



Legal update

No. 3 of 2019 • January 2019

momentum

FSCA Guidance Note 7, PFA Notice 2 and PFA Guidance Notice 8

The Financial Sector Conduct Authority (the FSCA) published the FSCA Guidance Note 7, PFA Notice 2 and PFA Guidance Notice 8. These relate to applications for retirement fund rule amendments, exemption from Regulation 38(2)(c) of the Regulations to the Pension Funds Act and guidance on the application of the “Default Regulations”.

Below is a summary of the above documents, highlighting the important points.

1. Guidance Note 7 of 2018 – Applications for amendments in terms of section 12 to ensure compliance with the “Default Regulations” contained in Regulations 37, 38 and 39 of the Regulations made in terms of section 36

The Guidance Note was published on 7 December 2018 and provides guidance to funds on the process and timelines for applications, for amendments to rules submitted to the FSCA to comply with the Default Regulations.

The Guidance Note provides that all applications for rule amendments received by 31 January 2019 will be treated as urgent and the FSCA will attempt to consider and register such rules before 1 March 2019.

If a fund has already submitted applications for rule amendments to comply with the Default Regulations, it must send an email to Ms Jodine Scholtz at jodine.scholtz@fsc.co.za to alert the FSCA of the application so that it can be escalated for urgent consideration.

Where a fund intends to submit the applications for amendments to rules, consisting only of amendments for the Regulations 37 to 39, this must be reflected in the covering letter.

2. PFA Notice 2 of 2018 – General exemption from the requirement to convert defined benefit amounts into defined contribution amounts in terms of Regulation 38(2)(c) made in terms of section 36 of the Pension Funds Act

Regulation 38(2)(c) provides that a fund’s rules must specify that when a member becomes paid-up, a defined benefit must be converted to a defined contribution and have it preserved.

On 5 December 2018, the FSCA published the PFA Notice 2 of 2018 which exempts pension and provident funds with defined benefit categories from the provisions of regulation 38(2)(c).

3. PFA Guidance Notice 8 of 2018 – Guidance on the application of “Default Regulations” contained in

Disclaimer:
Copyright reserved © MMI 2019
Conditions for use: The contents of this document may not be changed in any way. The document is for illustrative purposes only and does not constitute tax, legal, accounting or financial advice. The user relies on the contents at his sole discretion. A person should not act in terms of the information in this document without discussing it with an authorised financial adviser and should seek personal, legal and tax advice. MMI Holdings Limited, its subsidiaries, including MMI Group Limited, shall not be liable for any loss, damage (whether direct or consequential) or expenses of any nature which may be suffered as a result of or which may be attributable, directly or indirectly, to the use or reliance upon this publication.
MMI Group Limited (registration number: 1904/002186/06) is an authorised financial services and credit provider.
MMI Group Limited is a wholly owned subsidiary of MMI Holdings Limited.

Regulations 37, 38, 39 and 40

The Guidance Notice was published on 12 December 2018 and provides guidance on the application of the default regulations by retirement funds. The Guidance Notice explains and clarifies certain aspects of the default regulations. It starts off with a summary of the application of the Default Regulations, which confirms that it does not apply to beneficiary funds and funds in voluntary liquidation. The various defaults (DIP = default investment portfolio – Regulation 37, DPres = default preservation and portability – Regulation 38, and DAS = annuity strategy – Regulation 39) apply:

	Pension	Provident	Retirement Annuity	Pension Preservation	Provident Preservation
DIP	√	√	×	×	×
DPres	√	√	×	×	×
DAS	√	×	√	√	×
		√ if the fund rules state that the member may buy an annuity			√ if the fund rules state that the member may buy an annuity

- **Default investment portfolios**

- Participating employers may be allowed to choose the default investment portfolio that applies to members employed by them, provided the fund rules allow for this. The ultimate decision on the available portfolios that the employers may choose from and their appropriateness still remains with the board of trustees.
- Where there is only one default investment portfolio in which members' contributions are invested in terms of the fund's investment policy statement, that portfolio is considered to be the default investment portfolio and must meet the requirements of Regulation 37.
- If an existing default investment portfolio does not comply with Regulation 37(1), it will no longer qualify as a default investment portfolio from 1 March 2019.
- A fund should communicate to its members, at least once a year, the asset composition, performance of the default investment portfolio/s compared to appropriate benchmarks, top 10 holdings by value and fund returns for the current and at least two previous financial years.

- **Paid up membership certificates**

- Paid up membership certificates which must be provided to a member in terms of Regulation 38(1)(b)(ii) should as far as possible resemble the template provided in the Guidance Notice, see the annexure for a sample of a paid up certificate.

- **Retirement benefits counselling**

- Retirement benefits counselling may be provided in person or in writing. A fund must keep a record of the retirement benefits counselling given to each member.
- A person appointed by a fund to provide retirement benefits counselling is not required to be a registered FSP or financial adviser in terms of the Financial Advisory and Intermediary Services Act.
- Members must be expressly informed that retirement benefits counselling does not include advice, even on tax matters.
- It is recommended that access to retirement benefits counselling is provided no earlier than six months before the member's retirement from the fund and the information provided during retirement benefits counselling is still relevant and appropriate at retirement age.
- Where members are given access to retirement benefits counselling, a disclosure and explanation must be given to the member in clear and understandable language. This must include the risks, costs, fees and charges of all the items set out in the definition of "retirement benefits counselling".

- **Converting paid-up benefits from defined benefit amounts to a defined contribution component**

- Funds with defined benefit categories in their rules have been exempted from complying with this requirement. Please see section 2 above.

- **Paid-up members**

- The board of trustees must reasonably determine whether administration fees and charges for paid-up members are fair, reasonable and in proportion with the cost of providing administration services to members still in the service of the participating employer. Administration fees for paid-up members should be less than administration fees for members who are in-service because there are no contributions to be administered or schedules to be considered.
- Deducting administration fees for paid-up members will not be a reduction of a benefit. Trustees are required to implement a paid-up administration arrangement that will ensure that the benefits of paid-up members are not used up over time by fund expenses.
- Investment fees for paid-up members should not be different from the fees paid by in-service members.
- A member should not be charged for transferring a paid-up benefit from another fund at any stage of membership.
- Section 37(c) of the Pension Funds Act, dealing with the distribution of death benefits, applies to a paid-up member's benefit in the same way that it applies to any other death benefit that is payable by a fund.
- The FSCA will be establishing and maintaining a database of all paid-up membership certificates. Funds must ensure that the paid-up membership database is updated accurately and timeously.

- **Annuity strategy**

- Provident and provident preservation funds do not have to comply with Regulation 39 unless the fund

rules allow for a member to elect an annuity.

- The maximum period for providing access to retirement benefits counselling before a member's normal retirement age is not prescribed. It is recommended that it should not be longer than six months before a member's normal retirement age.
- For living annuities, the investment choice is limited to a maximum of four investment portfolios. The number of portfolios can be less than four and can be a single portfolio.

- **Exemptions**

- When a fund applies for exemption, it must specify whether the exemption is in terms of regulation 37(3), or 38(3) or 39(6).
- Applications for exemption must be submitted through the FSCA's online system using the prescribed form. This form is attached to the Guidance Note.
- The FSCA may request supporting documents. A fund may also submit supporting documents with the initial application.
- The exemption may be granted to any person or a class of people. The exemption will not be granted if it is considered to be against public interest or may prejudice achieving the purpose of the Default Regulations.
- Exemptions will be granted in writing and will be published on the FSCA's website.

Dionne Nagan

Legal Specialist: Research

Retirement Fund & Product Governance

Momentum Investments: Product Solutions

PAID-UP MEMBERSHIP CERTIFICATE

Requirement in terms of Regulation 38(1)(b)(ii) of the Pension Funds Act, 1956

Details of the Fund

Name of fund: XYZ Pension Fund
Registration number: 12/8/9876543
Registered address: 1234 Long Street,
Cape Town, 8000
Telephone number: 021-654 3210
Email address: principal.officer@xyzpf.co.za
Facsimile: 021-654 3211

Details of the Administrator

Administrator: ABCD Administration
Registration number: 24/101112
Registered address: 4567 Church Street, Pretoria, 0001
Telephone number: 012-345 6789
Email address: resp.person@abcdadmin.co.za
Facsimile: 012-345 6788

Details of the Member

Member's full name:	Ms Jane Smith
Identity number:	780101 5678 087
Tax number:	1234567890
Fund membership number:	123/01/1994
Address:	579 Victoria Road, Camps Bay, Cape Town, 8040
Telephone number:	021-987 6543
Cellular phone number:	083 456 7890
Email address:	janes@pfmember.co.za
Paid-up date:	20 September 2018
Value of member's individual account / reserve as at paid-up date:	R 1 450 695.31
Default investment portfolio invested in:	Moderate equity

ATTENTION MEMBER: Please note that it is incumbent upon the member to inform XYZ PENSION FUND or ABCD Administration if any of the member's contact details as stated above has changed.

I hereby certify that the above information has been verified against XYZ Pension Fund's records and is to the best of my knowledge true and correct as at the date of issue.

PRINCIPAL OFFICER: XYZ PENSION FUND

Date of issue: 20 November 2018