Financial Services Board (FSB) Information Circular PF130 issued 11 June 2007 - Checklist

This circular was issued by the FSB in order to provide guidelines to the effective management of Boards of Trustees of Pension and Provident funds. In essence it pertains to good governance and merely provides guidance in this regard.

We have highlighted below the main points that you should be aware of when acting in a trustee or principle officer capacity or when advising a retirement fund.

*This document serves as a mere guide and should not be used as the definitive and only source of information in implementing any procedures in your business and for advising clients. Your due diligence must be done.*

PREAMBLE IN PF130

- A pension or provident fund is based on the following:
  1. Benefits promised in terms of rules of fund;
  2. Board of management (trustees);
  3. Assets held in trust for those persons who will ultimately benefit from them;
  4. People in a trust or fiduciary relationship to funds must act with integrity;
  5. Must act in terms of pensions law, common law, customary law, regulations, registered rules of fund, codes of conduct, and policies that apply to the fund;
  6. Must act with a degree of discretion in making decisions;
  7. Not all circumstances may be circumscribed or clearly defined within a legal framework. Necessitates governance measures;
  8. Governance includes values and ethical principles which requires a certain standard of behavior of the board.

A FUNDAMENTAL PRINCIPLE IS THE BOARD:

- Must act with utmost good faith towards the fund and in the best interest of all members.
- Must give full and proper effect to the rules of the fund.
- Should always give full and proper effect to the rules of the fund.
- Deals with all matters relating to the fund and its members in accordance with the fiduciary duties fairly and with respect.
**STAKEHOLDERS**

- In the governance of the fund there are the fund members (pensioners, former members, deferred pensioners, dependents, nominees of the members and beneficiaries;
- Other stakeholders in the governance of the fund are the employer, sponsor and registrar.

**GOOD GOVERNANCE**

Good governance is to ensure that:

- Benefits in terms of the rules of the fund are actually delivered;
- Benefits are optimized and associated investment risks are minimized, with these opposing concepts being appropriately balanced against each other;
- Provision of benefits and the administration of the fund warrants that the cost implications for members and beneficiaries are transparent and quantifiable by the stakeholders.

**WHO IS RESPONSIBLE FOR THE GOVERNANCE OF THE FUND?**

- The board of the fund
- Assisted by the principal officer who is responsible for the governance of the fund.

**FUNDAMENTAL TO THE GOVERNANCE OF A FUND IS THE EXTENT OF THE ACCOUNTABILITY OF THE BOARD AND PRINCIPAL OFFICER**

- Principal Officer is accountable to the board.
- The board is accountable to members, beneficiaries and registrar for its governance of the fund.
- The board is also accountable to the employer (in respect of the rules of the fund) and sponsor (set up fund confirming provision of benefits in terms of the rules of the fund).

  Members and beneficiaries require legal recourse or remedies if benefits are not provided to them as stipulated in rules of the fund.
**THE MEANING OF THE ACCOUNTABILITY REQUIREMENT**

The accountability requirement means collectively and individually the board members may be held liable for any breach in governance which results in loss to the fund, members and beneficiaries in the provision of benefits.

Board should adhere to the rules and if any breach by a member must institute disciplinary measures.

**COMPLYING WITH THE REQUIREMENTS OF THE APPLICABLE LEGISLATION**

The board and principal officer must at all times ensure governance of the fund complies with the requirements of the applicable legislation and the board should obtain expert advice where necessary.

**WITH THE ABOVE AS BACKGROUND, THE PRINCIPLES OF GOVERNANCE ARE SET OUT BELOW UNDER THE FOLLOWING HEADINGS:**

- The governance by the board of itself and the governance structure
- The governance by the board of the:
  - Operations of the fund;
  - Governance mechanism; and
  - Management of the relationships in the governance of the fund.

**EVERY FUND SHOULD HAVE:**

- A code of conduct;
- An investment policy statement (IPS);
- A communication policy;
- A performance assessment tool for trustees which will inform their education and training policy.

This list is by no means complete as there are many other policies needed as well.

**REFERENCE IN THE ANNUAL FINANCIAL STATEMENTS**

Reference should be made in the annual financial statements to:

- The fact that the fund has these documents;
- That the board has viewed them during the year; and
- That beneficiaries have access to them on request or via an appropriate web site or via the principle officer.
Communication to the board and members should be done in an adequate, appropriate and cost effective manner to afford all parties the opportunity to understand the information and make informed decisions.

Below are numbered the Principles by which a Board of Trustees must abide by. *(It is being suggested that this may become a legal requirement in time)*

**SECTION 1  GOVERNANCE BY THE BOARD**

**Principle 1. ROLES, RESPONSIBILITIES AND ACCOUNTABILITIES OF THE BOARD AND THE GOVERNANCE STRUCTURE**

This section covers the duties and responsibilities of the Chairman, Principal Officer and the Board of Trustees. For full details refer to PF130.

It also covers conflicts of interest which are of importance to anyone dealing with a Board of Trustees. The most important of these are:

1. **The fiduciary duty owed by the board and the principal officer requires that they avoid conflicts of interest.**

   The following should be appreciated by the board and principal officer in this regard:

   ➢ The proper resolution by the board of any conflict of interest is necessary for promoting the credibility of the governance of the fund and enhances the trust of both members, beneficiaries and stakeholders;
   ➢ The board should distinguish conflicts of interest which may be structural, and therefore unavoidable, and those conflicts of interest which can be avoided or, if this does not compromise the credibility of the governance arrangements managed appropriately;
   ➢ Potential or perceived conflicts of interest are as serious as actual conflicts of interest;
   ➢ Any conflict of interest situation should be fully recorded in the board minutes, which should include details as to how the board has resolved the matter.

2. **Members of the board should be able to demonstrate their independence. This is demonstrated by any discretion of the board being exercised in a manner which is:**

   ➢ Impartial;
- Fully informed;
- Not influenced by inappropriate considerations;
- Consider what is in best interests of members;
- Should appreciate the duty of good faith owed by the fund to the employer the sponsor is subordinate to this requirement;
- The board is not responsible in an umbrella fund, preservation fund or RA fund for the viability of the business proposition of the sponsor in respect of such a fund.

3. **Respect confidentiality**

No board member may disclose information about the operations of the board or the fund unless authorized to do so by the board itself.

4. **Code of conduct**

The Board must have code of conduct which outlines and confirms its duties and obligations. Each board member completes an acceptance of duties form. Annual or more frequently declaration of interests as set out in the funds codes of good practice/conduct needs to be conducted.

**Principle 2: COMPOSITION AND COMPETENCY OF THE BOARD AND DELEGATION THROUGH THE USE OF SUB-COMMITTEES**

1. **Sufficient capacity**

- Board members should have sufficient capacity to deal diligently and thoroughly with their duties and responsibilities;
- Employer appointed trustees should have the necessary skills and it is the employer who has to ensure they have;
- To minimize conflict of interest the employer should preferably not appoint persons to the board who would otherwise be involved in decisions on behalf of the employer in respect of the fund;
- In umbrella, preservation and Retirement Annuity funds the credentials of independent trustees should be verified with the various regulatory authorities and/licensing institutions to ensure that they have the necessary fitness and propriety skills to exercise their governance responsibilities.
2. Professional expertise

- Large funds may benefit from professional trustees i.e. lawyers, actuaries and CA's where costs are justified;

- It is recommended that at least 50% of umbrella funds, preservation funds and RA fund’s Trustee Boards be independent.

3. Independent board members should not:

- Be employees of the employer participating in the fund;

- Be controlled by or in common control with the employer, administrator or sponsor of the fund;

- Provide services to the fund, employer or sponsor;

- Any variations should be dealt with in the rules or the code of conduct.

4. Sub-committees

- Sub-committees may be established to exercise specific oversight responsibility or to carry out, where rules permit it, any board delegated responsibility.

- Any such sub-committee should have a written mandate which sets out clearly its functions, scope and authority as well as the criteria and membership requirements.

5. Clear terms of reference

Clear terms of reference should be set by the board for the sub committees which should be adhered to at all times. Sub-committees should operate within the set parameters.

6. Sub-committees may include:

- Audit and administration;

- Investment;

- Legal;

- Communication/education;

- Risk benefit;
7. Provision of sub-committee information to main board

Sub-committees to inform board of any risks relating to its functions to be performed and process controls necessary to mitigate that risk

Principle 3:  BOARD ORIENTATION AND EDUCATION

1. Rigorous and comprehensive training

New Board members at the expense of the fund post appointment and election receive rigorous and comprehensive training on:

- Legislative;
- Regulatory;
- Governance principles;
- To minimize their risk of liability and safeguard against bad decision making.

2. Ongoing education

Board members should be educated on an ongoing basis, at the cost of the fund, relating to new matters about the fund to ensure they acquire and maintain an understanding of:

- Risk management;
- Investment risk and strategies;
- Benefit structures;
- Legal issues;
- Regulatory and compliance requirements;
- Taxation;
- Actuarial reform issues.
3. Continuous and life-long learning

Training/education is an ongoing process with emphasis on continuous and life-long learning.

**Principle 4: BOARD ASSESSMENT AND BREACH OF CODE OF CONDUCT**

1. Performance appraisals

Should be subject to a performance appraisal at least once a year to assess the effectiveness of the board, principle officer and sub-committees to highlight improvement areas.

2. Breaches by a board member

Where a board member breaches the code of conduct and/or acts in contravention of responsibilities imposed upon him/her then the board should take such action as it considers appropriate, based on any defense by the board member, and should the rules of the fund permit. The following are some of the actions that may be taken:

- Request they vacate their office;
- Suspension subject to any terms and conditions;
- The action is to preserve the integrity of the board and its governance role;
- Action should not be driven solely on whether the breach gave rise to financial or other reputational prejudice to the fund or stakeholder;
- Each matter should be assessed on the facts and merits of the situation with the appropriate form of discipline.

**GOVERNANCE BY THE BOARD AND THE OPERATION OF THE FUND**

**Principle 5: INTERNAL CONTROLS AND GOVERNANCE MECHANISMS**

1. Primary function is rigorous oversight

- Clear identification and assignment of responsibilities to either persons with appropriate skills employed by the fund (self-administered) or by way of written agreement to a licensed administrator/long term insurer.
- To exercise an oversight role.
- Ensure adherence to and compliance with all statutory and regulatory requirements.
Appreciate the rights and duties of all stakeholders.

2. **Oversight responsibility requires there to be:**

- Regular assessment of the performance persons and entities involved in the operation of the fund in terms of the service level agreements, mandates and performance contracts etc.
- Regular review of services, fees and all costs associated with the operation of the fund.
- Regular review, preferably with the independent external advisers, of the information processes, operational software systems, and accounting and financial reporting systems involved in the operation of the fund.
- Monitoring and resolution of actual, potential or perceived conflicts of interest amongst those involved in the operation of the fund.
- Protection of confidential information.
- Regular review of compliance with regulatory and statutory requirements of the fund.

**Principle 6: EXPERT ADVISORS**

1. Board members are not obliged to have all the expert skills necessary for the day to day operation of a fund. It is reasonable for the board to engage professionals:

   - Accountant;
   - Actuary;
   - Investment manager or financial advisor;
   - Lawyer; and
   - Other experts.

**Principle 7: RISK MANAGEMENT**

1. The management of risk in a fund is a vital component of the governance of the fund. Every fund should have in place a risk management policy which should be reviewed annually and should include:

   - Identification of risks facing the fund;
   - The impact of such risk to the fund;
➢ Process or controls necessary to reduce the impact of the key risks;

➢ The monitoring of the risk process or controls to ensure that they are appropriate;

➢ The communication to members and the stakeholders of the funds risk management policy, including the identification of the key risks and the process or controls in place to manage them. This may be outlined in the financial statements of the fund.

Principle 8: THE INVESTMENT PERFORMANCE OF THE FUNDS ASSETS

The investment performance of the fund assets is the most important factor in determining whether the fund will be able to deliver on the retirement benefits or whether there will be a sufficient amount accumulated for adequate replacement of income.

A Fund investment policy statement (IPS), should be communicated to stakeholders, and reviewed annually (when considering the financial statements) to ensure it remains appropriate in terms of the member profile and needs of the fund. The IPS should contain the following minimum information:

➢ Who the fund’s investment advisors are;

➢ Where applicable, who the custodian of the investors are;

➢ Whether the fund has a socially responsible investment policy, and its definition of such an investment type;

➢ Whether the investments are in the form of an insurance policy or a segregated mandate, and the reasons thereof;

➢ What the targeted benchmarks are in respect of each asset manager. And asset class held by the fund, and what the previous year’s actual performance was in relation to the fund’s benchmarks, as well as the tracking error;

➢ The level of risk attributed to each asset class/asset manager;

➢ Whether or not the fund exercises its ownership rights in respect of investments held by it (and if so, what the proxy voting policy is) and, if not, the reasons therefor.
MANAGEMENT OF STAKEHOLDER RELATIONSHIPS

Principle 9: COMMUNICATION AND ACCESS TO INFORMATION

Access to Information:

1. Board members should have unfettered access to all relevant information relating to the fund to enable them to make an informed decision.

2. All information about the fund is confidential and may not be released to any person unless such person has lawful right to that information, such as the rights of members to obtain the registered rules of the fund, actuarial valuations and audited financial statements.

   In particular, no person, other than board members and service providers should have access to the minutes of Board meetings and membership details unless such information is required for a lawful purpose.

   The board should not, however, be obstructive in supplying information when the person requesting it has a lawful right to access such info.

3. The information about a fund, its membership and investments belong to the fund and the board should ensure that where this information is held by a service provider, that it is returned to the fund should that relationship be terminated.

4. A communication policy should be established for the disclosure of the fund information to members and beneficiaries. Cognizance should be taken of the registrar’s prescribed minimum disclosure requirements to members and beneficiaries.

Principle 10: MEMBERS AND BENEFICIARIES (PROTECTION OF RIGHTS)

The board should communicate aspects of the operation of the fund, including the performance of the fund’s investment.

Where a fund offers member investment choice (this is now a requirement in terms of Regulation 28), the details of the investments in respect of which members may make an election should be described setting out the severity of any associated risk and the performance benchmarks, as well as the underlying type of investments. Members should be able to make an informed decision from such information. Members should also be reminded periodically of the need to review the investment choices made by them.
Principle 11: EMPLOYER AND SPONSOR

A fund owes the employer and sponsor (where different from the employer) a duty of good faith.

Principle 12: APPROVED SERVICE PROVIDERS

When selecting approved service providers the board must be aware of possible conflicts of interest. The board cannot delegate its responsibility and therefore can be held jointly and severally liable for the actions of their mandated agents.

A policy should be established which sets out the frequency of reporting by the administrators and service providers to ensure that the fund is administered and managed properly.

Principle 13: REGULATORY AUTHORITIES/EFFECTIVE SUPERVISION

These must be complied with and any query from the registrar, Pension Funds Adjudicator and any court must be dealt with timeously.

CONCLUSION

Please note the annexures to PF130 for more information:

Annexure A: A board Code of Conduct
Annexure B: Good Governance guidelines to an investment policy statement
Annexure C: Trustees Declaration of interest