

Legislative and Industry Updates

A. FSB levies: 2015 / 2016

	% change	2015/2016	2014/2015
Retirement Funds' Levies			
Basic fund levy (including preservation funds but excluding retirement annuity funds)	0%	R1 138.00	R1 138.00
Member levy	2%	R12.45	R12.21
Maximum levy	2%	R2 411 731.00	R2 364 442.00
Pension Fund Adjudicator Levy	3%	R4.39	R4.27
Administrators' Levies			
Basic levy	2%	R6 718.68	R6 586.94
Levy per fund administered by administrator	2%	R523.78	R513.51
Levy per member under the administrator	2%	R0.64	R0.63

B. Draft Information Circular: winding up and cancellation of shell or dormant fund without trustees or a liquidator

The Registrar has issued a lengthy draft information circular on how to close shell and dormant funds where there is no liquidator or properly constituted board of trustees.

Closing a Dormant Fund

The Registrar will appoint a trustee who must ensure that a properly constituted board is put in place.

Where there are members who can be reached

If there are members, they should be given the right to elect trustees. The rules must set out the process to be followed if members don't elect trustees and the trustees are therefore employer appointed only.

Where members cannot be reached and if a board cannot be constituted

If the employer exists but members cannot be reached, a curator must be appointed. The Registrar will apply to court for a curator.

Disposing of assets

If the rules provide that the fund must be liquidated if certain events occur, a liquidator must be appointed. Funds concerned about liquidation costs may apply to the Registrar for an exemption.

Definitions: Shell and Dormant Funds

Dormant fund: is a fund which is not an active fund or a shell fund and it does not have a properly constituted board.

Shell fund: is a registered fund which has no assets or liabilities. This includes funds which were registered but which never conducted business as a fund.

Closing a Shell Fund

An interested person may write to the Registrar to request that the fund's registration be cancelled. The Registrar must be satisfied that the fund is a shell fund before its registration is cancelled and certain prescribed documents must be submitted to the FSB. Thereafter adverts must be placed in the Government Gazette, FSB website and newspapers giving 30 days' notice of the intention to cancel the fund's registration.

Once the 30 days has passed, the Registrar will then be satisfied that it is a shell fund and has ceased to exist.

C. Draft Information Circular: participation, termination and re-commencement of participation by employers in umbrella funds

A draft Information Circular providing process guidance to trustees of umbrella funds on the commencement, termination, and re-commencement of an employer's participation in an umbrella fund, has been released for comment. A short summary of this circular is set out below:

- Type A umbrella funds are funds governed by general rules plus a set of special rules for each participating employer
- Type B umbrella funds are funds with a set of general rules only. Funds with multiple, related participating employers as well as bargaining council, sectoral and municipal funds are Type B umbrella funds
- A new employer starts its participation in a Type A umbrella fund when the Registrar approves the employer's special rules
- An employer starts its participation in a Type B umbrella fund when it complies with the requirements for participation in terms of the fund's general rules
- Termination of participation must be in accordance with the partial liquidation rule in the fund's general rules, unless the fund is exempt from the liquidation provisions
- For Type A umbrella funds, on partial liquidation of a participating employer, an amendment must be registered to delete the special rules for the liquidated employer. This applies to past terminations before the publication of the circular. The draft circular doesn't clarify whether all employers exiting a fund must go through a section 28 partial liquidation, even if they exited via a full section 14 transfer out. It is also not clear whether umbrella funds will be required to revisit every past participating employer's termination and submit rule amendments to the FSB. It is hoped that the final circular will clarify this
- In the past, the Registrar "de-registered" the participation of an employer and issued a de-registration letter. The Registrar says there is no provision in the Act for the "de-registration" of an employer's participation in an umbrella fund and therefore this will no longer be allowed
- Where a participating employer was "de-registered" and then re-started participation in the same fund, the rules must be amended to allow for this
- Funds will be required to complete affidavits confirming and providing participating employer details to the Registrar
- The Registrar will only amend its records once she is satisfied that there was no prejudice to members when the participating employer was de-registered or when it re-started participation in the umbrella fund.