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## GUIDANCE NOTICE NO. 2 OF 2018

### GUIDANCE ON DIRECTIVE 8 PROHIBITION ON THE ACCEPTANCE OF GRATIFICATION

#### 1. BACKGROUND

Directive 8 was issued on 8 March 2018 to assist in combatting and preventing corruption and corrupt activities in the retirement fund industry. Given the ambit of its operation and past practices, The Financial Sector Conduct Authority (FSCA) has received enquiries relating to the interpretation and implementation of Directive 8.

#### 2. PURPOSE

The purpose of this guidance notice is to provide practical guidance on the interpretation and implementation of Directive 8 and to address enquiries received by the FSCA. This guidance notice does not replace Directive 8 and where there is any practical inconsistency between this guidance notice and Directive 8, preference must be given to the provisions of Directive 8.

#### 3. INTERPRETATION AND IMPLEMENTATION OF DIRECTIVE 8

##### 3.1. Reporting

- 3.1.1. It is important to note that Directive 8 places a reporting obligation on all persons affected by the Directive. Any person who fails to report a matter will be in breach of Directive 8. In this regard, even a potential breach of Directive 8 must be reported.
- 3.1.2. Directive 8 requires reporting of non-compliances immediately upon becoming aware of a breach or potential breach. Such reports should preferably be made in writing.
- 3.1.3. Please refer to Information Circular 1 of 2018, which provides guidance on the manner in which a person may make a report or protected disclosure to the FSCA.

### **3.2. Training**

- 3.2.1. Directive 8 was not intended to stop training being provided by service providers or attendance at training sponsored by service providers. However, it intends to prevent corruption and corrupt activities being perpetrated under the guise of training.
- 3.2.2. In order to strike a balance by still supporting genuine training of board members while prohibiting corruption and corrupt activities, it is preferred that all costs for the training, travel and accommodation be paid for by that retirement fund. In instances where training is offered for free by a service provider to that 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.
- 3.2.3. 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.
- 3.2.4. The actual costs of such training, whether paid by the fund or offered for free by the service provider, must still be reasonably justifiable.

### **3.3. Business related meals and similar considerations**

- 3.3.1. It is not impermissible under Directive 8 for a service provider to pay for business related meals provided that such meals are legitimately for the purpose of conducting the business of the fund. Such activities should however be kept to the minimum level necessary to maintain effective business relationships and should not be exorbitant.
- 3.3.2. Retirement fund officers are required to declare any business meals paid for by a service provider in the fund's gift register, which must include the value of such meals.

### **3.4. Entertainment**

- 3.4.1. Retirement fund officers may not accept 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.
- 3.4.2. Service providers must act responsibly and not attempt to justify an entertainment event as a legitimate event in order to circumvent the provisions of Directive 8. Concomitantly, it is expected of retirement fund officers to apply their minds as to whether an invitation to an event is for a legitimate purpose or actually for the purposes of providing entertainment.

### **3.5. Token gifts**

- 3.5.1. Token gifts are gifts usually given at year end which may include pens, diaries, desk calendars, calendars, mugs and other indulgences such as chocolates, biscuits or beverages which is a token of goodwill. The annual limit from any one service provider is R500.00 (five hundred rand).
- 3.5.2. The purpose of limiting the amount is to prohibit a concession for goodwill to be converted into corruption and corrupt activities.

### **3.6. Due diligences and other retirement fund related activities**

- 3.6.1. 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. A service provider is not permitted to pay for such costs.
- 3.6.2. A due diligence or any fund related activity should not be an excuse for a retirement fund officer to go on a holiday at the expense of the retirement fund, and boards of retirement funds must exercise their discretion sparingly after proper motivation has been given for the due diligence or activity. This should include consideration of the number of officer(s) required to attend to the due diligence or activity and if the relevant officer(s) concerned possess the necessary skill and experience to conduct the due diligence or fund related activity.
- 3.6.3. After a due diligence or activity has been conducted, the retirement fund officer(s) concerned should produce a written report to the board.

### **3.7. Sponsored Funds**

- 3.7.1. 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.
- 3.7.2. Such remuneration will be interpreted to include board of fund expenses.

### **3.8. Gratification which objectively viewed creates a conflict of interest**

- 3.8.1. As far as is reasonably possible, a retirement fund should bear its own expenses unless circumstances dictate otherwise and objectively viewed no conflict of interest is created. Substance will take precedence over form in all such cases.
- 3.8.2. Where a section 26(2) trustee is appointed to a dormant fund or a shell fund and the section 13B administrator pays the expenses for the cancellation or liquidation of the retirement fund because the fund has either little or no assets of its own, this will not constitute a breach of Directive 8.
- 3.8.3. In an underwritten fund, the payment of board of fund expenses by the administrator does not objectively create a conflict of interest and would not be a breach of Directive 8. This does not mean that the board of such funds will not be expected to exercise their minds independently and fulfill their objects and duties as required in applicable legislation.
- 3.8.4. Where a retirement fund officer has an interest in a service provider to the retirement fund concerned, and there are no circumstances that dictate that the retirement fund cannot reasonably appoint another service provider, this will constitute a breach of Directive 8. As an example, the principal officer or trustee of a retirement fund may not also be a director or employee of the law firm appointed by the retirement fund for legal services. Objectively viewed this would create an avoidable conflict of interest.

#### **4. CONCLUSION**

Importantly, this guidance notice does not intend to cover every aspect of Directive 8 and where there is uncertainty on whether a particular practice is compliant with the provisions of Directive 8 then such a practice should preferably be avoided. The Directive and Guidance should also be approached in the context of an outcomes and principles orientated regulatory framework, if the rule is not always clear.



**OLANO MAKHUBELA**

**ON BEHALF OF THE AUTHORITY**