



Legal Services

FINANCIAL SERVICES



ON THE SCALES 4 of 2018

Notice No 1 of 2018 – Penalties imposed in terms of Section 37(2) of the Pension Funds Act

The FSB has issued Notice 1 of 2018 stating that the administrative penalty for the failure to submit to the Registrar of Pension Funds ('the Registrar') information requested in terms of the Pension Funds Act ('the Act') will increase from R1 000 to R4 000 for each day that the non-compliance continues.

Summary

- Notice 1 of 2018 sets out the increased maximum administrative penalty that can be charged by the Registrar.
- Administrative penalties can be imposed for the failure of a fund, administrator or third party to submit information required under the Pension Funds Act.
- From 1 March 2018 the maximum administrative penalty will increase from R1000 per day to R4000 per day.
- There is a process to be followed before an administrative penalty is imposed.

Administrative penalty amount increases from R1000 to R4000 per day from 1 March 2018

Section 37(2) of the Act allows the Registrar to prescribe a maximum penalty amount that can be imposed on a fund, administrator or third party for the failure to submit to the Registrar within a period specified in the Act or in a directive or condition imposed by the Registrar in terms of the Act, any scheme, statement, report, return or other document or information required in the Act to be submitted. This would include, for example, annual financial statements, section 14 transfer applications and valuation reports.

The current maximum penalty is R1 000 for every day the non-compliance continues. This maximum administrative penalty amount has remained the same since 2008, and non-compliance continues from some funds in the industry.

The Registrar considers it necessary to increase the maximum penalty amount to R4000 per day, as it seems that the current maximum administrative penalty does not have a deterrent effect on entities to encourage future compliance with the requirements of the Act.

Penalty process

The Act sets out a process to be followed when a penalty is to be imposed.

Before imposing a penalty the Registrar must in writing-

- a. inform the administrator, pension fund or third party of his or her intention to impose a penalty;
- b. specify the particulars of the alleged non-compliance;
- c. provide reasons for the penalty intended to be imposed;
- d. specify the amount of the penalty intended to be imposed;
- e. invite interested persons to make representations within a period specified by the Registrar. *For example, a closing fund may request the penalty be reduced or waived based on its own specific circumstances.*

If the Registrar, after consideration of representations made, decides to impose an administrative penalty, he or she must by written notice inform the administrator, pension fund or third party that it may, within 30 days after the date of the notice, pay the penalty or lodge an appeal to the FSB Appeal Board.

If an administrator, pension fund or third party fails to pay an administrative penalty the Registrar can institute civil action to recover the penalty amount.

Comment: the R4000 per day is the maximum that could be levied. The Registrar has the discretion to determine the amount to be charged depending on the circumstances of the non-compliance.

If you need more information, please contact your consultant.
