



FSCA COMMUNICATION 41 OF 2020 (RF)

Default Regulations: Non-compliance with Regulations 38(1)(b)(ii) and 38(1)(e)(i) of the Pension Funds Act, 1956 by Retirement Funds

1. Purpose

The purpose of the communication is to remind the Boards of retirement funds of their fiduciary duties and responsibilities towards the members of the fund and to ensure that retirement funds comply with the provisions of Regulations 38(1)(b)(ii) and 38(1)(e)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the PFA").

2. Background

2.1 The Financial Sector Conduct Authority ("the Authority") has been inundated with reports by auditors of retirement funds in terms of section 252(1)(a) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) ("the FSR Act") to the effect that retirement funds are contravening the provisions of Regulations 38(1)(b)(ii) and 38(1)(e)(i) of the PFA.

2.2 Regulation 38(1)(b)(ii) provides that:

"When members leave the service of a participating employer before retirement, such members must be presented with a paid-up membership certificate within two (2) calendar months of the fund becoming aware that the member has left the service of the participating employer."; and

2.3 Regulation 38(1)(e)(i) provides that:

"The rules of funds to which a member belongs as a condition of employment must make provision to accept any amount or amounts transferred, to the fund from another fund for the benefit of a member or members, provided that such transfers comprise a defined contribution benefit component, and such fund must within four (4) months of a member joining the fund, request, in manner which may be prescribed, a list of all paid-up membership certificates in respect of any retirement savings of that member."

3. Failure to Comply with the Regulations

Retirement Funds are reminded that failure to ensure compliance with the provisions of Regulation 38(1)(b)(ii) and Regulation 38(1)(e)(i) may lead to the Authority imposing an administrative penalty in terms of section 167 of the FSR Act.

4. Enquiries

For more information regarding this Communication contact the Retirement Funds Supervision Division of the FSCA at Cornelia.buitendag@fsca.co.za.



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