



## GUIDANCE NOTICES 1, 2 AND 3 FROM THE FINANCIAL SECTOR CONDUCT AUTHORITY

- A. **Guidance Notice 1 of 2018: request for quarterly updates on the information relating to retirement funds' unclaimed benefits – issued 25 June 2018**
- B. **Guidance Notice 2 of 2018: guidance on Directive 8: prohibition on the acceptance of gratification - issued 8 March 2018 and**
- C. **Guidance Notice 3 of 2018: cancellation of registration of a fund in terms of section 27(1) of the Pension Funds Act and termination of participation of employers in umbrella funds – issued 11 July 2018**

### WHAT IS A GUIDANCE NOTICE?

A Guidance Notice may be issued by the Financial Sector Conduct Authority (“FSCA”) under the Financial Sector Regulation Act. A Guidance Notice is not binding and is issued for information only. In addition, the subject matter of a Guidance Notice is a financial sector law. In the case of these three Guidance Notices, the law in question is the Pension Funds Act.

### A. GUIDANCE NOTICE 1 OF 2018: REQUEST FOR QUARTERLY UPDATES ON THE INFORMATION RELATING TO RETIREMENT FUNDS' UNCLAIMED BENEFITS – ISSUED 25 JUNE 2018

Following the issuing of PF Circular. 4 of 2015, the data provided by funds has been captured on the Financial

Sector Conduct Authority (FSCA) database (which forms the basis for the Unclaimed Benefit Fund Search Engine provided for on the FSCA website).

The search engine has been implemented successfully. Together with the other initiatives to assist members of the public to determine if there are possible unclaimed benefits due to them, the statistics provided by funds and administrators have proven to be helpful in directing enquirers to funds and administrators to ask about possible benefits due to them.

According to the unclaimed benefits system, the following unclaimed benefit enquiries have been logged onto the system:

Unclaimed benefit channel used	Enquirers	Enquirers with a match	Current rand value of total matches
TRP Outreach	2,411	458	43,808,080
Email: Automatic (ID no)	1,092	97	2,867,927
Email: Manual	1,648	220	29,608,402
Fax	62	20	1,301,136
Printed Letter	337	58	3,026,294
SMS: Automatic (ID no)	98	24	438,433
Telephone	93	11	4,137,220
Walk in Client	8,272	1,094	92,714,803
Web Search	31,235	5,998	1,697,712,503
<b>Total</b>	<b>45,248</b>	<b>7,980</b>	<b>1,875,614,801</b>

## REQUEST FOR INFORMATION RELATING TO UNCLAIMED BENEFITS

In order for the FSCA to continuously and accurately measure the success of the unclaimed benefits project, funds have been requested to provide updated unclaimed benefits information, with the addition of new unclaimed benefits and benefits paid since the previous upload of data.

Funds are requested to submit their updated unclaimed benefits data on or before *30 September 2018* and at least *once every three months thereafter* to ensure that the data remains valid and current.

Similar to a previous request, funds are requested to provide updated details regarding unclaimed benefits electronically on the FSCA website.

The FSCA states that in order to prevent fraud and to comply with the Protection of Personal Information Act, no personal information of any individuals will be disclosed on the FSCA website.

The FSCA is also considering publishing some of this information once or twice a year on its website to provide the public with information on the progress of the project.

## B. GUIDANCE NOTICE 2 OF 2018: GUIDANCE ON DIRECTIVE 8: PROHIBITION ON THE ACCEPTANCE OF GRATIFICATION - ISSUED 8 MARCH 2018

Directive 8 was issued on 8 March 2018 to assist in combatting and preventing corruption and corrupt activities in the retirement fund industry. In addition, Information Circular 4 of 2018 was issued after Directive 8, clarifying that the effective date for Directive 8 was 8 March 2018. The Financial Sector Conduct Authority (FSCA) has since received enquiries relating to the interpretation and implementation of Directive 8.

### PURPOSE

Given the queries received by the FSCA, the purpose of this latest Guidance Notice is to provide practical guidance on the interpretation and implementation of Directive 8. Details hereof were included in Verbatim No. 26.

The FSCA provides the guidance below as regards the interpretation and implementation of Directive 8.

### REPORTING

Directive 8 places a reporting obligation on all persons affected by the Directive. Any person *failing to report* a matter is in breach of Directive 8. It is important to note that even a *potential* breach of Directive 8 is required to be reported.

Directive 8 requires reporting of non-compliances *immediately* upon becoming aware of a breach or potential breach. The FSCA states that it is preferable that these reports be made in *writing* (refer back to the FSCA's Information Circular 1 of 2018 [see Verbatim No. 22] which provides guidance on the manner in which a person may make a report or a protected disclosure to the FSCA).

### TRAINING

The FSCA states that it does not intend to stop training being provided by service providers or attendance at training sponsored by service providers but to prevent corruption and corrupt activities being perpetrated under the guise of training.

The Guidance Notice goes on to provide that it is preferable that all costs of training, travel and accommodation be paid for by the retirement fund itself. In instances where training is offered for free by a service provider, the fund should at least bear the *costs* relating to the training (for example, travel and accommodation costs).

Where a service provider intends to provide training or to present topics relevant to the retirement fund industry at no cost, which may also include refreshments and beverages, the event, must be open for registration to the general public or to a general category of persons.

The actual costs of training, whether paid for by the fund or offered for free by the service provider, must still be reasonably justifiable.

### BUSINESS RELATED MEALS AND SIMILAR CONSIDERATIONS

It is permissible for a service provider to pay for business related meals for fund officials provided such meals are *legitimately for the purpose of conducting the business of the fund*. Such activities should be kept to a minimum and not be exorbitant.

Retirement fund officers are required to *declare* any business meals paid for by a service provider in the fund's gift register (including the value of such meals).

Comment: it is probably a good idea that where such business meals occur, that service providers or funds minute or note in writing the business conducted so that they can refer to it later, if asked.

Comment: service providers will need to make known the cost of the meal to fund officials so that they can declare the cost accurately.

Comment: the fund's standard gift register wording may require updating to remind fund officials to declare business meals.

### ENTERTAINMENT

Retirement fund officers may not accept invitations to entertainment events paid for by service providers, for example breakfasts, lunches, dinners, coffee, drinks, sporting events, hunting, jazz festivals and concerts. The FSCA states that service providers and retirement fund officers must not attempt to justify an entertainment event as a legitimate event in order to circumvent the provisions of Directive 8.

### TOKEN GIFTS

These are gifts usually given at year-end. The annual limit for fund officials from any one service provider is R500.00 (five hundred rand).

Comment: again, the fund's standard gift register wording may require updating to remind fund officials to declare gifts and the limit for gifts. It is more efficient if service providers provide the cost of the gift to fund officials, so that fund officials do not need to guess.

### DUE DILIGENCES AND OTHER RETIREMENT FUND RELATED ACTIVITIES

If it is necessary for a retirement fund officer to conduct a due diligence or other fund related activity, the costs related to that, including travel and accommodation, must be paid for by the retirement fund, not a service provider.

The FSCA require that boards of retirement funds must exercise their discretion sparingly, that is boards should consider the number of retirement fund officer(s) required to attend to the due diligence or other activity and if the relevant officer(s) concerned possess the necessary skill and experience to conduct the due diligence or relevant fund related activity.

After a due diligence or activity has been conducted, the retirement fund officer(s) concerned should produce a written report to the board.

### SPONSORED FUNDS

The FSCA permits sponsor appointed board members to be remunerated by the sponsor of a retirement fund (including trustees appointed in terms of section 26(2) of the Pension Funds Act). Such remuneration will be interpreted by the FSCA to include such sponsor appointed trustees' expenses as well.

### GRATIFICATION WHICH OBJECTIVELY VIEWED CREATES A CONFLICT OF INTEREST

The FSCA requires that, as far as is reasonably possible, a fund should bear its own expenses unless circumstances dictate otherwise and that when objectively viewed such expenses do not create a conflict of interest. Substance will take precedence over form in all cases.

The Guidance Notice goes on to provide that where an administrator pays the expenses for the *cancellation or liquidation of a dormant or a shell fund*, due to the fund having too little or no assets of its own, it is not a breach of Directive 8.

In addition, the payment of the board of funds' expenses by the administrator of an *underwritten* fund does not objectively create a conflict of interest and would not breach Directive 8.

Where a retirement fund officer has an *interest in a service provider* to the retirement fund concerned, and there are no circumstances that dictate that the retirement fund cannot reasonably appoint another service provider, this will constitute a breach of Directive 8.

### UNCERTAINTY AND PRINCIPLES

Where there is uncertainty as to whether a particular practice is compliant with the provisions of Directive 8 then the FSCA state that such a practice should preferably be avoided. Boards of management are directed to consider the outcomes and principles behind the FSCA's regulatory approach, when objectively applying their minds to fund practices.

### C. GUIDANCE NOTICE 3 OF 2018: CANCELLATION OF REGISTRATION OF A FUND IN TERMS OF SECTION 27(1) OF THE PENSION FUNDS ACT AND TERMINATION OF PARTICIPATION OF EMPLOYERS IN UMBRELLA FUNDS – ISSUED 11 JULY 2018

Where the FSCA has received an application for the cancellation of a fund's registration accompanied by the relevant documents (as set out in Information Circular 2 of 2017) such fund *will not be required to submit statutory returns or to pay FSCA levies* after the date of submission of the application.

Circular 2 of 2017 remains in force. Termination of participation of employers in umbrella funds continues as per Information Circular 2 of 2017.

Where applications have already been submitted for:

- (a) section 27(1) cancellation of registration of a fund; or
- (b) applications for the termination of participation of employers in umbrella funds,

these do not have to be re-submitted to the FSCA as a result of this Guidance Notice, but the FSCA may ask for further information.

The FSCA's system for cancellation of funds (section 27(1) – cancellation of registration) will be implemented shortly.