Edition 78: September 2017

**Legislative and Industry Updates**

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1. **FSB Levies: 2017 / 2018**

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|  | **% Change** | **2017/2018** | **2016/2017** |
| **Retirement Funds’ Levies** | | | |
| Basic fund levy (excluding retirement annuity funds) | 0.00% | R1 138.00 | R1 138.00 |
| Member levy | 1.93% | R13.46 | R13.20 |
| Maximum levy | 1.96% | R2 607 564.00 | R2 556 435.00 |
| **Pension Fund Adjudicator Levy, per member** | 11.07% | R5.51 | R4.90 |
| **Administrators’ Levies** | | | |
| Basic levy | 1.96% | R7 264.44 | R7 122.00 |
| Levy per fund administered by administrator | 1.96% | R566.31 | R555.21 |
| Levy per member under the administrator | 1.45% | R 0.69 | R 0.68 |

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1. **FSB Notices**

**FSB Notice 2 of 2017 - Interest rate for purposes of section 19(5)(b)(iii) has been changed**

The interest rate on housing loans has been changed. It was previously set at the repo rate (which was 5% at the time) plus 5.5% per annum, from 14 February 2011 to the date of the change. With effect from 21 July 2017, the interest rate on housing loans is the repo rate (currently 6.75%) plus 2% per annum.

**FSB Notice 1 of 2017: Regulation 28 Exemption in respect of debt instruments issued or guaranteed by a South African Bank**

Regulation 28 sets out statutory limits for investments, per specific asset classes. Items 2.1(c)(i), (ii) and (iii) of Table 1 in Regulation 28 provide that funds may invest in debt instruments issued or guaranteed by a listed South African bank against its balance sheet, subject to limits based on the market capitalisation of South African banks (the issuers). In practice, the controlling companies of such banks are often the listed entities, rather than the South African banks, themselves.

The Registrar has issued an exemption to funds, where the South African bank is not listed on an exchange, from applying the limits set out in the aforementioned provisions to South African banks. The exemption is provided on condition that the bank’s controlling company is listed and the aforementioned statutory limits are applied, taking into account the controlling company’s market capitalisation.

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1. **FSB Information Circulars**
2. **Information Circular 2 of 2017: Cancellation of registration of Funds in terms of section 27(1) of the Pension Funds Act (the “Act”) and the termination of participating employers in umbrella funds**

The Registrar issued Information Circular PF 2 of 2017 on 6 July 2017. This circular provides clarity on the requirements for:

1. A stand alone fund’s cancellation of registration in terms of section 27(1) of the Act, and
2. The termination of participation by an employer, from an umbrella fund.
3. **Stand-alone fund: cancellation of registration**

When a stand-alone fund applies for cancellation of registration, it must provide sufficient information to the Registrar to prove that the fund has ceased to exist, as per section 27(1)(a) of the Act. A fund ceases to exist and its registration can be cancelled:

* When all members, assets and liabilities are transferred out of the fund via a Section 14 application. The trustees / administrator can thereafter apply for cancellation of the fund’s registration; or
* Where it has been exempted by the FSB from the provisions of section 28 (liquidation provisions). In this case, the person responsible for the winding-up of the fund must ensure that the fund complies with all the exemption requirements and conditions and thereafter the fund can apply for its registration to be cancelled; or
* When the last member on the fund has exited the fund and the fund no longer holds any assets or liabilities, nor has pending litigation against it; or
* Where the fund never commenced business and thus the fund was registered by mistake.

The specific information required for cancellation of registration in each of the above circumstances, is set out in Annexure A of the Circular.

1. **Termination of participation by an employer from an umbrella fund**

When a participating employer terminates its participation in an umbrella fund, the umbrella fund board must inform the FSB of this event and submit a rule amendment allowing for this (if necessary).

Termination of participation of an employer in an umbrella fund can take place:

* When all members, assets and liabilities are transferred out of the fund via a Section 14 application; or
* Where it has been exempted by the FSB from the provisions of section 28 (subject to the same terms and condition as a stand-alone fund); or
* When the last member in respect of the particular employer’s participation in the umbrella fund has exited the participating employer’s participation in the umbrella fund; or
* Where special rules were registered for an employer that did not participate in the umbrella fund, in reality.

The specific information required for termination of a participating employer in each of the above circumstances, is set out in Annexure B of the Circular.

In addition to the above, the FSB may potentially request further information. All applications must be submitted electronically to the FSB on their Retirement Funds On-line System.

**Pending cancellation of registration applications**

Pending applications already submitted to the Registrar will continue to be processed. The Registrar may however request further information before the fund or the participating employer in an umbrella fund can be de-registered.

**Process to finalise cancellation of registration by the FSB:**

* Before finalising the above for both a stand-alone fund and a participating employer’s withdrawal from an umbrella fund, the Registrar will publish an intention of cancellation of registration notification as per the requirements of the Promotion of Administrative Justice Act, 2000 and on the FSB website, for a period of 30 days
* During this period, any affected person may lodge an objection to this process. Thereafter, the Registrar will make a decision as to whether to proceed with the process
* The FSB will then inform the affected person of their final decision.

1. **Information Circular PF 3 of 2017: The appointment of persons to the Board of a Fund by the Registrar in terms of section 26 (2) of the Act**

Information Circular 3 of 2017 was issued by the FSB on 6 July 2017. Section 26(2) of the Act allows the FSB to appoint board members where funds are not properly constituted. Two previous circulars were issued by the FSB on this matter: Notice 3 of 2016 and Information Circular 3 of 2016**.**

**Notice 3 of 2016 and Information Circular 3 of 2016**

These notices state that any vacancy on a board must be filled within 90 days from the date on which the position became vacant. They also deal with the legitimacy of decisions made by boards which are not properly constituted. During this 90 day period when there is a board vacancy, the fund must continue to comply with the Act, the board must make decisions during this time in accordance with the rules of the fund in order to be valid, and a board quorum must be present.

**Section 26(2) of the Act**

This provision allows for FSB board member replacement and empowers the FSB to assign such duties as deemed beneficial to the board appointed in terms of section 26(2)(a) of the PFA.

**Applications for Section 26(2) board members**

Where a fund wishes to apply for the appointment of a trustee in terms of section 26(2) of the Act, this must be undertaken electronically. When applying, the following documents must be attached to the application:

* A motivation letter setting out a brief history on the fund’s circumstances Steps taken by the remaining trustees or the administrator to re-constitute the board
* ID documents and brief CVs of 2 persons whom the fund would like the Registrar to consider as suitable FSB appointments to the board
* A list of outstanding fund issues that need to be attended to by the Section 26(2) board, for inclusion in the appointment letter, in respect of the section 26(2) trustee(s).

**Section 26(2) board (FSB appointed board) duties**

These include:

* Constituting a board in terms of the rules of the fund
* All aspects of management of the fund in terms of the Act
* Ensuring compliance with all laws applicable to retirement funds
* Applying for exemption from the minimum board member requirements ( section 7B of the Act)
* In the event that a valid board in terms of section 7A of the Act cannot be established, applying to the Registrar for the approval of the appointment of a liquidator, or applying for the cancellation of the fund (as appropriate).

Boards/board members that are or have been appointed in terms of section 26(2) of the Act must perform the duties as contained in their appointment letters. These appointment letters may be supplemented or altered in terms of section 26(2)(b), at the discretion of the Registrar.

1. **Information Circular PF 4 of 2017**

Information Circular 4 of 2017 was issued by the FSB on 6 July 2017. It addresses the practical problems faced by funds in complying with certain Section 14 deadlines, in light of the requirements of the Income Tax Act changes, effective 1 March 2017. These changes require that tax directives be applied for, in respect of all transferring members.

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| **Section 14 transfer applications submitted after 6 July 2017** | **Approved but unpaid Section 14 Transfers**  Exemptions were granted to Section 14 transfers approved by the FSB but unpaid, as follows: | | **Section 14 transfers submitted to the FSB but unapproved** | **Corrections to Section 14s approved by the FSB** |
| All Section 14 applications submitted to the FSB after 6 July 2017 must contain the tax numbers of all transferring members. This must be certified by the transferor fund, as part of the Section 14 application. | **Section 14 transfers that were approved by the FSB on or after 1 January 2017**: This applies to funds that had Section 14 transfers approved by the FSB on or after 1 January 2017, but had not paid the transferring members’ benefits over to the transferor fund as at 1 March 2017. Such transferor funds had an extension to the 60 day period to pay over these assets, until 31 August 2017, in order to obtain the tax numbers of transferring members. | **Section 14 transfers with effective dates of 1 September 2016 onwards**: This applies to funds that had transfer dates of 1 September 2016 onwards, had obtained FSB approval of their transfers, but had not paid the transferring members’ benefits over to the transferor fund as at 1 March 2017. Such transferor funds had an extension to the 60 day period to pay over these assets, until 31 August 2017, in order to obtain the tax numbers of transferring members. | This applies to funds which had submitted Section 14 applications to the FSB by 6 July 2017, but such transfers were not approved. Such funds should provide amended Section 14 applications to the FSB if they find that they do not have tax numbers for the transferring members and thus need to exclude them from the Section 14 transfer. | If a fund had received Section 14 approval in respect of transfers but could not pay out the Section 14 transfer as they did not have tax numbers for the transferring members, the FSB gave funds to 31 August 2017 to amend or withdraw such Section 14 applications. |



**FSB’s Unclaimed Benefits Search Engine**

The FSB established an unclaimed benefits search engine, which affords funds’ former members with an opportunity to locate their benefits, should they have left these unpaid in former employer’s funds. Funds must ensure that all their unclaimed benefits are uploaded onto this site and ensure that these unclaimed benefits listings are updated. This search engine can be found on:

<https://www.fsb.co.za/Departments/retirementFund/searches>.

The FSB has established a process for former members, in respect of this unclaimed benefits search engine. This can be found on:

<https://www.fsb.co.za/Departments/retirementFund/Documents/UNCLAIMED%20BENEFITS%20DATA%20SEARCHES.pdf>