



## **PFA INFORMATION CIRCULAR NO. 1 OF 2019**

### **PENSION FUNDS ACT, 1956**

#### **APPLICATIONS ALREADY SUBMITTED TO THE AUTHORITY FOR THE CANCELLATION OF REGISTRATION OF FUNDS IN TERMS OF SECTION 27(1) AND THE REINSTATEMENT OF DEREGISTERED FUNDS**

##### **1. Cancellation of registration of funds**

- (1) Information Circular PF No. 2 of 2017, which provides guidance on the information required for an application for the cancellation of a fund and the withdrawal of participation of employers in umbrella funds, will be withdrawn and a Guidance Notice setting out the revised requirements will be issued by the end of March 2019.
- (2) In order to manage enquiries with respect to applications for the cancellation of the registration of funds, funds and administrators are required to confirm that –
  - (a) their internal and administration platforms / systems (both administrators and investment managers) have been checked and there is no additional information or assets that will impact on the application for the cancellation of a fund already submitted to the Authority;
  - (b) the records and accounts held by the funds or administrators, e.g. suspense accounts, “slush funds”, etc. have been checked and there are no remaining assets due to the funds in respect of which applications for cancellation have been submitted to the Authority for consideration; and
  - (c) an external auditor has verified and confirmed that the fund to be cancelled does not have assets, liabilities, members or a board, and attach proof thereof.
- (3) The confirmations required in sub-paragraph (2) above must be accompanied by a list of funds that they relate to.

- (4) Applications for the cancellation of registration of funds already submitted to the Authority will only be considered once the confirmations referred to in sub-paragraph (2) above, relevant to the fund(s), have been received.
- (5) Where necessary, the Authority may request additional information.

## **2. Reinstatement of funds deregistered by the Authority**

### *Cancellations before 1 April 2018*

- (1) Where a fund or administrator becomes aware that the cancellation of the registration of a fund prior to 1 April 2018 was made in error as the fund still has members, assets or liabilities, the fund or administrator must immediately -
  - (a) inform the Authority accordingly;
  - (b) disclose all relevant information and full particularity of the error and provide an explanation for why the error occurred; and
  - (c) make application to a competent Court with jurisdiction in order for the cancellation of the registration of the fund to be reviewed and set aside. Such applications must be launched without delay and be served on the Authority.

### *Cancellations after 1 April 2018*

- (2) Where a fund or administrator becomes aware that an application for the cancellation of the registration of a fund was made in error as the fund still has members, assets or liabilities, the fund or administrator must immediately -
  - (a) inform the Authority accordingly; and
  - (b) disclose all relevant information and full particularity of the error and provide an explanation for why the error occurred.
- (3) If, from the information provided in terms of 2(2), it transpires that the Authority erroneously cancelled the registration of a fund after 1 April 2018, i.e. where the decision was not based on an inaccurate application for cancellation submitted by the fund or administrator, the Authority may exercise the powers afforded to it in terms section 95 of the Financial Sector Regulation Act, 2017 ("FSR Act") if applicable.
- (4) Depending on the nature of the error uncovered and whether or not the provisions of section 95 of the FSR Act find application, the Authority may require of administrator or other interested party to make application to a competent Court with jurisdiction to set the Authority's decision aside.

- (5) Any failure to comply with 2(1) or 2(2) above, once discovered, may result in the Authority taking appropriate regulatory action.
- (6) The Authority may undertake supervisory on-site inspections or investigations and invoke any other legal measures to verify whether or not funds and administrators are implementing the appropriate process in order to establish whether there are remaining assets, liabilities or members in the terminating funds and if the funds or administrators are doing the necessary reporting and approaches to the courts where the information justifies such action as required in paragraph 2(1) and 2(2).



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**Date: 4 March 2019**