BOARD NOTICE

NOTICE 22 OF 2009

DIRECTIVE PF No. 3

Effective Date: 13 February 2009

FINANCIAL SERVICES BOARD

REPUBLIC OF SOUTH AFRICA

PENSION FUNDS ACT (ACT 24 OF 1956)

SECTIONS 15B, 15E, 15F, 15J AND 15K

SURPLUS APPORTIONMENT SCHEMES AND NIL RETURNS

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INTRODUCTION

PURPOSE

1. This Directive is issued in terms of section 33A of the Pension Funds Act, 1956, as amended.

2. It sets out the conditions of the Registrar of Pension Funds in respect of the provisions embodied in sections 15B, 15E, 15F, 15J and 15K of the Act and provides clarification in respect of other actuarial surplus issues.

3. This Directive takes effect on the date of issue.

4. The Registrar requires that any submissions made after **1 APRIL 2009** must be in the prescribed format as outlined in this Directive.

REFERENCES & DEFINITIONS

5. The following references are used throughout the Directive:

"Act"	Pension Funds Act, 1956, as amended
"Registrar"	Registrar of Pension Funds
"SARS"	South African Revenue Services
"LRA"	Labour Relations Act, No. 66 of 1995
"SAD"	Surplus Apportionment Date
"FMR"	Former member representative

6. The following defines commonly used terminology in the Forms to the Directive:

"First tier distribution" is where actuarial surplus exists which is sufficient only for allowing partial or full minimum benefit top-ups of pensioners and former members.

"Residual distribution" is where sufficient actuarial surplus exists for apportionment to all stakeholders after allowing for full minimum benefit top-ups of pensioners and former members.

SECTION I

GENERAL INFORMATION RELATING TO SURPLUS APPORTIONMENT SCHEMES AND NIL RETURNS

INTRODUCTION

1. Section 1 of the Act defines actuarial surplus as follows:

"actuarial surplus", in relation to a fund which is -

(a) subject to actuarial valuation, means the difference between -

(i) the value that the valuator has placed on the assets of the fund less any credit balances in the member and employer surplus accounts; and

(ii) the value that the valuator has placed on the liabilities of the fund in respect of pensionable service accrued by members prior to the valuation date together with the value of the amounts standing to the credit of those contingency reserve accounts which are established or which the board deems prudent to establish on the advice of the valuator;

(b) exempt from actuarial valuation, means the difference between -

(i) the fair value of the assets of the fund less any credit balances in the member and employer surplus accounts; and

(ii) the sum of the values of the amounts standing to the credit of all the accounts held for individual members, whether contributory or paid-up, plus the value of any other liabilities plus the amounts standing to the credit of any investment reserve account set up to facilitate the smoothing of fund return credited to member accounts and such contingency reserve accounts which are established or which the board deems prudent to establish:

Provided that, for the purpose of quantifying the actuarial surplus in terms of section 15B, the surplus utilised improperly by the employer in terms of section 15B(6) shall be added to the difference calculated in paragraph (a) or (b), as the case may be.

2. Every registered fund that commenced prior to 7 March 2002 must perform a surplus exercise and such funds cannot be exempted from this requirement.

3. All registered funds reflecting an actuarial surplus at SAD are required to submit a surplus apportionment scheme and funds with no actuarial surplus must submit a nil return as required in terms section 15B(11) of the Act.

4. Where funds were previously valuation exempt, such exemptions expired as at the first financial year-end or fund anniversary following 7 December 2003 (refer to Regulation 36 of the Act). Such funds are therefore accordingly required to submit an actuarial valuation report in terms of section 16 of the Act as at this date.

5. The SAD of any fund cannot precede 7 December 2001.

6. A statutory actuarial valuation report as at the SAD must be submitted before, or together with a surplus apportionment scheme or nil return.

7. A fund must submit its surplus apportionment scheme or nil return to the Registrar within 18 months of its SAD. In terms of section 37(3) of the Act, the Registrar may impose a penalty for the late submission thereof. Furthermore, the Registrar may exercise further remedies as outlined in section 15K(1), read with section 15B(10), of the Act.

STATUTORY ACTUARIAL VALUATION AS AT SAD

8. Form C1/D1 of the abbreviated nil return is deemed to be acceptable as an actuarial valuation report for purposes of a nil return, provided that the fund complies with the prescribed conditions set out therein and the Registrar is satisfied with the contents thereof. This principle may be extended to abbreviated bulk returns.

9. Valuators should take note of the requirement to be consistent in respect of valuation bases applied both in relation to different funds and over time.

10. Valuations should be performed in line with any standards set by the Registrar for the determination of actuarial surplus at the SAD, as well as the establishment of contingency reserve accounts in line with Regulation 35 of the Act.

11. The Registrar requires the inclusion of an analysis of the change in surplus (or deficit) since the previous statutory valuation in the report submitted as at the SAD.

12. In the case of Defined Contribution funds, in order for the Registrar to assess whether interest or bonus distributions were reasonable or whether actuarial surplus was distributed in line with actual returns, a table should be included in the valuation report indicating the rates of return actually earned on the assets of the fund as well as the rates of interest declared. (Also refer to para. 21 below).

13. Pension increases granted must be disclosed and appropriately motivated in the valuation report in line with the established pension increase policy of a fund.

CONTINGENCY RESERVE ACCOUNTS

14. In terms of Regulation 35 of the Act, the establishment and magnitude of any contingency reserve account by a fund –

    (a) must be motivated by the valuator in the relevant report on the statutory actuarial valuation; and

    (b) may be rejected by the Registrar, where the Registrar is not satisfied with any such motivation.

15. The contingency reserve account, included by a valuator, should contain a reasonable estimate of the likely costs of the surplus apportionment.

SURPLUS APPORTIONMENT SCHEMES & NIL RETURNS

16. The board of a fund has the right to advance the SAD where the exemption expired prior to the financial year-end or scheme anniversary following 7 December 2003.

17. Where the expiry of valuation exemption occurs earlier than the financial year-end or scheme anniversary following 7 December 2003, the board may elect to perform the surplus exercise at this date rather than the date specified in regulation 36 (section 15B(1)(b) of the Act).

18. The relevant prescribed forms are contained as Annexures to this Directive. Applicants are required, as far as is possible, to adhere to the prescribed formats and not deviate from them when submitting surplus apportionment schemes or nil returns.

19. Where a fund does not have an actuarial surplus as at SAD, a nil return, as required in section 15B(11) of the Act, must be submitted to the Registrar confirming this fact.