



### Prohibition on the acceptance of gratification

#### Summary

Directive PF number 8 (“the Directive”) was published on 8 March 2018 and is aimed at assisting with combating and preventing corruption and corrupt activities in the retirement fund industry. The Directive, which must be read together with Guidance Notice number 2 of 2018 (“the Note”), sets out what kind of gratification is not allowed. The Note provides clarification on some of the gratification that is prohibited by the Directive.

#### 1. Prohibition on the acceptance of gratification

The general principle of the Directive is that a board member, principal officer, deputy principal officer, employee of a fund, auditor, valuator, and administrator, employee of an administrator or service provider to a fund must not be involved in any conduct that is corrupt or can be seen to be corrupt.

Gratification, which is defined in the Directive, includes:

- 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.
- Any office, status, honour, employment, contract of employment or services, any agreement to give employment or provide services in any capacity and residential or holiday accommodation.
- Any real or pretended aid, vote, consent, influence or abstaining from voting.

This does not include any remuneration that is paid by a sponsor of a fund to a board member appointed by the sponsor of a fund.

The Directive lists specific types of gratification that are automatically not allowed to be accepted, agreed or offered to be accepted by the abovementioned persons from any other person who is connected to the service provider of a fund in which the person serves. These are:

- Any gratification which, objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund.

- Token gift(s) that exceed(s) the annual limit set by the board in terms of the fund's gift policy. The annual limit must not be more than R500 a year in aggregate from any one service provider.
- Any gratification relating to local or international due diligences including, but not limited to, subsistence, travel or accommodation.
- Any gratification relating to local or international entertainment or sporting events, including, but not limited to, subsistence, travel or accommodation.
- Conference costs or board of fund expenses.

The Note provides some clarification regarding some of the types of gratification that are now allowed. For example, the Note states that if it is necessary for a fund officer to conduct a due diligence or other fund related activity, the cost of such due diligence or other activity must be carried by the fund. This includes travel and accommodation costs. Proper motivation must be given for the due diligence or activity and this must include consideration of the number of officers needed to attend to the due diligence or activity.

The Note also clarifies that while training provided by service providers is not prohibited, it is important to strike a balance between supporting genuine training of board members with prohibition corruption and corrupt activities. It is preferred that all costs for the training, travel and accommodation are paid for by the fund. Where training is offered for free, the fund should at least carry the costs related to the training, such as travel and accommodation costs but excluding the costs of the actual training. If the service provider intends to provide training or present on topics that are relevant to the retirement fund industry at no cost (which may include refreshments and beverages), the event must be open for registration to the general public or general category of persons.

## **2. Duty to report corrupt transactions**

The Directive emphasises the duty in the Pension Funds Act 24 ("the Act") to report any material matter that relates to the affairs of the fund that may seriously prejudice the fund or its members. It also refers to section 9B of the Act which provides that certain persons, such as a board member or principal officer, may also submit a protected disclosure.

It also highlights the duty to report corrupt transactions contained in Section 34 of the Prevention and Combating of Corrupt Activities Act, which applies to a board member, principal officer and deputy principal officer of a retirement fund. It requires any person who holds a position of authority who knows, suspects or ought to have known or suspected that another person has committed certain specified offences involving an amount of R100 000 or more, to report to the police official in the Directorate for Priority Crime Investigation. These offences include theft, fraud extortion, forgery, receiving or offering unauthorised gratification by or to a party to an employment relationship.

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