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Legal & industry update – August 2025

In this publication we look at:

- FSCA Conduct Standard 2 of 2025 (RF) - Conditions Prescribed in respect of Pension Fund Benefit Administrators
- Constitutional Court judgment on the distribution of death benefits

FSCA Conduct Standard 2 of 2025 (RF) - Requirements for Pension Fund Benefit Administrators

On 6 August 2025, the Financial Sector Conduct Authority (FSCA) released Conduct Standard 2 of 2025 (RF), outlining the prescribed requirements for Pension Fund Benefit Administrators (the Conduct Standard). This new standard will phase out Board Notice 24 of 2002 (BN 24) in two stages and supplements existing obligations under the Pension Funds Act, 1956 (PFA) and other financial sector legislation.

Background

Section 13B(1) of the PFA stipulates that no individual or entity may manage pension fund contributions or benefit distributions unless approved by the FSCA and in compliance with prescribed conditions. These conditions were previously detailed in BN 24. However, significant industry developments over the past two decades, including the introduction of Retail Distribution Review (RDR), Treating Customers Fairly (TCF), and the Financial Sector Regulation Act, 2017, necessitated an updated regulatory framework to ensure alignment with modern financial sector objectives.

In July 2021, the FSCA issued a draft Conduct Standard titled “Conditions Prescribed in respect of Pension Fund Benefit Administrators” for public feedback. The project was initially paused pending the Conduct of Financial Institutions Bill but was later prioritised due to ongoing issues in the section 13B administrator landscape and the absence of a robust framework. After informal consultations with industry stakeholders on the initial draft, the final version was submitted to Parliament in April 2025.

The requirements

While the Conduct Standard retains some elements of BN 24, it significantly enhances and refines these requirements:

- **Business and governance:** Benefit administrators must adhere to fundamental business principles, including achieving TCF outcomes, and comply with comprehensive governance obligations. This includes adopting, documenting, implementing and monitoring effective governance frameworks.
- **Changes in business information:** Administrators must notify the FSCA of changes, such as updates to their name, contact details, or key personnel (as defined in the FSR Act).
- **Fit and proper standards:** The Conduct Standard establishes fit and proper criteria for key personnel.
- **Outsourcing:** It sets out conditions for outsourcing arrangements, including their management, oversight and periodic review.
- **Conflicts of interest:** Administrators are required to establish and maintain a conflict of interest policy in line with section 13B(5)(a) of the PFA and report any material conflicts that could harm a fund or its members to the FSCA.
- **Communication, disclosures and complaints:** The standard mandates clear communication and disclosure protocols with funds and establishes requirements for a complaints management framework.
- **Data and record-keeping:** Conditions are set for data management, including reliance on third-party data storage, and record retention, with a minimum retention period specified.
- **Financial matters:** The standard addresses financial management, including accounting practices, trust account management, handling of unclassified payments and requirements for indemnity insurance.

- **Operational capacity:** Administrators must demonstrate the operational capability to perform their functions effectively. They are required to notify the FSCA before replacing or migrating administration systems and inform affected funds of any significant system changes in a timely manner.

The FSCA will adopt proactive supervisory methods to monitor compliance, identifying potential risks and engaging with administrators to address concerns. A reporting framework will be developed to collect data for offsite supervision, enabling the FSCA to identify conduct risks, trends, and benchmarks across the sector.

Formats for submissions

Under section 108(2)(a) of the FSR Act, the Conduct Standard allows the FSCA to specify the format and procedure for submissions. Accordingly, FSCA RF Notice 10 of 2025, published alongside the Conduct Standard, outlines the required formats for submissions such as termination of administration agreements, asset registers for pension funds, and applications for mergers or acquisitions.

Conclusion

The initial draft proposed a six-month compliance period, but industry feedback led to a revised, staggered implementation timeline. Some conditions take effect immediately upon publication, while others allow for a six- or twelve-month transition period, depending on the requirement.

It is strongly encouraged that all trustees, management committees and service providers read the full Conduct Standard. You can find a copy [here](#) for ease of reference

Constitutional Court ruling on death benefit distribution

On 8 August 2025, the Constitutional Court delivered a pivotal ruling in *Mutsila v Municipal Gratuity Fund and Others*, significantly redefining the interpretation of section 37C of the Pension Funds Act, 1956 (PFA). The decision overturns the precedent established by the Supreme Court of Appeal (SCA) in *Guarnieri v Fundsatwork Umbrella Pension Fund (Guarnieri)*, a move many view as a critical and positive development.

Background

The Constitutional Court examined the application of section 37C of the PFA, which regulates the fair allocation of death benefits to dependants of deceased retirement fund members under the PFA.

The case stemmed from Ms Mutsila's challenge to the Municipal Gratuity Fund's (Fund) decision to distribute a substantial portion of her late husband's death benefit to Ms Masete and her children, identified by the Fund as factual dependants. Ms Mutsila contested the alleged customary marriage between her deceased husband and Ms Masete, as well as their claimed dependency on him.

Key rulings

The Constitutional Court determined that:

- The Fund failed to adequately investigate the factual dependency of Ms Masete and her children, as mandated by section 37C, which compromised its allocation decision.
- The Fund relied on unverified information and did not properly exercise its discretionary powers.
- The SCA erred in concluding that Ms Mutsila had not challenged the dependency findings.

As a result, the Court set aside all prior decisions and directed the Fund to re-evaluate the distribution within three months, based on the circumstances as

they existed on 9 April 2014, when the Fund made its initial determination.

Significance of this ruling

This marks the first time the Constitutional Court has interpreted section 37C, making it a landmark decision.

The Court explicitly overruled *Guarnieri*, which held that dependency for death benefit distribution should be assessed at the time of the determination and that the person must still meet the definition of being a beneficiary at the time of the trustees' distribution.

The Constitutional Court deemed this approach legally incorrect and impractical for several reasons:

- Section 37C mandates that dependency be evaluated as of the date of the member's death, not at the time of distribution.
- The definition of "dependant" pertains to past dependency, not ongoing dependency.
- Post death changes in circumstances may influence allocation but do not alter a person's status as a dependant.

This judgement reinforces the social security purpose of death benefits in retirement funds and underscores the responsibility of funds to safeguard vulnerable dependants.

It establishes a binding precedent for all retirement funds, adjudicators and courts.

It is important that trustees, management committees, sub-committees and service providers revisit their processes and mandates to incorporate this new ruling.

This publication does not provide advice or legal opinion. If you have any questions/comments on the above, please contact your consultant.

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