

PENSION FUNDS ACT 24 OF 1956

CONSULTATION REPORT: DRAFT DIRECTIVE NO. 8 OF 2018

Prohibition of Inducement and Acceptance of Gratification Section 7C – Object of Board

Regulation	Regulatory change	Comments	Response
Introduction Paragraph 1	The purpose of this Directive is to determine conditions to be imposed by the Registrar of Pension Funds ('Registrar') in order to combat and prevent bribery, and corrupt conduct by and of principal officers, deputy principal officers, board members, valuers, auditors, administrators, or other officers or other service providers to funds.	Align this paragraph with section 9B of the Pension Funds Act by including "or employees of a fund" to cater for the employees of a self-administered fund. Substitute the comma at the end of this paragraph with a full stop.	The introduction has been removed. "Employees of a retirement fund" have been included in the Directive.
		The first paragraph of the Directive refers to "inducements and acceptance of gratification by boards". The introductory paragraph of the Directive must be clarified to reflect that the "acceptance of gratification by boards" applies to gratification received by board members and not to any remuneration or incentives received by employees of services providers in	The introduction has been removed.

		<p>their capacities of valuator, administrator, principal officer acting in the course and scope of their employment.</p> <p>The reference to the words “corrupt conduct” followed by the words “by and of” may create the misunderstanding.</p>	
		<p>Our understanding is that the purpose of the Directive is to combat and prevent corruption by restricting or prohibiting certain activities and/or behaviours that is dubious, illegal or dishonest. It is also our understanding that the Directive intends to address corruption in the broadest sense of the word. In order to do so we are of the opinion that it would be necessary that the Directive be explicit in its intention and should therefore be consistent in the use of terminology when defining or describing its intentions.</p> <p>For instance, the purpose of the Directive to determine conditions to be imposed in order to combat and prevent bribery and corrupt conduct. Later in the Directive reference is also made to fraud, corruption and corrupt transactions.</p> <p>We are of the view that the words bribery, corrupt conduct, fraud, corruption do not have corresponding or same meanings and should therefore not be used interchangeably and for the following reasons:</p>	<p>Comments noted and wording revised where appropriate.</p>

		<p>Corruption involves unduly influencing someone to act in a certain way that is illegal or dishonest. Corruption constitutes an abuse of power to achieve an unjust outcome. The word corruption serves as a collective description of the various activities associated with undue behaviours. Corrupt activities or conduct on the other hand may include bribery, fraud, anti-competitive behaviour, extortion, etc. These activities are forms of corruption.</p> <p>The Directive is narrow in its reference to a few corrupt activities (bribery, fraud and corrupt activities) which might imply that these are the only forms of corrupt activities that the Registrar would pursue.</p> <p>There should be a common understanding and consistence in the use of terminology which should align to definitions and other references contained in the relevant laws.</p> <p>It is proposed that the introductory paragraph 1 be amended as follows:</p> <p>INTRODUCTION</p> <p>The purpose of this Directive is to determine conditions to be imposed by the Registrar of Pension Funds ('Registrar') in order to combat and prevent corruption, and corrupt activities by and of principal officers, deputy principal officers, board</p>	
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		<p>members, valuers, auditors, administrators, or other officers or other service providers to funds.</p>	
		<p>Given the wording of the paragraphs headed "Introduction" and "General Principle", my understanding of the draft Directive is that it seeks to caution trustees and the other role-players listed to avoid accepting a gratification that could be construed as a bribe or could constitute a conflict of their interests with the interests of the Fund. They should take steps to ensure that their duties in this regard are appropriately carried out. Any form of "gratification" should be considered and assessed as to whether or not the purpose of the Directive is being adhered to, except in respect of paragraph 5.1 where no discretion is permitted because an outright ban is imposed. The point has also been made that the Directive should apply to Employer Management Committees, which, in the case of some Umbrella Funds, are established in respect of each participating employer to give input in respect of that employer's participation in the Fund. I am uncertain how this can be achieved, however, in that these Committees are not recognised in the Pension Funds Act. It is also not clear to me what influence they have and how incentives received by them would</p>	<p>The introduction has been removed.</p> <p>The Directive applies to management committees. Whilst management committees have not been expressly defined in the <i>Pension Funds Act No.24 of 1956</i> it is not impermissible for funds to implement such structures. The condition is that the fund's rules must provide for this and to the extent that they do, such management committees are subject to the Act. This would similarly apply to situations where the board of a fund has delegated some of its functions to a management committee. The definition of "officer" as contained in the Act is broad enough to include members of a management committee.</p>

		influence the prudent management of the Fund.	
		Xxxxxx proposes that the word “employee of a fund” be included in the Introduction to align it with section 9B of the Pension Funds Act (PFA). This will ensure that employees of self-administered pension funds are also included.	The introduction has been removed. The wording “employee of a fund” has been included where this is appropriate.
Definitions paragraph 2	For the purposes of this Directive the following definitions shall apply.	<p>The following definitions should be considered for inclusion:</p> <p>“Corruption” means any person who directly or indirectly, accepts or gives or agrees or offers to accept or give, any form of gratification from any other person, whether for the benefit of themselves or for the benefit of another person in order to act personally or by influencing another person to act, in a manner that amounts to be illegal, issue or selling of information or material acquired in the course of the exercise, carrying out or performance , of any powers duties or functions that amounts to the abuse of a position of authority a breach of trust; or the violation of a legal duty or a set of rules; that is designed to achieve an unjustified result, or any other unauthorized or improper inducement to do or not to do anything. “Corrupt Activities” includes but is not limited to corrupt transactions such as bribery,</p>	<p>A definition for corruption and corrupt activities has been included and ascribed the same meaning as contained in the <i>Prevention and Combating of Corrupt Activities Act, 2004</i>.</p> <p>It would be undesirable to afford a narrow definition to the term “fit and proper”.</p> <p>The Conduct Authority will exercise the discretion afforded in the <i>Pension Funds Act No.24 of 1956</i> and other legislation.</p> <p>The word “induce” was not used in the directive.</p> <p>Induce is defined in the <i>Prevention and Combating of Corrupt Activities Act, 2004</i>.</p>

		<p>extortion, fraud, forgery, fronting, anti-completive behaviour, price fixing, insider trading and theft. (Each activity may also be defined separately)</p> <p>“Fit and Proper” means any person or class of persons who meet the honesty and integrity, competency and operational ability requirements defined for a specific profession or by any law.</p> <p>“Induce” includes persuading, encouraging, coercing, intimidating or threatening or causing a person, and “inducement” has a corresponding meaning; The Directive explicitly indicates that it prohibits gratification and inducement. However, inducement is not defined.</p>	
		<p>The draft only refers to current services providers and not potential future service providers. I suggest that you include a definition of “service providers” to address the concerns relating to associated companies and to also include any person who seeks to become a service provider to a Fund.</p>	<p>The concern has been addressed in paragraph 4.1 of the Directive.</p>
<p>Paragraph 2.2</p>	<p>Gratification means:</p>	<p>Xxxxxx proposes that the definition of “gratification”, as set out in the Directive, be referenced to the Prevention and Combating of Corrupt Activities Act of 2004 (PRECCA) from where it is derived. This will ensure</p>	<p>The terms “corruption” and “corrupt activities” are referenced to in the <i>Prevention and Combating of Corrupt Activities Act, 2004</i>. The term “gratification” has been modified in the directive to be applicable</p>

		that the Directive remains updated whenever this definition is amended.	to the retirement fund industry.
Paragraph 2.2(a)	Money, whether in cash or otherwise;	This is very widely worded and could include the salaries or expense reimbursement of sponsor employed POs and Trustees, which we do not believe could have been the intention? This should be clarified.	Gratification excludes remuneration paid by a sponsor of a retirement fund to a board member.
Paragraph 2.2(b)	Any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;	Does this include the infrastructure afforded to independent POs of sponsored funds? A loan should not be a problem if it is permitted under the Pension Funds Act. Surely it is only a problem if the loan is written off or not at market rates?	The infrastructure should be afforded for the benefit of the fund and not the PO in his or her personal capacity.
Paragraph 2.2(d)	Any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;	How would this affect PO's employed by sponsors of commercial umbrella funds – does it mean the fund must become an employer and pay them directly?	Yes, the fund must employ the PO directly.
Paragraph 2.2(g)	Any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of	Does this include the indemnification of Trustees and POs of sponsored funds by the sponsor of the fund?	No. The Directive permits sponsor appointed trustees to be remunerated by the sponsor of a retirement fund and this includes trustees appointed in terms of section 26(2) of the <i>Pension Funds Act No.24 of 1956</i> .

	any right or any official power or duty;		
Paragraph 2.3	Retirement fund shall mean a pension fund organization as defined in section 1 of the Pension Funds Act, 1956.	Since 2.3 contains a definition of “retirement fund”, this term should be used throughout the document i.e. also in par 1, 4.1, 5.1 and 5.2.	The term has been incorporated throughout the Directive.
General principles Paragraph 3	A board member, principal officer, deputy principal officer, auditor, valuator, administrator or service provider to a retirement fund should not be involved in any conduct constituting bribery, fraud or corruption and any such involvement will have a bearing on such persons’ fitness and propriety to hold office.	<p>Why is “other officer or employee of a fund or an administrator”, as referred to in section 9B of the Pension Funds Act, not included in this list?</p> <p>Delete “in” before “involved”</p> <p>General comment: rather define the list of persons to who the prohibition applies, instead of listing them in paragraphs 3 and 5.2.</p> <p>This Directive should also apply to Employer Management Committee participating in an umbrella fund.</p> <p>It is suggested that a definition of service provider be inserted, similar to the definition in the TCF Complaints Management BN, to ensure this Directive extends to the asset consultants and tracing agents appointed by a fund.</p>	<p>The term “other officer” has been included in 4.1 of the Directive.</p> <p>The word “in” before “involved” has been deleted.</p> <p>The issue of management committees has been addressed above. The Directive applies to management committees.</p> <p>The reference to service provider includes all providers of services to a retirement fund and is not limited to a defined list.</p>

		<p>We support this provision. However, we do caution that this can lead to a flood of allegations unless the Registrar aligns the provision with the general offence of corruption as defined in the Prevention and Combating of Corrupt Activities Act (“PRECCA”). The PRECCA provision specifically requires that there must be an intention to act, personally or by influencing another person so to act, in a manner that amounts to the illegal, dishonest, unauthorised conduct and is aimed at the abuse of a position of authority; a breach of trust; or the violation of a legal duty or a set of rules in order to achieve an unjustified result; or that amounts to any other unauthorised or improper inducement to do or not to do anything.</p>	<p>The provision has been aligned as suggested.</p>
		<p>The principles contained in the Directive state that fiduciaries should not engage in bribery, fraud and corruption and that such behaviour might impact their fit and proper status. “As indicated earlier in the submission reference to bribery, fraud, corruption and corrupt transactions are limiting and should encompass all forms of corruption. (See my earlier comments in point 1)Some service providers mentioned in list of role players might not be subjected to fit and proper requirements as defined. It would be</p>	<p>The comment has been accepted subject to certain minor amendments.</p>

		<p>necessary to include a sentence to indicate the impact of corrupt conduct on their ability to do business. It is proposed that the paragraph 3, General Principles be amended as follows:</p> <p style="text-align: center;">GENERAL PRINCIPLE</p> <p>A board member, principal officer, deputy principal officer, auditor, valuator, administrator or service provider to a retirement fund should not be involved in any corruption or corrupt activities and/or conduct. Any such involvement will have a bearing on such persons' fitness and propriety to hold office and/or to provide a service."</p>	
		<p>The inclusion of "other officer and "employee of a fund" are proposed for reasons advanced in 1 above.</p>	<p>This has been Included in 4.1</p>
<p>Duty to report to the authorities</p>		<p>The Directive highlights the legislative duty to report as well as specific offences contained in the PRECCA. The references reflect on and confirm the provisions of the whistle-blowing requirements.</p> <p>PRECCA - The Directive is not explicit as to what needs to be reported in terms of Section 34 of the PRECCA. (Prevention and Combating of Corrupt Activities Act, 2004). It would mean that fiduciaries must consult the PRECCA legislation in order to determine which activities</p>	<p>Section 34 of PRECCA has been directly quoted in the Directive.</p> <p>All fiduciaries are required to report suspicious activities.</p>

		<p>are regarded as offences.</p> <p>The Directive is also silent on whether fiduciaries should report on suspicion especially in relation to the PRECCA. The reporting of suspicion without prima facie evidence in a criminal case might have adverse legal consequences. We are of the opinion that fiduciaries should report once they have obtained legal advice.</p> <p>The Directive is also not clear what if the wrongdoing is below the R100 000 thresholds or the amount cannot be accurately quantified. We are of the opinion that reporting should continue irrespective of the amount stipulated.</p> <p>PFA (Section 26) - This Directive is silent on the powers of the Registrar as set out in Section 26 of the Pension Funds Act to intervene in the management of the fund. These powers give to the Registrar the very necessary power if strong action is needed to be taken to correct a poor fund governance situation or to protect the interests of members from some form of bad practice or maladministration. Section 26 allows the Registrar to include service providers who are not necessarily subjected to fit and proper requirements to be subjected to the</p>	<p>An offence involving an amount above R100000.00 must be reported to the Directorate for Priority Crimes.</p> <p>Sections 7A(4)(b), 8(6)(b), 9(4)(c), 9A(2) and 13B(10) require the concerned persons to report the matter to the Conduct Authority irrespective of the amount.</p> <p>Section 26 of the Pension Funds Act still applies notwithstanding the contents of the Directive.</p>
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		<p>rules set out in the Directive.</p> <p>Who to report to - The duty to report require fiduciaries to report to different authorities in relation to the different pieces of legislations. It might be helpful to include a reference of what needs to be reported to whom and how. The following inclusions in respect of the duty to report are suggested:</p> <p>The Directive should include the list of offences, the consequences of malicious reporting and guidance on the approach should the wrongdoing monetary value is below the threshold or not quantifiable.</p>	
Paragraph 4.1	<p>A board member, principal officer, deputy principal officer, auditor, valuator or administrator of a retirement fund has a duty, in terms of sections 7A(4)(b), 8(6)(b), 9(4)(c), 9A(2), and 13B(5), respectively, of the Act, on becoming aware of any matter relating to the affairs of the fund, which in their opinion, may prejudice the fund or its members, inform the Registrar thereof in writing.</p>	<p>The whistle-blowing obligation of the principal officer under section 8(6)(b) does not extend to the deputy principal officer; there is no specific provision in section 8 that provides that the provisions of that section apply mutatis mutandis to a deputy principal officer.</p> <p>The whistle-blowing obligation on an administrator is dealt with under section 13B (10), not 13B (5).</p> <p>Insert “to” before “inform”.</p>	<p>The Directive applies to deputy principal officers.</p> <p>The reference to section 13B (10) has been amended.</p>
		<p>The reporting requirements should also include reporting on any approaches and gifts with the objective of committing a corrupt or</p>	<p>The Directive does include these type of approaches.</p> <p>In certain cases, it may be undesirable to place an obligation to report to the</p>

		fraudulent activity should be disclosed not only to the Registrar of also the board of trustees.	board of trustees as the report may implicate trustees.
		Xxxxxx proposes that “other officer” and “service provider” also be included for the same reasons as in 1 above.	This has been included.
Paragraph 4.2	A board member, principal officer, deputy principal officer, auditor, valuator or administrator of a retirement fund may also submit a Protected Disclosure to the Registrar in terms of section 9B of the Act.	Section 9B of the Pension Funds Act also includes “other officer or employee of a fund or an administrator”. Is there any specific reason for excluding these two categories from the prohibition? Par 4.2 creates the impression that a protected disclosure is something different from the “whistleblowing” as contemplated in the sections referred to in par 4.1 above, which is not the case. In our view the disclosure referred to in sec 9B includes the said whistleblowing.	Both categories are included. Refer to information circular PF1 of 2018.
		The same comment as in 1 above applies.	This has been included.
Paragraph 4.3	Section 34 of the Prevention and Combating of Corrupt Activities Act, 2004, which applies to a board member, principal officer, deputy principal officer, auditor, valuator and administrator of a retirement fund, provides: <i>Duty to report corrupt transactions.</i> —(1) Any person	Xxxxxx proposes that penalties in respect of any person who is guilty of an offence (i.e. failure to report corrupt transactions as set out section 34 of PRECCA), be included.	The provisions of the <i>Prevention and Combating of corrupt Activities Act, 2004</i> do apply.

	<p>who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—</p> <p>(a) An offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or</p> <p>(b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995, (Act No. 68 of 1995).</p> <p>(2) Subject to the provisions of section 37 (2), any person who fails to comply with subsection (1), is guilty of an offence.</p>		
<p>Specific types of gratification not permitted: Paragraph 5.1</p>	<p>It is hereby directed that the following types of gratification are automatically not permitted to be accepted, agreed or offered to be accepted by a board member, principal officer, deputy principal officer, valuator, auditor, administrator or other officer or service provider to a</p>	<p>The Directive stipulates that certain types of gratification are automatically prohibited. The list is not necessarily exhaustive but retirement fund specific. We agree with the content of the list.</p> <p>A loophole that will persist is that international companies circumvent local regulations by getting their</p>	<p>In this instance the Directive will still apply to the principal officer or trustee, who is prohibited, in terms of the</p>

	<p>fund, from any other person connected in whatsoever manner to a service provider of a fund in which such principal officer, deputy principal officer, valuator, auditor, administrator or other officer or service provider to a fund or other officer serves:</p>	<p>offshore companies to pay the cost of these activities. One presumes the cost is then recovered by transfer pricing. For example, assuming the fund board agrees to send a principal officer or trustee to an overseas conference, then the international subsidiary will lavishly entertain the individual instead of the local company.</p> <p>The source of the money used for improper inducements is a loophole being used currently to circumvent the FAISA. The problem also extends to financial services companies that offer multiple types of financial services, e.g. short term insurance or banking services. These companies will circumvent the directive by sampling getting the short term insurer or bank to approach the trustee, disguised as services providers to the employer.</p>	<p>Directive, from accepting the gratification contemplated.</p> <p>The Directive applies to any other person connected in whatsoever management service provider of a retirement fund.</p>
		<p>The same comment as in 1 above applies.</p>	<p>This has been included.</p>
<p>Paragraph 5.1 (a)</p>	<p>Any gratification which objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund;</p>	<p>Guidelines are suggested as to what would constitute a conflict of interest or is it sufficient for each of the parties listed (i.e.: Boards, POs, administrators, valuers, auditors, etc..) to apply their minds to this question and to record that, in their view, the "gratification" that they receive does not create a conflict of interest for them relating to their</p>	<p>The test to be applied is not a subjective one (i.e. it is not that the party decides whether a gratification results in a conflict of interest) but an objective test, i.e., whether or not it constitutes a conflict of interest.</p>

		duties to the fund and the fund members. In other words, how is this to be policed?	
		We want to point out the Registrar that the employees of a service provider to a fund may in certain circumstances also render a specific statutory function to the same fund. For example, a valuator appointed by a fund might be employed by the same benefit administrator providing administration services to the fund. In such a case the fees earned by the valuator will be credited to the administered which in turn will pay the latter a salary. The current format will essentially resulting in the valuator in the above scenario and administrator contravening the directive. The Registrar should consider including an exception or exemption for relationships similar to the one explained in the example but it being subject to full disclosure to the board of trustees.	The test to be applied is an objective test i.e. it is a question of reasonability.
Paragraph 5.1 (b)	(b)Token gift/s that exceed/s the annual limit set by the board in terms of the fund's gift policy, which annual limit shall not be more than R500.00 per annum in aggregate from any one service provider;	What informed this amount? FAIS has a limit of R1 000.00 per annum in the aggregate from one service provider. This should not be a specific amount, but rather referenced to the test which forms part of 5.1(a).	In this instance it is considered desirable to provide set guidelines to the industry and the amount of R500.00 is considered to be reasonable for the purposes of token gifts.
		It is suggested that the words following the comma be deleted because it is very prescriptive and paternalistic in nature. The Board should be given the discretion to	In this instance it is considered desirable to provide set guidelines to the industry and the amount of R500.00 is considered to be reasonable for the

		determine the limits in their gift policy which amount should rather be reasonable in the circumstances.	purposes of token gifts.
		Some members have indicated that the amount of R500 allocated in respect of token gifts is too low and should be increased to R1000 in line with provisions in other legislation such as FAIS. Consider an increase of the value to R1000.	In this instance it is considered desirable to provide set guidelines to the industry and the amount of R500.00 is considered to be reasonable for the purposes of token gifts.
		Xxxxxx proposes that the limit amount of R500 (in the aggregate over a year) on gifts is low and should be increased to R1000 and that some context or explanation be provided. The said limit does not fit in the context of the FAIS General Code of Conduct and similar Codes globally.	In this instance it is considered desirable to provide set guidelines to the industry and the amount of R500.00 is considered to be reasonable for the purposes of token gifts.
Paragraph 5.1 (c)	Travel or accommodation relating to local or international due diligences;	This should not be an outright prohibition, but rather referenced to the test which forms part of par 5.1(a).	The costs relating to local or international due diligences should be paid by the fund.
		It is suggested that paragraphs “c” to “e” be deleted as paragraphs “a” and “b” read together with this Directive as a whole, Pension Funds Circular PF 130 and King IV set the tone of impermissible gratifications. Service providers may have the infrastructure and resources to host valuable and insightful conferences, seminars, workshops and training events that	If it is necessary for a retirement fund officer to conduct a due diligence or other fund related activity then all costs related to such due diligence or activity, including travel and accommodation, must be borne by the retirement fund. Retirement fund officers may not accept invitations to entertainment events paid for by service providers. This includes, but is not limited to,

		<p>add significant value to trustees and contribute to the continued education and training of trustees which is one of the continuous outcomes the Registrar seeks to achieve with the introduction of fit and proper requirements for trustees.</p> <p>There needs to be a general exemption granted to: Funds which have a s26(2) board in place, where the administrator of the fund is carry the costs of the 26(2) board as well as the fund expenses (e.g. audit fees, board meeting costs etc.); and</p> <p>Funds which are in the process of winding down and where the administrator/sponsor is carrying the board and fund expenses.</p>	<p>breakfasts, lunches, dinners, coffee, drinks, sporting events, hunting, jazz festivals and concerts.</p> <p>All costs for the training, travel and accommodation must be paid for by the retirement fund. In instances where training is offered for free by a service provider to a retirement fund, the fund should at least bear the costs relating to the training (e.g. traveling and accommodation costs) but excluding those of the actual training. Where a service provider intends to provide training or to present topics relevant to the retirement fund industry at no cost, which may also include refreshments and beverages, such an event must be open for registration to the general public or to a general category of persons.</p> <p>The actual costs of such training, whether paid by the fund or offered for free by the service provider, must still be reasonably justifiable.</p>
		<p>(c) And (d), These paragraphs only refer to travel and accommodation and should be explained and/or clarified, perhaps by way of examples. Travel in a staff van or vehicle from the office of a service provider to a lunch/event is also travel and requires clarification.</p>	<p>The section has been amended to provide further clarification.</p>
Paragraph	Travel or accommodation	This should not be an outright	Retirement fund officers may not accept

5.1 (d)	relating to local or international entertainment or sporting events; and	prohibition, but rather referenced to the test which forms part of par 5.1(a).	invitations to entertainment events paid for by service providers. This includes, but is not limited to, breakfasts, lunches, dinners, coffee, drinks, sporting events, hunting, jazz festivals and concerts.
Paragraph 5.1 (e)	Conferencing costs or board of fund expenses.	<p>This should not be an outright prohibition, but rather referenced to the test which forms part of par 5.1(a).</p> <p>Why can't conferencing costs for a board or a (deputy) principal officer not be paid for by for instance a service provider/sponsor / administrator if the conference programme is topical and relevant?(Trustees will not attend these if they were to fund it themselves.) This can be seen as training costs, which would benefit the fund and its members, and can fall under par 5.2 – preferably it should not be necessary to have to apply for permission each time training is given, i.e. the Directive should state that trustee training is permitted.</p> <p>There needs to be a carve out or general exemption granted to: funds which have a s26(2) board in place, where the administrator of the fund is carry the costs of the 26(2) board as well as the fund expenses (eg. audit fees, board meeting costs etc), funds which are in the process of winding down and where the administrator/sponsor is carrying the board and fund expenses.</p>	<p>All costs for the training, travel and accommodation must be paid for by the retirement fund. In instances where training is offered for free by a service provider to a retirement fund, the fund should at least bear the costs relating to the training (e.g. traveling and accommodation costs) but excluding those of the actual training. Where a service provider intends to provide training or to present topics relevant to the retirement fund industry at no cost, which may also include refreshments and beverages, such an event, must be open for registration to the general public or to a general category of persons.</p> <p>The actual costs of such training, whether paid by the fund or offered for free by the service provider, must still be reasonably justifiable.</p>

		<p>In terms of the conflict of interest provisions in the FAIS General Code of Conduct, in respect of the definition of financial interest, training is excluded from the definition of 'financial interest', and it is recommended that a similar provision be inserted in this Directive “financial interest” means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than -</p> <ul style="list-style-type: none"> (a) an ownership interest (b) training, that is not exclusively available to a selected group of providers or representatives, on – <ul style="list-style-type: none"> (i) products and legal matters relating to those products; (ii) general financial and industry information; (iii) specialized technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training; <p>There also needs to be a special dispensation for sponsored funds which may have sponsor employed POs, board members, provide various indemnities and infrastructure to POs and board members, etc.</p>	
		<p>It is assumed that the reference to the payment of conference cost by</p>	<p>Where a service provider intends to provide training or to present topics</p>

		<p>service providers refers to a practice whereby service providers pay the conference fees and other expenses on behalf of the trustees. For example, should Xxxxxx host a conference in Durban the service provider will pay all the fund's expenses in this respect. This could clearly be construed as a potential conflict of interest scenario.</p> <p>However, it is our understanding that trustees may accept an invitation to service provider education and training sessions which could be free of charge on condition that the service provider does not pay for any fund expenses in relation to the attendance of such events. Clarify whether funds are prohibited from attending any service provider event which is free of charge or partially funded by the service provider.</p>	<p>relevant to the retirement fund industry at no cost, which may also include refreshments and beverages, such an event must be open for registration to the general public or to a general category of persons.</p> <p>The actual costs of such training, whether paid by the fund or offered for free by the service provider, must still be reasonably justifiable.</p>
		<p>The wording of 5.1(e) seems to cause some problems: "conferencing costs or board of fund expenses." Was this intended to read something along the lines of "conferencing costs or board of fund expenses in relation to attendance at conferences"?</p> <p>"...board of fund expenses" on its own poses a problem for employers and possibly administrators where they provide secretarial support, facilities for board meetings and/or trustee elections, and generally</p>	<p>The Directive permits sponsor appointed trustees to be remunerated by the sponsor of a retirement fund and this includes trustees appointed in terms of section 26(2) of the Pension Funds Act.</p> <p>Such remuneration will be interpreted to include board of fund expenses.</p>

		<p>support the day-to-day running of the fund.</p> <p>Even if par 5.1(e) is amended to have similar wording to that suggested above, the issue remains in respect of principal officers and trustees who are employees of a fund sponsor and whose salaries are therefore paid for by the sponsor. The sponsor is certainly “connected to a service provider” of the fund as contemplated in paragraph 5.1 – the sponsor is the s13B administrator of the fund and also the investment manager and/or insurer to the fund. It seems reasonable for employers to fund their employee principal officers’ and trustees’ attendance at relevant conferences and/or overseas due diligences where required.</p>	
Paragraph 5.2	<p>If it is substantively demonstrated to be in the best interests of the fund or its members, a board member, principal officer, deputy principal officer, auditor, valuator, administrator, officer or service provider to a retirement fund, as the case may be, may request permission from the Registrar to accept or give, any of the specific types of gratification mentioned in 5.1. Above and may only accept or give such</p>	<p>Include the word “other” before officer and add the words “of a fund or an administrator” to it, to align with the wording in section 9B of the Pension Funds Act.</p> <p>The Registrar should never grant permission for a gratification as contemplated in par 5.1(a).</p> <p>In our view it should be stated that the sponsor of the fund should be able to fund premiums payable in respect of professional indemnity in order to cover the fund and trustees, and it</p>	<p>Agree, wording has been amended to accommodate comments and the provision for an exemption has been deleted.</p>

	<p>gratification after written permission has been granted by the Registrar.</p>	<p>should not be required that permission in terms of par 5.2 should be applied for. The remuneration payable to independent trustees might in some instances not be sufficient to cover these premiums. Independent trustees may not be willing to serve on the board if they have to pay these premiums from their remuneration, because the remuneration for their services could potentially, after the payment of these premiums, not justify the risk of serving on the board.</p> <p>To obtain prior approval will be impractical. As an alternative, can the rules of the fund not deal with the circumstances under which such a gratification can be accepted, based on guidelines provided by the FSB? These guidelines can deal with the generally accepted exceptions, and be revised as and when required.</p>	
		<p>The requirement to obtain permission may cause an administrative burden on the office of the Registrar. We suggest that the registrar make provision for a general exemption where gratification will be considered to be in the best interest of the fund.</p>	<p>Agree, wording has been amended to accommodate comments and the provision for an exemption has been deleted.</p>

		<p>We disagree with the provision of paragraph 5.2 that a fund may ask the Registrar for permission to an override their own prohibitions.</p> <p>We are of the view that the issues contained in the list reflect areas that could instigate or perpetuate corrupt behavior whether it was intended or not. The Registrar might find himself in a compromising position should the permission eventually result in corruption for whatever reason.</p> <p>Trustees are jointly and severally liable for their decisions. What will the liability of the Registrar be in case of subsequent corrupt behavior? It is proposed that paragraph 5.2 be deleted.</p>	<p>Agree, wording has been amended to accommodate comments and the provision for an exemption has been deleted.</p>
		<p>This will be impractical and onerous to request the Registrar's permission every time a fund contemplates for good reason, an item mentioned in 5.1 above.</p>	<p>Agree, wording has been amended to accommodate comments and the provision for an exemption has been deleted.</p>

General comments	
<p>We would support the objective of this draft Directive but question whether there is sufficient legislation in force already to prosecute corrupt trustees / PO's / service providers. And the real difficulty is in enforcement of legislation, rather than adding more legislation.</p> <p>Guidance was provided in PF 130 to say that boards shall avoid conflicts of interest, but where this cannot be avoided the conflicts (and if it does not compromise the credibility of the governance arrangements) must be managed appropriately. PF 130 recognised that there may be structural conflicts which are unavoidable. When the FSB rewrite PF 130 and issue it as a directive, please take into account what was issued in this directive, so that there is consistency between the directives insofar as dealing with conflicts of interest are concerned. We have a specific request that representatives of commercial umbrella funds meet with the FSB to get further guidance (such as a focussed guidance note) so as to understand the intent of the proposed directive in relation to the administrators, POs, board members, valuers, auditors and other service providers of sponsored funds and how the directive should be interpreted applied with regard to these funds.</p>	
<p>We support the Registrar of Pension Funds" measures to rid the pension fund industry of corruption, fraud and bribery and in particular to ensure that we only have ethical board of trustees and service providers that put the interest of members first. In doing so, the Registrar's measures should not conflict with the Prevention and Combating of Corrupt Activities Act, 2004. There is clear distinction between achieving sound and principled governance by managing possible or perceived conflicts of interest and transgressing law by committing a crime that involves fraud and dishonesty.</p>	
<p>We welcome the explicit prohibition of inducement and gratification as a</p>	

way to stop corruption and corrupt activities given that the law does not require funds to create an anti-corruption compliance framework. However, the onus is on the board of trustees to make sure that their governance practices are aligned with the relevant laws and that they manage the risks associated with corruption.

We welcome the explicit reference to all the participants in the retirement fund value chain that have a duty to prevent and combat corruption. Retirement Funds are entrusted with the savings of their members to secure an income at the end of their working life. Retirement Funds, their boards of trustees, the principal officer, officers of the fund, administrators and service providers all play a role in achieving this. These fiduciaries find themselves in a position of trust and therefore required to act with honesty and integrity, demonstrate independence and avoid conflict of interest. Only a concerted and sustained effort by all the retirement fund fiduciaries will ensure that the member's savings and interests are protected.

We welcome the recognition that any involvement of a fiduciary in corruption would have a bearing on their fit and proper status. The retirement fund trustees and principal officers are professionalising. They are now required to meet the fit and proper requirements like any other professional in industries such as medical, accounting and engineering. Professionals have the necessary technical knowledge to do their work well. They are ethical and trustworthy. Meeting the fit and proper standards associated with professionals serves as a conduit in combating corruption that is firmly part of everyday life. The Directive is silent on the powers of the Registrar in relation to the PFA's whistleblowing requirements i.e. that the Registrar may declare that a specific practice or method of conducting business is unacceptable or undesirable and that the fund, administrator or any other person must refrain such practice; and that the Registrar may remove or replace a

<p>board member if the Registrar has reason to believe that a board member is not fit and proper to hold office.</p> <p>Proposal 6: Include a paragraph on Section 26 powers of the Registrar</p> <p>The Directive does not provide guidance on how to or who to report to should fiduciaries wish to do so. The inclusion of such details would go a long way to speed up processes.</p> <p>Proposal 7: The Directive should include details of who to contact in case of an enquiry. This should include information about the various hotlines. The Directive is an important step in curbing corruption and corrupt activities within the retirement fund industry. We appreciate the guidance.</p>	<p>The section 26 powers of the Registrar are already contained in the PFA.</p> <p>Reference to Information Circular 1 of 2018 has been included in the Directive.</p> <p>Agree, wording has been amended to accommodate comments and contact details have been provided.</p>
<p>These guidelines, although self-evident, are welcome and possibly overdue.</p>	
<p>I am sure that many investment managers will have been relieved to read the Draft. Over the years, Xxxxxx members have regularly complained that they are approached by trustees with the direct request that they fund trustees' conference and entertainment costs. It will be valuable for them to have a Directive to refer to that specifically prohibits such conduct.</p>	
<p>Circular PF130 (PF130) provides principles which every pension fund should consider for good corporate governance. Moreover, PRECCA, Prevention of Organised Crime Act (POCA), Financial Intelligence Centre Act (FICA) deal with the issues raised in the Directive. Every fund is expected in terms of PF130 to have a code of conduct where the issues raised in the Directive are dealt with. Xxxxxx, in addition to having</p>	

a code of conduct, also has an antifraud and corruption policy where section 34 of PRECCA, sections 4, 5 and 6 of POCA, section 9B of the PFA and sections 29, 51, 52 and 68 of FICA are incorporated.

Xxxxxx proposes that instead of issuing a new Directive, pension funds should rather be obliged to amend their policies (if required) to incorporate the above provisions as they already deal with the issues raised in the Directive.