

LEGAL NOTICE NO OF 2008

THE RETIREMENT FUNDS ACT, 2005



(Act no. 5 of 2005)

THE RETIREMENT FUNDS DIRECTIVES, 2008

(Under section 69)

In exercise of the powers conferred by section 69 of the Retirement Funds Act, the Registrar of Retirement Funds hereby issues the following directives

Citation

1. These directives may be cited as the Retirement Funds Directives, 2008, and shall come into force on the 1st day of May, 2008.

Short title and interpretation

2. In these directives, unless the context otherwise requires-

“Act” means the Retirement Funds Act, 2005;

“Circular” means a notification issued by the Registrar instructing and advising the industry on matters related to the Act and any changes related to such notices previously issued by the Registrar in terms of the Act ;

“Regulations “ means the regulations issued by the minister in terms of section 69 of the Act;

Surplus” means the amount by which the assets of a retirement fund exceeds its liabilities;

“Contingency reserve account” means in relation to a fund an account of the fund to which shall be credited or debited such amounts as the board shall determine, on the advice of the valuator in order to provide for explicit contingencies; and

“Undesirable practice” means any practice retirement funds, Retirement Fund Administrators, Investment Managers, Custodians, intermediaries and other service providers engage in which may be considered by the Registrar to be harmful to the good name of the retirement funds industry.

Basic format of rules

3. The rules of a retirement fund shall correspond with the format issued by the Registrar in terms of RDP1.

Undesirable Practices

4. (1) The Registrar may declare a practice to be undesirable if he considers the practice to be harmful to the good name of the retirement fund industry.

(2) The Registrar shall declare a practice as undesirable by including a description of that practice in RDP 2.

(3) No retirement fund shall carry on a practice, which has been declared undesirable by the Registrar, and any retirement fund, which was engaged in a practice that has been declared undesirable, shall immediately cease to carry out that practice on inclusion of that practice in circular RDP 2.

(4) Any retirement fund which was engaged in a practice that has been declared undesirable and which is unable to comply with the provisions of paragraph 3 immediately, or will be unable to comply with the provisions of paragraph 3 immediately without materially harming its members interest, shall inform the Registrar in writing with reasons within 7 days of the inclusion of the undesirable practice in a circular of its situation.

(5) The fund referred to in paragraph 4 shall supply the Registrar with full details of its situation and shall submit a scheme to the Registrar for compliance with paragraph 3.

(6) The Registrar may in his sole discretion in writing with full reasons reject, amend or accept any scheme submitted in terms of subparagraph 5.

(7) Any person who contravenes the provisions of this Regulation, commits an offence and shall on conviction be liable to the penalty in terms of section 68 of this Act.

Indemnity and Fidelity guarantee insurance

5. (1) Any institution or body charged with the administration of a retirement fund shall take out and maintain professional indemnity insurance and fidelity guarantee prescribed by the Registrar from time to time in terms of RDP 3

(2) If the Registrar is satisfied that the guarantee is suitable the Registrar shall certify to that effect.

Payment and apportionment of Surplus

6. (1) After the expiry of a period of 12 months after the commencement of the Act, the management board of the fund shall ensure that the surplus of the fund is appropriately distributed as prescribed by the Registrar.

(2) Subject to paragraph (c), the board of a fund shall submit to the Registrar a scheme for the proposed apportionment of any actuarial surplus as at the effective date of the statutory actuarial valuation of the fund coincident with, or next following, the commencement date.

(3) The board shall submit the scheme not later than 18 months after the effective date contemplated in (b): provided that-

(a) if the board elects to apportion actuarial surplus at a date earlier than the effective date of the next statutory actuarial valuation, it may do so if the statutory valuation date is advanced to such earlier date;

(b) if the fund is liquidated in term of section 40 or 41 at the date prior to the effective date of the next statutory actuarial valuation, the effective date of the liquidation shall be surplus apportionment date; and

- (c) if the category of the members of the fund is converted from defined benefit to defined contribution and the effective date of the conversion is earlier than the next statutory actuarial valuation date of the conversion shall be the surplus apportionment date.

Valuation of assets of a retirement fund

7. The valuation of assets of a retirement fund shall be according to RDP 4.

Registrar's Conditions Attaching to Housing Loans

8. Any Fund which has received an application for a housing loan from a member or has been required to issue a guarantee for a member to obtain a loan in terms of the Act shall ensure that:

- (a) the provisions of the Employment Act, 1980, in respect of the one third deduction will be met;
- (b) the members employer has certified in writing that the deductions comply with the provisions of (a) above;
- (c) the repayment period shall not exceed 25 years from the date of the loan; and,
- (d) the interest rate shall not be less than the prevailing prime lending rate.

SCHEDULE 1

REGISTRAR'S DIRECTIVES

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Circular RDP1
KINGDOM OF SWAZILAND

OFFICE OF THE REGISTRAR OF RETIREMENT FUNDS

REGISTRAR'S DIRECTIVE - BASIC FORMAT OF RULES

The rules of a retirement fund should broadly correspond to the following format and may be changed to suit each fund's requirements. The Registrar, however, shall determine whether the rules are suitable and in the members' and sponsor's interest.

A complete copy of the rules is available from the Registrar on application.

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PROVIDENT/PENSION FUND

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DATE

REGISTRAR OF RETIREMENT FUNDS

Circular RDP 2

KINGDOM OF SWAZILAND

OFFICE OF THE REGISTRAR OF RETIREMENT FUNDS

REGISTRAR'S DIRECTIVE - PRACTICES DECLARED UNDESIRABLE

In terms of regulation 11 and by the authority vested in me in terms of regulation 15 I have deemed the following practice to be harmful to the good name of the retirement funds industry and hereby declare them undesirable. No person shall carry on the practice mentioned below from the date of its first inclusion in this circular.

Practice	Date of first inclusion in this circular
1.	

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DATE

REGISTRAR OF RETIREMENT FUNDS

Circular RDP 3

KINGDOM OF SWAZILAND

OFFICE OF THE REGISTRAR OF RETIREMENT FUNDS

REGISTRAR'S DIRECTIVE

INDEMNITY AND FIDELITY GUARANTEE INSURANCE

1. (1) Every Retirement Fund Administrator, Custodian, or Investment Manager shall furnish the Registrar with a guarantee protecting the assets that the Retirement Fund Administrator, Custodian, or Investment Manager manages or invests on behalf of a retirement fund.

(2) If the guarantee is in the form of an insurance policy, it shall be ceded to the Registrar as the sole beneficiary.

(3) If the Registrar is satisfied that the guarantee is suitable the Registrar shall issue a certificate using form RF.

(4) If the Registrar is aware that, in respect of any insurance policy that has been ceded to the Registrar as a guarantee, the Retirement Fund Administrator, Custodian, or Investment Manager is not performing or is negligent in performing his obligations under that policy which may result in the policy being void, the Registrar shall act against the Retirement Fund Administrator, Custodian, or Investment Manager in order to ensure compliance and may require him to submit guarantees in the form of securities.

(4) A person who has no professional indemnity insurance is prohibited from operating as a Retirement Fund Administrator, Custodian, or Investment Manager.

(5) The amount of professional indemnity insurance in terms of section 66 of the Act shall not be less than E5,000,000 and shall be sufficient to cover for projected premiums and if this sum is the minimum amount then the Registrar shall not permit the Retirement Fund Administrator, Custodian, or Investment Manager to collect premiums in excess of the amount of E5,000,000. The Minister may, on recommendation by the Registrar, from time to time revise this amount in terms of prudent standards.

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REGISTRAR OF RETIREMENT FUNDS

Circular RDP 4

KINGDOM OF SWAZILAND

OFFICE OF THE REGISTRAR OF RETIREMENT FUNDS

REGISTRAR'S DIRECTIVE

VALUATION OF THE ASSETS OF A RETIREMENT FUND

For the purpose of the Act the value of a fund's assets shall be determined in accordance with International Financial Reporting Standards (IFRS).

DATE:

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REGISTRAR OF RETIREMENT FUNDS

SANDILE C. DLAMINI
REGISTRAR OF INSURANCE AND RETIREMENT FUNDS

.....April, 2008