



## FSB Information Circulars PF No. 1 to 5 of 2016

The FSB issued five Information Circulars on 27 September 2016:

- Information Circular PF No. 1 of 2016: Pension Funds Act, 1956 – Compliance and enforcement of section 13A
- Information Circular PF No. 2 of 2016: Member personal details for purposes of member communication and payment of benefits
- Information Circular PF No. 3 of 2016: Filling of vacancies on the board of a fund
- Information Circular PF No. 4 of 2016: Responsibility for submission of annual financial statements and penalties for the late submission of annual financial statements submitted in terms of section 15(1) of the Pension Funds Act, 1956
- Information Circular PF No. 5 of 2016: Transfers contemplated in terms of section 14 of the Pension Funds Act, 1956 (“The PFA”) and the requirement to obtain tax directives where individual voluntary transfers of benefits are concerned.

This legal update gives a summary of these Information Circulars and their impact on the MMI Sponsor Funds.

### A. Information Circular PF No. 1 of 2016: Pension Funds Act, 1956 – Compliance and enforcement of section 13A

#### 1. Introduction

Section 13A of the Pension Funds Act (the PFA) deals with the payment of contributions and certain benefits in retirement funds. Non-payment or short-payment of contributions in a defined contribution fund can adversely affect the quantum of members’ benefits and can also have an adverse impact on the fund’s financial soundness.

Any person who contravenes or fails to comply with section 13A is guilty of an offence and liable on conviction to a fine not exceeding R10m or to imprisonment for a period not exceeding 10 years, or both.

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### MMI Sponsor Funds

Only the FundsAtWork Umbrella Funds are affected by section 13A. The section has no impact on the retail funds (retirement annuity, preservation and unclaimed benefits funds).

## **2. Compliance with Section 13A(6)**

Section 13A(6) requires the fund to appoint an “authorized person” to monitor and ensure compliance with section 13A and to advise the FSB who this person is. Where a fund fails to do so, the principal officer will by default fulfil the functions of the “authorized person”. The Information Circular calls on funds to advise the FSB of the identity and details of the “authorized person” if they have one.

### FundsAtWork Umbrella Funds

The Funds have an “authorized person” and have advised the FSB of the identity and details of that person.

## **3. Compliance with Sections 13A(8) & (9)**

Section 13A(8) sets out who will be personally liable for compliance with section 13A. Refer to [Legal update 8-2014](#) for more information on that.

Section 13A(9)(a) requires that a fund to which section 13A(8) applies must request the employer in writing to notify it of the identity of the persons who are personally liable under that section.

The FSB has found in their onsite inspections that there are funds who have not complied with section 13A(9)(a). The Information Circular therefore calls on funds to do so and to keep proof of sending and delivering the letter to employers. A specimen of the letter to the employer is attached to the Information Circular.

### FundsAtWork Umbrella Funds

The Funds did send letters to employers shortly after the amendment of section 13A came into effect in 2014. Upon installation of new schemes, employers are requested to provide the information required.

## **B. Information Circular PF No. 2 of 2016: Member personal details for purposes of member communication and payment of benefits**

### **1. Introduction**

The increase in unclaimed benefits indicates that funds are not informed of members’ personal and contact details or do not properly maintain it when it changes.

### **2. Member communication**

Sections 7C(2) and 7D(1)(c) and Regulation 33(3)(a) of the PFA, read together with Circulars PF 86 and 90, deal with the duties and responsibilities of trustees with regards to members and communication to them. Funds must ensure that this is done timeously, and in a transparent, understandable and easily accessible manner.

### MMI Sponsor Funds

All the MMI Sponsor Funds have communication policies and strategies as required under Circular PF 130, which are reviewed annually. These policies comply with the requirements stated in this Information Circular. Where the Funds have the personal contact details of the members, they communicate directly to those members.

### **3. Member records and contact details**

The Information Circular urges funds to review their members' information to see if it is current, and where necessary, get the latest contact details and update and maintain their member records accordingly. This will reduce unclaimed benefits and the number of complaints relating to members not being properly informed of their rights, benefits and duties.

### MMI Sponsor Funds

The FundsAtWork Umbrella Funds requires members' personal and contact details at installation stage. They also request members in the trustee newsletters to update their details if it changes. All the MMI Sponsor Funds endeavour to update and maintain member records by confirming their details whenever they interact with a member.

## **C. Information Circular PF No. 3 of 2016: Filling of vacancies on the board of a fund**

### **1. Introduction**

Section 7A(1A) of the PFA, which has been introduced with effect from 28 February 2014, provides that a vacancy on a fund's board must be filled within the period prescribed. Notice No. 3 of 2016, issued on 18 July 2016, prescribes this period to be a maximum of 90 days, calculated from the date on which the vacancy arises.

### **2. Rules of the fund**

The fund must still comply with section 7A(1A) for the duration of the vacancy, which means that unless the fund is exempt from this requirement, the board must consist of at least 50% member-elected trustees. The rules of the fund must also specifically provide that decisions taken during the 90 period will be valid despite the vacancy. The Information Circular includes the following as an example of such a rule:

*“Even though a vacancy on the Board may arise, when a decision is taken during the period prescribed in section 7A(1A) of the Act, it will not make that decision invalid provided the fund still complies with the provisions of section 7A(1) of the Act.”*

### MMI Sponsor Funds

Where the rules of the fund does not already contain a provision similar to the one referred to in the Information Circular, the rules will be amended to do so.

### **3. Decisions by a board not fully constituted**

If the fund complies with section 7A(1A), the fund's rules allow for it and there is a quorum at the meetings, the decisions taken during the vacancy will be valid despite the vacancy during the 90-day period.

**D. Information Circular PF No. 4 of 2016: Responsibility for submission of annual financial statements and penalties for the late submission of annual financial statements submitted in terms of section 15(1) of the Pension Funds Act, 1956**

**1. Background**

Section 15(1) of the PFA requires a fund to submit annual financial statements to the FSB within six months after the fund's financial year end.

One of the duties of the board is to act with due care, diligence and good faith when directing, controlling and overseeing the operations of the fund (section 7C(2)(b)).

**2. Responsibility to submit annual financial statements**

It is the responsibility of the board of the fund to submit the annual financial statements to the FSB within the prescribed period. If the board does not do so, and they have not applied for and been granted an extension, they are in contravention of the PFA and are also not fulfilling their duties under section 7C. The Information Circular reminds boards that the late or non-submission of annual financial statements may lead to the registrar considering such a board as not fit and proper to hold office under section 26(4) of the PFA. It also makes it difficult for the FSB to perform its supervisory duties, results in inaccuracies and delays in compiling industry statistics and impacts on the registrar's ability to submit his annual report to the Minister of Finance.

MMI Sponsor Funds

The MMI Sponsor Funds diarise the submission dates for all regulatory submissions on their annual calendars and monitor the processes impacting on these submissions to ensure that submissions are done timeously.

**3. Penalties**

The registrar is authorised to issue an administrative penalty not exceeding R1 000 or such other amount as prescribed by the registrar for each day from the day after a return is required to be submitted until the date of submission.

The Information Circular informs funds that the registrar intends imposing a penalty of R60 per day for the late or non-submission of 2014 annual financial statements prescribed under Board Notice 77 of 2014. The FSB will send out notification letters to the funds concerned, giving them an opportunity to respond to the notification. The fund must provide for penalties where applicable.

**E. Information Circular PF No. 5 of 2016: Transfers contemplated in terms of section 14 of the Pension Funds Act, 1956 ("The PFA") and the requirement to obtain tax directives where individual voluntary transfers of benefits are concerned**

**1. Background**

The Information Circular clarifies that a voluntary transfer of an individual member's benefit from one fund to another is regarded as a transfer of business under section 14 of the PFA and requires an application for a tax directive. It also reaffirms what constitutes "excluded" or "exempted" transactions as provided in Directive PF No. 6. A transaction that is neither "excluded" nor "exempted" is subject to the provisions of section 14t.

## 2. Directive PF No 6

Directive PF No 6 was issued on 28 December 2011. Section IV of that Directive lists the transactions which do not represent a transfer in terms of section 14 (“excluded” transactions), whilst Section VI lists the exemptions from the provisions of section 14 (“exempted transactions”).

## 3. Tax directives

The Income Tax Act requires that a tax directive application must be done where an individual member voluntarily elects to transfer his benefit from one fund to another. It also requires that a tax directive application must be done for a transfer from a pension fund to a provident fund under section 14.

The Information Circular requests boards of funds and administrators to comply with these requirements.

### MMI Sponsor Funds

The Information Circular is based on the assumption that paragraph 9(3)(b) of the Fourth Schedule to the Income Tax Act will be deleted, as envisaged under the Draft Taxation Laws Amendment Bill, 2016, that was published on 8 July 2016. Following that deletion, the current exemption that section 14 transfers are exempt from tax directive applications will fall away. Retirement funds and their administrators will then have to apply for tax directives for all members who are included in a section 14 transfer of business, including transfers from one retirement annuity fund to another.

The FundsAtWork Umbrella Funds currently only apply for tax directives when transfers from a pension to a provident fund are done and not for other inter-fund transfers.

The MMI retail funds do apply for a tax directive on individuals transferring between retirement annuity funds.

Once the Draft Taxation Laws Amendment Bill, 2016 is enacted, the MMI Sponsor Funds will comply with the requirements as set out in the Information Circular.

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Retirement Fund Governance

MMI Investments and Savings: Retirement Solutions