

momentum

BETWEEN THE TIDES

THE 2012 PENSION LAWYERS ASSOCIATION
CONFERENCE

INSPECTIONS AND ENFORCEMENT BY THE
REGISTRAR OF PENSION FUNDS (FSB)

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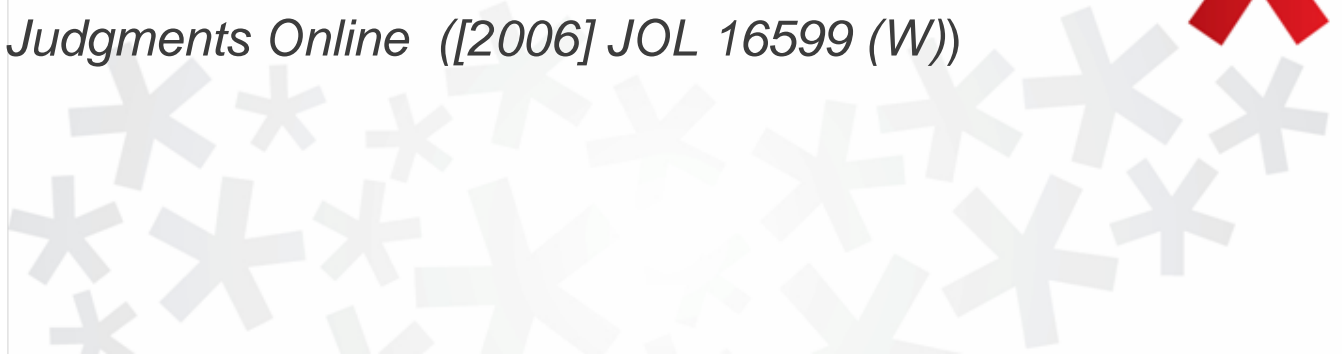
MOMENTUM EMPLOYEE BENEFITS



Inspections & Investigations by the Regulator

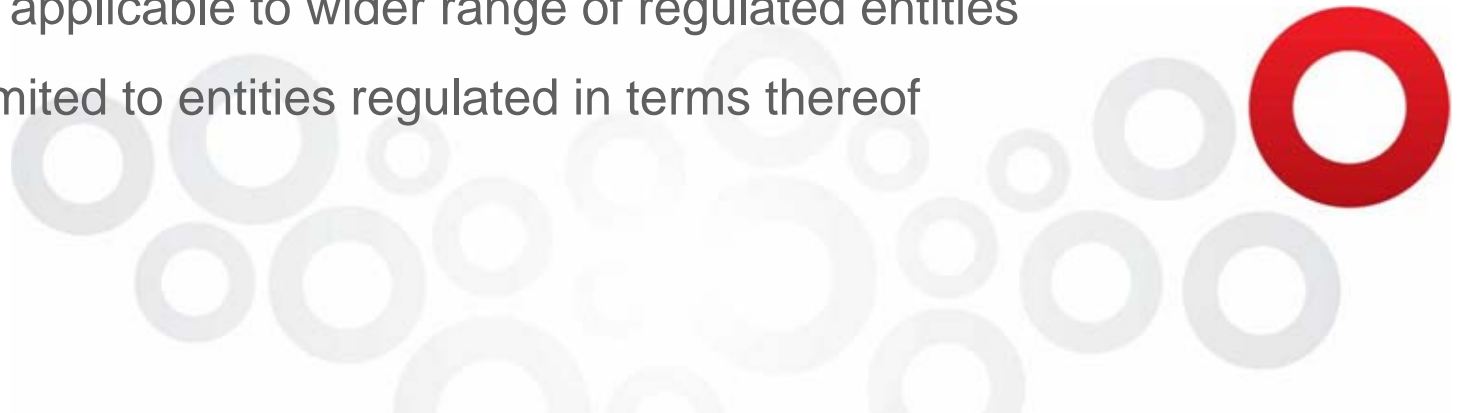
“The Registrar conducts surveillance and enforcement programmes. This is to keep in touch with financial institutions to such an extent that the Registrar is able to take precautionary steps to ensure that institutions do not get into difficulties, instead of coming along afterwards with measures designed to bring about recovery”

(see *Platinum Asset Management (Pty) Ltd & others v Financial Services Board & Others; Anglo Rand Capital House (Pty) Ltd & others v Financial Services Board & others* 2006 (4) SA 73 (W)
- *Alternative: Judgments Online* ([2006] JOL 16599 (W))



Inspections & Investigations ... continue

- Empowering Legislation – Registrar of Pension Funds
 - Inspections of Financial Institutions Act (IFI Act) &
 - Pension Funds Act (PFA)
- Purpose
 - Monitor the level of compliance with applicable and specific legislation by regulated entities
- Application of empowering legislation
 - IFI Act applicable to wider range of regulated entities
 - PFA limited to entities regulated in terms thereof



Inspection of Financial Institutions Act

- Inspections in terms of the IFI Act
 - “financial institutions” - Section 1 of the Financial Services Board Act
 - Pension Fund Organizations;
 - Section 13B Administrators
 - “Associated institutions” – Section 1 of the IFI Act
 - Participating employer in pension fund
 - Persons to whom functions of the board was delegated
- Inspections not limited only to registered entities
 - Provide for the **inspection** of the affairs of financial institutions; &
 - The inspection of the affairs of unregistered entities conducting the business of financial institutions.



IFI Actcontinue

- Purpose of Inspections
 - routine inspections monitor and ensure compliance &
 - special inspections to obtain evidence of non-compliance or criminal conduct which might prejudice the public
(see *Platinum Asset Management (Pty) Ltd & others case*)
- Powers of inspection wide
 - registered and unregistered financial institutions
 - Inspectors powers - Section 4
 - Questioning of relevant persons
 - Search any relevant premises
 - Seize any document





Pension Funds Act

- Section 25 – Pension Funds Act
 - Pension Funds Amendment Act 11 of 2007
 - Sect 25(2) & (3)
 - Effective from 13 September 2007
- Compliance visits
 - Pension Funds
 - Section 13B administrators
- Purpose of Compliance visits
 - Assess the level of compliance with the Act, the rules of the fund or Board Notice 24 of 2002

What may follow a compliance visit?

- Section 26
 - Intervention in the management of a pension fund
- Referral to the Enforcement Committee
 - Financial Services Board Act
 - Section 10A – Establish the EC
 - Financial Institutions (Protection of Funds) Act
 - Refer contraventions for which Registrar cannot impose an administrative sanction
- Inspection in terms of the IFI Act



Enforcement Committee

- Non-Compliance
 - Pension Funds
 - Registered rules
 - Certain provisions of the Pension Funds Act
 - Approved Administrators
 - Section 13B
 - Board Notice 24 of 2002



momentum

Thank you

Ngiyabonga

Dankie

