

FSCA COMMUNICATION 3 OF 2022 (CIS)

Publication of Determination of Permissible Deductions from a Portfolio in terms of section 93(2) of the Collective Investment Schemes Control Act, 2002 (CISCA)

1. PURPOSE

The purpose of this Communication is to inform stakeholders that today the Financial Sector Conduct Authority (FSCA) published a determination of amounts, which may be deducted from a portfolio of collective investment scheme (the Determination).

2. BACKGROUND

- 2.1 Section 93(1) of CISCA provides for amounts which may be deducted from a portfolio. Section 93(2) of CISCA, specifies that the FSCA may determine amounts, other than those referred to in section 93(1) of CISCA, which may be deducted by a manager from a portfolio. The purpose of section 93(2) is to provide for changing needs for deductible costs due to the dynamic nature of the Collective Investment Schemes (CIS) industry over time.
- 2.2 On 25 June 2021, the FSCA also published FSCA Guidance Notice 2 of 2021 (Guidance Notice), which provides guidance on the application of section 93(1) of CISCA.
- 2.3 Further to the costs and fees provided for in the abovementioned section 93(1) of CISCA and the Guidance Notice, industry members subsequently identified additional costs and fees that could not be interpreted for inclusion as deductible costs, and specifically requested that the FSCA apply section 93(2) by determining the proposed costs as permissible deductions from a portfolio.
- 2.4 In addition to the industry, the providers of the services to which the costs apply also requested that their costs be determined as deductible costs, as it would permit for appropriate netting of counterparty fee obligations against income obtained for the portfolio.
- 2.5 Past expectations were that costs such as those for the recovery of Value Added Tax (VAT) and withholding taxes would be part of the administration process and expenses of the CIS Managers, which they would recover by means of the permitted deduction of their own fees. However, these functions or services have become quite sophisticated over time, requiring special expertise and systems. Accordingly, they are outsourced to specialist service providers and the costs should rightfully be borne by the portfolios. The income derived from these services are in the interest of investors.
- 2.6 Legal fees and costs incurred to protect the value of, or enforce the rights in, an asset held in a portfolio are inarguably costs to be borne by the portfolio, but have never been determined as such. These costs are also incurred to protect the interests of investors.

2.7 The FSCA, as contemplated in section 93(2) of Cisca, thus prescribes through this Determination to include these additional costs and fees.

3. AVAILABILITY OF INFORMATION AND ENQUIRIES

3.1 This Determination is available on the FSCA's website at **www.fsca.co.za**.

3.2 For more information regarding this Determination and/or this Communication please contact the Regulatory Frameworks Department of the Authority at **Marius.DeJongh@fsca.co.za**.

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', with a large, sweeping flourish extending to the right.

**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT
AUTHORITY**

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