

FSCA COMMUNICATION 56 OF 2020 (RF)

SUPERVISORY CONCERNS ABOUT INDUSTRY PRACTICES RELATED TO SUBMISSION OF STATUTORY RETURNS

1. Purpose

The Financial Sector Conduct Authority (Authority) has noted with concern the laxity of certain funds and administrators when it comes to the submission of statutory returns. The purpose of this communication is to elucidate the supervisory concerns identified and confirm to the industry the approach that will be taken by the Authority when considering any applications for extension.

2. Background

2.1 The Authority is increasingly concerned about the lack of adherence to submission deadlines in terms of the Pension Funds Act, 1956 (Act No.24 of 1956) (PFA) for the following statutory returns:

- 2.1.1 Annual financial statements
- 2.1.2 Section 14 transfers (this includes section 14(1), 14(2)(b) and 14(8))
- 2.1.3 Section 16 submissions
- 2.1.4 Section 15B submissions
- 2.1.5 Section 18 schemes
- 2.1.6 Regulation 37, 38 and 39 rule amendments

2.2 Funds and administrators have instead opted to submit a large volume of extension applications for matters that can be better managed through improved planning, strengthened internal controls at administrator level and increased governance oversight by boards and principal officers.

2.3 To ensure that funds are the ones requesting an extension and not the service providers, the Authority will, as of 1 March 2021, **only** accept applications from Funds signed by the Principal Officer or Deputy Principal Officer and/or a member of the Board duly authorised by the Board to do so.

3. Emerging themes

3.1 The Authority will only consider granting a further extension for the same submission under exceptional circumstances. The fund would need to clearly explain the reason the originally planned extended deadline has not been met. Delays in submitting statutory returns or applications on time can compromise the interests of members.

3.2 The following themes have emerged from supervisory experience in considering industry applications for extensions:

Types	Examples of reasons provided in support of extensions
Poor planning or governance	• The special rules were registered late or have not yet been registered. • No properly constituted board and no application for section 26 board appointment has been lodged with the Authority. • Administrator is still in the process of finalising the documentation. • The trustees/principal officer was not in the country or available to sign the documents. • Auditor not booked on time or engagement letter not signed timeously. • Extension granted in the prior year and same reasons or motivation given in the current year with no corrective action illustrated. • Prior year financial statements still outstanding. • Inadequate handover of records and delays in the process by the previous administrator.
Lack of internal controls	• Application not appropriately signed. • Administrator delays. • Notification to transfer/section 14 documents submitted after the period has expired. • There was an oversight in internal processes. • Fund/Administrator is awaiting the outstanding documents/information.
Lack of cooperation between the parties	• Disputes between the auditors and trustees. • Fund has been doing follow-ups with the other fund for outstanding documentation/information.
Legislative matters	• Tax directives were declined by SARS.

- 3.3 The above matters are within the board of trustees' control. Remedies or recourse should be contained in the administrator's service level agreements and administration agreements.
- 3.4 In addition, funds and administrators should be able to provide basic information requested by SARS for tax purposes. Funds and employers should be ensuring that employees and members are on-boarded with all the correct personal information, including Identity document (ID) number and Income Tax numbers, and verifying that all existing employees or members have up-to-date information.
- 3.5 Funds are reminded that failure to submit statutory returns by the due date amounts to non-compliance with the legislation and may attract administrative action, including penalties that may be levied against defaulting funds.
- 3.6 Funds should also note the information requested in terms of FSCA Information Request 6 of 2020(RF) related to pending transfers in terms of section 14 of the PFA which must be submitted to the Authority before 31 March 2021. The information request is available on the FSCA's website (www.fsca.co.za).

4. Enquiries

This Communication does **not** constitute an extension in terms of section 279 of the

Financial Sector Regulation Act, 2017. For more information regarding this Communication contact the Retirement Funds Supervision Division of the Authority at Mamiki.Motale@fsca.co.za.



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