



PFA GUIDANCE NOTICE NO. 5 OF 2018

PENSION FUNDS ACT, NO. 24 OF 1956

SECTIONS 4(5) AND 12(6): REQUESTS FOR INFORMATION

1. PURPOSE

The purpose of this notice is to provide guidance on the process where the Financial Sector Conduct Authority (“Authority”) received applications for the registration of rules or the alteration, rescission, addition or consolidation of rules (“rule amendments”) where queries were raised or additional information requested and the fund fails to provide the required information or response to queries within the prescribed time.

2. BACKGROUND

Where funds fail to provide the required information or response to the Authority’s query, the relevant cases remain open on the Authority’s system for extensive periods of time. This places a burden on the Authority’s record base and causes difficulties for the Authority to manage cases within the agreed service level periods and the allocation of the service fees for accounting purposes. Further, failure to ensure that the applications for registration of rules and rule amendments are finalised results in funds not being finally registered or having to operate in terms of registered rules that do not align with their intended operation.

3. PROVISION OF INFORMATION TO THE AUTHORITY IN TERMS OF SECTIONS 4 AND 12

3.1 Where a fund has applied for registration and the Authority, in terms of section 4(5)(a) of the Pension Funds Act, 1956 (“the Act”), requests additional information or requires the fund to verify information in its application, but the fund fails to furnish the Authority with the required information or verification within a reasonable period, section 4(5)(b) determines that –

“(b) If a pension fund fails to furnish or verify the information contemplated in paragraph (a) within 60 days from the date of the request, its application under subsection (1) lapses.”

- 3.2 Where a fund has submitted a proposed amendment to its rules for registration by the Authority and the Authority has, in terms of section 12(6)(a) of the Act, requested additional information, but the fund does not furnish the Authority with the required information within a reasonable period, section 12(6)(b) determines that –

“(b) If a registered fund fails to furnish the information requested by the registrar within 180 days from the date of that request, any submission or approval of an alteration, rescission, addition or consolidation of the rules of that fund lapses.”

4. OPERATION OF SECTIONS 4(5)(b) AND 12(6)(a)

- 4.1 From 1 October 2018, any request for information by the Authority in terms of section 4(5)(a) which –

- 4.1.1 the fund has not responded to within the prescribed 60 days will lapse on 30 November 2018;
- 4.1.2 was requested but does not as yet exceed the 60 day period, will lapse immediately on expiration of 60 days from the date of the request; and
- 4.1.3 is requested on or after 1 October 2018 will lapse after the 60 day period.

- 4.2 From 1 October 2018, any request for information by the Authority in terms of section 12(6)(a) which –

- 4.2.1 the fund has not responded to within 180 days will lapse on 30 November 2018;
- 4.2.2 was requested but does not as yet exceed the 180 day period, will lapse immediately on expiration of 180 days from the date of the request; and
- 4.2.3 is requested on or after 1 October 2018 will lapse after the 180 day period.

5. EFFECT OF THE LAPSING OF APPLICATIONS

The Authority will send notification to the relevant funds of its intention to lapse the application and should the fund fail to provide the relevant information by the dates indicated in paragraphs 4.1 and 4.2 above, the fund will be required to submit a new application with the fees as prescribed. There will be no refund of fees in respect of the lapsed case and the new submission cannot be made under the lapsed case number.

6. RE-APPLICATION AFTER LAPSING

When a sponsor re-applies for the registration of a new fund or an umbrella fund re-submits special rules, the applicant must indicate when submitting on the on-line system that the application is in relation to a lapsed case. This will prevent the online submission system from rejecting the application due to a “duplicate name” and will then automatically link the re-application of a lapsed case to the previous lapsed case for record keeping purposes. Even though the re-application will be linked to the previous lapsed case, a new case number will be allocated for the new application. It is therefore important that any re-application must not be submitted on the previous case number, as such case would have been closed on lapsing.



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ON BEHALF OF THE FINANCIAL SECTOR CONDUCT AUTHORITY

Date 19 October 2018