



# Legal Update

Healthcare  Actuarial  Retirement  Investment  Personal Wealth

29 January 2018  
Edition 1 of 2018

## LATEST LEGAL DEVELOPMENTS

### INFORMATION CIRCULAR PF NO 1 OF 2018 - REPORTS AND DISCLOSURES TO THE FSB

This circular was issued to clarify how certain persons should report or disclose information that they want to bring to the Registrar's attention, during their term of appointment or after termination of their appointment.

#### 1. Disclosures by Board Members, Principal Officers, Auditors and Valuers

Should a board member be removed from office, or the appointment of a principal officer, deputy principal officer, auditor or valuator is terminated, then there is a duty on them to report their perceived reasons for their removal or termination. Such report must be submitted to the Registrar within 21 days of their removal from office or termination of appointment.

Should a board member, principal officer, deputy principal officer, auditor or valuator become aware of any matter, which in their opinion, may prejudice the fund or its members, then there is a duty to report to the Registrar.

#### 2. Disclosures by Administrators

Should an administrator become aware of any material issue, which in their opinion, may prejudice the fund or its members, then there is a duty to report to the Registrar, without unreasonable delay.

#### 3. Confidentiality and Protection

The above mentioned reports will be treated confidentially if the person making the report expressly requests that it be treated confidentially or wishes to remain anonymous or requests protection in terms of section 9B of the Pension Funds Act.

#### 4. Protected Disclosures

All disclosures or reports made to the Registrar in terms of section 9B of the Pension Funds Act will be treated confidentially and will be protected. This means that the person who makes the disclosure may not suffer any occupational or other detriment. For example, a person who makes a protected disclosure may not be dismissed, suspended, demoted, harassed or intimidated because of the disclosure.

#### 5. Submission

Disclosures can be sent

- via e-mail ([FSB.PDisclosure@fsb.co.za](mailto:FSB.PDisclosure@fsb.co.za)) or
- by post or hand delivered, addressed to "The Registrar of Pension Funds, Protected Disclosures".

#### 6. Anonymous Tip-Offs

A board member, principal officer, deputy principal officer, auditor, valuator and administrator may also make an anonymous tip-off on the FSB website ([www.fsb.co.za](http://www.fsb.co.za)) by clicking on "anonymous tip offs" at the bottom of the page.

## **FSB NOTICE NO 1 OF 2018 - INCREASE IN PRESCRIBED MAXIMUM ADMINISTRATIVE PENALTY**

The Registrar of Pension Funds may impose an administrative penalty where a fund or administrator fails to submit any document, scheme, report or return (i.e. financial statements, valuations etc.) within the prescribed period. In practice the Registrar sends out a notification of the intention to levy a penalty, before imposing the penalty.

The FSB has issued FSB Notice 1 of 2018 in which the *maximum* penalty has been increased to R4 000 per day (it was R1 000 per day) that the failure continues. The effective date of this Notice is 1 March 2018.

## **AMENDED FINANCIAL SERVICES SECTOR CODE - BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) AND RETIREMENT FUNDS**

The Amended Financial Sector Code (FSC) was gazetted on 1 December 2017. The FSC has been prepared in terms of the Broad-Based Black Economic Empowerment Act, as amended.

### **Scope of Application**

The amended FSC applies to any natural or juristic person conducting a business, trade or profession in the South African financial sector including, but not limited to, the following: Banks; Long-term Insurers; Short-term Insurers; Re-insurers; Retirement Fund Administrators; Financial Services Intermediaries; Brokers and Asset Managers.

Many aspects of South Africa's B-BBEE dispensation are not relevant to retirement funds. However, funds play a critical role in the South African economy by virtue of the amount of members' savings, which exceeds R4 trillion. Retirement funds also have a critical role to play in the transformation of the financial sector itself, largely by virtue of the appointment of private sector service providers. Funds are also currently required by Regulation 28 of the Pension Funds Act to consider environmental, social and governance criteria and B-BBEE as part of their supplier selection processes.

The FSC aims to introduce a voluntary disclosure programme for the top 100 retirement funds (including umbrella funds). The FSC is not clear whether the "top 100 retirement funds" refers to the size of assets or membership.

### **Suggested Scorecards for Retirement Funds**

The FSC suggests that retirement funds measure themselves annually against certain aspects of the broad-based empowerment scorecard contained in the amended FSC. In essence, it is proposed that large retirement funds compile and publish annual scorecards for the preferential procurement and management control elements.

Retirement funds are classified as mandated investors in B-BBEE legislation. Trustees however have little or no influence on membership demographics. For this reason, it is suggested that large funds should not be scored on the ownership aspect of B-BBEE, but should report annually on the proportion of fund liabilities attributable to black male members and black female members. Retirement funds traditionally do not employ large numbers of employees. However, given the critical role that trustees, office bearers and principal officers play in the economy, it is suggested that funds annually disclose details related to accredited SAQA approved training spent on trustees and executive managers such as principal officers and other staff. This should include the quantum, average spend per staff member, number of staff members trained, together with some examples of key training interventions. Member education initiatives, where applicable, should also be disclosed both in terms of number of members trained and amount spent relative to size of membership.

The B-BBEE annual reporting by retirement funds should include a description of the B-BBEE score achieved and future plans for improving the score. The Council will measure transformation on an annual basis; this may include relying on surveys that are available in the public domain. If sufficient disclosure by pension funds does not materialise, then consideration will be given to revising this dispensation.

Once more clarity is obtained, NMG will advise any of our Funds that are affected as to how and when reports must be submitted.

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