



## **FSCA INFORMATION REQUEST 3 OF 2020 (RF)**

### **FINANCIAL SECTOR REGULATION ACT, 2017 (ACT NO. 9 OF 2017)**

#### **REQUEST FOR INFORMATION RELATED TO PARTICIPATING EMPLOYERS UNDER UMBRELLA FUNDS**

##### **1. PURPOSE**

The purpose of this Information Request is to obtain the following information from all retirement funds and administrators relating to participating employers under umbrella funds<sup>1</sup> which subscribe to and are governed by sectoral determinations<sup>2</sup>:

- 1.1 historic information that is requested on a once off basis to ensure that the Financial Sector Conduct Authority (FSCA) has up to date and accurate information on participating employers under umbrella funds;<sup>3</sup> and
- 1.2 information that must be provided on an ongoing basis as and when certain applications are submitted.<sup>4</sup>

##### **2. BACKGROUND**

- 2.1 The FSCA has identified various challenges relating to applications to register employers intending to participate under umbrella funds that are lodged by administrators or funds.
- 2.2 Some employers, by virtue of their trade, are bound by certain sectoral determinations requiring these employers to only participate in and contribute to particular sectoral retirement funds. Accordingly, such employers may not participate in any arrangement other than the relevant sectoral fund.

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<sup>1</sup> An umbrella fund is a retirement fund which may be joined by multiple and possibly unrelated employers, as opposed to a free-standing fund established for a principal employer and its subsidiaries only.

<sup>2</sup> Section 51 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) ("BCEA") empowers the Minister of Labour to make sectoral determinations establishing basic conditions of employments for employees in a particular sector and demographic area. These sectoral determinations are made in accordance with Chapter 8 of the BCEA and by notice in the Gazette. Section 55(4)(m) of the BCEA states that a sectoral determination may in respect to the sector and area concerned regulate pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds.

<sup>3</sup> See paragraphs 3.2 and 3.3 below.

<sup>4</sup> See paragraphs 3.4 and 3.5 below.

- 2.3 The FSCA has concerns that it has not in the past received sufficient information on employers intending to participate under umbrella funds as per the applications lodged by administrators or funds.
- 2.4 The Office of the Pensions Fund Adjudicator has also raised concerns over the high number of complaints involving non-compliant employers bound by sectoral determinations.
- 2.5 As such, there is a need for the FSCA to obtain up to date and accurate information from retirement funds and administrators relating to participating employers which subscribe to and are governed by sectoral determinations.

### 3. REQUEST FOR INFORMATION

- 3.1 The FSCA hereby, in terms of section 131 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) read with section 21 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PFA) request all retirement funds and administrators to provide the following information to the FSCA -
- (a) the historic information as referred to in paragraph 3.2 by the relevant due date;
  - (b) on an ongoing basis, upon registration of a participating employer in an umbrella fund, the information referred to in paragraph 3.3; and
  - (c) upon application for a rule amendment to effect a change of name of a participating employer, the information referred to in paragraph 3.4.

#### 3.2 *Historical information requested*

All retirement funds and administrators must complete Annexure A to this Information Request. The completed Annexure A must be submitted to the FSCA via email to [FSCA.Reviews&AuthorisationsInfo@fsc.co.za](mailto:FSCA.Reviews&AuthorisationsInfo@fsc.co.za) by not later than 30 September 2020.

#### 3.3 *Ongoing information: Information that must accompany any new application related to registration of a participating employer in an umbrella fund*

From date of publication of this Information Request, each new application<sup>5</sup> to amend the rules of a fund in order to register a participating employer (“registration application”) must be accompanied by a completed Annexure B to this Information Request, which must be submitted to the FSCA together with the registration application.

#### 3.4 *Name change information: Information that must accompany any application for rule amendments*

For each application<sup>6</sup> to amend the rules of a fund in order to change the name of a participating employer (“name change application”), Annexure C to this Information Request must be completed and submitted to the FSCA together with the name change application.

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<sup>5</sup> Made under section 12(1) of the PFA.

<sup>6</sup> Made under section 12(1) of the PFA.

#### **4. FAILURE TO COMPLY WITH INFORMATION REQUEST**

In terms of section 267(1) of the FSR Act, a supervised entity that fails to comply with the requirements contained in a notice under section 131(1) commits an offence and is liable on conviction to a fine not exceeding R1,000 for each day during which the offence continues.

A failure to provide the specified information by or within the timeframe specified constitutes an offence under section 267 of the FSR Act.

This Information Request is available on the FSCA's website ([www.fsca.co.za](http://www.fsca.co.za)) under *Regulatory Frameworks < Notices*.

#### **5. ENQUIRIES**

For further information regarding this Information Request and the contents hereof please contact the FSCA by emailing Papinyana Kekana @ [Papinyana.kekana@fsca.co.za](mailto:Papinyana.kekana@fsca.co.za).



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**Date of publication: 20 July 2020**