

**SHAPING  
THE FUTURE**



## ON THE SCALES 12 OF 2018

### Introduction to the Financial Sector Conduct Authority

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In *On the Scales* 19 and 20 of 2017, we advised funds that the Financial Sector Regulation Act (“FSR Act”) had become law. As a reminder, the FSR Act introduces the twin peaks regulatory framework – and more specifically introduced the Prudential Authority (“PA”) and the Financial Sector Conduct Authority (“FSCA”).

The FSR Act will be implemented in stages, with some sections already having come into effect and others will only be implemented next year.

Of particular interest to funds is the FSCA, as that authority will be the primary regulator for funds and will focus on market conduct of funds.

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#### Summary

- The FSCA commenced on 1 April 2018 and has explained what their immediate and twelve-month goals will be.
  - The FSR has introduced amendments to the Pension Funds Act.
  - The changes to the Pension Funds Act will be implemented in stages – 1 April 2018, 1 October 2018 and 1 April 2019.
  - On 20 April 2018, the FSCA advised that there were delays in registering amendments as a result of the transitional processes and it was anticipated the backlog would be resolved in 5 weeks.
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## **The FSCA went live on 1 April 2018**

The FSCA issued a newsletter confirming that they have transformed from the Financial Services Board (“FSB”) to the FSCA.

The FSCA mandate is to ensure improved market conduct outcomes in the financial sector.

They will promote the fair treatment of customers, support the efficiency of financial markets, assist in maintaining financial stability and support the financial inclusion and transformation of the financial sector.

## **Immediate changes under the FSCA**

A transitional committee has been established to lead the FSCA, under the chair of Mr Abel Sithole. This committee will stay in place until the new executive committee is established, which will include the appointment of a Commissioner and Deputy Commissioner, as envisaged under the FSR Act.

All communication (letters, website, decisions) will be in the name of the FSCA.

The FSB Appeal Board has been replaced by the Financial Sector Tribunal, which will make decisions where an entity is aggrieved by a decision of the FSCA. The Tribunal will take over existing cases being heard by the Appeal Board.

## **Forthcoming changes by the FSCA**

In the next 12 months, the FSCA will establish a new organisational structure, and upskill or recruit staff to ensure enhanced analytical, technical and research capabilities.

The FSCA will publish their three-year regulatory strategy, which will provide useful insight into what the FSCA will be focussing on.

To co-ordinate and clarify responsibilities between the FSCA, the PA, the SA Reserve Bank and the National Credit Regulator, there will be memoranda of understanding issued.

## **Impact on retirement funds**

We discussed the changes included in the FSR Act that would result in amendments to the Pension Funds Act (‘PFA’) in *On the Scales* 21 of 2017. There are different effective dates for different amendments to the PFA and the changes include the following:

### ***From 1 April 2018***

The following new definitions have been added to the PFA:

- Authority - *this is the Financial Sector Conduct Authority.*
- Conduct standard – *this is a document issued by the FSCA setting out market conduct requirements for financial institutions.*
- FSR Act – *the new legislation establishing the twin peaks regulatory framework.*
- Joint standard – *this is a document issued by both the FSCA and the Prudential Authority.*
- Prudential standard - *this is a document issued by the Prudential Authority setting out financial soundness or stability requirements for financial institutions.*

- Register – *this is a website containing all laws, standards, cases, ruling and other regulatory documents applicable to financial institutions.*
- Tribunal – *the Financial Sector Tribunal, which will hear appeal cases.*

The following definitions have been deleted from the PFA:

- Financial Services Board
- Prescribed
- Registrar

All references in the PFA to registrar and FSB must be read as a reference to the Authority.

The FSCA will have powers under the PFA and the FSR Act.

Matters will no longer be prescribed by regulation or in a Government Gazette, but will be prescribed in a conduct standard, joint standard or prudential standard.

Appeals against decisions of the FSB will be read as a reconsideration of the Authority's decision by the Tribunal.

The Authority will be able to order an investigation and/or audit be done on the financial position of a fund – without requiring an inspection or investigation to be done first.

The Authority can, through a directive, direct a fund to amend its rules relating to trustees if the fund is not financially sound or is not being managed in line with the PFA and the fund rules.

The Pension Funds Adjudicator ('the Adjudicator') will be a statutory ombud scheme under the FSR Act.

### ***From 1 October 2018***

The Adjudicator may be designated complaints to attend to under the FSR Act.

The Adjudicator must:

- apply, where appropriate, principles of equity;
- have regard to contractual arrangements or legal relationships between a complaint and financial institution;
- have regard to the PFA; and
- act in a procedurally fair, economical and expeditious manner.

*Comment: these principles will probably result in changes in the rulings issued by the Adjudicator. In previous decisions, the Adjudicator has said that taking into account fairness would result in a more favourable outcome to complainants, rather than strictly applying the terms of a contract or rules applicable to that complainant.*

Deleting the sections dealing with the registrar's powers to extend time periods and to issue directives and the requirement to issue an annual report.

***From 1 April 2019***

Prescribed fees in the PFA will be set out in the FSR Act.

Deleting the section dealing with the registrar's powers to prescribe matters, for example fees payable

*Comment: all fund contracts, policies and rules will need to be reviewed and where applicable, amended over time reflect these changes.*

**Communique from FSCA on 20 April 2018**

Funds may have been aware of delays in the registration of amendments. Directly and through the industry bodies we sit on, we have been following up with the FSCA to understand the reason for the non-registration of amendments.

We have received a communique from the FSCA acknowledging the delays and advising that it may take 5 weeks to resolve the transitional issues impacting on service delivery and to have the backlog resolved.

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*If you need more information, please contact your consultant.*

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