



## Umbrella Fund

Sanlam Umbrella Fund Industry Update

**Joint Forum update**

March 2018

Insurance

Financial Planning

Retirement

Investments

Wealth



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# 1. Directive 8: Prohibition on the Acceptance of Gratification

This directive was issued on 8 March 2018 and became effective on the same date. The directive:

- ① reminds trustees and stakeholders that they have a duty to report all corrupt transactions involving an amount of R100 000 and more, whistle blow / inform the FSB on becoming aware of any matter relating to the affairs of the fund, which in their opinion, may prejudice the fund or its members; and
- ② prohibits any gratification under circumstances where it would constitute corruption or corrupt activities as contemplated in the Prevention and Combating of Corrupt Activities Act, 2004, or which, objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund, or where any token gifts exceed R500 per annum from any one service provider. Does not make any clear attempt to extend its requirement to gratuities between service providers or intermediaries in relation to participating employers in umbrella funds. At the very least, it establishes a clear framework against which any such gratuities should be measured.

## General principle

The general principle is that a board member, principal officer, deputy principal officer, auditor, valuator, administrator or service provider to a retirement fund should not be involved in any conduct constituting bribery, fraud or corruption and any such involvement will have a bearing on such persons' fitness and propriety to hold office.

## Duty to report corrupt transactions

The directive defines corruption and corrupt activities with reference to the Prevention and Combating of Corrupt Activities Act and provides a reminder that in terms of Section 34 of that Act, a board member, principal officer, deputy principal officer, auditor, valuator or administrator of a retirement fund is required to report knowledge or suspicion of corrupt transactions involving an amount of R100 000 or more to the Directorate for Priority Crime Investigation.

## Duty to whistle blow

The directive reminds that a board member, principal officer, deputy principal officer, auditor, valuator or administrator of a retirement fund has a duty, in terms of sections 7A(4)(b), 8(6)(b), 9(4)(c), 9A(2), and 13B(10) of the Pension Funds Act respectively, on becoming aware of any matter relating to the affairs of the fund, which in their opinion, may prejudice the fund or its members, to inform the Registrar thereof in writing.

All these entities must now report any breach or attempted breach of this directive to the regulator immediately on becoming aware of it and must take guidance from Information Circular 1 of 2018 on how to go about it. It is very important that they indicate whether they wish to make a protected disclosure (which means it will be treated anonymously) or not.



## Specific types of gratifications not permitted

The directive is not entirely clear on a number of aspects which will have to be clarified by the FSB. Herewith our summary and understanding of the gratuities that are prohibited -

- A. A gratification that is “automatically not permitted to be accepted, agreed or offered to be accepted” includes -
  - (a) any gratification which, objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund;
  - (c) travel or accommodation relating to local or international due diligences;
  - (d) travel or accommodation relating to local or international entertainment or sporting events; and
  - (e) conferencing costs or board of fund expenses.
- B. Token gifts that exceed the annual threshold of R500 from any service provider.
- C. Gratification under circumstances and between parties where it would constitute corruption or corrupt activities as contemplated in the Prevention and Combating of Corrupt Activities Act.

It therefore does not mean that all gratifications as defined is prohibited. A gratification is only prohibited in the circumstances referred to above.

## What is the general implication of this directive?

Service providers of the fund may no longer provide or pay for any coffees or lunches or other “token gifts” in respect of any one trustee etc. that adds up to more than R500 per annum. No payment may be made in respect of sporting events or concerts, even if it is less than R500 per annum, as these are automatically prohibited. The same rule applies to service providers who are soliciting for business.

For most funds the most significant implication is that the amount of the gratification may not exceed R500 per annum. It may only consist of token gifts and may not include gratuities in respect of sporting events, concerts, conferences, travel and accommodation. It also means that trustees may have to keep record and report on gratifications.

This directive will, based on our understanding, not apply to the attendance of a symposium or seminar facilitated by a service provider, to which their wider client base is invited free of charge. An example of such a function is the Sanlam Benchmark Symposium.

## 2. Information Circular 1/2018: Disclosures to the Registrar

This circular unpacks the “whistle blowing” duties of retirement fund trustees, administrators, principal officers, deputy principal officers, auditors and valuers. Each one of these individuals have a statutory duty to inform the Registrar of any matter relating to the affairs of a fund, which in their opinion may prejudice the fund or its members.



The circular seeks to clarify that such persons have two options in making such reports or disclosures, i.e. either anonymously in terms of section 9B of the Pension Funds Act or disclosing their identity. Disclosures in terms of section 9B can be e-mailed to the Registrar at: [FSB.PDisclosure@fsb.co.za](mailto:FSB.PDisclosure@fsb.co.za) or submitted anonymously via the FSB website: [www.fsb.co.za](http://www.fsb.co.za) by clicking on the Anonymous Tip-Offs tab at the bottom of the webpage.

These duties may have a direct bearing on the behaviour of participating employers. Where an employer fails to comply with its duties and responsibilities in terms of the Pension Funds Act, the rules or other requirements of a fund, it may well constitute a risk or potential prejudice to the members of the fund in respect of which a disclosure is required.

### 3. PF Notice 1/2018: Administrative penalties imposed by the Registrar

In terms of section 37(2) of the Pension Funds Act “The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues”.

This PF Circular increased the maximum penalty from R1 000 per day to R4 000 per day with effect from 1 March 2018.

This is a quite a significant increase and may have serious financial implications for a fund or service provider if they submit a report or return late. A delay of an additional month could cost a fund or an administrator up to R124 000 in fines. A delay of one year could cost up to R1.46m in fines. In its consultation process, the FSB made it clear that they can impose a fine of up to R4 000 per day and that the level of the fine will depend on the veracity of the non-compliance or failure.

### 4. Draft Notices relating to TCF and retirement funds and administrators

The Registrar of Pension Funds published four draft notices for comment relating to the responsibilities of retirement funds and administrators to Treating Customers Fairly (TCF) during October 2017. TCF is a consumer protection framework that requires all regulated financial institutions, including retirement funds and their service providers to demonstrate that they have implemented and are delivering the 6 TCF outcomes in the way they conduct their business.

The FSB points out that existing legislative and regulatory frameworks already allow for the application of TCF outcomes and that failure to deliver on one or more of the TCF Outcomes will in most cases already constitute a breach of these obligations, and would, therefore, be actionable by the regulator.

The 6 TCF outcomes, from the perspective of retirement funds, can be summarised as follows:

**Outcome 1:** Retirement fund boards must be confident that the fund is managed and administered in such a way that the fair treatment of members and beneficiaries is central to the fund’s culture.

**Outcome 2:** Retirement fund products and services should be developed and administered to meet the needs and expectations of members, beneficiaries and other stakeholders in order to achieve the ultimate goal of providing appropriate retirement income.



The board must ensure that the products provided by the fund are appropriate after considering the needs and risk profile of the members and beneficiaries. The board must also ensure that members and beneficiaries have sufficient information to make an informed decision in selecting investment and other options offered by a fund.

**Outcome 3:** Members and beneficiaries must receive clear and appropriate information regarding the retirement fund, its benefits and the operations of the fund before joining (where applicable), on joining, and regularly during their membership of the fund.

**Outcome 4:** Where boards and/or members of retirement funds receive advice, the advice must be suitable and take into account their respective circumstances. Boards must ensure that the intermediaries appointed are, where applicable, appropriately licensed, understand the products and have sufficient expertise. Boards should also request and verify whether the advisor receives any incentives from the service provider for selling a specific product and whether there are similar products in the market for comparison. Products must be suitable for the needs of the fund and its members.

**Outcome 5:** Retirement funds must provide products and benefits which perform in a manner that meet the needs and reasonable expectations of their members and are in line with what members have been led to expect. The products and services provided to members must be suitable, of an acceptable standard and in line with what members have been led to expect.

**Outcome 6:** Retirement funds and members should not face unreasonable barriers to submit a claim or make a complaint or to change product or switch provider where the rules of a fund allow for such choices. Boards must establish and implement an effective complaints management process.

## 5. Draft Notice on Projection Statements

This notice will require every fund that is registered under the Act, excluding beneficiary funds and unclaimed benefit funds, to ensure that the annual benefit statements include a projection of the expected retirement benefit, which must be explained in a simple and clear manner. A projection statement should also be provided to members when joining a fund in order for them to make a proper decision with regards to contribution rates and investment choice, where relevant. New requirements are proposed to ensure that the assumptions used in these projections are standardised. Reaching agreement on appropriate assumptions can be time consuming.

This Draft is a great compliment for the Sanlam Umbrella Fund as it seeks to make the tools and offerings we initiated, such as the Day One fund induction strategy, the retirement calculator and aspects of the member guidance and support strategy, compulsory for all funds.

## 6. Tax directive applications in respect of section 14(1) transfers

With effect from 1 March 2017, tax directives must be obtained in respect of all members when section 14(1) transfers are processed, prior to the amount being transferred. This requirement is very problematic as it requires each member to have a tax number. In cases where members do not have a tax number or have tax issues, their directives are withheld. This not only adds to the delays experienced, but it also increases the risk and the cost of retirement membership. In the 2018 budget the Minister of Finance indicated that this matter will be reviewed.



In our presentations to National Treasury and the FSB we highlighted the following concerns. Funds and employers do not have any direct influence over the requirements necessary for a directive to be issued. It is something that only the individual member / taxpayer can process with SARS. Without direct influence, funds will have to do the transfers in a number of batches or wait until all necessary information has been received.

These delays will cause the old fund to remain fully operational which means two sets of trustees, administrators, consultants and fees - even FSB levies. (FSB levies are calculated “per member of the fund and in respect of every other person who receives regular periodic payments from the fund (excluding any member or person whose benefit remained unclaimed and beneficiaries)”.

A long delay in the approval of a section 14 transfer can cause the old fund to submit another set of financial statements which may not have been budgeted for. In situations like these the proposed new increased maximum penalty of R4 000 per day will not be appropriate as the fund cannot be penalised for delays caused by members who have to settle their affairs with SARS.

## 7. Taxation Laws Amendment Act, 2017

The key changes include -

- ⊙ allowing members who retired from service, but retain their benefits in the fund (i.e. the membership class known as “phased retirees” and “paid-up members” who reached normal retirement age and are not eligible for membership of another occupational fund), to transfer their retirement benefits to a retirement annuity fund from 1 March 2018. A transfer of such benefits to any other fund, e.g. a preservation fund, is not allowed at present but in the 2018 budget the minister indicated that it may also be considered;
- ⊙ tax-exempt status of pre-March 1998 build-up in public sector funds are now protected even when the member transfers to a second fund;
- ⊙ removal of the requirement that where an employer establishes a retirement fund or joins an umbrella fund for the first time, any existing employee may never join that fund if they did not opt to do so in the first 12 months;
- ⊙ postponement of the (T-Day) annuitisation requirement for provident funds to 1 March 2019;
- ⊙ disallowing the exemption for a lump sum, pension or annuity from a SA retirement fund or insurer in respect of foreign service; and
- ⊙ the maximum monthly tax deduction in respect of retirement fund contributions may not exceed one-twelfth of the R350 000 annual threshold, i.e. the tax deduction may not be more than R29 166 per month.

## 8. Revised Policyholder Protection Rules

The revised Policyholder Protection Rules (“the rules”), published on 15 December 2017, will require insurers of risk benefits provided under a fund or in terms of an employer policy to liaise directly with the members of the fund or with the employees insured in terms of the policy. From the implementation date it would no longer be sufficient for an insurer to liaise with the fund or the employer, as has been the case up until now.

Rule 13 which will become effective on 15 December 2019 requires that the insurer must have access to the names, identity numbers and contact details of all its policyholders, which includes members of funds and group schemes. Such contact details must be as complete as possible, and must, where available, include the mobile numbers and e-mail addresses of the members.



Retirement funds are required to maintain the personal contact details of their members in terms of information Circular 2 of 2016. To date funds have had great difficulty obtaining this information as there is no legal requirement on members or employers to gather and maintain it. The legislature is effectively giving all stakeholders another reason to comply, this time with an effective date of 15 December 2019.

## 9. Changes to the Commission Table

The table for the payment of commission in respect of a group scheme or fund policy is amended with effect from 1 January 2018.

MAXIMUM COMMISSION AS PERCENTAGE OF ANNUAL PREMIUM -	ANNUAL PREMIUM OF WHICH THE AMOUNT -	
	EXCEEDS	DOES NOT EXCEED
7.5%		200 000
5.0%	200 000	300 000
3.0%	300 000	600 000
2.0%	600 000	2 000 000
1.0%	2 000 000	UNLIMITED

The percentages are the same but the amounts/bands have been adjusted upwards e.g. in the first band, if the annual premium does not exceed R200 000 (previously R142 000), the maximum commission is 7.5%. In the last band, if the premiums exceed R2 million (previously R1.55 million) the commission is 1%.

Stakeholders are reminded that the fund does not pay commission to intermediaries as it has a fee-based service model. The fees agreed on between participating employers and contracted benefit consultants may however be formulated in relation to the commission scale.

## 10. Broad-Based Black Economic Empowerment and Retirement Funds

Voluntary participation is now recommended for the top 100 funds. The Financial Sector Charter Council will measure transformation on an annual basis. If sufficient disclosure by pension funds does not materialise, consideration will be given to revising this dispensation.

On 1 December 2017 the Minister of Trade and Industry issued a Financial Services Sector Code in terms of the Broad-Based Black Economic Empowerment Act ('B-BBEE') entitled Schedule I, "Voluntary Dispensation for Top 100 Retirement Funds Including Umbrella Funds".

The schedule recognises that many aspects of South Africa's B-BBEE dispensation are not relevant to retirement funds. However, because funds play a critical role in the South African economy by virtue of the amount of members' savings (the amount exceeds R4 trillion), retirement funds have a critical role to play in the transformation of the financial sector itself. This role, according to the schedule, is largely by virtue of the appointment of private sector service providers.





Funds are reminded that they are currently required by Regulation 28 of the Pension Funds Act to consider environmental, social and governance (ESG) criteria and B-BBEE as part of their supplier selection processes.

## Suggested Retirement Fund B-BBEE Scorecard

In order to accommodate the transformation and empowerment imperatives the Code suggests that retirement funds measure themselves annually against, the following two aspects of the broad-based empowerment scorecard.

**Preferential procurement:** This measures the procurement by funds on empowered suppliers including categories for “51% black-owned” and “30% black women-owned” suppliers as a percentage of the total.

**Board and Executive management participation:** This measures the voting rights of black board members, black female board members and the number of black officials and management involved in the fund.

It is proposed that large retirement funds compile and publish annual scorecards for the preferential procurement and management control, using the Retirement Fund B-BBEE Scorecard provided.

## Other proposed annual disclosures

Retirement funds are classified as mandated investors in B-BBEE legislation.

- ⦿ Because trustees have little or no influence on membership demographics, it is suggested that large funds should report annually on the proportion of fund liabilities attributable to black male members and black female members, based on the principals enshrined in FS Code 100.
- ⦿ 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 narrative on 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.

The aim of the code is to promote a transformed and globally competitive financial sector that reflects the demographics of South Africa, provides accessible financial services and directs investment into targeted sectors of the economy. The code strengthens and supports the resolve of many retirement funds to have a board that is representative of its membership, to invest in the ongoing education and training of the board members as well as contributing to the financial literacy levels of the fund members and their ability to plan effectively for retirement. There is no clear definition to help determine which funds qualify as the top 100 funds. There are many other matters that that will have to be researched or clarified. We are making enquiries and will in due course roll out strategies to comply with this code.