

FSCA COMMUNICATION 7 OF 2024 (RF)

Publication of final FSCA Interpretation Ruling 1 of 2024 (RF) on the Application of Section 37C of the Pension Funds Act, 1956, and withdrawal of FSCA Interpretation Ruling 1 of 2020 (RF)

1. PURPOSE

The purpose of this communication is to inform stakeholders that the Financial Sector Conduct Authority (Authority) has withdrawn FSCA Interpretation Ruling 1 of 2020 (RF) (IR 1 of 2020) and replaced it with FSCA Interpretation Ruling 1 of 2024 (RF): *Interpretation and application of section 37C of the Pension Funds Act, 1956* with effect from date of publication.

2. BACKGROUND

- 2.1 On 14 August 2023 the Authority published the draft Interpretation Ruling for public consultation, with comments due by 26 September 2023¹. The draft Interpretation Ruling is intended to withdraw and replace IR 1 of 2020, issued on 25 March 2020.
- 2.2 The process of issuing the draft Interpretation Ruling was initiated after it was 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. IR 1 of 2020 erroneously set out that the reference to “any benefit” in section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), included a reference to an unclaimed benefit. The Authority consulted on a revised interpretation ruling with the intention to provide clarity, consistency and certainty in the interpretation and application of section 37C of the PFA.

3. SUMMARY OF THE CONSULTATION PROCESS AND THE FINAL INTERPRETATION RULING

- 3.1 The Authority received a total of 9 comments through public consultation on the draft Interpretation Ruling from 4 commentators. Published alongside FSCA Interpretation Ruling 1 of 2024 (RF) and this communication is a consultation report setting out the comments received and the Authority’s responses thereto. The Authority also had specific engagement with industry participants to ensure a thorough understanding of the revised interpretation and to avoid any unintended consequences that may arise.

¹ Available at: www.fsc.co.za under *Regulatory Frameworks < Documents for consultation < Retirement Funds*.

- 3.2 Section 37C provides that benefits payable as a consequence of the death of a member do not form part of the estate of a member and explains the manner in which the benefit payable upon the death of a member must be dealt with. FSCA Interpretation Ruling 1 of 2024 (RF), in its final form, explains the distinction to be drawn between a benefit becoming payable upon the death of a member, in which instances section 37C would apply, compared to a benefit that has already become payable before the member's death, which falls outside the ambit of section 37C even if the benefit has not yet been paid to the member upon the death of the member.
- 3.3 A key distinction is the cause of the vesting of the benefit – where the death of the member is the cause for the benefit to become payable section 37C will apply, whereas if a member has become entitled to claim a benefit and if the fund received a written instruction from the member to pay out or to transfer the benefit prior to the member's death, then it is that written instruction that caused the benefit to be payable (not the death of the member) and accordingly section 37C will not be applicable.
- 3.4 It also clarifies that section 37C does not apply to an unclaimed benefit and to a member of an unclaimed benefits fund. It concludes that the reference to "any benefit" in section 37C includes a paid-up member's benefit and a deferred retiree's benefit before receipt by the fund of an instruction to pay or transfer such benefits, and not an unclaimed benefit as was set out in IR 1 of 2020.
- 3.5 The FSCA Interpretation Ruling 1 of 2024 (RF) and consultation report are available on the Authority's website at www.fsca.co.za.

4. ENQUIRIES

For further information regarding this Communication, please contact Roslynn van Wyk at FSCA.RFDStandards@fsca.co.za.



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