



Legal Services

FINANCIAL SERVICES



ON THE SCALES 17 OF 2018

Guidance Note 3 – cancellation of registration of a fund and termination of employer participation in an umbrella fund

The Financial Sector Conduct Authority (FSCA) has issued Guidance Note 3 of 2018 to clarify issues around cancelling a fund's registration.

Summary

Guidance Note 3 issued by the FSCA clarifies issues around cancelling a fund's registration.

- Confirms that Information Circular 2 of 2017 is still applicable.
- Funds do not have to submit statutory returns or pay FSCA levies after submitting their application for de-registration.
- The FSCA system for cancelling a fund's registration is almost finalised.
- Applications that have already been submitted to cancel the registration of a fund and to terminate an employer's participation in an umbrella fund will not have to be re-submitted when the system becomes operational.

Information Circular 2 of 2017 still applies

- A fund will cease to exist when the fund no longer has any assets, liabilities or members or any pending litigation against it.
- Similarly, the participation of a participating employer terminates when an umbrella fund no longer has any assets, liabilities or members or any pending litigation against it in respect of the participating employer.
- Under these circumstances, the fund and the participating employer may apply to the FSCA for cancellation of registration.
- A fund or the participating employer in an umbrella fund may apply for cancellation of its registration when it is terminating because of a full section 14, the last member on the fund has exited the fund and where the fund never commenced business, following it having being registered in terms of the Pension Funds Act (PFA).

Guidance Note 3 of 2018

Guidance Note 3 of 2018 refers to Information Circular 2 of 2017 that was issued by the then FSB in July 2017. That Circular set out the requirements for cancelling the registration of a fund and terminating an employer's participation in an umbrella fund. That Circular still applies, but under the FSCA.

Levies and reporting requirements

Once the FSCA receives an application for the cancellation of the registration of a fund, that fund will not be required to submit statutory returns or pay FSCA levies after the date of submission.

Status of processing applications

The FSCA system for cancelling a fund's registration is almost finalised. The FSCA intends to implement it shortly.

Applications that have already been submitted to cancel the registration of a fund and to terminate an employer's participation in an umbrella fund will not have to be re-submitted when the system becomes operational. However the FSCA may request further documents or information for any submission.

Information Circular 2 of 2017

We dealt with the provisions of Information Circular 2 of 2017 in *On the Scales* 14 of 2017, but we shall highlight those requirements again for convenience.

Cancellation of the registration of a fund

A fund ceases to exist:

- when it is terminating because of a full section 14;
- when the last member on the fund has exited the fund;
- where the fund never commenced business, following it having being registered in terms of the PFA.

1. Transfer in terms of section 14

A Board of Trustees may apply to the FSCA for cancellation of the fund's registration, where the Board of Trustees has transferred all the assets, liabilities and members in terms of an approved section 14 to another fund, leaving the transferor fund without any members, assets or liabilities.

2. An exemption from the provisions of section 28

Where a fund has been exempted from the liquidation provisions contained in section 28 of the PFA and the person responsible for the winding-up of the fund has complied with all the requirements and conditions in respect of the exemption, an application for cancellation of the fund's registration can be made to the FSCA.

3. Exit of the last member

Where a fund ceases to exist due to members having received all their benefits from the fund and the fund has no remaining assets, liabilities and members or any pending litigation against it.

4. A fund registered that never commenced business as a fund

Where the FSCA and the fund agree that the fund was registered but never commenced fund business, in circumstances not amounting to fraud.

In each of the circumstances referred to above at least the information for the cancellation as set out in **Annexure A** of the Circular must be included in the application for the cancellation of the fund's registration. The FSCA may request additional information in cases where this is considered necessary.

Termination of the participation of an employer in an umbrella fund

When a participating employer terminates its participation in an umbrella fund:

- the board of the umbrella fund should, within 60 days, make the FSCA aware of the termination of the participation of the employer; and
- where applicable, submit a rule amendment to the registered rules or special rules of the fund which records the termination of participation in the fund of the participating employer.

Termination of participation of an employer in an umbrella fund may take place as a result of the following actions:

1. Transfer in terms of section 14

Where the transfer of all the assets, liabilities and members of the relevant participating employer to another fund as result of an approved section 14, leaves the umbrella fund with no remaining assets, liabilities and members in respect of that participating employer;

2. An exemption from the provisions of section 28

Where a fund has been exempted from the liquidation provisions contained in section 28 of the PFA and the person responsible has complied with all the requirements and conditions in respect of the exemption, an application for cancellation of the fund's registration can be made to the FSCA.

3. Exit of the last member

Where the participation of an employer ceases due to all members receiving their benefits from the fund and the fund has no remaining assets, liabilities and members in respect of that participating employer.

4. Special rules being registered for an employer that never commenced participation

Where the FSCA and the fund agree that the special rules in respect of the participating employer should not have been registered as the participating employer never commenced its participation in the fund.

An umbrella fund must, in each of the circumstances mentioned above, include at least the information for the termination of participation of the employer as set out in **Annexure B** of the Circular. The FSCA may request additional information where needed.

The FSCA will, prior to the cancellation of the registration of a fund, and the termination of a participating employer, publish a notice of the intention to cancel the registration of the fund or the participating employer:

- in accordance with the requirements of the Promotion of Administrative Justice Act, 2000; and
- on the Financial Sector Conduct Authority website for a period of 30 days.

During this period, any affected person may lodge an objection to the cancellation and deregistration of the fund or the termination of the participating employer. The Registrar will consider the objection and thereafter make a decision as to whether to proceed with the cancellation of the fund or the termination of the participating employer's registration. The FSCA will inform the affected person of his final decision.

If you need more information, please contact your consultant.
