

The FSCA Comes into effect & FSCA Directives

A. The Financial Sector Conduct Authority (“FSCA”) is here!

As a reminder, the Financial Sector Regulation Act was signed into law on 21 August 2017, establishing the “Twin Peaks” model of regulatory oversight. With effect from 1 April 2018, the Financial Services Board (“FSB”) ceased to exist and its duties and responsibilities have been absorbed into the FSCA - the FSCA’s responsibilities will encompass the previous FSB’s powers.

The Leadership of the FSCA

In terms of the the Financial Sector Regulation Act, a Commissioner and Deputy Commissioner making up the FSCA’s Executive Committee, are to be appointed and this process is to commence soon. As an interim measure from 1 April 2018, a Transitional Management Committee will lead the FSCA, until these appointments are (expected to be) made after a period of 3 months. This Transitional Management Committee is made up of the following:

- ▶ Former FSB Executive Committee
- ▶ The Chairperson of the former FSB Board (Mr Abel Sithole). Mr Sithole will be caretaking as the FSCA’s Commissioner until the new Commissioner is appointed
- ▶ A National Treasury appointee (Ms Katherine Gibson).

The Deputy Registrar of Pensions (Mr Olano Makhubela) appointed in October 2017, is currently remaining in this position.

Changes effective 1 April 2018

The FSCA has stated in a press release that there will not be a “big bang” approach to the FSCA’s implementation, but rather gradual changes over the course of 2018. Sections of the Financial Sector Regulation Act will be gradually phased in. The immediate changes are:

- ▶ Leadership changes (as discussed)
- ▶ All communications from the Regulator will be branded the FSCA (this will lead to a short delay in current rules / amendments / S14 applications changes, until the end of May 2018)
- ▶ The FSB website has been replaced by the FSCA website: www.fsc.co.za
- ▶ The Financial Sector Tribunal replaces the previous FSB Appeal Board.

B. Directive 8: Prohibition on the Acceptance of Gratification

Directive 8 was published on 8 March 2018. As a reminder, FSCA Directives have the same binding effect as legislation. Directive 8 imposes conditions to combat and prevent bribery and corrupt conduct by principal officers, deputy principal officers, board members, employees of retirement funds, valuers, auditors, administrators, employees of administrators, other officers or other service providers to funds including investment managers and investment advisors.

General Principle

The above fund officials, fund stakeholders and fund service providers should not be involved in any conduct which constitutes bribery, fraud or corruption. This conduct will have a bearing on that person’s fitness and propriety to hold office or provide a service.



The definition of “gratification”*

- ▶ Money, whether in cash or otherwise;
- ▶ Any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;
- ▶ The avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- ▶ Any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;
- ▶ Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- ▶ Any forbearance to demand any money or money’s worth or valuable thing;
- ▶ Any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;
- ▶ Any right or privilege;
- ▶ Any real or pretended aid, vote, consent, influence or abstention from voting; or
- ▶ Any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

*Excludes remuneration paid by a sponsor of a fund to a trustee appointed by the sponsor of a fund.

The duty to report

- ▶ Principal officers, deputy principal officers, auditors, valuers and fund administrators already have a duty under the Pension Funds Act, to inform the FSCA in writing, on becoming aware of any matter relating to the affairs of the fund which in their opinion may prejudice the fund or its members
- ▶ Any report to the FSCA can be made as a protected disclosure in terms of 9B of the Pension Funds Act, which gives protection to the person submitting the report
- ▶ Section 34 of the Prevention and Combating of Corrupt Activities Act requires fund officials and service providers to report corrupt transactions to the South African Police Services, in respect of offences involving theft, fraud and extortion, of R100,000 or more
- ▶ The above fund officials, fund stakeholders and fund service providers must report or disclose any breach or attempted breach of Directive 8 immediately upon becoming aware of this breach, to the FSCA
- ▶ Information Circular 1 of 2018 gives guidance on how to report or disclose matters to the Registrar (see Dashboard edition 3 of 2018 for more on this Information Circular).





Specific types of gratification not permitted

The Directive states that the types of gratification set out below, are automatically not permitted to be accepted, agreed or offered to be accepted by the abovementioned fund officials, service providers and any other person connected in whatsoever manner to a service provider of a fund, or form any potential future service providers, in which such a person serves. These are:

1. Any gratification which objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund
2. Token gift/s that exceed/s the annual limit set by the board in terms of the fund's gift policy, which annual limit may not be more than R500.00 per annum in aggregate from any one service provider
3. Any gratification relating to local or international due diligences, including but not limited to subsistence, travel or accommodation
4. Any gratification relating to local or international entertainment or sporting events, including but not limited to subsistence, travel or accommodation
5. Conferencing costs of board or trustee expenses.

Information Circular PF No. 4 Of 2018: Urgent Clarification on the Effective Date of Directive 8

1. The Directive is implemented with effect from 8 March 2018
2. Commitments forbidden by the Directive entered into before 8 March 2018, should be withdrawn or declined, where possible
3. If it is not possible to withdraw or decline such prior commitments, these can be honoured, but should not be interpreted as the FSCA endorsing the prohibited action. This should be seen within the context of the effective date being 8 March 2018.


C. Draft Directive: Sustainability, Reporting & Disclosure Requirements

The FSB has issued this draft directive for comment by 14 May 2018, providing guidance on the content of some of the essential aspects of an investment policy statement ("IPS") and the manner in which this is disclosed by funds:

1. Expanded disclosure requirements for funds' IPS in respect of Environmental, Social and Governance ("ESG") principals
2. Requirements for IPS documents (and changes to these) to be made available to members, participating employers and representative unions
3. Funds' audited financial statements and Trustee reports to members are to disclose how the principles under 1 above have been applied, the extent of compliance with the IPS, any changes to the IPS and how copies of the IPS are made available.

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