



2022 PENSION LAWYERS ANNUAL CONFERENCE

CHANGES TO AGREEMENTS BETWEEN FUNDS AND ADMINISTRATORS

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Administration Agreements/SLA's

Introduction

Speakers: Carlyle Field & Anita Roodman

Topic: Changes to agreements between funds and administrators arising from the FSCA Draft Conduct Standard [-] of 2021 [Conditions prescribed in respect of pension fund benefit administrators]

Structure of presentation:

- Background to Conduct Standard (Anita)
- High-level summary of provisions of BN 24 of 2002 (Carlyle)
- Summary of provisions in Conduct Standard relating to administration agreements
- Summary of provisions in Conduct Standard relating to SLA's
- Summary of other important provisions in Conduct Standard



Administration Agreements/SLA's

Background to Conduct Standard

13B of the Pension Funds Act – administrators to be approved by the FSCA:

- If they receive contributions, and
- Conduct payment of benefits in terms of the rules

On behalf of a retirement fund

FSCA may prescribe conditions

Currently in BN24 of 2002

Draft Conduct standard issued 29 July 2021 – will replace BN24



Administration Agreements/SLA's

Background to Conduct Standard (continued)

Reason for reviewing BN24:

- Issued 20 years ago, never been updated
- TCF and other financial sector laws not captured
- Not on par with rest of financial sector
- Likely to lead to better outcomes and less conduct risks

Will be effective from date it is published

6 months transitional period to:

- Amend agreements with existing parties
- Enter into agreement with new parties (e.g., employer)



Administration Agreements/SLA's

Background to Conduct Standard (continued)

Draft is based on outdated framework and overlaps with COFI Bill

FSCA busy analysing and aligning – will see second version before the standard will be final



Administration Agreements/SLA's

High-level summary of provisions in BN 24 of 2002 (in relation to the SLA)

Fund and administrator must enter a written agreement recording “specific arrangements” for administration, which must:

- Particularise powers of the board to be performed by the administrator;
- Provide that the administrator must ensure that investments must be made in accordance with the Act;
- Stipulate basis for remuneration of administrator;
- Allow either party to terminate on not more than 90 days.



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement

Written administration agreement and SLA to be entered into with the fund prior to commencing services.

Must provide for details of administration services.

Must provide for responsibilities of the board to be delegated to the administrator.

Must provide for specific duties and responsibilities which the administrator must perform.

Much the same as what is set out in BN 24 of 2002: more detail and removal of condition that administrator must ensure that investments are made in accordance with the Act.



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Must set out the administrator's duties and responsibilities in relation to communicating with members of the fund, including the information and circumstances in which they must communicate to members and the levels of expected standards when communicating.

New requirement.

Must include information regarding the administrator's complaints management processes and procedures.

Communications must make members aware of any relevant facts that could reasonably be expected to influence any decision that members must take in relation to their participation (section 18(2)).

Communications must place members in a position to take specific actions in relation to the administrator, such as lodging a complaint (section 18(2)).

Communications must be clear, unambiguous, adequate, correct, promote understanding, provide comparisons of similar financial services etc (section 18(3)).



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Must set out the remuneration to which the administrator will be entitled and the basis on which the administration fee and other remuneration or income will be calculated.

Expands on provision in BN 24 of 2002.

Income includes income directly or indirectly earned:

- i.) by the administrator from providing other services to a fund; or
- ii.) by other divisions, subsidiaries or associates of the administrator from performing administration or other functions for the fund.



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Must set out the procedure to be followed to remedy a breach of any of the conditions contained in the administration agreement.

New but relatively standard in most SLA's.

Must set out the conditions for the termination of the agreement.

Similar to provision in BN 24 of 2002 – either party may terminate in writing. Maximum period of 90 days remains in respect of agreements concluded prior to the effective date of the Conduct Standard but extended to 3 calendar months in respect of agreements entered into after the effective date.

Must provide that any amendments to the agreement will be in writing and effected by way of an addendum or new agreement.

Same as BN 24 of 2002.



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Must include details of whether the administrator employs a head of the compliance function, compliance officer or person responsible to monitor compliance by the administrator with the Act, regulations, conditions and rules of the fund.

Not to be confused with the appointment of a responsible key person to manage and oversee the performance of administration functions by the administrator in terms of section 7.

Responsible key person appears to have more general roles in respect of oversight of the administrator as a whole.

Compliance officer appears to be a more specific role to each fund.



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Must set out the procedure to be followed for the renegotiation of administration fees and other fees or income payable to the administrator.

New but a relatively standard provision in most SLA's.



Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Take-on procedures

Specific conditions regarding a take-on plus responsibilities of the relevant parties

- Duties and responsibilities of the board
- Duties and responsibilities of the relevant employers
- Duties and responsibilities of the administrator
- Financial implications during the transitional period
- Additional fees payable for services rendered after the termination date
- Timing, process, method and format of data, records and documents, the asset register, minute books, members' records
- Reports and content thereof, plus frequency of reporting
- Person responsible for preparation and submission of regulatory returns prior to termination date
- Party responsible for maintenance of data and records, including contributions and/or benefit payments upon termination of the agreement



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

All records remain the sole property of the fund and must be available timeously upon request, not later than 7 days

Already in 13B(7A), but time period is new.

Administrator's responsibility to provide information and reports to the fund to ensure that the fund can be properly managed and comply with regulatory reporting requirements

New requirement, although may agreements provide for this already – must be specifically recorded



Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Requirements relating to indemnity and fidelity guarantee policies that must be maintained

New requirement

Most agreements already include reference to indemnity and fidelity cover, but specific requirements need to be added to agreement

Utilising of Trust accounts – must comply with conduct standard

Utilising of Suspense accounts – must comply with conduct standard



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Requirements in respect of the outsourcing of administration functions to another administrator

- Such other administrator must be approved in terms of section 13B
- 13B has similar provision
- New outsourcing requirements



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Adequate processes, procedures and controls to identify, manage and monitor risks.

New requirement

Reference to separate document, e.g. policy of administrator

Details of how the administrator will ensure proper governance, risk management and ethical behaviour

New requirement

Separate policy document?



Summary of provisions in draft Conduct Standard in relation to administration agreement (continued)

Obligation on the fund to provide the administrator, on an ongoing basis, with the relevant information in respect of members and employers participating in the fund, which should include:

- Member data and payment of contributions
- Information relating to benefit claims, including procedures to be followed
- Notification of any changes in membership data and/or the payroll



Administration Agreements/SLA's

Summary of provisions in draft Conduct Standard in relation to SLA

Must include clear timelines for the performance of duties and responsibilities of parties.

Must include administrative procedures (contribution and benefit processing, housing loan administration, section 14 transfers, financial accounting, information and reporting, investments and disinvestments, bank account management, communications, service level reviews).

Must include a clear and effective communication and reporting procedure.

Must include take-on and handover procedures (and associated fee issues).

Must include remedies for non-compliance with SLA.

Must include manner and frequency of the review of the SLA.

Overlapping in instances between the provisions of the “administration agreement” and the “service level agreement” – is there a need for a distinction?



Administration Agreements/SLA's

Other important provisions in Conduct Standard in relation to administration agreement/SLA's

Governance policy (Section 4)

Administrator must adopt a governance policy that addresses how it will handle various governance issues.

Conflict of interest management policy (section 17)

Overlap with FAIS General Code of Conduct requirements.

Recommendation that funds are fully acquainted with these policies and could possibly cross-refer in administration agreement/SLA (remedies for breach?)



Administration Agreements/SLA's

Other important provisions in Conduct Standard in relation to administration agreement/SLA's **(continued)**

Data management (section 26)

Administrator must have a data management framework

Recommendation to include it in agreement

Possible overlap with POPIA – POPIA requires that there must be a written contract between the Responsible Party (fund) and Operator (administrator) that ensures that the Operator will establish and maintain the security measures referred to in section 19 of POPIA.



Administration Agreements/SLA's

Other important provisions in Conduct Standard in relation to administration agreement/SLA's
(continued)

Maintenance of records (section 27)

Administrator must be able to keep record of communication with fund and members

Must be able to store and retrieve

Retention period (safe from destruction) of 5 years after admin agreement is terminated or 5 years after communication period

5 year retention period prescribed for member details, participating employer detail, section 14 information, information relating to benefit payments



CONCLUDING REMARKS AND QUESTIONS

THANK YOU

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