



Legal Services

FINANCIAL SERVICES



ON THE SCALES 7 OF 2019

Pending applications for cancellation of funds and reinstatement of deregistered funds

On 04 March 2019, the Financial Sector Conduct Authority ('the Authority') issued Information Circular 1 of 2019. This Information Circular requires funds which have pending applications for cancellation of registration to submit certain confirmations before the Authority can consider or approve their applications for cancellation.

The Information Circular also sets out the process for reinstatement of funds which were cancelled in error.

Summary

- Information Circular PF2 of 2017 has been withdrawn by the Authority.
- Funds that have pending applications for cancellation of registration with the Authority are required to make certain confirmations before the application is considered or approved by the Authority.
- Funds which were cancelled in error before 1 April 2018 must apply to court to be reinstated.
- Where a fund was cancelled in error after 1 April 2018, the Authority may reinstate a fund's registration if the cancellation was not based on an inaccurate application for cancellation submitted by a fund.

On the Scales is produced by Alexander Forbes Legal Services department to provide clients with information on employee benefits. The issues need to be carefully considered taking into account the specific circumstances of each of our clients.

April 2019

Cancellation of registration of funds - Information Circular PF. 2 of 2017

Information Circular PF. 2 of 2017 provided guidance on the information required for the cancellation of a fund's registration, as well as the withdrawal of participation of employers in umbrella funds.

Cancellation of registration of funds - Information Circular 1 of 2019

In Information Circular 1 of 2019, the Authority advised that it will withdraw the 2017 Circular by the end of March 2019. It will instead issue a Guidance Note that will set out the revised requirements.

What does Info Circular 1 of 2019 say?

The Authority requires funds and administrators to make certain confirmations before it can consider or approve an application for cancellation of a fund. The fund and administrator must confirm that:

- the investment managers and administrator have checked their internal and administration platforms or systems to ensure that there is no additional information or assets which will impact the application;
- the records and accounts held by funds or administrators, for example suspense accounts or "slush funds", have been checked to ensure that there are no remaining assets due to the funds in respect of which a cancellation application has been submitted to the Authority; and
- an external auditor has verified and confirmed that the fund to be cancelled has no assets, liabilities, members or a board. Funds must submit proof of this confirmation.

The confirmations must be accompanied by a list of relevant funds. The Authority may require additional supporting documentation and, it is therefore recommended that funds submit all relevant documents upfront.

Comment: The requirement for a fund to use external auditors to confirm that the fund has no assets or liabilities is new and might have cost implications for funds. Where a fund has no assets, it is not clear who will be liable for the cost of the external auditor. This concern was raised with the Authority at one of the IRFA Legal & Technical Committee meetings.

Reinstatement of deregistered funds that were cancelled before 1 April 2018

Where a fund or administrator becomes aware that the registration of a fund was cancelled in error before 1 April 2018 as the fund still has members, assets and liabilities, the fund or administrator must immediately:

- inform the Authority;
- disclose all relevant information, full particulars of the error and an explanation of why the error occurred; and
- apply to a competent court to have the cancellation set aside without delay. The Authority must be served with the application and only the court has authority to set aside this cancellation

Reinstatement of deregistered funds that were cancelled after 1 April 2018

Where a fund or administrator becomes aware that the registration of a fund was cancelled in error, and such cancellation happened after 1 April 2018, such fund or administrator must immediately inform the Authority and also disclose all relevant information and full particulars of the error.

In respect of the post 1 April 2018 cancellations, where the cancellation was not due to an error on the part of the fund or administrator, the Authority has power in terms of the Financial Sector Regulation Act to withdraw and set aside these approved cancellations.

If the Authority is unable to withdraw the cancellation due to the nature of the error, the Authority may require an administrator or fund to apply to court to have the cancellation of the fund withdrawn or set aside.

Funds are required to act as directed by this Information Circular as soon as they discover that the fund was cancelled in error, failing which the Authority will take regulatory action against those funds.

Notwithstanding the fact that an information circular is not law, the Authority may conduct on-site inspections or investigations and invoke other legal measures to verify whether funds and administrators are taking the necessary actions as directed by this Information Circular.

Comments: funds and administrators that have pending applications for cancellation of registration before the Authority must conduct investigations to verify that there are no assets, members and liabilities remaining in the fund.

If you need more information, please contact your consultant.
