



Legal Services

FINANCIAL SERVICES



ON THE SCALES 9 OF 2018

Directive 8 - Prohibition on the Acceptance of Gratification

The Registrar of Pension Funds (the Registrar) has issued a final Directive 8 called 'Prohibition on the Acceptance of Gratification'. We covered the draft directive in *On the Scales* 26 of 2017.

The Directive imposes conditions to **combat and prevent bribery and corrupt conduct** by and of principal officers, deputy principal officers, board members, employees of retirement funds, valuers, auditors, administrators, employees of administrators or other officers or other service providers to funds, including investment managers and investment advisors.

Summary

- The Registrar has issued Directive 8 - Prohibition on the Acceptance of Gratification
- Officials of and service providers to a fund must not be involved in any conduct constituting bribery, fraud or corruption, and any such involvement will have a bearing on such person's fitness and propriety to hold office.
- Issues which may prejudice a fund or its members must be reported to the Registrar.
- Corrupt transactions must be reported to the police.
- The Directive defines what constitutes 'gratification'.
- The defined types of gratification may not be accepted at all by fund officials and service providers, unless the Registrar agrees in advance they can be accepted.

General Principle

A board member, principal officer, deputy principal officer, employee of a fund, auditor, valuator, administrator, employee of an administrator or service provider to a fund should not be involved in any conduct which constitutes bribery, fraud or corruption.

That type of conduct would have a bearing on that person's fitness and propriety to hold office or provide a service.

The duty to report to the authorities

Trustees already have a duty under the Pension Funds Act ('the Act'), on becoming aware of any material matter relating to the affairs of the fund which in their opinion may seriously prejudice the fund or its members, to inform the Registrar in writing of that issue.

A principal officer, deputy principal officer, auditor, valuator or administrator of a fund already has a duty under the Act, on becoming aware of any matter relating to the affairs of the fund which in their opinion may prejudice the fund or its members, to inform the Registrar in writing of that issue.

Any report to the Registrar can be a protected disclosure, which gives protection to the person submitting the report.

Also the Prevention and Combating of Corrupt Activities Act requires fund officials and service providers to report corrupt transactions to the South African Police Service.

A trustee, principal officer, deputy principal officer, employee of a fund, auditor, valuator, administrator, employee of an administrator or service provider to a fund must report or disclose to the Registrar any breach or attempted breach of Directive 8 immediately upon becoming aware of that.

Information Circular 1 of 2018 gives guidance on how to report or disclose matters to the Registrar (see *On the Scales* 3 of 2018).

What qualifies as "gratification" in Directive 8?

Gratification means:

1. money, whether in cash or otherwise;
2. any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;
3. the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
4. any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;
5. any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
6. any forbearance to demand any money or money's worth or valuable thing;
7. any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;
8. any right or privilege;
9. any real or pretended aid, vote, consent, influence or abstention from voting; or
10. any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

Gratification excludes any remuneration paid by a sponsor of a fund to a trustee appointed by the sponsor of a fund.

Comment: the Directivek does not actually specify the purpose of this definition, but we assume these types of gratification are not permitted.

Specific types of gratification not permitted

The Directive says that the below types of gratification are automatically not permitted to be accepted, agreed or offered to be accepted by a trustee, principal officer, deputy principal officer, valuator, auditor, administrator, employee of an administrator or other officer or service provider to a fund, from any other person connected in whatsoever manner to a service provider of a fund, or form any potential future service providers, in which such a person serves:

1. any gratification which objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund;
2. token gift/s that exceed/s the annual limit set by the board in terms of the fund's gift policy, which annual limit may not be more than R500.00 per annum in aggregate from any one service provider;
3. any gratification relating to local or international due diligences, including but not limited to subsistence, travel or accommodation;
4. any gratification relating to local or international entertainment or sporting events, including but not limited to subsistence, travel or accommodation; or
5. conferencing costs of board of trustee expenses.

Comment: not all of our comments on the draft directive were taken into account by the FSB. We will be raising certain questions with them now, as we foresee some difficulties around implementing the final directive.

If you need more information, please contact your consultant.
