



## **FSCA COMMUNICATION 15 OF 2023 (RF)**

### **The calculation of late payment interest by pension funds**

#### **1. PURPOSE**

The purpose of this Communication is to provide clarification to the industry on the calculation of late payment interest in respect of contributions that are not transmitted into a pension fund's bank account within the period stipulated in terms of section 13A(3)(a) of the Pension Funds Act, 1956 ("PFA").

#### **2. BACKGROUND**

- 2.1 FSCA Conduct Standard 1 of 2022 (RF): Requirements related to the payment of pension fund contributions ("Conduct Standard") came into effect on 19 February 2023. At the same time, the Minister of Finance repealed Regulation 33 of the PFA.
- 2.2 The Financial Sector Conduct Authority ("FSCA") has received requests from industry for clarification of the calculation of late payment interest as contemplated in the PFA and Conduct Standard, more specifically from which date the LPI starts running.
- 2.3 It is contended that in the PFA, section 13A(7) read with section 13A(3) provides that LPI starts running after the 7<sup>th</sup> day, i.e. from the 8<sup>th</sup> day. Previously it was interpreted that LPI starts running from the 1<sup>st</sup> day of the month following the expiration of the period in respect of which the contributions were due and payable. This was because of Regulation 33(7) (since repealed) providing same.
- 2.4 It appears that there is uncertainty within the industry regarding the interpretation as to whether the LPI starts running from the 1<sup>st</sup> day or the 8<sup>th</sup> day following the expiration of the period in respect of which the contributions were due and payable, or if there is another interpretation.

#### **3. CONSIDERATION OF REQUEST FOR INTERPRETATION RULING**

- 3.1 The FSCA considered whether it is necessary to issue an interpretation ruling or guidance notice to clarify the issue pertaining to calculation of LPI.
- 3.2 Section 141 of the Financial Sector Regulation Act, 2017 (Act No. 7 of 2017) ("FSR Act") states that the FSCA can issue a guidance notice on the application of a financial sector law, and that a guidance notice is for information purposes and not binding.

- 3.3 Section 142 of the Financial Sector Regulation Act, 2017 (Act No. 7 of 2017) (“FSR Act”) states that the FSCA can issue interpretation rulings regarding the interpretation or application of a specified provision of that law. An interpretation ruling is binding, and its purpose is to promote clarity, consistency and certainty in the interpretation and application of financial sector laws.
- 3.4 Typically the FSCA would only consider issuing an interpretation ruling if the law is ambiguous or unclear resulting in inconsistent application and/or uncertainty.
- 3.5 The FSCA considered the issue of LPI as reflected in the law and is of the opinion that the law is not, in this instance, ambiguous or unclear and that it is merely a case of legislative changes that could have resulted in some confusion. As such, the FSCA does not believe that it is necessary to issue a guidance notice or interpretation ruling in respect of the application of LPI, and that the legislative changes should merely be reiterated through this Communication.

#### 4. CONTEXT TO LEGISLATIVE CHANGES

##### *LPI requirements before the repeal of Regulation 33*

- 4.1 Section 13A(3)(a)(i) of the PFA provides that –
- “any contribution to a fund in terms of its rules...shall be transmitted directly into the fund’s account...not later than seven days after the end of the month for which such a contribution is payable.”*
- 4.2 Section 13A(7) of the PFA provides that –
- “Interest at the rate as prescribed shall be payable from **the first day following the expiration of the period** in respect of which such amounts were payable on...”*
- 4.3 Regulation 33(7), before it was repealed by the Minister, provided that –
- “Compound interest on late payments or unpaid amounts and values shall be calculated for the period from the **first day of the month following the expiration of the period** in respect of which the relevant amounts or values are payable or transferable until the date of receipt by the fund at the rate prescribed from time to time by the Minister under section 13A(7) of the Act by notice in the Gazette.”*
- 4.4 The treatment of LPI, therefore, in the context of Regulation 33(7) was different when compared to treatment of LPI when in the context of section 13A(7) of the PFA.

##### *LPI requirements after the repeal of Regulation 33*

- 4.5 As mentioned in the Statement supporting the Conduct Standard, one of the aims of the Conduct Standard was to make drafting improvements and clarify various requirements contained in the now repealed Regulation 33.

- 4.6 The treatment of LPI was one of these issues the FSCA addressed in the Conduct Standard and the intention with the proposed change pertaining to LPI was to ensure greater alignment between the PFA and subordinate legislation insofar as it relates to requirements pertaining to LPI.
- 4.7 As such, paragraph 5(1)(a) of the Conduct Standard provides that –
- “For the purposes of section 13A(7) of the Act, compound interest on late payments or unpaid amounts –*
- Must be calculated from the **first day following the expiration of the period** in respect of which such amounts were payable until the date of receipt by the fund;”*
- 4.8 Paragraph 5 of the Conduct Standard therefore replaced Regulation 33(7) and is now fully aligned with section 13A(7) of the PFA. The previous Regulation 33(7) is therefore no longer relevant.
- 4.9 As stated above, the wording in paragraph 5(1)(a) of the Conduct Standard read with sections 13A(3)(a)(i) and 13A(7) of the PFA is clear and unambiguous. Section 13A(3)(a)(i) of the PFA requires that contributions must be paid not later than seven days after the end of the month for which such a contribution is payable. It follows, in terms of the wording of paragraph 5(1) of the Conduct Standard and section 13A(7) of the PFA, that LPI must be calculated from the day after the seventh day referred to in section 13A(3)(a)(i) of the PFA.
- 4.10 Industry is reminded that section 13A(3)(a)(i) refers to “***not later than seven days...***”, which implies that efforts should be made to make payment earlier, where possible and the transfer of contributions to the fund should not be unreasonably delayed, thus prejudicing members.
- 4.11 **Example A:**  
Company ABC pays salaries and deducts pension fund contributions on the 25<sup>th</sup> of every month, for example 25<sup>th</sup> May 2023, in terms of its employment contract and fund rules. These contributions must be paid into the retirement fund’s bank account by the 7<sup>th</sup> of June 2023 (the following month - i.e. not later than 7 (seven) days after the end of the month for which such contribution is payable as specified in section 13A(3)(a)(i)). Company ABC fails to pay these contributions by the 7<sup>th</sup> of June 2023. The interest payable on these outstanding contributions will then commence running from the 8<sup>th</sup> of June 2023 (i.e. the first day following the expiration of the period as per section 13A(7)).
- 4.12 **Example B:**  
Company XYZ pays salaries and deducts pension fund contributions on the last day of every month, for example 30<sup>th</sup> June 2023 in terms of its employment contract and fund rules. These contributions must be paid into the retirement fund’s bank account by the 7<sup>th</sup> of July 2023 (the following month - i.e. not later than 7 (seven) days after the end of the month for which such contribution is payable as specified in section 13A(3)(a)(i)). Company XYZ fails to pay these contributions by the 7<sup>th</sup> of July 2023. The interest payable on these outstanding contributions will then commence running from the 8<sup>th</sup> of July 2023 (i.e. the first day following the expiration of the period as per section 13A(7)).

## **5. ENQUIRIES**

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