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## MANUAL

*IN ACCORDANCE WITH*

**THE PROMOTION OF ACCESS TO  
INFORMATION ACT (NO. 2 OF 2000)**



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# **MANUAL**

COMPILED IN COMPLIANCE WITH SECTION 51 OF  
THE PROMOTION OF ACCESS TO INFORMATION ACT, 2000

## **Accessing Our Fund Information**

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### **The Tongaat-Hulett Pension Fund**

The Tongaat-Hulett Pension Fund  
August 2002  
P O Box 3, Tongaat, 4400  
Tel: 032 439 4000 • Fax: 032 944 8283

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## **SECTION 1**

### **Preamble**

The Promotion of Access to Information Act came into operation on 23 November 2001. Section 51 of this Act requires that a private body compile a manual giving information to the public regarding the procedure to be followed in requesting information from the private body when any rights of the individual need to be exercised or protected.

We have compiled this manual, not only to comply with the provisions of the Act, but also to foster a culture of transparency and accountability in our environment and to ensure that the people of South Africa have effective access to information to enable them to more fully exercise and protect their rights.

Inside these pages you will be able to view the categories of information that this fund possesses. You will also be shown the correct procedure to follow should you require access to any of this information.

## **SECTION 2**

**Full Name of Fund** The Tongaat-Hulett Pension Fund

(Registration No. 12/8/2451/2)

**Registered Address** Amanzimnyama Hill  
Tonga

**Postal Address** P O Box 3  
Tonga  
4400

**Telephone Number** 032 439 4000

**Fax Number** 032 944 8283

**Information Officer Details** Stuart Booth  
e-mail Stuart.Booth@tonga.co.za

## **SECTION 3**

### **Human Rights Commission Guide**

Section 10 of the Act requires the Human Rights Commission to publish a guide, in each of the official languages containing information reasonably required by a person wishing to exercise or protect any right in terms of this Act. The guide will only become available in August 2003 .

The Human Rights Commission may be contacted at:

Address: Private Bag 2700 Houghton 2041,

Telephone: (011) 484 8300

Facsimile: (011) 484 0582

Website: <http://www.sahrc.org.za>.

## **SECTION 4**

### **Information Available in terms of This Act**

This fund holds the following categories of information:-

#### **Claims (Withdrawals, Retirements, Deaths & Disabilities)**

- Withdrawal of Member form – PF3
- Calculations (where available), or Actuarial notification – PF3/PF10
- Tax Application (where applicable)
- Tax Directive (where applicable)
- IT 88 notifications
- Tax Certificate (Duplicate - where applicable)
- Employee / broker payment instruction (where applicable)
- Section 37D deduction instruction (where applicable)
- Copy of any other court order against benefits
- Option letter
- Payment letter
- Copy of cheque (or cheque/EFT payment reference)
- Trustees' Resolution - Disposal of benefit (deaths only) – only discretion cases
- Insurance received - statement by insurer (deaths only)
- Copy of death certificate
- Statement by Employer (disability only)
- Statement by Employee (disability only)
- Acceptance / Declination Letter (disability only)

#### **Member Data**

- New entrant data – Membership form
- Contribution records - registers
- Statement of member fund value – Annual Member Statement



**Section 14 Transfers / Liquidations**

- Calculations – actuarial values advised by the actuary
- Option letters
- Tax application forms (where applicable)
- Tax directives (where applicable)
- Tax certificates (duplicate - where applicable)
- Payment letter (**liquidations only**)
- Copy of S14 application lodged (transferor fund)
- Copy of S14 (1) (e) certificate (transferee and transferor funds)

**Pensioners:**

- Special tax directives, including IT 88's, garnishees, etc.
- Commutation of pensions - calculations
- Pensioner increase notification
- Certificates of existence
- Study certificates
- Death certificates

**Disability**

- Medical Reviews - correspondence (where applicable)
- COCD ( certificate of continued disability )
- Escalator notification
- Payment/Benefit confirmation letter
- EFT payment reference
- Recovery Documentation
- Letter of Suspension/Reinstatement from underwriter

**Accounting records**

- Cashbooks and reconciliation to bank
- General Ledgers
- Trial Balances
- Annual financial statements
- Audit files with working papers
- Bank statements of fund bank accounts
- EFT files (ACB whilst still applied)
- Deposit slips (where applicable)

**Miscellaneous**

- Copies of signed rules and amendments
- Minute books
- Trustees registers
- Original or copies of all insured benefit policy documents
- Documentation relating to the review of insurances on an annual basis as well as the quotations obtained from insurers to a rebroke exercise
- Agendas for all meetings held
- Investment manager mandates or policies of insurance depending on the nature of the investment
- Copies of statements detailing the asset values for a fund
- Copies of communication sent to members of the funds in respect of specific events e.g. Trustees' reports, changes to death benefit structure, changes to fund structure etc
- Copy of service agreement between fund and Administrator
- Correspondence to the trustees in respect of fund matters
- Correspondence to members/pensioners, where applicable
- Fund statutory valuation reports
- Confirmation as to appointment of Principal Officer and Actuary of Fund
- Copies of Pension Fund Adjudicator complaints lodged

**Procedure For Requesting Access To The Above Information**

A person is required to complete a request form which is available from our Information Officer. There is a prescribed fee for requesting and accessing information (Regulation 5 of the Regulations under this Act, as published in Government Notice No. 223 dated 9 March 2001). Details of these fees are available on request. Please note that the points set out below must be followed when requesting information:-

- The request must be made to the Information Officer whose name and contact details are specified in Section 2 above.
- Any request for access to records in terms of the Act must be completed on the prescribed form in terms of the Act and the Regulations thereto.
- Please note that the Fund is a separate legal entity from the employer(s) that participate in the Fund as well as from the Fund's administrators, auditors, consultants, actuaries and other advisors/service providers.

- The requester must provide sufficient detail on the request form to enable the head of the private body to identify the record and the requester. The requester should also indicate what form of access is required.
- The requester must identify the right that he or she is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right.
- If a request is made on behalf of a person, the requester must then submit proof of the capacity in which the requester is making the request to the satisfaction of the head of the Fund.
- The head of the Fund must notify the requester (other than a personal requester) by notice, requiring the requester to pay the prescribed fee (if any) before further processing the request.
- The head of the Fund will then make a decision whether to grant the request or not and notify the requestor in the required form.
- If the request is granted, then a further access fee must be paid for the search, reproduction and preparation, and for any time that has exceeded the prescribed hours to search and prepare the record for disclosure.

## **SECTION 5**

### **Information Available in terms of Other Legislation**

#### **The Pension Funds Act 24 of 1956**

- The registered rules of the Fund (including amendments) are available on demand by a member of the Fund on payment of a fee of R25.
- The following records are available for inspection at no charge at the registered address of the Fund;
  - the last revenue account and balance sheet of the Fund;
  - the registered rules of the Fund;
  - the last report by a valuator prepared in terms of section 16 of the Pension Funds Act, 1956;

Note – in terms of section 22 of the Pension Funds Act, any person (upon payment of prescribed fees) may inspect at the office of the Registrar of Pension Funds any record referred to in (a) and (b) above and make a copy thereof or take extracts therefrom, or obtain from the Registrar of Pension Funds a copy thereof or extract therefrom. The Registrar of Pension Funds may be contacted at:

Address: 446 Rigel Avenue, Pretoria  
Telephone: (012) 428 8000  
Fax: (012) 347 0221  
Website: <http://www.fsb.co.za>

## **SECTION 6**

### **Information Automatically Available**

The following categories of records are automatically available for inspection, purchase or photocopying. In other words, you do not need to request this information in terms of the Act.

Request forms for these categories of information are also available from the information officer.

**NONE**

## **SECTION 7**

### **General**

#### **Introduction**

The Promotion of Access to Information Act, 2000, came into operation on 9 March 2001.

The Act allows individuals to obtain information or records held by a public institution (such as a Government department or municipality), or a private body which carries on any trade, business or profession. Accordingly it enables members of the public and competitors to information held by companies.

All private bodies must, by 15 August 2002, compile a manual, which must be updated on a regular basis, setting out the procedures to be followed so as to facilitate a request by a member of the public for access to the records of a private body.

In the case of a fund, the obligation to establish the manual is placed with the Principal Officer or any person duly authorised by the Principal Officer.

The manual must stipulate how a request for information must be submitted, the fees which are to be charged for producing information and generally the procedures to be followed.

The head of a private body is obliged to refuse access to certain categories of information. This relates particularly to information held by a private body and which is owned by a third party.

In regard to information owned by the private body, the private body may refuse a request for the information if such information contains trade secrets or the disclosure of the information would cause harm to the commercial or financial interests of the body.

Certain categories of information have to be disclosed.

Where the head of a private body receives a request for information and such information relates to a third party, the private body must advise the third party before making the disclosure.

Where the head of a private body refuses access to information the aggrieved applicant may apply, within thirty days, to a Court.

Regulations have been published in the Government Gazette setting out the fees which a private body may charge for providing information.

### **General Right of Access**

A member of the public is entitled to access to any record of a private body if such record is required for the exercise or protection of any rights.

The reference to "rights" is likely to be construed as a reference to a right contained in the Bill of Rights to the Constitution.

South Africa's Constitution is unique in that it applies not only vertically, that is as between individuals and the State, but also horizontally, that is between individuals. The horizontal application of the Bill does not apply in all circumstances and is an area of constitutional law which is being developed. The Promotion of Access to Information Act however specifically states in its preamble that:

"Section 8 of the Constitution provides for the horizontal application of the rights in the Bill of Rights to juristic persons to the extent required by the nature of the rights and the nature of those juristic persons."

It follows that whether in fact a particular record "is required for the exercise or protection of any right of any individual" will depend in each case on the circumstances of the matter. Companies should therefore adopt internal procedures whereby they seek legal advice where there is any doubt as to an entitlement to the record.

Section 52 of the Act states that the head of a private body may on a voluntary basis submit to the Minister a description of categories of records that are automatically available without a request having to be made. In these circumstances the Minister must on a periodic basis publish a description so submitted. This could, for example, include all statutory licences or permissions which a private body may hold.

### **The Manual**

By 15 August 2002 a private body must compile a manual setting out their contact details, a guide that has to be followed, the categories of records which are available without a formal request having to be made, the location of such records and the procedures to be followed and the contact person in regard to making a formal request. The manual must be made available when requested.

**Manner of Access**

The form of request will be on a prescribed form. The company is entitled to recover fees for providing the records. For example, for every photocopy of an A4 size page, the fee is 60 cents, for a copy of a stiffy disk the fee is R5.00, and for a compact disc it is R40.00.

The request fee payable by every requester is R35.00.

Procedures exist for the head of the private body to sign an Affidavit should the document not be found. If a request is refused reasons for the request must be submitted. The head of the private body must make his decision/provide the documentation within 30 days. If the head of the private body does not provide the information within 30 days or formally refuse access then he is deemed to have refused access.

Special procedures are in place in regard to providing information as to the health records of an individual and for counselling should the records be of the requester and the head of the private body is of the view that the disclosure of the records may cause serious harm to his or her physical or mental health.

**Grounds for Refusal of Access to Records**

Subject to certain exceptions, the head of a private body is obliged to refuse a request for access to a record if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

Furthermore the head of a private body must refuse a request for access to a record of the body if the record contains trade secrets of a third party, financial, commercial, scientific or technical information of a third party which would cause financial harm to that third party or information supplied in confidence by a third party and the disclosure of the information is expected to place that party at a disadvantage. This restriction however does not apply if the information relates to product or environmental testing and the disclosure would reveal a serious public safety or environmental risk.

If the disclosure of information would constitute an action for a breach of a duty of confidence owed to a third party in terms of an agreement, it must be refused. Information which is privileged from production in legal proceedings may not be disclosed as well as information which prejudices or impairs security of property, transport or computer or communication systems.

The head of a private body may refuse a request for access to a record of the body if the record contains trade secrets of the private body, financial, commercial, scientific or technical information, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body or



information, the disclosure of which would reasonably be expected to put the private body at a disadvantage in contractual or other negotiations or to prejudice the body in commercial competition.

Again a record may not be refused insofar as it consists of information about the results of any product or environmental testing or other investigations supplied by, carried out by or on behalf of the private body and its disclosure would reveal the public safety or environmental risk.

There is mandatory protection of research information of a third body and optional protection of research information of the private body.

Notwithstanding all of the above the head of a private body must grant a request for access to a record if the disclosure:

- (a) would reveal evidence of a substantial contravention of or failure to comply with the law; or
- (b) the disclosure would reveal evidence of imminent and serious public safety or environmental risk; and
- (c) the public interests in the disclosure of the record far outweigh the harm contemplated in the provision in question.

### **Application to Court**

Any court hearing an application following the refusal of a request for information is entitled to examine any record of a private body to which the Act applies, and no such record may be withheld from the Court on any grounds.

The Court may receive representations ex parte, conduct hearings in camera and prohibit publication of such information in relation to the proceedings as the Court determines.

Proceedings are civil proceedings and not criminal proceedings. The Court on hearing the application may grant any order which it considers to be just and equitable including orders for compensation or costs.

### **Criminal Offences**

Any person with intent to deny a right of access, destroys, damages or alters a record, conceals a record, or falsifies a record commits an offence and is liable on conviction to a fine or imprisonment not exceeding 2 years.

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