



Legal Services

FINANCIAL SERVICES



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Draft Directive on Sustainability Reporting and Disclosure Requirements

The Financial Sector Conduct Authority (“FSCA”) has issued a draft directive to inform trustees what should be contained in an investment policy statement insofar as the sustainability and active ownership of assets are concerned, as well as how funds need to report on these issues.

Summary

- Funds must consider environmental, social and governance factors when investing fund assets.
 - This directive sets out requirements that fund must follow, which the FSCA will monitor.
 - The directive introduces definitions of ‘active ownership’ and ‘sustainability’.
 - Each fund must update their investment policy statement (‘IPS’) to deal with ESG, sustainability and active ownership.
 - Annual financial statements and trustee reports must deal with how the IPS has been complied with or not or changed in the reporting year.
 - Members, participating employers and unions are entitled to receive a copy of the fund’s IPS.
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Requirements of Regulation 28

Regulation 28 requires all funds to have an investment policy statement. It is also a requirement that all funds consider environmental, social and governance factors before investing in any asset.

Regulation 28 promotes responsible investing of pension fund assets, based on a sustainable, long-term, risk aligned and liability-driven investment philosophy.

The purpose of the directive is to set out requirements for funds to follow. The FSCA will monitor funds' compliance with these requirements.

Definitions in the draft directive

Active ownership means the prudent fulfilment of responsibilities relating to ownership of or an interest in an asset. These responsibilities include, but are not limited to:

1. Guidelines to be applied to identify sustainability concerns in the assets;
2. Mechanisms of intervention and engagement with the person responsible for an asset where concerns have been identified. And a means to escalate concerns, if the concerns cannot be resolved.
3. Voting at shareholder meetings, criteria used to reach voting decisions and public disclosure of full voting records.

Asset class is a category of asset, whether located in South Africa or not.

Assets means any type of asset held by a pension fund.

ESG means environmental, social and governance.

FSP has the same meaning as an authorised financial service provider under the FAIS legislation.

Sustainability means the ability of an entity to conduct its operations that meets existing needs, without compromising the ability of future generations to meet their needs. This includes managing the impact of the business of an entity on the life of the community, the broader South African economy and the natural environment in which it operates. It also considers the effects of ESG on business strategy.

Investment policy statement requirements

Every fund's IPS must include the following:

1. How the fund's investment approach ensures the long-term performance of its assets.
2. Its policy in applying ESG factors to the assets it intends acquiring.
3. How regularly it measures ESG compliance and sustainability criteria of its assets, with specific focus on broad-based black economic empowerment.
4. Its active ownership policy.
5. How the above 4 requirements are included in the mandate given by the fund to each FSP engaged by it.

If a fund holds assets that limit the application of ESG factors, the sustainability criteria or the full application of an active ownership policy, the IPS must say why this limitation is in the interests of the fund and its members. Alternatively, the IPS must set out the remedial action the fund will take to rectify the position.

Members and participating employers are entitled to a free copy of the IPS. The fund can issue an abridged version if certain sections of the IPS are not relevant to all members. If a fund has a website, the IPS must be available on the website.

All of the requirements related to the IPS must be implemented 6 months after the directive is effective.

Reporting and provision of information to stakeholders

A fund's annual financial statements and annual trustee report must include feedback on:

- how the fund has complied with the requirements of this directive;
- the extent of non-compliance; and
- any changes made to the IPS in the reporting period.

The annual trustee report must tell members that they are allowed a copy of the IPS and inform them of any changes to the IPS in the last year.

Annually, a fund must provide a copy of the IPS to all participating employers and unions in the fund.

These reporting requirements must be implemented 12 months after the directive is effective.

Exemptions can be applied for by a fund from any of the requirements in the directive. A fund should show good reason why it is applying for an exemption.

Comment: please bear in mind that this is still a draft directive. We shall update you once it is finalised.

If you need more information, please contact your consultant.
