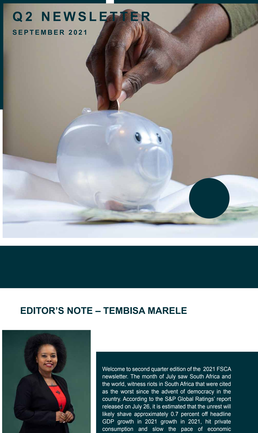
FSCA

Q2 NEWSLETTER

SEPTEMBER 2021



EDITOR'S NOTE – TEMBISA MARELE

Wellcome to second quarter edition of the 2021 FSCA newsletter. The month of July saw South Africa and the world, witness riots in South Africa that were cited as the worst since the advent of democracy in the country. According to the S&P Global Ratings' report released on July 26, it is estimated that the unrest will likely shave approximately 0.7 percent off headline GDP growth in 2021 growth in 2021. Yet private consumption and slow the pace of economic recovery

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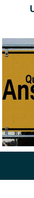
ON THE REGULATORY FRONT THE UPDATE ON UNCLAIMED BENEFITS



The FSCA recently held a media roundtable aimed at giving an update on regulatory developments within the retirement funds environment. The Divisional Executive of Retirement Funds, Diane Makhubela and his team covered a myriad of topics including but not limited to the impact of Covid-19 on retirement funds; cancellations; curatorship and statutory management; sustainable financing; fund governance enhancement and Directive 8; unclaimed benefits and the central unclaimed benefit fund.

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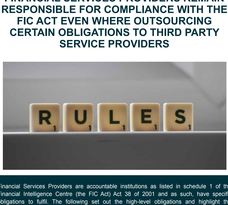

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THE FSCA COMPLIES WITH THE POPIA

We live in a digital led world where the use and access to information is merely a click away. This also applies to the distribution and access to personal information. Technology has enabled the simplicity of processing personal information in more ways than we could previously imagine.

Personal information refers to information that identifies a person and this information is generally provided when one applies for a loan, opens a store or bank account.

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FINANCIAL SERVICES PROVIDERS REMAIN RESPONSIBLE FOR COMPLIANCE WITH THE FIC ACT EVEN WHERE OUTSOURCING CERTAIN OBLIGATIONS TO THIRD PARTY SERVICE PROVIDERS

Financial Services Providers are accountable institutions as listed in schedule 1 of the Financial Intelligence Centre (the FIC Act) Act 38 of 2001 and as such, have specific obligations to fulfil. The following set out the high-level obligations and highlight the outsourcing possibilities.

Outsourcing of compliance activities to Third- Party Service Providers

Public Compliance Communication 12A (PCC 12A) was published on 24 March 2021, to provide guidance to accountable institutions and reporting institutions on the outsourcing of compliance activities that stem from the obligations in terms of the FIC Act to third-party service providers.

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HAVE YOUR SAY!

We want to hit the right note for you with our Newsletter. Let us know what you think by taking a moment to click through our quick survey.

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EDITOR'S NOTE – TEMBISA MARELE

Welcome to second quarter edition of the 2021 FSCA newsletter. The month of July saw South Africa and the world, witness riots in South Africa that were cited as the worst since the advent of democracy in the country.

According to the S&P Global Ratings' report released on July 26, it is estimated that the unrest will likely shave approximately 0.7 percent off headline GDP growth in 2021, hit private consumption and slow the pace of economic recovery.

The riots spared no sector including the financial services sector. Despite the devastating effects of the July riots on many of our stakeholders, the FSCA has optimistically not missed a beat in its relentlessness pursuit of its mandate which is to regulate market conduct of financial institutions and to protect financial consumers.

In this issue, we are advice and information driven for both financial services providers and financial consumers equally. For financial services consumers, we highlight the issue of unclaimed benefits and how the FSCA can assist members of the public ascertain if there are any unclaimed benefits due to them. We also delve into the recent imposition of an administrative penalty of R50 million on the partnership known as Viceroy Research and its partners which has had us quite busy.

This issue also provides much needed advice on the importance of financial literacy and highlight the FSCA's financial literacy training efforts. For the Financial services sector, we put a spotlight on every financial services provider's perceived nightmare - curatorship! We explain the process involved in the appointment of a curator, the role they play, statutory management and their fees.

The first of July 2021 also saw the end of the one-year grace period for compliance with the Protection of Personal information Act (POPIA). We saw it fit to bring you up to speed on the FSCA's role in ensuring adherence to POPIA internally and by its stakeholders.

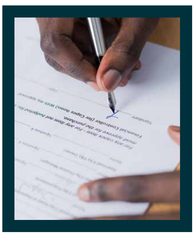
There's more and we hope you will enjoy the newsletter and take a moment to provide us with feedback on the articles you read and what your topics of interest are.

We ask because we aim to please.

Happy reading!

Tembisa

Back



ON THE REGULATORY FRONT THE FSCA'S UPDATE ON UNCLAIMED BENEFITS

By Takalani Lukhaimane - Manager: Retirement Funds Conduct Supervision

The FSCA recently held a media roundtable aimed at giving an update on regulatory developments within the retirement funds environment. The Divisional Executive of Retirement Funds, Olano Makhubela and his team covered a myriad of topics including but not limited to the impact of Covid-19 on retirement funds; cancellations; curatorship and statutory management; sustainable financing; fund governance enhancement and Directive 8; unclaimed benefits and the central unclaimed benefit fund.

Of particular interest during the session was their update on Unclaimed Benefits. An unclaimed benefit is a benefit that has not been paid to or claimed by a member within 24 months from the date it became due for payment or claiming. These benefits are due to members of a pension or provident fund or a possible beneficiary of a member who belonged to such a fund and who did not claim their benefit when their employment ended. Unclaimed Benefits have been a widespread issue in the South Africa retirement fund industry for some time now. Industry statistics currently place the value of unclaimed benefits to around R43bn with approximately 4.8 million unclaimed members. Some of the contributing factors to unclaimed benefits include:

- Inaccurate member data - Fund members do not provide the fund with updated contact details or employers do not provide funds or administrators with comprehensive details of members of the fund.
- Many employers or funds don't provide members with sufficient fund information, informing them of their entitlement to withdraw benefits.
- Not enough mechanisms that enable workers coming from other countries and leaving South Africa shortly after the expiry of their work permits, to claim their benefits from their home countries and get paid in those countries.
- Poor administration and record keeping by funds or administrators.

Outlined during the session was the importance of understanding that the responsibility of tracing and paying unclaimed benefits remains with the board of the fund. These benefits are held by retirement funds and not by the FSCA. The role of the FSCA is to assist members or beneficiaries to trace an unclaimed benefit by liaising with the fund or the fund administrators. The FSCA does not maintain individual records of members however, it maintains the records of retirement funds and administrators and enables them to facilitate enquiries with retirement funds and administrators.

Unclaimed Benefits trend analysis – Ten-year overview

- Approximately 60% of unclaimed benefits in occupational funds (fund established by an employer for the benefit of its employees) are in respect of former employees that were members of the retirement funds relating to the mining, motor, metal and engineering industries.
- During the 2019 financial year, unclaimed benefits funds had 919,656 members with assets amounting to R9,6 billion (21.5% of the total assets in respect of unclaimed benefits). Occupational funds had 3,611,266 members with assets amounting to R35,3billion (78.5% of the total assets in respect of unclaimed benefits).
- The total assets of unclaimed benefits as a percentage of the total assets of retirement funds, increased from 1.67% in 2018 to 1.7% in 2019.
- From the data received from funds for purposes of hosting the FSCA search engine, it is estimated that 17% of the asset value of unclaimed benefits is less than R100 and 9.5% between R100 and R250 per member.
- It is important to note that the asset value of unclaimed benefits is not only as a result of an increase in the number of unclaimed benefits but also due to investment income earned on the assets relating to these unclaimed benefits.
- The asset value and members in respect of unclaimed benefits in occupational funds increased gradually as surplus apportionment schemes were submitted and funds were unable to trace and pay former members and therefore classified as unclaimed as defined in the PFA (Pension Fund Administration)
- The increase of 66.5% in unclaimed benefit assets from 2013 to 2014 was mainly due to two large funds which changed their accounting policy, resulting in the reclassification of R11 billion assets as unclaimed benefits.
- From 2009, registered unclaimed benefit funds submitted financial statements and the asset value in the unclaimed benefit funds consist of transfers of unclaimed benefits from active and dormant funds as the PFA made provision for the transfer of any fund's (including on-going funds) liabilities in respect of unclaimed benefits to these funds.

Unclaimed Benefits paid to date

It is apparent to the FSCA that there are ongoing efforts by administrators to trace and pay beneficiaries of unclaimed benefits. According to annual financial statements submitted to the FSCA, from 2010 to 2019, R34,3 billion unclaimed benefits were paid to 1,2 million members. In the last 5 years, R22 billion was paid to 598 000 members. This amounts to an average benefit of R 36978 per member.

Other efforts championed by the FSCA, contributing to the above-mentioned amounts include the unclaimed benefits search engine. Since its implementation, there have been 40 322 possible matches identified and an asset value of approximately R 1.2 billion was paid to 14 558 members after valid claims were submitted to the relevant funds. The FSCA also has a dedicated team of employees who are responsible for assisting members of the public with their unclaimed benefits enquiries. Taking regulation to the people (TRP) is another initiative where the FSCA goes to communities to assist them with the location of potential unclaimed benefits due to them. This initiative has however, been paused over the past year or so, due to the Covid-19 pandemic.

Members of the public can use the following FSCA platforms or channels to search for potential unclaimed benefits:

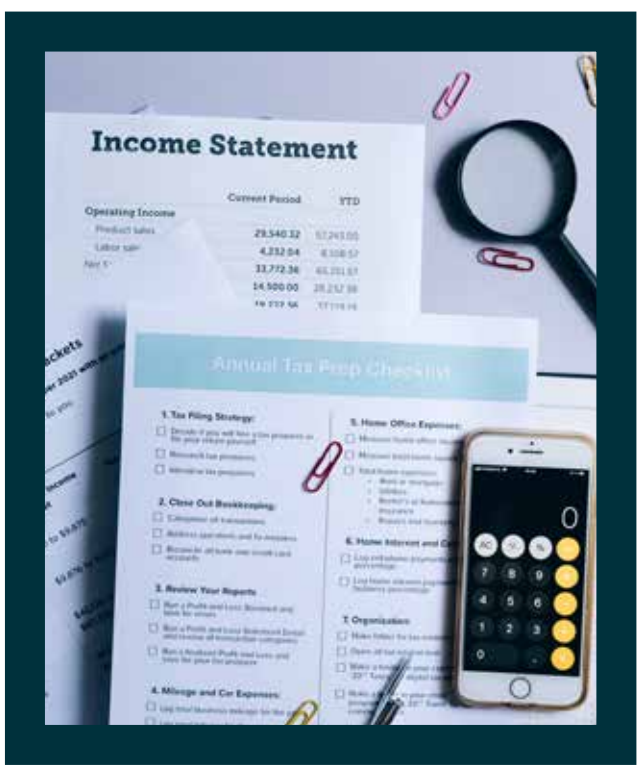
	Search Channel	Link/ contact details
1	Online searches - FSCA website	http://www.fsca.co.za/Magic94Scripts/mgrqispi94.dll?APPNAME=Web&PRGNAME=UB_Partial_Search
2	Email enquiry - ID number	Pensions.UBmemberID@FSCA.co.za
3	Email enquiry - general request	Pension.Queries@FSCA.co.za
4	SMS enquery - ID no	30913
5	SMS enquiry - general request*	30766
6	Toll-free Telephone enquiries	0800110443/ 0800202087 (toll-free)
7	Walk in clients	River Walk Office Park, Block B, 41 Matroosberg Road, Ashlea Gardens
8	Written enquiries	PO Box 35655 Menlo Park Pretoria 0102

Looking Ahead

The Retirement Fund Conduct Supervision department undertook the task of sampling funds with the highest unclaimed benefits and conducted desktop reviews of the third and fourth quarters of 2020. Some of the insights obtained from this review indicate that there is a lack of a standardised approach to unclaimed benefits; the records of previous efforts to trace beneficiaries are not maintained; there is a lack of competition in the tracing industry and a lack of data integrity checks. Comprehensive findings of the review will be communicated through engagements with the retirement funds industry in due course.

There is also the proposal for a Central Unclaimed Benefit Fund (CUBF) to be established. It is envisioned that the CUBF will be compulsory. The CUBF would be the repository of all unclaimed benefits which would make it easier for members or beneficiaries to claim their benefits as opposed to not knowing which fund houses the benefits they may be entitled to. Its main purpose would be to centralise unclaimed benefits and maintain a central database. This will result in a central access point for any person to make a tracing enquiry for his or her retirement benefit or to lodge a claim to obtain the benefit. This will mitigate the current challenge of different funds housing unclaimed benefits which is making the location of funds by members or beneficiaries difficult.

Back



CURATORSHIP, STATUTORY MANAGEMENT AND FEES

By Wilmi van der Walt – Manager: Retirement Funds Conduct Supervision

Since 2017, the Financial Sector Conduct Authority (FSCA) has within the retirement funds space, placed approximately four funds under curatorship. Some of the curators were appointed in terms of section 5(10) of the Financial Institutions (Protection of Funds) Act, 2001 ("FI Act"), which is by agreement with the retirement fund and without the intervention of a court.

The FSCA has identified areas where its monitoring and supervision of historic curatorship required improvement. To address the identified improvement areas, it has adopted a new approach in its monitoring and supervision of retirement funds under curatorship:

Curators are now required to submit monthly invoices, with supporting schedules to the FSCA, including corresponding month's bank statements of the retirement fund. These financial documents and supporting schedules are thereafter reviewed by the FSCA, and where deemed necessary, queries are raised.

a) Prior to effecting payment, curators are required to await the FSCA's formal correspondence approving their fees. On a monthly basis, the process of verification by the Authority also includes analysis of the retirement fund's bank account. This is to ensure payment of the curator's fees are always effected following the FSCA's approval;
b) Curators are also required to report to the FSCA regularly, by submitting monthly or bi- monthly feedback reports;
c) The FSCA meets with curators at least quarterly; and
d) Where the FSCA has appointed a curator, either by application to court (in terms of section 5(a) of the FI Act) or by agreement with the retirement fund (in terms of section 5(10) of the FI Act), the monthly fees that may be charged by the curator(s), are capped.

The approach, as set out above, has proven effective in ensuring that curators discharge their duties efficiently and within the ambit of legislation.

The FSCA is cognisant of the stigma surrounding curatorship and it considers curatorship as a last resort after all other statutory interventions have failed to address non-compliance within a fund.

The FSCA has and continues to utilise section 5A of the FI Act, which provides for the appointment of a statutory manager, by agreement with a financial institution/retirement fund and without the intervention of a court, if it appears that the fund has in material respect, failed to comply with a law; is likely to be in an unsound financial position; or is maladministered.

The FSCA considers the appointment of a statutory manager as a valuable regulatory tool of intervention, which is not considered as adverse as a curatorship. Furthermore, the appointment of a statutory manager is to protect the interest of clients of the financial institutions; the safety and soundness of financial institution(s) in general; and or the stability, fairness, efficiency and orderliness of the financial system.

By virtue of a statutory manager being appointed by agreement, this promotes cooperation between the retirement fund and the FSCA, whose primary objective is to act in the best interest of members of a retirement fund.

It should be noted that proposed changes to legislation will enable the FSCA to appoint a statutory manager without agreement with the retirement fund.

Statutory management has proven an effective way to address non-compliance by a retirement fund. Should a disagreement exist between the board of the retirement fund and the statutory manager, Section 5A(4)(b) of the FI Act, as a remedy, provides for a statutory manager to have a casting vote.

A key and required responsibility of a statutory manager includes reporting to the FSCA monthly or bi-monthly, citing progress made in regularising the affairs of the retirement fund and any other matters considered material.

Following thorough analysis of challenges faced by the retirement fund, statutory managers are also requested by the Authority to make recommendations as to whether or not a retirement fund should be placed under curatorship.

Statutory managers are remunerated on an hourly rate or alternatively at a capped monthly fee and this forms part of their appointment letter.

To date and since 2017, the FSCA has appointed four Statutory Managers and continues to evaluate its processes for the benefit of all stakeholders.

Back

UNPACKING HOW DEBARMENTS ARE CARRIED OUT BY THE FSCA

With Charene Nortier and Tshepo Mogale – Managers: Financial Advisors and Intermediaries Department

The Financial Advisory and Intermediaries department at the FSCA is responsible for supervising the business conduct of entities licensed to provide financial advice as well as entities who are authorised for the activity of product sales and execution on a non-advice basis, where the entity is not authorised for the actual issue of the products concerned. The team is aligned with a risk-based classification, informed by the different adviser competency requirements being implemented through amendments to the FAIS fit & proper standards. The team is also responsible for dealing with debarments of natural persons in terms of section 153 of the FSR Act, i.e. debarments by the Authority.

At a recent FSCA FAIS Webinar session, spearheaded by the Financial Advisory and Intermediaries department, Charene Nortier had a detailed discussion with Tshepo Mogale on how Debarments are carried out by the FSCA in terms of Section 153 of the FSR Act.

This is how the conversation unfolded.

1. What is a debarment?
A debarment means that the representative and/ or any person is debarred on an industry-wide basis from rendering financial services to the investing public. There are two processes of debarments which sometimes confuses Financial Services Providers (FSP). Firstly, the process under Section 14 of the FAIS Act which governs FSPs to debar its representatives and secondly the process under Section 153 of the FSR Act, which governs the FSCA to debar a natural person. Section 153 of the FSR Act repealed Section 14 A of the FAIS Act as of 1 April 2018. The former process is initiated by the FSP and the latter by the FSCA.

2. Please explain what Section 153 of the FSR Act is all about?
In terms of Section 153 of the FSR Act, the responsible Authority for a financial sector law may make a debarment order in respect of a natural person if the person has:

- Contravened a financial sector law in a material way;
- Contravened in a material way an enforceable undertaking that was accepted by the responsible authority in terms of section 151 (1);
- Attempted, or conspired with aided, abetted, induced, incited or procured another person to contravene a financial sector law in a material way; or
- Contravened in a material way a law of a foreign country that corresponds to a financial sector law.

3. It is clear that the contravention must be material. May you please explain how the FSCA gets to know about the contravention?
What happens is that the FSCA receives information about the conduct of a natural person, either from an FSP, members of the public, the ombudsman, other regulators, the clients of the respondent or any other source. Thereafter, the FSCA investigates the matter and upon completion, an ITC check is conducted on the person's latest contact details in compliance with section 155 of the FSR Act. A notice of intention to debar the said person is then drafted and sent to the respondent in order to allow them a chance to respond to what is alleged.

4. What happens once the notice of intention has been drafted?
The affected person is notified of the debarment and the intended period of the debarment and any terms to be attached to it.

5. How much time does a person have to respond to the intention to debar and once a person has responded, what happens then?
As soon as a person receives the notice, they have one month within which to respond to the allegations. Depending on the response, or lack thereof, the matter may be closed, or a final debarment order be granted.

6. So, let's unpack this a little more. Before serving the intention to debar an investigation is first concluded and a notice of intent to debar is sent and depending on the response the case may be closed without it being taken any further?
Yes, this is correct Charene. After considering the respondents submission and accompanying evidence, together with the information at our disposal, the decision to debar or not is then taken. In the event that the Authority decides to debar a person for a stipulated period, as soon as the debarment period lapses, the debarment will automatically cease. Thereafter, a previously debarred person may apply to either be a Key Individual (KI), Financial Services Provider (FSP) or representative (rep). If a person applies to be a FSP or a KI, the application must be considered by the FSCA. If a person applies to be a rep of an FSP, then it is up to the FSP to conduct due diligence, to determine if the applicant is fit and proper.

7. Let us explore the debarment order in more detail. What is a person not allowed to do if they have a debarment order issued against them?
A debarment order prohibits a person from:

- Providing or being involved in the provision of specified financial products or services, generally or under the circumstances specified in the order;
- Acting as a key person in a financial institution or providing specified services to a financial institution;
- A debarment order against a natural person takes effect from the date it is served or at a later date, according to the order;
- A person who is subject to a debarment order may not engage in conduct that directly or indirectly contravenes the debarment order; and
- The responsible authority must publish the debarment order.

8. So, after publishing the debarment order, can prospective employers search on the FSCA website to see if there is a debarment order issued against a person?
Yes, this information is accessible to employers as well as the general public. The search is conducted by using the person's ID number, name, and surname.

What does the FSCA consider when determining the period of debarment?
The FSCA considers the following:

- The seriousness of the allegations levelled against a person;
- The actual or potential prejudice suffered by the client;
- The number of allegations levelled against the person;
- The negative impact the conduct has had on the financial industry.

9. Can someone appeal against a debarment order?
Yes. A person aggrieved by a debarment decision may apply to the Tribunal for a reconsideration of the decision in terms of section 230 of the FSR Act. The contact details of the Tribunal are 012 741 4302 or via email applications@fstribunals.co.za

10. in closing, what are some of the challenges experienced by the Tribunal, when these applications are received?

- Dealing with applications that have no merit such as in the case of a debarment order being granted because the person was involved in fraud. In a case involving fraud, there are no legal grounds for appeal nor any prospect for success.
- Applicants not meeting the prescribed period within which to apply, without a just reason. A prescribed period in which to lodge an appeal is 60 days.
- Failure to site the correct parties or misunderstanding of who the decision maker is. For example, if a representative is debarred by an FSP, then the FSCA in this case is not the decision maker.
- Lastly, failure by applicants to adhere to the rules of the Tribunal in their application.

Back

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The Financial Sector Conduct Authority (FSCA) recently held a media round table discussion where they announced the imposition of an administrative penalty of fifty million Rand (R50 million) in terms of section 167(1)(a) of the Financial Sector Regulation Act 9 of 2017, on the partnership known as Viceroy Research and its partners, Mr Aiden Lau, Mr Fraser John Perring and Mr Gabriel Bernarde (the Respondents). The penalty imposed is jointly and severally payable by the Respondents within 30 days from the date of the order.

During the roundtable discussion, the FSCA outlined how the Respondents had contravened Section 81(1) of the Financial Markets Act 19 of 2012 (FMA) in that during January 2018 they published false, misleading or deceptive statements, promises or forecasts regarding material facts about Capitec, which they ought to have reasonably known not have been true. Further, notwithstanding being made aware that what they had published was false, they failed to publish full and frank corrections , as required by Section 81(2) of the FMA.

According to Unathi Kamlana the Commissioner of the FSCA, the penalty is particularly significant because it shows just how far the FMA reaches. Although the Viceroy Research Partnership, and its partners are not financial institutions and are domiciled in a different jurisdiction, their comments about South African listed securities made them subject to the stipulations of the Act. The penalty also makes it clear that breaching our financial sector laws has serious consequences.

Some background

In January 2018, Viceroy Research published a report titled Capitec, a Wolf in Sheep's Clothing. It said its research showed that Capitec was "a loan shark" that massively understated its bad debts. The research report said that its analysis pointed to predatory lending practices from Capitec, where clients would be pushed to take out new loans to pay off old ones, while being charged initiation fees and incurring other costs. Viceroy went as far as recommending that that the South African Reserve Bank (SARB) place the bank into immediate curatorship.

Over the past few years, the FSCA carried out an investigation into the matter and internally enlisted the help of the US's Securities and Exchange Commission (SEC) to force Viceroy Research to cooperate. It tested all the allegations the short-seller made by going back to analyse the financial statements the 2018 report was based on.

Determining the appropriate administrative penalty

The FSCA considered the following factors when determining the appropriate administrative penalty for the contravention:

- **The nature, duration, seriousness and extent of the contravention** - The Respondents made a concerted effort to publish these statements as widely as possible, knowing that Capitec is a systemically important financial institution in South Africa and that these statements had the potential to trigger a run on the bank.
- **The effect of the conduct on the financial system and financial stability** - Capitec is a systemically important financial institution in South Africa, therefore the Respondent's false statements, and their failure to subsequently publish corrections of these statements, posed a clear and present threat to the stability of the South African financial system.
- **The extent of any financial or commercial benefit arising from the conduct** - The Respondents gained financially from the decline in the Capitec share price.
- **Loss or damage suffered by any person as a result of the conduct** - The publication of the statements immediately caused the Capitec share price to decline by 23.12%.
- **The degree of co-operation in relation to the contravention** - The FSCA had to enlist the assistance of the Securities and Exchange Commission (SEC) of the USA to compel a representative of the Viceroy Research partnership to be questioned under oath. We thank the SEC for the assistance they provided.
- **Whether the person has previously contravened a financial sector law** - there is no record of the Respondents previously contravening a financial sector law.
- **The need to deter such conduct** - A contravention of section 81 of the FMA is a serious offense that can cause significant harm to investors, listed entities and the broader market, hence the need to impose a penalty that would serve as a deterrent.

During an interview with SABC News, Kamlana was asked why it was important for the FSCA to investigate what Viceroy had alleged against Capitec. Kamlana said, "Part of our mandate is to ensure market integrity and efficiency in our markets and all we require of all those who are participants or those who comment on listed securities, is that they act responsibly and professionally. Certainly, the bar that requires people not to publish misleading or deceptive statements, is the absolute minimum that we expect from anyone who is a participant in our markets or in many regulated markets".

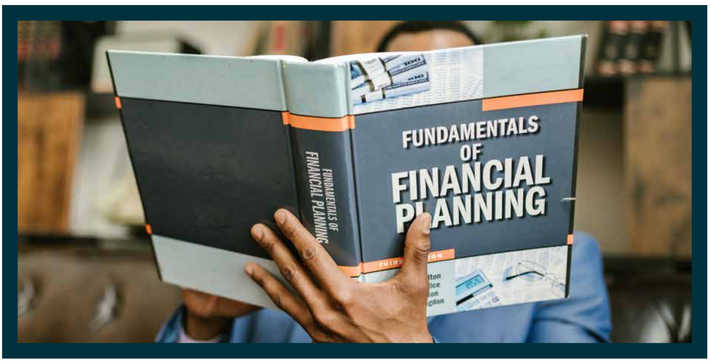
"We hope this decision is a deterrent in terms of reckless business models and those hoping to make a quick buck by peddling false information. Although we are aware that we should not be banning short selling as an activity in the market, it should not be on the basis of people who deliberately peddle falsehoods around the business models of listed securities or companies in our regulated markets," Kamlana added.

The FSCA also investigated possible Insider Trading (Section 78 of the FMA) and Prohibited Trading Practices (Section 80 of the FMA) in Capitec securities during the period of the publications but has not found any evidence of such contraventions. These two investigations have therefore been closed without any enforcement proceedings being instituted.

Back

THE ENDLESS NEED FOR FINANCIAL EDUCATION

By Nomthandazo Mtshweni, Communication and Language Services



Necessity is the mother of all invention. Throughout history, we have seen how the need for something, forces us to search for solutions that need a reality. The concept of financial freedom has, to many, been but a myth – a dream only few ever get to achieve. As financial transactions continue to evolve and the days of basic acts such as trade and barter of goods and services are replaced by standardised currency systems based on monetary value, it does not look like this evolution is stopping. What with the new rapid growth in the popularity of crypto currencies! Financial literacy training is therefore a consistent need.

The FSCA has recognised this need and it further recognises the vulnerability of consumers as far as financial literacy (or lack thereof), is concerned. The basic, common need for financial freedom amongst a majority of consumers and the rapid evolution of the world of finance is what propelled the regulator to put more emphasis on financial education. This is being achieved with the establishment of the Consumer Education department (CED).

As the name suggests, the CED is mandated to provide consumers with financial education and to promote financial literacy. Consumers get to know what service levels to expect from the financial industry; the different products mixes offered; and how best to protect their precious finances. This important task by the CED is the application of the Treating Customers Fairly (TCF) principle, which is line with the regulator's value of fairness.

In partnership with various financial institutions and the National Treasury, the CED has initiated several noteworthy projects, tailor-made to suit both the younger and the older generation and continues to execute them with remarkable results. For example, since its inception, the annual Financial Literacy Speech Competition has already made a positive impact on South African's lives by actively engaging youth from marginalised schools in financial literacy as well as equipping many, with crucial lifetime skills. Another initiative is Money Smart Week South Africa. This is an extension of the Global Money Week campaign, through which consumers are kept abreast with exciting financial developments from all over the world.

New trends

With the rise of new technological trends in the financial sector, the need for crucial financial education is validated. Transactions based on crypto currencies, though not entirely new are still a mystery to many. Despite the uncertainly of many of how cryptocurrencies work, they are gaining exponential growth in popularity inadvertently opening up new opportunities for consumer abuse in these markets. Fortunately, the FSCA in collaboration with bodies such as the Inter-governmental Fintech Working Group (IFWG), is helping to maintain stability in the financial markets by ensuring that new innovations prioritise the protection of consumers.

The global impact of the COVID-19 pandemic has also fast-tracked the migration to digital platforms. The world in lightning speed is adopting new ways of communicating, receiving news, performing work schooling and in some cases receiving emergency medical advice.

Indeed, the range of apps that facilitate online transactions have enhanced ease of access to banks and other institutions and added great value and convenience. However, without proper knowledge of how to navigate the plethora of these available alternatives, consumers become highly susceptible to cyber-crime. It is again for this reason that the regulator, through its Consumer Education and Fintech departments continuously seeks ways to develop policies that regulate Fintech, and educational programs that engage consumers all over the country in order to promote awareness of the importance of their financial well-being.

Proactivity vs Reactivity

Much as the regulator plays its part to ensure the inclusion and protection of financial customers, it cannot be overemphasised that it is equally the responsibility of the consumer to grab every learning opportunity available to broadening their financial education. Furthermore, with most financial transactions now being digital, consumers need to take on a more proactive approach to their finances. This means actively seeking out opportunities to get empowered with financial and digital skills as opposed to waiting to react after the damage has already been done. As the saying goes, prevention is better than cure.

How does one become a proactive consumer? When consumers actively take part in FSCA financial literacy initiatives, it enables the regulator to assess consumers' changing needs, and adjust its solutions accordingly across languages. From informal financial terms such as "modende", to complex industry concepts that can intimidate even experts, it is only through active participation that the regulator is challenged to improve its output for greater reach, relevance, and resonance with all sectors of society.

So, as we look into a future of embracing new technology and financial trends with curious eyes, may we remember that the FSCA is also there to fulfil our unending needs for financial education. We just need to engage proactively.

Back

THE FSCA COMPLIES WITH THE POPIA

By Boitumelo Manganyi, Communication and Language Services

We live in a digital led world where the use and access to information is merely a click away. This also applies to the distribution and access to personal information. Technology has enabled the simplicity of processing personal information in more ways than we could previously imagine.

Personal information refers to information that identifies a person and this information is generally provided when one applies for a loan, opens a store or bank account. Information provided usually includes the provision of full names, contact details, telephone numbers, biometric information, identity numbers and more.

The ease of access to and distribution of one's personal information, as well the recent findings of the Southern African Fraud Prevention Service (SAFPS) in its report on 2020 fraud statistics that risks for consumers of financial and identity fraud are growing by the day, has made it urgent for all of us to understand the value of our information.

We furthermore need to know how our personal information is used, by who? and why? This understanding contributes to avoiding one's private details from being used for sinister reasons which may result in the disruption of one's life.

The establishment of the Protection of personal information Act (POPIA) seeks to protect data subjects from security breaches, theft, and discrimination and sets some conditions for responsible parties to comply by lawfully processing and protecting personal information of data subjects. The Financial Sector Conduct Authority (FSCA) is no exempted and is too required to adhere to the POPIA.

The FSCA deals with a myriad of entities and collects personal information across the financial services industry, to give effect to the right to privacy requires strict compliance with applicable privacy laws as defined in the Protection of Personal Information Act No 4 of 2013 which are to:

- promote the protection of personal information processed by public and private bodies;
- introduce certain conditions so as to establish minimum requirements for the processing of personal information;
- provide for the establishment of an Information Regulator to exercise certain powers and to perform certain duties and functions in terms of this Act and the Promotion of Access to Information Act, 2000;
- provide for the issuing of codes of conduct;
- provide for the rights of persons regarding unsolicited electronic communications and automated decision making;
- regulate the flow of personal information across the borders of the Republic; and
- provide for matters connected therewith.

The implementation of the POPI Act has amplified information governance within the FSCA, whose holistic approach will seek to manage information with renewed processes, roles and controls to treat information as a valuable business asset.

This approach comes with a wide range of benefits such as:

- whoever requires access to certain information can receive it;
- underlying data is properly managed, stored and secured;
- regulatory requirements are correctly observed, where necessary; and
- risk management is in place to minimise any issues that might arise from incorrect use.

Whereas the implementation comes with improved efficiencies in processing and storing data, there are inherent risks that also need mitigating. The FSCA has therefore designed controls that aid in maintaining confidentiality, prevent loss and mitigate unauthorised access and damage to information by unauthorised parties. The FSCA continuously conducts rigorous security vulnerability assessments to reinforce its security posture and provides assurance to internal and external stakeholders.

As required by the Protection of personal information Act, the FSCA has established adequate safeguards and controls to protect both its internal and external stakeholders from harm when processing personal information. The most crucial safeguards which will drive full POPIA compliance by the FSCA is the laying of a solid foundation internally and providing POPIA training initiatives to all staff members, to ensure that they know the importance of protecting, processing and sharing of personal information.

What does this mean for financial services providers?

To fulfil one of its tasks of processing applications for the registration of licenses, the FSCA is required to collect personal information from persons or multiple sources. The processing of such information aids in supervising the business conduct of entities that are regulated by the FSCA and makes it easier to identify and enforce any contravention of sector laws from registered entities.

What does this mean for financial customers?

Customers can rest assured that all entities regulated by the FSCA are POPIA compliant. The FSCA will validate every piece of information of all registered entities as well as provide the correct information to customers to simply verify entities, persons and contact them for their financial needs. The use and accessibility of financial services providers personal information is of the benefit of the customers.

Customers are furthermore encouraged to verify financial services providers they wish to deal with by ensuring that they are properly licensed and regulated. Customers are also appealed to, to refrain from sharing private information with unregistered and unauthorised entities.

Back

FINANCIAL SERVICES PROVIDERS REMAIN RESPONSIBLE FOR COMPLIANCE WITH THE FIC ACT EVEN WHERE OUTSOURCING CERTAIN OBLIGATIONS TO THIRD PARTY SERVICE PROVIDERS

Article by the FIC

Financial Services Providers are accountable institutions as listed in schedule 1 of the Financial Intelligence Centre (the FIC Act) Act 38 of 2001 and as such, have specific obligations to fulfil. The following set out the high-level obligations and highlight the outsourcing possibilities.

Outsourcing of compliance activities to Third- Party Service Providers

Public Compliance Communication 12A (PCC 12A) was published on 24 March 2021, to provide guidance to accountable institutions and reporting institutions on the outsourcing of compliance activities that stem from the obligations in terms of the FIC Act to third-party service providers.

Outsourcing refers to when an accountable institution contracts with a third-party service provider to seek assistance (including advice and/or other services) in relation to the performance of their compliance obligations. Accountable institutions remain fully accountable, responsible and liable for any compliance failures that may result from or be associated with an outsourcing arrangement and as such, liability and/or culpability for non-compliance with the FIC Act obligations cannot be transferred to a third-party service provider.

The third-party service provider in an outsourcing arrangement may also be an accountable institution in its own right. The fact that a third-party service provider is an accountable institution does not absolve the accountable institution, requesting such assistance, of their FIC Act obligations pertaining to its client.

Outsourcing vs placing reliance

Reliance refers to circumstances where an accountable institution places reliance on another third-party accountable institution where assistance is received in the obtaining of Customer Due Diligence (CDD) information and/ or documentation in relation to Shared Clients.

The do's and don'ts in a nutshell:

Outsourcing of risk management

Accountable institutions may seek the assistance of third-party service providers when conducting their risk assessments. However, the ultimate determination and approval of the risk assessment remains the obligation and responsibility of the accountable institutions.

Outsourcing of the activities relating to customer due diligence

An accountable institution may seek the assistance of a third-party service provider to assist with the customer due diligence (CDD) operational functions such as the collection and processing of documentation and/or information for CDD purposes. Irrespective of what CDD operational functions are outsourced, which may vary from collection to processing etc., the accountable institution must still conduct customer due diligence, and comply with its obligations in terms of the FIC Act.

Scrutinising of client information against DPIP/FPPO and TFS lists

An accountable institution cannot outsource their obligations to obtain senior management approval as required in terms of the FIC Act. The FIC Act does not prohibit the outsourcing of the activity of scrutinising client information to determine whether the client is a Foreign Prominent Public Official (FPPO), domestic prominent influential person
(DPIP) or person listed on a targeted financial sanctions list by the accountable institution.

Outsourcing of record-keeping requirements

The Money Laundering and Terrorist Financing Control Regulation 20 sets out the process to be followed when an accountable institution opts to appoint a third-party service provider to keep records on their behalf. Reporters are cautioned against the outsourcing of record-keeping relating to regulatory reports submitted to the Centre, specifically reports in terms of section 28, 28A and 29 of the FIC Act.

Outsourcing of compliance governance

The compliance function can be outsourced to third-party service providers, subject to certain conditions. The compliance officer must be a member of the accountable institution. The compliance officer may seek assistance from a third-party service provider in fulfilling their duties subject to the restrictions as set out in Public Compliance Communication 12A Guidance (PCC 12A).

Outsourcing of registration obligations

No third-party service provider may register the entity and related users of that entity on an accountable institutions' behalf.

Outsourcing of reporting obligations

Reporting done in terms of the FIC Act, cannot be outsourced to a third-party service provider.

For more information refer to the FIC website www.fic.gov.za for the various FIC public compliance communications, guidance notes, reporting and registration user guides. Contact the FIC's compliance contact centre on +27 12 641 6000 or log an online compliance query by clicking on: www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx.

Back

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4. What would you like to see more of in the newsletter?
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Back