Officer who fails to comply with the provisions of section 8(6) of the Act may be referred to the Enforcement Committee which has the power to impose an administrative penalty against that Principal Officer.

# Guidelines for aspiring Principal Officers, current Principal Officers and Boards of Trustees

## Introductory

### 1. Who should read this document?

This document should be read by prospective Principal Officers, current Principal Officers and boards of trustees. It is also relevant to retirement Fund administrators, auditors, valuers, fidelity and professional indemnity insurers, the Financial Services Board and the National Treasury.

### 2. What are the fit and proper requirements?

The fit and proper requirements are a list of requirements that apply to Principal Officers, auditors and valuers. To decide whether a person meets the fit and proper requirements, the Registrar may consider the following factors:

- \* whether the person is competent and has sound judgment to be able to fulfil the responsibilities of the particular office and the type of Fund;
- \* whether the person applies diligence in fulfilling their responsibilities;
- \* the previous conduct and activities of the person in business or financial matters;
- \* whether the person has been convicted of a criminal offence relating to dishonesty, fraud or a financial crime
- \* whether the person has been convicted or found guilty in proceedings of a disciplinary or criminal nature
- \* whether the person has been the subject of adverse findings or any settlement in civil proceedings
- \* whether the person or business in which the person has a controlling share or controlling interest has been investigated and disciplined or suspended by a regulatory or professional body, or a court or tribunal
- \* whether the person has been the owner, manager or director of a company, partnership or other organization that has been refused registration, approval, membership or a licence to conduct trade, business or profession, or has had that registration, approval, membership or licence revoked, withdrawn, or terminated as a result of wrongdoing;



- \* whether, as a result of refusal or withdrawal the licence, registration or other approval, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other approval;
- \* whether the person has been a director, partner, or otherwise involved in the management of a business that has gone into curatorship, insolvency or liquidation while
- \* the person was connected with the organization, or within a reasonably short period after the person's departure from the organization;
- \* whether the person has been dismissed, asked to resign or resigned from employment, or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity;
- \* whether the person has been disqualified from acting as a director or serving in a managerial capacity because of wrongdoing;
- \* whether the person has not been fair, truthful and forthcoming in dealings with customers, superiors, auditors, and regulatory authorities within the past ten years and has been subject to any justified complaint relating to regulated activities; and
- \* whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory authorities, and any other legal regulatory or professional requirements and standards.

## New Funds and new Principal Officers

### 3. What must a new Fund do within 30 days of having been registered?

The Fund must give the Registrar written notice of the appointment of its Principal Officer. It must give the Registrar the prescribed information about the appointee.

### 4. What must any Fund do within 30 days of having appointed a Principal Officer?

The Fund must give the Registrar written notice of the appointment of the Principal Officer. It must give the Registrar the prescribed information about the appointee.

## Recruitment and appointment of the Principal Officer

### 5. What must the Fund be aware of when recruiting a Principal Officer?

All written material that provides information about the process leading to appointment as a Principal Officer must clearly indicate that anyone who applies for the position will be subject to the fit and proper requirements. All documents relating the fit and proper requirements (including forms and information sheets) must be readily available to an applicant for the position of Principal Officer.

**6. What is required of applicants and retirement Funds when a person applies for the position of Principal Officer?**

**Applicants**

- \* Applicants must complete the personal questionnaire and declaration.
- \* Applicants must provide the following additional information: their CV, a copy of their identity document, proof of their education, details of their work experience and a police clearance certificate.

**Funds**

- \* Funds must explain to applicants what information will be required. They must list the sections contained in the questionnaire and declaration so that the applicant knows what information will be expected of him or her.
- \* Funds must explain how they will handle the applicant's information. They must mention any special conditions.
- \* If the applicant is unable to produce a police clearance certificate, the Fund must undertake to obtain one.

**7. Are there any special conditions that apply to the appointment of the Principal Officer?**

- \* When the Fund appoints a Principal Officer, the Fund must complete the Notification of Appointment form (See Annexure C).
- \* The appointment of the Principal Officer may be terminated in terms of section 8(5)(b), in other words, if the Registrar objects to the appointment. The Fund must make the Principal Officer's appointment subject to this condition.

## How the Registrar objects

**8. What happens if the Registrar wants to terminate the appointment of the Principal Officer, the auditor or the valuator?**

The Registrar may object to the Fund's appointment of a Principal Officer, an auditor or a valuator. To make his objection, the Registrar must follow the procedures set out in the Promotion of Administrative Justice Act. In other words, he must notify the Fund and the appointee of his objection and grounds thereof. He must also allow the Fund and the appointee to make representations. Once the process has been completed and a final decision has been taken, the Registrar must inform the Fund that the process has been finalized. If following the finalization of the process in terms of Promotion of Administrative Justice Act the Registrar still holds the view that the appointee is not fit and proper to hold that position, then the Fund has to terminate the appointment of the Principal Officer, auditor or valuator within 30 days of being so informed.

**9. When can the Registrar object to the appointment of a Principal Officer, auditor or valuator?**

The Registrar can object to the appointment at any time if he reasonably believes that the Principal Officer, auditor or valuator is not, or is no longer, a fit and proper person to hold that office. He can also do so if it is not in the public interest for the Principal Officer, auditor or valuator to hold the office.

**10. How does the Registrar object?**

The Registrar must give written notice and state the grounds of his objections and provide them to the chairperson of the board of the Fund, and the appointee. The Registrar must also follow the relevant procedures of the Promotion of Administrative Justice Act, then inform the Fund once the procedures have been finalized.

**11. Does the Registrar have to make the determination himself or can he ask for outside assistance?**

The Registrar may request any person to assist him in assessing whether a person is fit and proper to act as Principal Officer, auditor or valuator of a Fund. The final decision must be that of the Registrar.

**12. What happens once the Registrar has objected to the appointment of a Principal Officer and the procedure set out in PAJA has been finalised?**

- \* The board of trustees making the appointment must terminate the appointment within 30 days of the Registrar informing the board of the finalization of the process in terms of PAJA.
- \* The Principal Officer or the Fund can lodge an appeal with the FSB Appeal Board.
- \* The Appeal Board will examine the relevant evidence, then decide whether the Registrar's decision was right or wrong.
- \* If any party is unhappy with the appeal Board's decision, that party can take the appeal Board's decision on review to the High Court.

**When the board of trustees terminates an appointment (whistle-blowing)**

**13. What must a Principal Officer do if his or her appointment is terminated by the board of the Fund and such termination is not the result of an objection by the Registrar?**

The Principal Officer must submit a written report to the Registrar within 21 days of his or her termination.

The report must state the Principal Officer's perceived reasons for the termination.

If the Principal Officer is aware of a matter relating to the Fund which could prejudice the Fund or its members, the Principal Officer must inform the Registrar about it in writing.

**14. What must an auditor do if his or her appointment is terminated by the board of the Fund and such termination is not the result of an objection by the Registrar?**

The auditor must submit a written report to the Registrar within 21 days of his or her termination.

The report must state the auditor's perceived reasons for the termination. If the auditor is aware of a matter relating to the Fund which could prejudice the Fund or its members, the auditor must inform the Registrar about it in writing.

If the auditor, but for the termination, would have had reason to submit a report contemplated in section 45(3) of the Auditing Profession Act, the auditor must submit the

report to the Registrar. This is a report to the Registrar setting out details of any reportable irregularities as defined in section 1 of the Auditing Profession Act, Act 26 of 2005.

## Annexures

The following prescribed forms, to be used to determine whether an applicant for the position of Principal Officer meets the fit and proper requirements, are attached:

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## ANNEXURE A

### Extract from the Act:-

#### 4. Section 8 of the Pension Funds Act, 1956 (Act No. 24 of 1956), as amended by Act 22 of 2008:

- “(1) Every registered fund shall have a principal executive officer.
- (2) The principal officer of a registered fund shall be an individual who is resident in the Republic, and if he is absent from the Republic or unable for any reason to discharge any duty imposed upon him 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.
- (3) Every fund must within 30 days after the registration of a fund or within 30 days after the appointment of a principal officer give the registrar written notice of the appointment by furnishing the registrar with the prescribed information in respect of the appointee.
- (4) Despite anything to the contrary in any law or in any agreement, the appointment by a fund of a principal officer is subject to the condition that the appointment may be terminated under subsection (5)(b) and the fund must make any appointment subject to this condition.
- (5) (a) The registrar, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), may, if the registrar reasonably believes that a principal officer is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the principal officer holds or continues to hold such office, object to the appointment of a principal officer, stating the grounds for the objection, and provide such to the chairperson of the board and to the appointee.
- (b) If the registrar objects to an appointment in terms of paragraph (a), the board must terminate the appointment within 30 days of the registrar informing the board of the finalisation of the processes and procedures provided for in the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

- (c) The registrar may for purposes of assessing if a principal officer is not, or is no longer, a fit and proper person in accordance with paragraph (a), have regard to—
- (i) the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and type of fund;
  - (ii) the diligence with which the person concerned is likely to fulfil those responsibilities;
  - (iii) previous conduct and activities of the person in business or financial matters; and
  - (iv) any evidence that the person—
    - (aa) after 27 April 1994 has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), or any offence involving dishonesty;
    - (bb) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine;
    - (cc) has contravened the provisions of any law the object of which is the protection of the public against financial loss;
    - (dd) is a former principal officer of a fund and whose actions contributed to that fund's inability to pay its debts or caused financial loss to its members;
    - (ee) has taken part in any business practices that, in the opinion of the registrar, were deceitful, prejudicial, or otherwise improper (whether unlawful or not) or which otherwise brought discredit to that person's methods of conducting business; or

- (ff) has taken part in or been associated with any other business practices, or conduct that casts doubt on his or her competence and soundness of judgement.
  - (d) The registrar may request any person to assist him or her in assessing whether a person is fit and proper to act as a principal officer of a fund.
- (6) A principal officer of a fund must—
- (a) within 21 days of his or her appointment being terminated, other than in accordance with the condition referred to in subsection (5)(b), submit a written report to the registrar detailing the principal officer’s perceived reasons for the termination; and
  - (b) on becoming aware of any matter relating to the affairs of the pension fund which, in the opinion of the principal officer, may prejudice the fund or its members, inform the registrar thereof in writing.”.



## ANNEXURE B

### Personal Questionnaire and Declaration Form

The form below helps the Board of Trustees select a person for an advertised position as a Principal Officer by assessing the candidate's fitness for the position. It must be completed by persons wishing to apply for a position as a Principal Officer.

### PERSONAL QUESTIONNAIRE AND DECLARATION FORM



#### WHAT IS THE PURPOSE OF THIS FORM

To assist a Board of Trustees in selecting a person for an advertised post as a principal officer and for assessing the fitness and probity of the candidate.

You need to fill in this form completely, accurately and legibly. This will help ensure that your application and assessment are treated fairly.

#### WHO SHOULD COMPLETE THIS FORM

Persons wishing to apply for a position as a Principal Officer of a pension fund organization as defined in the Pension Funds Act, 1956.

#### ADDITIONAL INFORMATION

This form requires basic information as required by law. Candidates who are selected for interviews will be requested to furnish additional certified information that may be required to make a final selection.

#### A. THE ADVERTISED POST

Position for which you are applying (as advertised)	Where the position was advertised:
Reference number (as stated in the advert)	If you are offered the position, when can you start OR how much notice must you serve with your current employer?

#### B. PERSONAL PARTICULARS:

Surname		
First names		
Date of birth		
Identity number		
Gender		
Do you have a disability?		
Are you a South African Citizen?		
Passport Number		

<p><b>SPECIAL NOTES</b></p> <p>1. All information will be treated with the strictest confidentiality and will not be disclosed or used for any other purpose than to assess the suitability of a person, except in so far as it may be required and permitted by law. Your personal details must correspond with the details in your ID or passport.</p> <p>2. This information is required to enable the Board of Trustees to comply with the Pension Funds Act as amended by Financial Services Laws General Amendment Act, 2008.</p> <p>3. This information will only be taken into account if it directly relates to the requirements of the position.</p> <p>4. Applicants with substantial qualifications or work experience must attach a CV.</p>	If no, what is your nationality?				
	And do you have a valid work permit?				
	<b>C. HOW DO WE CONTACT YOU?</b>				
	Preferred language for correspondence?				
Telephone number during office hours					
Preferred method for correspondence	Phone	Fax	e-mail		
Correspondence contact details (in terms of the above)					
<b>D. ADDITIONAL DETAILS</b>					
Have you ever been subject to a change of Name (if 'Yes' provide details below).					
Previous Family Name	Previous Name	Date of change			
Reasons for change					

Have you changed your permanent address during the last ten years (if 'Yes' provide full details below)	Yes	
	No	
<b>Full previous permanent address</b>	<b>Date of change</b>	

<b>E. ACADEMIC QUALIFICATIONS</b>		
Name of School / Technical College	Highest qualification obtained	Year obtained
<b>Tertiary education (complete for each qualification you obtained)</b>		
Name of institution	Name of qualification	Year obtained
Current study (institution and qualification):		

**F. PROFESSIONAL QUALIFICATIONS**

Professional Body	Status	Date of Admission

**G. SIGNIFICANT SHAREHOLDING HISTORY (INCLUDING INDIRECT HOLDINGS) OVER AT LEAST THE LAST TEN YEARS (including only those holdings which provided you a significant influence over the operations and affairs of the entity)**

Name of the Entity	Date influence was acquired	Date influence was relinquished

**H. PROPRIETOR, PARTNERSHIP AND DIRECTORSHIP HISTORY OVER AT LEAST THE LAST TEN YEARS**

Name of Entity	Date of appointment	Date of resignation

**I. WORK EXPERIENCE COVERING AT LEAST THE LAST TEN YEARS (start with current and most recent position)**

1. Employer (including current employer)	Post held	From		To		Reason for leaving
		MM	YY	MM	YY	
Nature of Employer's business						
Employer's phone number						
Brief description of duties						
2. Employer (including current employer)	Post held	From		To		Reason for leaving
		MM	YY	MM	YY	
Nature of Employer's business						
Employer's phone number						
Brief description of duties						

3. Employer (including current employer)	Post held	From		To		Reason for leaving
		MM	YY	MM	YY	
Nature of Employer's business						
Employer's phone number						
Brief description of duties						
4. Employer (including current employer)	Post held	From		To		Reason for leaving
		MM	YY	MM	YY	
Nature of Employer's business						
Employer's phone number						

Brief description of duties			
If you were previously employed as a principal officer, indicate whether any condition exists that prevents your re-appointment.	Yes	No	
If yes, provide the name of the previous employing retirement fund			

<b>J. REFERENCES</b>		
Name	Relationship to you	Tel. No. (office hours)

**K. SPECIFIC TEST TO ASSESS FITNESS AND PROBITY**

**If any answers to any of these questions is 'yes' please provide details on separate pages with proper referencing**

No 1	Question	Yes	No	Ref
1	Have you ever been subject to any proceedings of a disciplinary or criminal nature, or have been notified of any impending proceedings or of any investigation, which might lead to such proceedings?	Yes	No	Ref
2	Have you, or any business in which you have had controlling interest or have exercised significant influence, been investigated, disciplined, suspended or criticized by a regulatory or professional body, a court or tribunal, whether publicly or privately?	Yes	No	Ref
3	Have you ever been associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, approval, membership or a license to conduct trade, business or profession, or has had that registration, approval, membership or licence revoked, withdrawn or terminated?	Yes	No	Ref
4	As a result of the removal of the relevant licence, registration or approval mentioned in question 3 above, have you ever been refused the right to carry on a trade, business or profession requiring a licence, registration or other approval?	Yes	No	Ref



**K. SPECIFIC TEST TO ASSESS FITNESS AND PROBITY**

**If any answers to any of these questions is 'yes' please provide details on separate pages with proper referencing**

5	Have you ever been subject of any justified complaint relating to regulated activities?	Yes	No	Ref
6	Have you ever been charged or convicted of any criminal offence, particularly an offence relating to dishonesty, fraud, forgery, uttering a forged document, perjury any financial crime or other criminal acts or been involved in acts of serious financial or other misconduct?	Yes	No	Ref
7	Have you ever contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies?	Yes	No	Ref
8	Have you ever been a director, partner, or otherwise involved in the management of a business that has gone into curatorship,, insolvency or liquidation while you have been connected with that business or within one year after that connection?	Yes	No	Ref
9	Have you ever been dismissed, asked to resign or resigned, from employment or from a position of trust, fiduciary appointment or similar because of questions about your honesty and integrity?	Yes	No	Ref

**K. SPECIFIC TEST TO ASSESS FITNESS AND PROBITY****If any answers to any of these questions is 'yes' please provide details on separate pages with proper referencing**

10	Have you ever been disqualified, under the South African Companies Act or any other financial services legislation or regulation the object of which is the protection of the public against financial loss from acting as a director or serving in a managerial capacity?	Yes	No	Ref
11	Have you ever been diagnosed as being mentally ill or unstable?	Yes	No	Ref
12	Have you ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement?	Yes	No	Ref
13	Have you ever been the subject of any adverse judgment or award, in South Africa or elsewhere that remains outstanding or was not satisfied within a reasonable period?	Yes	No	Ref
14	Have you ever made any arrangements or composition with your creditors, filed for bankruptcy, been declared insolvent, had your assets sequestrated, or been involved in proceedings relating to any of these?	Yes	No	Ref

**K. SPECIFIC TEST TO ASSESS FITNESS AND PROBITY**

**If any answers to any of these questions is 'yes' please provide details on separate pages with proper referencing**

15	Have you ever been a senior officer of a company or a shareholder in a position to exercise significant influence in the company that:	Yes	No	Ref
	<p>(a) Has been the subject of any adverse judgment or award, in South Africa or elsewhere, which remains outstanding or was not satisfied within a reasonable period?</p> <p>(b) Has, in South Africa or elsewhere, made any arrangements or composition with its creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of the foregoing?</p>			

**DECLARATION**

I hereby declare that:

All the information provided (including any attachments) is complete and correct to the best of my knowledge and that there are no other facts that are relevant to the Board of Trustees for assessing my fitness and propriety;

I understand that the Board of Trustees may seek additional information from any third parties it deems necessary in view of assessing my fitness and propriety;

I undertake to bring to the attention of the Board of Trustees any matter which may potentially affect my status as being someone fit and proper as and when it arises; and

I understand that any false information provided could lead to my disqualification or my discharge once I am appointed.

I understand that my appointment by the Board of Trustees is dependent on the Registrar of Pension Funds being satisfied that I meet the fit and proper requirements as per the required information.

**Signature:**

**Date:**

## ANNEXURE C

### Notification of the Appointment of a Principal Officer

The form below informs the Registrar about the appointment of a Principal Officer. It should be completed by the Chairperson of the Board of Trustees.

### NOTIFICATION OF THE APPOINTMENT OF A PRINCIPAL OFFICER

**WHAT IS THE PURPOSE OF THIS FORM**

To inform the Registrar of Pension Funds about the appointment of a Principal Officer.

You need to fill in this form completely, accurately and legibly.

**WHO SHOULD COMPLETE THIS FORM**

The Chairperson of the Board of Trustees.

**ADDITIONAL INFORMATION**

This form requires basic information as required by law.

**SPECIAL NOTES**

- All information will be treated with the strictest confidentiality and will not be disclosed or used for any other purpose in so far as it may be required and permitted by law.
- This information is required to enable the Board of Trustees to comply with section 8 of the Pension Funds Act as amended by

A. NOTIFICATION
<p>I hereby give notice that we, the Board of Trustees of (Name and FSB Reference Number of Fund) have appointed (Name of Principal Officer) with effect from dd / mm / yyyy.</p>

B. PERSONAL PARTICULARS OF THE CHAIRPERSON OF THE BOARD OF TRUSTEES OF THE FUND:	
Surname	
First names	
Date of birth	
Identity number	
E-mail address	
Tel number	
Mobile number	
Residential address	

the Financial Services Laws General Amendment Act, 2008.

3. All the required attachments must be certified as true copies.
  
4. All documentation must be kept for a period of three (3) years.

Postal address	
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<b>C. FUND PARTICULARS</b>	
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Name of Fund	
--------------	--

Name of chairperson	
---------------------	--

E-mail address	
----------------	--

Tel number	
------------	--

Mobile number	
---------------	--

Residential address	
---------------------	--

Postal address	
----------------	--

<b>D. ATTACHEMENTS (must be certified as true copies)</b>		
<b>Item</b>	<b>Yes</b>	<b>No</b>
<b>Personal Questionnaire and Declaration Form</b>		
<b>Curriculum Vitae (if applicable)</b>		
<b>ID Document</b>		
<b>Criminal Record (if applicable)</b>		
<b>Other documents or attachments, such as qualifications and academic records</b>		

<b>E. DECLARATION</b>	
<p>I hereby declare that:</p> <p>All the information provided (including any attachments) is complete and correct to the best of my knowledge and that there are no other facts which are relevant to the Board of Trustees for assessing the fitness and propriety of the principal officer;</p> <p>I undertake to bring to the attention of the Registrar of Pension Funds any matter which may potentially affect the status of the principal officer's fitness and propriety, as and when such matter arises.</p>	
<b>Signature:</b>	<b>Date:</b>

## ANNEXURE D

### Notification of termination form

The form below informs the Registrar about the reasons for the termination of a Principal Officer's services, other than in the case of a voluntary resignation. It should be completed by Principal Officers whose services have been terminated by the Board of Trustees for reasons other than the objection by the Registrar.

### NOTIFICATION OF TERMINATION FORM



#### WHAT IS THE PURPOSE OF THIS FORM

To inform the Registrar of Pension Funds about the reasons for the termination of a Principal Officers services, other than for a voluntary resignation.

You need to fill in this form completely, accurately and legibly.

#### WHO SHOULD COMPLETE THIS FORM

Principal Officers whose services have been terminated by the Board of Trustees.

#### ADDITIONAL INFORMATION

This form requires basic information as required by law.

#### SPECIAL NOTES

1. All information will be treated with the strictest confidentiality and will not be disclosed or used for any other purpose in so far as it may be required and permitted by law.

#### A. NOTIFICATION

I hereby give notice that my services as a principal officer have been terminated effective from dd / mm / yyyy.

#### B. PERSONAL PARTICULARS OF THE PRINCIPAL OFFICER:

Surname	
First names	
Date of birth	
Identity number	
E-mail address	
Tel number	
Mobile number	
Residential address	



2. This information is required to enable the Principal Officer to comply with the provisions of section 8(6) of the Pension funds Act as amended by the Financial Services Law General Amendment Act, 2008.

3. Applicants with substantial information must attach an annexure.

Postal address

**C. FUND PARTICULARS**

Name of Fund

Name of chairperson

E-mail address

Tel number

Mobile number

Residential address

Postal address

**D. PERCEIVED REASONS FOR TEMINATION (provide detailed information)**

**STATEMENT**

I make this statement as required by section 8(6) of the Pension Funds Act.

My statement is:

- made in good faith
- made without any admission to liability; and
- made without prejudice to any of my rights.

**Signature:**

**Date:**