

## **FSCA COMMUNICATION 20 OF 2023 (RF)**

**Publication of draft FSCA Interpretation Ruling [-] of 2023 (RF) on the Application of Section 37C of the Pension Funds Act, 1956 and withdrawal of FSCA Interpretation Ruling 1 of 2020(RF) – for public comment.**

### **1. PURPOSE**

The purpose of this communication is to -

- (a) inform stakeholders that the Financial Sector Conduct Authority (Authority) intends to revoke FSCA Interpretation Ruling 1 of 2020 (RF) (IR 1 of 2020) and replace it with the draft Interpretation Ruling [-] of 2023(RF) (draft Interpretation Ruling); and
- (b) invite comment from the public on the draft Interpretation Ruling, as published together with this communication, on or before 26 September 2023.

### **2. BACKGROUND**

- 2.1 On 25 March 2023 the Authority, pursuant to section 142(7) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), published IR 1 of 2020 on the application of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PF Act). The publication of IR 1 of 2020 followed from an extensive consultation process between the Authority and the public, which enabled the Authority to consider the various views on the interpretation of section 37C of the PF Act.
- 2.2 The initial draft Interpretation Ruling was published on 12 November 2019 for a period of four (4) weeks, with comments due on 13 December 2019. The comments received were considered by the Authority, which prompted the Authority to engage in further consultation by inviting the commentators to a consultative workshop held on 21 February 2020. IR 1 of 2020 came into effect on 25 March 2020.
- 2.3 It has since been brought to the attention of the Authority that paragraph 4 of IR 1 of 2020, relevant to the payment of unclaimed benefits following the death of a member, was incorrectly interpreted, resulting in certain unintended consequences in the application of section 37C.

### **3. THE APPLICATION OF SECTION 37C OF THE PFA IN RELATION TO MEMBERS OF AN UNCLAIMED BENEFIT FUND**

- 3.1 By publishing IR 1 of 2020, the Authority clarified the circumstances under which section 37C (in respect of the death benefit distribution process) would be applicable to the payment of members' benefits.
- 3.2 In IR 1 of 2020, section 37C was interpreted as being applicable to, *inter alia*, members of unclaimed benefit funds.

- 3.3. The inclusion of members of an unclaimed benefit fund within the ambit of 37C was an error of law in that, by definition, an unclaimed benefit is an accrued benefit which has already become due and payable to the member and remains as such after it has been transferred to an unclaimed benefit fund. Therefore, the payment of an unclaimed benefit is not conditional upon the occurrence of another event, such as the death of the member. Accordingly, whilst a member of an unclaimed benefit fund is a member within the meaning of section 1 of the PF Act, an unclaimed benefit does not become payable as a result of the death of such a member, as contemplated in section 37C.
- 3.4 The draft Interpretation Ruling in essence confirms the interpretation as set out in IR 1 of 2020 but clarifies the correct legal position by:
- (i) the addition of a new paragraph 4.5; and
  - (ii) the deletion of any reference to unclaimed benefits and members of unclaimed benefits funds in relation to the application of section 37C.

#### **4. INVITATION TO COMMENT ON THE DRAFT INTERPRETATION RULING**

- 4.1 In the above context, the Authority publishes for public consultation a new draft Interpretation Ruling on the Application of Section 37C of the Pension Funds Act, 1956.
- 4.2 The Notice setting out the proposed new draft Interpretation ruling, alongside a comments template, are available on the Authority's website at [www.fsca.co.za](http://www.fsca.co.za).
- 4.3 Interested parties are invited to submit comments on the draft Interpretation Ruling, using the Comments Template published with the draft Notice, in Word format, on or before 26 September 2023 to [FSCA.RFDstandards@fsca.co.za](mailto:FSCA.RFDstandards@fsca.co.za).

#### **5. ENQUIRIES**

For further information regarding this Communication, please contact Roslynne van Wyk at [FSCA.RFDStandards@fsca.co.za](mailto:FSCA.RFDStandards@fsca.co.za).



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