



fsp license no. 43648  
 po box 64 buccleuch gauteng 2066 | hurlingham office park 59 woodlands drive  
 block a suite 3 | cnr. republic road & william nicol drive hurlingham manor |  
 T:011 100 8100 | www.tennant.co.za



## An Update on the Default Regulations – Part One of Three: General and Default Investment Strategy

### What are the “default regulations”?

Regulation 37 to 40 to the Pension Funds Act are colloquially called the “default regulations”. These amendments to the Regulations to the Pension Funds Act were published on 25 August 2017.

The regulations ultimately require every retirement fund to put in place and implement:

- A default investment strategy (Regulation 37)
- The default preservation and portability requirements (Regulation 38); and
- A fund annuity strategy (Regulation 39).

The onus for the facilitation and implementation of the regulations falls to the board of management (“the board”) and it is, therefore, important that the board fully understands what is expected.

**Guidance Notice 8 of 2018** provides guidance on the default regulations and was issued by the Financial Sector Conduct Authority (the “Authority” or “FSCA”) on 12 December 2018.

### By when are funds required to comply with the default regulations?

All funds are to comply with the default regulations by **1 March 2019**. This date has not been moved.

The FSCA has stated in Guidance Notice 8 of 2018 that it will be examining funds' compliance from 1 March 2019. This means that funds will need to retain evidence of compliance with the regulations from that date.

### To which funds do each of the default regulations apply?

The FSCA's Guidance Notice 8 of 2018 provides the following handy table that sets out to which type of fund each of the Regulations applies.

	PENSION FUND	PROVIDENT FUND	RETIREMENT ANNUITY FUND	BENEFICIARY FUND	PENSION PRESERVATION FUND	PROVIDENT PRESERVATION FUND	FUNDS IN VOLUNTARY LIQUIDATION
Reg 37 <sup>1</sup>	YES	YES	NO	NO	NO	NO	NO
Reg 38 <sup>2</sup>	YES	YES	NO	NO	NO	NO	NO
Reg 39	YES	No, unless the rules enable a member to elect an annuity	YES	NO	YES	No, unless the rules enable a member to elect an annuity	NO

<sup>1</sup> In relation to funds with defined contribution categories to which members belong as a condition of employment

<sup>2</sup> In relation to funds which members belong as a condition of employment

## Exemptions generally

The FSCA may exempt a person (like a fund) or class of person (like a category of funds) from specific provisions of the default regulations. Attached to Guidance Notice 8 of 2018 is a standard exemption form which must be submitted online. Exemptions are granted in writing and published on the FSCA's website. This may prove useful as it will allow other funds to see what exemptions are permitted.

## Regulation 37 - Retirement Fund Default Investment Strategy

### *Requirement to include default investment portfolio(s)*

As we know, Regulation 37 provides that every fund **with a defined contribution category**, to which members belong as a condition of their employment, will need to amend their investment policy statement to include one or more default investment portfolios.

### *Participating employer's role in relation to the board*

FSCA Guidance Notice 8 of 2018: the participating employer of a fund may choose the default investment portfolio that will apply to that participating employer's members. However, the choice and appropriateness of default investment portfolios on offer as well as ensuring the employer's selection is appropriate for the members **remains with the board**.

### *What if the fund has only one investment portfolio?*

FSCA Guidance Note 8 of 2018: if there is **only one** investment portfolio in the fund, then this becomes the default investment portfolio and it must comply with the regulations.

### *Communication to members*

As we know Regulation 37 requires compulsory and extensive communication by boards to members regarding default investment portfolios. For example, about the composition of assets, the performance and fund returns as well as fees and charges.

FSCA Guidance Note 8 of 2018: requires that (a) the asset composition, (b) performance of the default portfolios compared to appropriate benchmarks, (c) top 10 holdings by value, and (d) fund returns for the current and last two previous financial years should be communicated to members at least every year.

The FSCA may, at some stage, issue standards for the communication.

### *Timing for compliance of existing default investment portfolios*

FSCA Guidance Notice 8 of 2018: from 1 March 2019 all default investment portfolios must comply with the regulations. If they do not comply, they will not be considered a default investment portfolio.

Members must be moved from old non-compliant default investment portfolios to new compliant default investment portfolios **before 1 March 2019**. Boards must communicate with their members about this move.

There are **no phasing-in provisions** that will allow non-compliant default investment portfolios, which already exist, to continue to exist after 1 March 2019.