



HOW DOES BROAD-BASED BLACK ECONOMIC EMPOWERMENT APPLY TO RETIREMENT FUNDS?

On 1 December 2017, the amended Financial Services Sector Code ('Code') was issued by the Minister of Trade and Industry. The Code has been issued in terms of the Broad-Based Black Economic Empowerment Act ('B-BBEE') and makes reference to retirement funds and service providers to retirement funds.

THE AIM OF THE FINANCIAL SECTOR CODE

The Financial Sector Code was first released in 2012 with the aim to actively promote a transformed, vibrant and globally competitive financial sector reflecting the demographics of South Africa, providing accessible financial services to black people and direct investment into targeted sectors of the economy. The Code consists of various Statements, each with their own objectives and principles against which entities need to measure themselves when completing their scorecards.

ENTITIES TO WHICH THE AMENDED CODE APPLIES

The amended Code applies to long-term insurers, short-term insurers, re-insurers, retirement fund administrators, intermediaries and brokers, asset managers and consultants. It does not apply to all retirement funds, only the top 100 funds, including umbrella funds, in South Africa.

VOLUNTARY DISPENSATION FOR TOP 100 FUNDS

Whilst it is not known how the top 100 funds will be identified (based on the value of assets or the number of members) or who will inform them that they are one of the top 100 funds, the amended Code states that many aspects of B-BBEE are not relevant to funds. However, funds play a critical role in the South African economy given that they consist of R4 trillion of individual savings.

Funds can play a role in the transformation of the financial sector by considering B-BBEE when appointing suppliers and service providers and environmental, social and governance criteria in investment decisions.

Given the above transformation and economic imperatives, the Code suggests that funds measure themselves annually against certain aspects of the B-BBEE scorecards.

PROPOSED DISCLOSURES BY LARGE FUNDS

The Code states that large funds can focus on the following:

1. Preferential procurement. This will score spend by funds on empowered suppliers (including 51% black-owned and 30% black women-owned suppliers) as a percentage of the total measured procurement spent.

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2. Management control. The management control score will measure voting rights of black board members, black female board members and, if applicable, the number of black officials and management involved in the fund.

It is not recommended that funds be measured on the following:

- Ownership – as trustees have little or no control over member demographics;
- Empowerment financing, enterprise and supplier development;
- Access to financial services;
- Socio-economic development.

Other aspects the top 100 funds should be reporting on:

1. Proportion of fund liabilities attributable to black male members and black female members (typically funds do not keep record of the race or gender of the members, so this will create additional administrative work and cost for funds).
2. Accredited, SAQA-approved training spent on trustee, principal officers and other fund officials (including quantum, average spend per individual, number of individuals trained and examples of training interventions). Whether training that is not SAQA approved is acceptable is not clear.
3. Member education initiatives, including number of members and the amount spent. It is not clear if the training should be based on the race or the gender of members.

ANNUAL SCORECARD REPORTING

The B-BBEE reporting that funds submit should include a narrative on the B-BBEE score they have achieved and their future plans for improving the score.

An annual report must be submitted by the funds to the Financial Sector Charter Council ('Council'). The Council may also rely on public surveys for feedback. If funds do not make sufficient disclosure, then consideration will be given to revising this dispensation.

NOTICE NO 1 OF 2018 – PENALTIES IMPOSED IN TERMS OF SECTION 37(2) OF THE PENSION FUNDS ACT HAVE BEEN INCREASED

The FSB has issued Notice 1 of 2018 stating that the administrative penalty for the failure to submit to the Registrar of Pension Funds ('the Registrar') information requested in terms of the Pension Funds Act ('the Act') will increase from R1 000 to R4 000 for each day that the non-compliance continues.

ADMINISTRATIVE PENALTY AMOUNT INCREASES FROM R1000 TO R4000 PER DAY FROM 1 MARCH 2018

Section 37(2) of the Act allows the Registrar to prescribe a maximum penalty amount that can be imposed on a fund, administrator or third party for the failure to submit any scheme, statement, report, return or any other document or any information required in the Act to be submitted to the Registrar within a period specified in the Act or in a directive or specific condition imposed by the Registrar in terms of the Act. Examples of such documents or information include annual financial statements, section 14 transfer applications and valuation reports.

Currently the maximum penalty is R1 000 for every day the non-compliance continues. This maximum administrative penalty has not been amended since 2008.

The Registrar considers it necessary to increase the maximum penalty amount to R4000 a day, as it seems that the current maximum administrative penalty does not have a deterrent effect on entities to encourage future compliance with the requirements of the Act.

PENALTY PROCESS

The Act sets out a process to be followed when a penalty is to be imposed.

Before imposing a penalty the Registrar must in writing:

- a. inform the administrator, pension fund or third party of his or her intention to impose a penalty;
- b. specify the particulars of the alleged non-compliance;
- c. provide reasons for the penalty intended to be imposed;
- d. specify the amount of the penalty intended to be imposed;
- e. invite interested persons to make representations within a period specified by the Registrar.

If the Registrar, after consideration of representations made, decides to impose an administrative penalty, he or she must by written notice inform the administrator, pension fund or third party that it may, within 30 days after the date of the notice, pay the penalty or lodge an appeal to the FSB Appeal Board.

If an administrator, pension fund or third party fails to pay an administrative penalty the Registrar can institute civil action to recover the penalty amount.