Glassock

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Proudly Bidvest

Information Circulars 2, 3 and 4 of 2018 – Retirement Funds

A. Fund financial statements
B. Increased foreign portfolio investment limits
C. Effective date for the acceptance of gratification Directive

A. Fund annual financial statements (Information Circular 2 of 2018)

(i) Exemption from being audited (small funds) withdrawn

As we know, the Pension Funds Act ("**the Act**") requires funds to submit audited financial statements within six months of its year end. However, the Act also provides that the Registrar of Pension Funds ("**Registrar**") can exempt any fund from a specific provision of the Act and at the same time specify conditions with which such funds must comply. If we look back to Board Notice 77 of 2014, the Registrar exempted certain funds (with smaller asset size) from having to appoint an auditor and have their financial statements audited by an auditor. These funds were still required to produce financial statements in the prescribed format.

This exemption will be withdrawn from 1 January 2019 after which all funds will be required to have their financial statements audited for financial years commencing after 1 January 2019.

The Registrar notes in the Circular that this could lead to increased costs for smaller funds and that these funds should thus consider whether they are still viable as self-standing funds or whether they should consider transferring to a suitable umbrella fund that offers good value.

(ii) Financial statements to be submitted within three months

The Registrar notes that there is a current practice of submitting annual financial statements six to eighteen months after the relevant financial year end and that this is not conducive to effective supervision. Thus, the Registrar intends to amend the Act to require funds to submit financial statements within three months (as opposed to the six months the Act currently stipulates). This proposal will not be effective until the Act is amended.

(iii) Cash and accrual accounting

Currently, the Regulatory Reporting Requirements for Retirement Funds provides that the Registrar could, on application, allow a fund to use a non-accrual basis of accounting. However, as from financial years commencing on or after 1 January 2019, funds will not be allowed to apply the non-accrual basis. The Registrar is of the view that enough time has been allowed now for funds to change their accounting basis.

B. Foreign investment limits (Information Circular 3 of 2018)

As announced in the National Budget, the South African Reserve Bank (SARB) has issued an Exchange Control Circular indicating that the foreign investment limits have been increased and has amended the Currency and Exchange Manual for Authorised Dealers. Regulation 28 provides that the SARB can determine the maximum allowable amount that a fund may invest in foreign assets.

In terms of the SARB Exchange Control Circular, retirement funds may now acquire foreign exposure up to a limit of 30 per cent in respect of foreign portfolio investments and an additional ten per cent for foreign portfolio investments in Africa.

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C. Effective date for the prohibition on the acceptance of gratification Directive (Information Circular 4 of 2018)

On 8 March 2018, the Registrar issued Directive 8 called "Prohibition on the Acceptance of Gratification". The Directive is aimed at combating and preventing bribery and corruption and imposed conditions on persons such as: principal officers, deputy principal officers, board members, valuators, auditors, employees of retirement funds and administrators, administrators and other service providers to funds. These fund officials and service providers may not be involved in any conduct constituting bribery, fraud or corruption if they wish to remain fit and proper to hold office or provide a service. The Directive sets out reporting requirements and defines what constitutes gratification.

The Deputy Registrar of Pension Funds has since issued Circular 4 of 2018 clarifying that:

- Directive 8 is effective from 8 March 2018;
- Commitments by officials and service providers that were entered into prior to 8 March 2018 and which are prohibited by the Directive (that is, prior-commitments) should be withdrawn or declined by the regulated persons or entities, where possible; and
- If it is not possible to withdraw or decline such prior-commitments, the regulated persons or entities can honour such prior-commitments. This should not be interpreted as the FSB endorsing the prohibited action, but should be seen within the context of the effective date being 8 March 2018.

An example: on 3 January 2018, an administrator has extended an offer to pay the costs for a trustee of a fund it administers to attend a conference on 30 April 2018. The Directive is issued on 8 March 2018. In this case, the administrator must immediately contact the trustee and withdraw the offer. Alternatively, the trustee must contact the administrator and decline the offer to attend the conference at the administrator's expense. We strongly encourage fund officials and service providers to take a conservative approach to extending or accepting any form of gratification as well as to the interpretation of the commencement date of this Directive.