



## PENSION FUNDS ACT, NO. 24 OF 1956

### DRAFT DIRECTIVE NO. XX OF 2017

#### Prohibition of Inducement and Acceptance of Gratification

##### Section 7C – Object of Board

I, Dube P Tshidi, Registrar of Pension Funds, hereby, under section 33A of the Pension Funds Act, No. 24 of 1956, publish for comment a draft Directive to be issued to determine conditions in respect of inducements and acceptance of gratification by boards to ensure compliance with and to prevent contraventions of the objectives of a board as determined in terms of section 7C of the Act.

#### 1. INTRODUCTION

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,.

#### 2. DEFINITIONS

For the purposes of this Directive the following definitions shall apply:

- 2.1 In this Directive "***the Act***" means the Pension Funds Act, 1956 (Act No. 24 of 1956) and any word or expression to which a meaning has been assigned in the Act, bears that meaning, unless the context indicates otherwise.

2.2 **gratification** means:

- (a) money, whether in cash or otherwise;
- (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;
- (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- (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;
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (f) any forbearance to demand any money or money's worth or valuable thing;
- (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 any right or any official power or duty;
- (h) any right or privilege;
- (i) any real or pretended aid, vote, consent, influence or abstention from voting; or
- (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

2.3 **retirement fund** shall mean a *pension fund organisation* as defined in section 1 of the Pension Funds Act, 1956.

### 3. GENERAL PRINCIPLE

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.

#### 4. THE DUTY TO REPORT TO THE AUTHORITIES

- 4.1 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.
- 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.
- 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:

***Duty to report corrupt transactions.***—(1) *Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—*

*(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*

*(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).*

*(2) Subject to the provisions of section 37 (2), any person who fails to comply with subsection (1), is guilty of an offence.*

#### 5. SPECIFIC TYPES OF GRATIFICATION NOT PERMITTED

- 5.1 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 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:

- (a) any gratification which objectively viewed, creates a conflict of interest with their fiduciary duty towards the fund;
- (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;
- (c) travel or accommodation relating to local or international due diligences;
- (d) travel or accommodation relating to local or international entertainment or sporting events; and
- (e) conferencing costs or board of fund expenses.

5.2 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 gratification after written permission has been granted by the Registrar.

This Directive takes effect on the publication hereof

Yours faithfully

**ADV D P TSHIDI**  
**REGISTRAR OF PENSION FUNDS**

Date: **XXXXXXXXXXXXXXXXXX** 2017