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## APPOINTMENT OF A PRINCIPAL OFFICER OR DEPUTY PRINCIPAL OFFICER IN TERMS OF SECTION 8 OF THE PENSION FUNDS ACT

Two documents have been published that deal with matters relating to the appointment of Principal Officers and Deputy Principal Officers:

*Board notice 57 of 2015 prescribes the period within which a fund must appoint a replacement if its Principal Officer is absent from the country or is incapacitated from discharging his/her duties.*

*Information Circular 2 of 2015 provides clarity regarding some issues relating to the appointment of a Principal Officer or Deputy Principal Officer.*

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### BOARD NOTICE 57 OF 2015

Following the promulgation in 2014 of the Financial Services Laws General Amendment Act 2013, Section 8 of Pension Funds Act allows the Registrar of Pension Funds to prescribe a period within which a fund must appoint a replacement if its Principal Officer is absent from the country or unable for any reason to discharge their legislated duties.

This Board Notice prescribes the period as being 90 days after the date on which the fund becomes aware of the absence or incapacity, and will apply to all such situations from 10 March 2015 onwards.

### INFORMATION CIRCULAR 2 OF 2015

This circular was issued on 18 March 2015 and provides clarity on some matters relating to the replacement of a Principal Officer or appointment of a Deputy Principal Officer.

- **Replacement of a Principal Officer:**

The point is made that the 90 day period prescribed in Board Notice 57 (refer above) is a maximum, and boards of funds are reminded that delays in appointing a replacement Principal Officer could affect the efficient administration and management of their funds. If the absence of a Principal Officer could result in prejudice to a fund or its members, then a period shorter than 90 days would be appropriate and a board would be expected to act accordingly.

- **Appointment of Deputy Principal Officer:**

The Financial Services Laws General Amendment Act 2013 introduced the ability for funds to appoint a Deputy Principal Officer to whom the Principal Officer could delegate duties according to a system of delegation set out in the fund's rules and any conditions determined by the Principal Officer. The Principal Officer would not, however, be thereby relieved of responsibility for anything so delegated. In particular, if a fund has a Deputy Principal Officer then that person would act in place of an absent or incapacitated Principal Officer until the fund was able to appoint a replacement.

The Information Circular clarifies the following points:

- A fund's rules need to be amended accordingly if it wishes to be able to appoint a Deputy Principal Officer and allow the Principal Officer to delegate functions to that person.
- The law confers on a Deputy Principal Officer the duty to act in place of an absent or incapacitated Principal Officer, hence no formal delegation is required in that case.
- A Deputy Principal Officer acting as Principal Officer would be required to comply with Directive 5 and the standards required of a Principal Officer during the relevant period. (*Directive 5 was issued by the Financial Services Board in 2010 and governs the appointment and termination of appointment of Principal Officers.*)
- Notwithstanding the fact that there is no legal requirement to inform the Registrar of Pension Funds when a Deputy Principal Officer is acting in place of an absent or incapacitated Principal Officer, the Registrar *requests* that his office be informed in writing in circumstances where such a situation is likely to exceed 30 days, and that the Deputy Principal Officer's name and contact details be provided to them.

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## WHAT DOES THIS MEAN FOR YOU?

Actions to be taken by boards of funds:

*Note the requirement to replace the Principal Officer within 90 days should the need arise, and be ready to move quickly depending on the needs of the fund.*

*Consider whether you would like to appoint, or be able to appoint, a Deputy Principal Officer, in which case make the necessary changes to your rules and your policies and procedures.*

*Note the additional implications set out above in the event that you decide to have a Deputy Principal Officer.*

Your Robson Savage consultant will be glad to provide any further input you might require, and will ensure the matter is raised for discussion at a future board meeting.

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