



February 2023

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SARS Operational & Tax Administration

Somaya Khaki

SARS OPERATIONAL AND TAX ADMINISTRATION



Challenges following the decommissioning of the IT14SD

- Consideration of section 95 of the Tax Administration Act, 2011



Other

- Delays in finalisation of verifications and refunds
- VAT 'consistency' checks
- SARS Contact Centre challenges
- **Reminder:** IRBA registered tax practitioners to transfer to a different RCB



CHALLENGES THAT HAVE
ARISEN FOLLOWING THE
DECOMMISSIONING OF THE
IT14SD



DECOMMISSIONING OF IT14SD – CHALLENGES

1. **SARS letter:** Failure to submit relevant material timeously → estimated assessment → **not subject to objection or appeal?**

The following information is important:

- You should please upload the supporting documents on or before 2022/10/10.
- If you fail to submit the supporting documents on or before the due date an adjusted assessment will be completed and you will not be able to object or appeal this assessment;

Has the wording changed?

SARS OPERATIONAL AND TAX ADMINISTRATION

DECOMMISSIONING OF IT14SD – CHALLENGES

2. Letter requesting relevant material is generic – what if the response is inadequate/incorrect?

The Notice of Assessment (ITA34C) reflects all the information which SARS obtained from your return. Please review this information against your relevant material including the related VAT and/or PAYE returns where applicable. If you find any errors, correct them by submitting a revised income tax return. If you do not detect any errors, you are required to submit the following relevant material:

- Signed annual financial statements, as well as a detailed Tax Computation and the underlying supporting documentation (e.g. Taxpack).
Note: If all of the above was submitted (accurately and completely) with the submission of the Company's income tax return, this request can be ignored unless specifically requested below.
- Please provide the following explanations:
 - Confirmation that all the expenses claimed were in the production of income, and not of a capital nature.
 - Provide the following in terms of the allowance claimed under "Other Non-taxable amounts Credited to the Income Statement":
 - Details of the amounts claimed under "Other Non-Taxable Income Credited to the Income Statement"
 - Relevant material(s) to substantiate that the declared income is non-taxable/exempt
 - Provide the reason(s) as to why this income is deemed "non-taxable", as well as the section of the Income Tax Act in terms of which the amounts are deemed "non-taxable".
 - If the non-taxable income consists of a government grant, provide the following:
 - Reasons why the grant is regarded as non-taxable.
 - Approval letter from the relevant government department e.g. DTI.
 - Purpose of the grant (what it was utilised for).
 - Detailed calculations of the section 12P adjustment and relevant supporting documentation (if applicable).
 - Provide the following in terms of the total expenses claimed by the company:
 - Detailed Income Statement with comparative figures.
 - In respect of the largest three expenses contained in your detailed Income Statement, or where expenses exceed income by 50% or more, explain and prove why these are considered deductible for tax purposes.

Is this possible and who should make this determination?

What does SARS consider 'relevant'?

Depreciation?
Cost of Sales – submit all invoices?

SECTION 95(1)

1. SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer—
 - a) does not submit a return;
 - b) submits a return or relevant material that is incorrect or inadequate; or
 - c) does not submit a response to a request for relevant material under section 46, in relation to the taxpayer, after delivery of more than one request for such material.

Assessment must be based on information readily available to SARS (s95(2)) and this action does not take away the responsibility to submit the return or relevant material (s95(4)).

Section 95(5) – (8)

- (5) An assessment under subsection (1)(a) or (c) is only subject to objection and appeal if SARS decides not to make a reduced or additional assessment after the taxpayer submits the return or relevant material under subsection (6).
- (6) The taxpayer in relation to whom the assessment under subsection (1)(a) or (c) has been issued may, within 40 business days from the date of assessment, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material.
- (7) If reasonable grounds for an extension are submitted by the taxpayer, a senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the relevant period referred to in section 99(1) or forty business days, whichever is the longest).
- (8) If SARS decides not to make a reduced or additional assessment under subsection (6), the date of the assessment made under subsection (1)(a) or (c), for purposes of Chapter 9, is regarded as the date of the notice of the decision.

DECOMMISSIONING OF IT14SD

Did SARS issue the specific letter and ask more than once?

S95(5) – Failure to submit relevant material timeously after more than one request → estimated assessment → **not subject to objection or appeal**

Assuming the request was issued more than once, what are the next steps?

1. Submit relevant material within 40 business days after estimated assessment – eFiling does not allow for this (we have engaged SARS);
2. SARS to review and decide whether or not to issue a revised assessment;
3. If SARS does not issue a revised assessment – then that decision may be disputed;
4. In terms of s95(8) – for purposes of the dispute timelines, the date of assessment = date of SARS' decision.

SARS OPERATIONAL AND TAX ADMINISTRATION

DECOMMISSIONING OF IT14SD

Is there evidence of a request for relevant material and was this delivered more than once?

- If not, SARS may not raise an estimated assessment.
- If an estimated assessment is issued, it may require court action to set aside the assessment.
- Members to escalate such cases via the SAICA Member Portal.

2. Letter requesting relevant material is generic – **what if response is inadequate/incorrect?**

- Concerns that the requests from SARS are not 'specific' enough, thereby putting taxpayers at risk of submitting inadequate or incomplete documents.
- SARS was supposed to refine the wording, but also believed that responses to earlier versions of the letters were adequate and that taxpayers seemed to understand what was required.

SARS may raise an additional assessment → taxpayer may dispute

SARS OPERATIONAL AND TAX ADMINISTRATION

Delays in finalisation of verifications and refunds

- Ongoing issue – SAICA is addressing this via various channels
- Tax Ombud systemic matter for a number of years (Feb TiP discussion)

VAT 'consistency' checks

- Members experience recently?

SARS Contact Centre challenges

- SARS acknowledges and is investigating various options – taxpayers also creating blockages

Reminder: IRBA registered TPs to transfer to other RCB

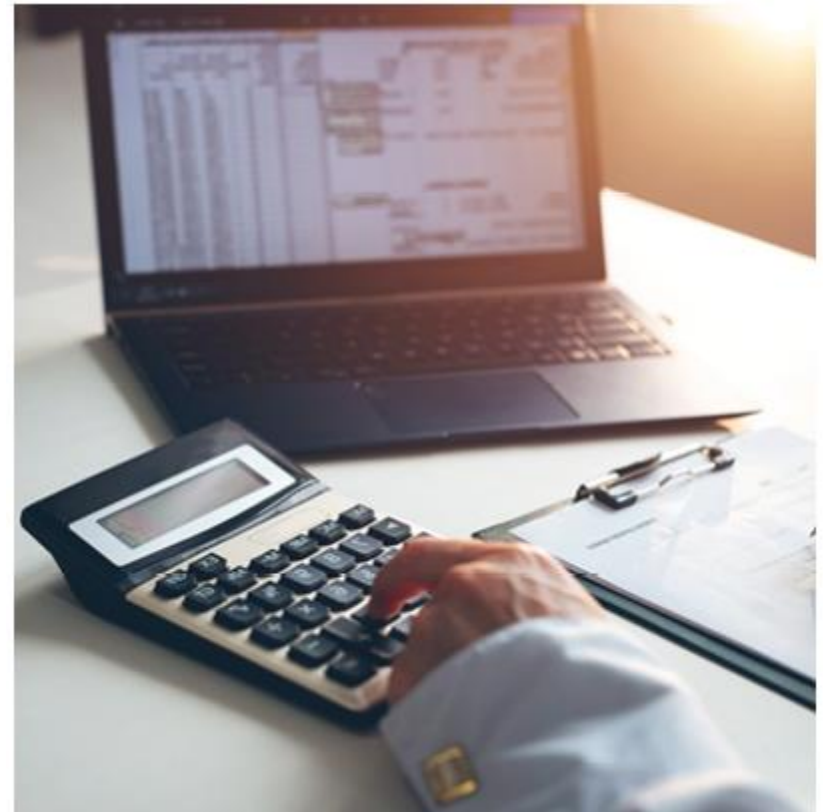
- Read [SARS communication](#) and log a query on the Member Portal for assistance (choose Tax Practitioner Administration)

A Death Benefit

Piet Nel

Estate planning:

Can a member of a pension, provident, or retirement annuity fund, bequeath his or her retirement interest in the fund to a family trust on the death of the member?



Background:

Why are we discussing the bequest of a retirement interest?

It is relevant in an estate planning process

The first, and often the most important objective in an estate plan, is to determine what must happen with assets in the individual's estate, at date of his or her death.

Property can be transferred to a trust, during the life of the planner (*inter vivos*), or by way of a bequest made in the last will and testament (*mortis causa*) of the person, when the transfer will be after date of death.

Remember that a retirement interest of a member cannot be “transferred” to a trust during the life of the member.

The question is whether a “bequest” of a retirement interest of a member of a fund can be done, and whether the planner will deal with it, or have to deal with it, in his or her last will and testament.

Background:

Why are we discussing the bequest of a retirement interest?

Maintenance of surviving spouse or children

Providing for the maintenance needs of the surviving spouse is an important consideration in the planning process.

Where adequate provision was not made for the reasonable maintenance needs, the surviving spouse has a claim against the estate of the deceased spouse in so far as he or she (the survivor) is not able to provide therefore from his or her own means and earnings.

The parents of children also has a common law duty to support the children, if the children are unable to support themselves.

Background:

Why are we discussing the bequest of a retirement interest?

Maintenance of surviving spouse

Retirement interests are, in my view, one of the best ways to meet the maintenance needs of the surviving spouse.

Like the proceeds of a life insurance policy, a retirement interest also “bypasses” the estate of the deceased and is normally available within a short period of time after the date of death.

There is no need to wait for the estate to be reported and an executor appointment to be made as it is not dealt with by the executor of the deceased.

Background:

Are there any tax considerations?

Estate duty

Generally there will be no estate duty consequences, even where a retirement interest does not accrue to the surviving spouse.

But estate duty is not the reason for this discussion.

Income or normal tax

Where the total value of a retirement interest, or a part thereof, is commuted for a single payment, there will be normal tax consequences for the member (or deceased). Income tax is also not covered in this discussion.

Where the dependants or nominees of a deceased person elects an annuity, there will not be a lump sum (or tax).

Further comments about income tax (and the Act)

Normal, or Income Tax

There are many definitions, and provisions dealing with retirement funds, in the Income Tax Act.

A recent amendment, to the definition of “living annuity” (in section 1(1) of the Income Tax Act for instance), envisages a trust as an annuitant under such a living annuity. We will not be dealing with living annuities.

The date of death, of a member of a retirement fund, is the “**retirement date**” of the member - see the definition in section 1(1). The death of a person, with respect to retirement interests, is a normal tax event.

For income tax purposes, the **retirement date** is the date a nominee or dependant of a deceased member of a retirement fund (or preservation fund), in terms of the rules of that fund, becomes entitled to a lump sum benefit on the death of the member – see the Second Schedule to the Act.

We will use the facts in a recent court case for context.

CG and Others v Momentum Retirement Annuity Fund and Others (7777/2021) [2022] ZAWCHC 231 (10 November 2022)
<http://www.saflii.org/za/cases/ZAWCHC/2022/231.pdf>

GET  **the** **FACTS**

Bequest

Upon the death of the deceased, a testamentary trust was created by virtue of his will. The deceased bequeathed his estate to this trust, of which his three children are income and capital beneficiaries.

It appears from the facts that the deceased had nominated the trust as beneficiary of his death benefits, and confirmed this (or specifically mentioned this) in the last will and testament (the bequest).

The fund

In terms of a decision by the board of Momentum Retirement Annuity Fund, following the death of its member, a death benefit (in the sum of R1 201 277) was allocated to a person who was regarded (by the fund) as the spouse of the deceased at the time of his death.

The dispute

The essence of the grievance of the children is that the entire death benefit was allocated, by the board of Momentum, to a person, solely on the basis that she was involved in a relationship with the deceased with whom he had lived before his passing.

They also took issue with:

- the fact that they were not consulted, nor were they provided with information upon which the board relied to make a decision.
- the degree of dependency of the life partner upon the deceased.

Note: The children (and ex-spouse) took the decision of Momentum Retirement Annuity Fund, to pay the death benefit to the “life partner” of the deceased on review, following the dismissal of their complaint by the Pension Funds Adjudicator.



S HOCKEY

ACTING JUDGE OF THE HIGH COURT

Some definitions

Relevant to the discussion

In the Pension Funds Act, unless the context otherwise indicates

“retirement annuity fund” means a retirement annuity fund as defined in section 1 of the Income Tax Act, 1962 ...

“retirement date” has the meaning assigned to it in section 1 of the Income Tax Act ...

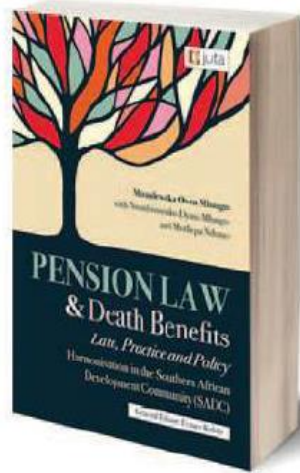
In the Income Tax Act, unless the context otherwise indicates

“retirement interest” means a member's share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund on the date on which he or she elects to retire or transfer to a pension preservation fund, provident preservation fund or retirement annuity fund

Other definitions

A death benefit

The term “death benefit” is not defined in an Act.



Pension Law & Death Benefits: Law, Practice and Policy – Harmonisation in the South African Development Community (SADC)
Mhango et al
Juta, 2022
(paperback 233 pages)
reviewed by S Khumalo SC
Johannesburg Bar

Advocate
December 2022

Death benefits are lump-sum benefits payable by pension funds to dependants and nominees (usually spouses and children) of deceased members of pension funds when members die before retirement

In the South African private sector, the payment of these benefits is governed by the Pension Funds Act 24 of 1956. In the public sector, it is governed by the relevant statute governing the specific public sector pension fund.

In section 37C, of the Pension funds Act, we find the following:

“any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member”.

The relevant law

(from the Pension Funds Act)

Section 37C(1), of the Pension Funds Act, 1956, deals with the disposition of pension benefits upon the death of a member of a registered fund. It creates the following general rule (in subsection 1):

Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit ... payable by such a fund upon the death of a member, shall ... not form part of the assets in the estate of such a member.

The important principle that follows from this is that the benefit payable by (or the retirement interest in) the fund upon the death of the member is not an asset in the estate of the member for estate duty purposes.

Also specifically excluded in the Estate Duty Act.

This of is course is so unless it relates to “*the amount of any contribution made by the deceased allowed as a deduction to determine the taxable portion of the lump sum benefit that is deemed to have accrued to the deceased immediately prior to his or her death*”.

The relevant law (from the Pension Funds Act)

Section 37C(1)(a) of the Pension Funds Act then prescribes how this benefit must be dealt with. It reads as follows:

If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the fund, to one of such dependants or in proportions to some of or all such dependants.

Section 37C(bA) of the Act, applies where a member has a dependant **and** the member has also designated in writing to the fund a nominee to receive the benefit or a specified portion of the benefit.

It is not clear from the facts and may well have been in the last will and testament only.



The deceased had nominated the trust as beneficiary of his death benefits

Comments made by Judge Hockey



The discretion conferred upon the board of a pension fund under section 37C trumps the mere wishes of the deceased member, even where such wishes are expressed in a nomination form or a testamentary instrument.

The judge then quoted the following from *The Municipal Workers Retirement Fund v Mabula and Another* (96855/16) [2017] ZAGPPHC 1153 (7 December 2017)

Section 37C of the PFA is intended to serve a social function. It was enacted to protect dependency, even over the clear wishes of the deceased.

The effect of the section is that the fund is expressly not bound by either a will or a nomination form. The section specifically restricts freedom of testation in order that no dependants are left without support and the fund is expressly not bound by a will, nor is it bound by the nomination form.

The provision explicitly denies the member of a fund the right to determine how the benefit is to be disposed of by the fund.

The decision by Judge Hockey



The deceased had nominated the trust as beneficiary of his death benefits, but the board correctly concluded that such nomination was of no force and effect as the death benefits must be distributed in terms of section 37C

which serves a social purpose, and as such,



a member of a retirement fund cannot nominate a juristic or inanimate entity (such as a trust) to receive a death benefit.

And that answers the question.

Does this mean that a “person” nominated by a member can never include a trust?

Further comments by Judge Hockey

I stated (earlier in this presentation) that, in terms of section 37C(1)(a) of the Pension Funds Act, the fund must pay a death benefit to a dependant. It is only where the fund did not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, that the benefit or a portion of the benefit can be paid to the nominee.



According to Momentum Retirement Annuity Fund, it was precisely because of contradictory versions of the relationship between A[....] and the deceased that they decided to conduct their own forensic investigation, which investigation concluded that the relationship between the deceased and A[....] was like that of a married couple. The deceased did in fact go to stay at his house in Gansbaai a few days before his passing, but I agree that this is not indicative that his relationship with A[....] had terminated.

Ms A - the life partner of

Final comments

Relevant to a beneficiary or dependant

In terms of section 1 of the Pension Funds Act, *and for purposes of that Act*, **“beneficiary”** means a nominee of a member or a dependant who is entitled to a benefit, as provided for in the rules of the relevant fund;

“dependant”, in relation to a member, means -

(a) a person in respect of whom the member is legally liable for maintenance;

(b) a person in respect of whom the member is not legally liable for maintenance, if such person –

(i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;

(ii) is the spouse of the member;

(iii) is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock.

(c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;

The board concluded that the life partner, Ms A, was a spouse of the deceased and accordingly, was a dependant of the deceased.

Final comments

Ex-spouse

With respect to the “non-member spouse” (she was married to the deceased and their marriage was dissolved by a divorce order granted on 24 April 2009), the board found that she qualifies as a dependent as she received monthly maintenance from the deceased in the amount of R17,000 for herself and her minor son.

According to the trustee of the trust, she will continue to receive R12,000 for herself as the deceased had a duty to maintain her for the rest of her life.

Considering the nature of her relationship with the Deceased (being his ex-spouse), her age and the fact that her future financial dependency needs will be met through the Trust continuing to pay her R12,000 per month for the rest of her life, the Trustees decided to allocated 0% of the benefit to her.

Final comments

Children

With respect to each one of the children of the deceased, each one was a income and capital beneficiary of the Trust (with assets worth approximately R42 million), the board found as follows:

Considering the nature of his (or her) relationship with the Deceased being

- a major son - employed and earns about R66,000 per annum;
- a major daughter - a registered student at UNISA under the LLB program and she is employed as a bartender;
- and a minor son, a school-going learner,

“and the fact that any financial dependency needs would be more than fully met through what” they stand “to receive from the Trust ... the Trustees decided to allocate 0% of the benefit to” each child.

Conclusion

A member of a fund is free to designate in writing to the fund the name of a nominee, who is not a dependant of the member.

Nevertheless, as judge Murphy said, section 37C of the Pensions Fund Act “is intended to serve a social function”, and it “was enacted to protect dependency, even over the clear wishes of the deceased”.

Estate planners must therefore be fully aware of the fact that the board of a retirement fund may ignore the designated nominees and pay the death benefit to another dependant. If the member specified percentages, or amounts, in the nomination, that can also be ignored by the board.

In addition, it is advisable that a trust should not be the nominee of a death benefit, and not only if there are dependants.

What When ? ? Who
ANY QUESTIONS?
How ? ? Where Why

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INTEGRITY | PUBLIC INTEREST | AUDIT QUALITY

Proposed Amendments to the IRBA Code of Professional Conduct

*Revisions to the Definitions of Listed Entity and Public Interest Entity
Kumu Matambo CA(SA) 23 February 2023*





About the speaker

- **Kumu Matambo CA(SA)**
 - Professional Manager in the Standards Department at IRBA
 - +4 years experience in standard setting
 - Member of the Zimbabwe Accounting Practices Board (ZAPB)
 - Part-time Lecturer – Auditing, Ethics & Governance
 - Leading the Enhanced Auditor Reporting project at IRBA



A firm that does not perform audits (only reviews)



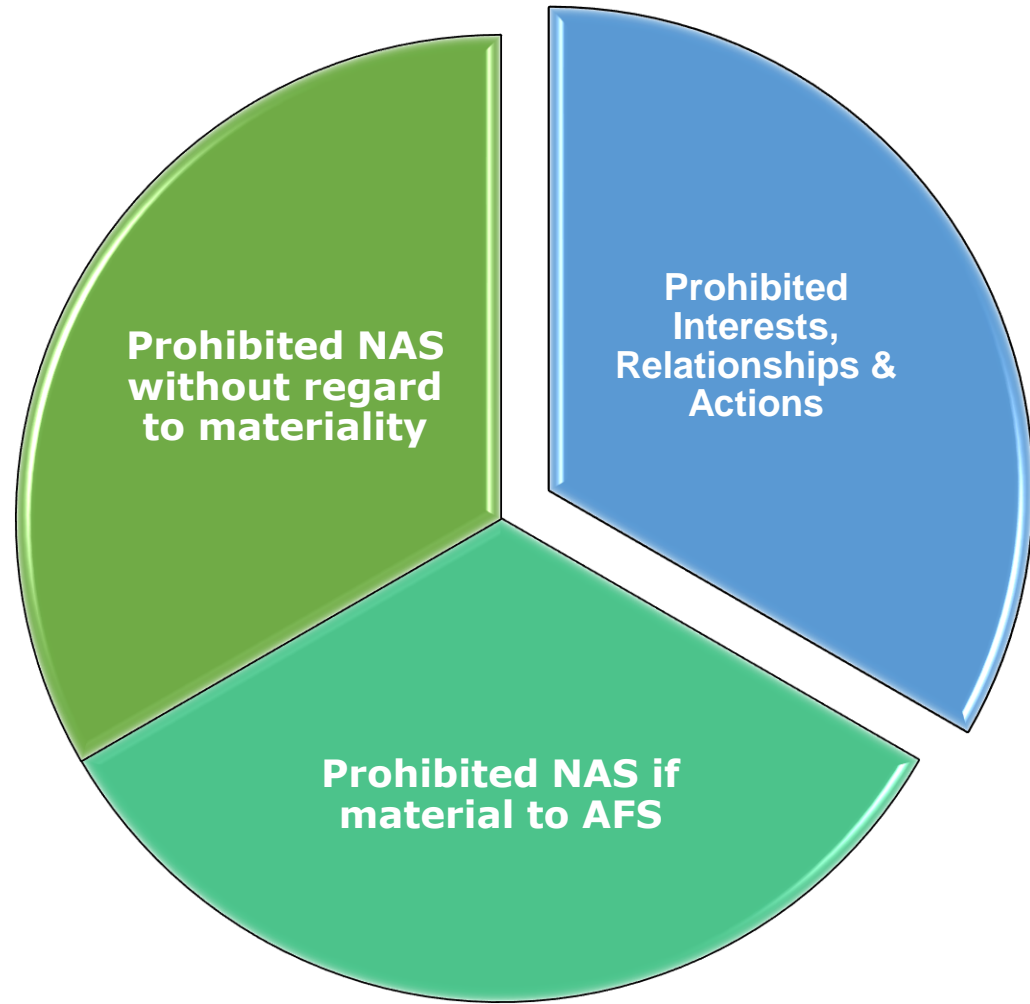
A firm that performs audits, but currently no PIE clients



A firm that currently performs audits of PIEs

Reminder - being classified as a PIE

What are the implications?



Many other implications, such as:

- Regulatory; and
- Firm policies.

The Proposed Amendments

Rationale

IESBA Revisions

- Adoption of IESBA Code
- Local adaptations

IRBA Code PIE Definition

- Age
- **R400.8a-c SA**
- Interaction with PIS & clearing confusion

Public Interest

- Protecting public interest
- Implications of being a PIE

Consistent application

- Independence Requirements
- Regulatory supervision

Internationally comparable Code

- 400.18 A1 & A2
- Extant **R400.8b SA**

The Proposed Amendments

Key amendments

Audit client

An entity in respect of which a firm conducts an audit engagement. When the client is a ~~listed entity~~ publicly traded entity in accordance with paragraphs R400.17 and R400.18, audit client will always include its related entities. When the audit client is not a ~~listed entity~~ publicly traded entity, audit client includes those related entities over which the client has direct or indirect control. (See also paragraph ~~R400.202~~.)

In Part 4A, the term “audit client” applies equally to “review client.”

Listed entity

~~An entity whose shares, stock or debt are quoted or listed on a recognised stock exchange, or are marketed under the regulations of a recognised stock exchange or other equivalent body.~~

Public interest entity

~~(a) A listed entity; or~~

~~(b) An entity:~~

~~(i) Defined by regulation or legislation as a public interest entity; or~~

~~(ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator; or~~

~~(c) Other entities as set out in paragraphs R400.8a SA and R400.8b SA.~~

The Proposed Amendments

Key amendments

Public interest entity For the purposes of Part 4A, an entity is a public interest entity when it falls within any of the following categories:

- (a) A publicly traded entity; or
- (b) An entity one of whose main functions is to take deposits from the public;
- (c) An entity one of whose main functions is to provide insurance to the public; or
- (d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.10.

Paragraph R400.18 SA more explicitly defines the categories of public interest entities in (b) and (c) above, and specifies those additional entities that are deemed to be public interest entities to meet the purpose described in paragraph 400.10, as contemplated in paragraph (d) above.

Publicly traded entity An entity that issues financial instruments that are transferrable and traded through a publicly accessible market mechanism, including through listing on a stock exchange.

A listed entity as defined by relevant securities law or regulation is an example of a publicly traded entity.

The Proposed Amendments

Key amendments

Public Interest Entities

400.8 Some of the requirements and application material set out in this Part ~~reflect the extent of public interest in certain entities which are defined to be~~ are applicable only to the audit of financial statements of public interest entities, reflecting significant public interest in the financial condition of these entities due to the potential impact of their financial well-being on stakeholders.

(Part of 400.8 has been elevated into a South African requirement)

R400.8a SA400.9 ~~Firms shall determine whether to treat additional entities, or certain categories of entities, as public interest entities because they have a large number and wide range of stakeholders.~~ Firms shall determine whether to treat additional entities, or certain categories of entities, as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered in evaluating the extent of public interest in the financial condition of an entity include:

- ~~The nature of the business or activities, such as the holding of assets in a fiduciary capacity for a large number of stakeholders taking on financial obligations to the public as part of the entity's primary business. Examples might include financial institutions, such as banks, insurance companies, and pension funds.~~
- ~~Number of equity or debt holders.~~
- Size of the entity.
- The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure.
- Number and nature of stakeholders including investors, customers, creditors and employees.
- The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.

The Proposed Amendments

Key amendments

Public Interest Entities

R400.17 For the purposes of this Part, a firm shall treat an entity as a public interest entity when it falls within any of the following categories:

- (a) A publicly traded entity;
- (b) An entity one of whose main functions is to take deposits from the public;
- (c) An entity one of whose main functions is to provide insurance to the public; or
- (d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.10.

400.17 A1 When terms other than public interest entity are applied to entities by law, regulation or professional standards to meet the purpose described in paragraph 400.10, such terms are regarded as equivalent terms. However, if law, regulation or professional standards designate entities as "public interest entities" for reasons unrelated to the purpose described in paragraph 400.10, that designation does not necessarily mean that such entities are public interest entities for the purposes of the Code.

400.17 SA *A client's public interest score, as calculated in terms of the Companies Act No. 71 of 2008, should not be used to determine whether the client is a public interest entity in terms of this Code. The two concepts should not be confused or used interchangeably.*

R400.18 In complying with the requirement in paragraph R400.17, a firm shall take into account more explicit definitions established by law, regulation or professional standards for the categories set out in paragraph R400.17 (a) to (c).

400.18 A1 The categories set out in paragraph R400.17 (a) to (c) are broadly defined and no recognition is given to any size or other factors that can be relevant in a specific jurisdiction. The IESBA Code therefore provides for those bodies responsible for setting ethics standards for professional accountants *registered auditors* to more explicitly define these

The Proposed Amendments

Key amendments

categories by, for example:

- Making reference to specific public markets for trading securities.
- Making reference to the local law or regulation defining banks or insurance companies.
- Incorporating exemptions for specific types of entities, such as an entity with mutual ownership.
- Setting size criteria for certain types of entities.

Considering the guidance above, paragraph R400.18 SA more explicitly defines the categories in paragraph R400.17 (a) to (c).

400.18 A2 Paragraph R400.17 (d) anticipates that those bodies responsible for setting ethics standards for ~~professional accountants~~ *registered auditors* will add categories of public interest entities to meet the purpose described in paragraph 400.10, taking into account factors such as those set out in paragraph 400.9. Depending on the facts and circumstances in a specific jurisdiction, such categories could include:

- Pension funds.
- Collective investment vehicles.
- Private entities with large numbers of stakeholders (other than investors).
- Not-for-profit organizations or governmental entities.
- Public utilities.

Considering the guidance above, paragraph R400.18 SA adds certain categories of public interest entities to meet the purpose described in paragraph 400.10, taking into account the factors set out in paragraph 400.9.

The Proposed Amendments

Key amendments

R400.8b18 SA ~~A registered auditor shall regard the following entities as generally satisfying the conditions in paragraph R400.8a SA as having a large number and wide range of stakeholders, and thus are likely to be considered as Public Interest Entities. Taking into account the factors set out in paragraph 400.9, the purpose described in paragraph 400.10, the broadly defined categories of public interest entities in R400.17 and the guidance from the IESBA in 400.18 A1 and 400.18 A2, a firm shall treat the following entities as public interest entities:~~

~~• Major Public Entities that directly or indirectly provide essential or strategic services or hold strategic assets for the benefit of the country.~~

(a) Publicly traded entities.

(b) Public entities listed in Schedule 2 of the Public Finance Management Act No. 1 of 1999.

(c) Universities as defined in the Higher Education Act No. 101 of 1997.

(d) Other public entities or institutions authorised in terms of legislation to receive money for a public purpose:

(i) With annual expenditure in excess of R5 billion; or

(ii) That are responsible for the administration of funds for the benefit of the public in excess of R10 billion as at financial year-end.

The Proposed Amendments

Key amendments

- (e) Banks as defined in the Banks Act, 1990 (Act No. 94 of 1990), and Mutual Banks as defined in the Mutual Banks Act 1993, (Act No. 124 of 1993).
- (f) Market infrastructures as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012).⁴
- (g) Insurers registered under *as defined in the Insurance Act No. 18 of 2017* ~~Long term Insurance Act, 1998 (Act No. 52 of 1998) and the Short term Insurance Act, 1998 (Act No. 53 of 1998), excluding micro lenders.~~
- (h) Collective Investment Schemes, including hedge funds, ~~in terms of~~ *as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), that hold assets in excess of R15 billion* *10 billion*.
- (i) Funds as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that hold or are otherwise responsible for safeguarding client assets in excess of R10 billion.
- (j) Pension Fund Administrators ~~(in terms of Section 13B of the Pension Funds Act, 1956 (Act No. 24 of 1956))~~ with total assets under administration in excess of R20 billion *10 billion*.

The Proposed Amendments

Key amendments

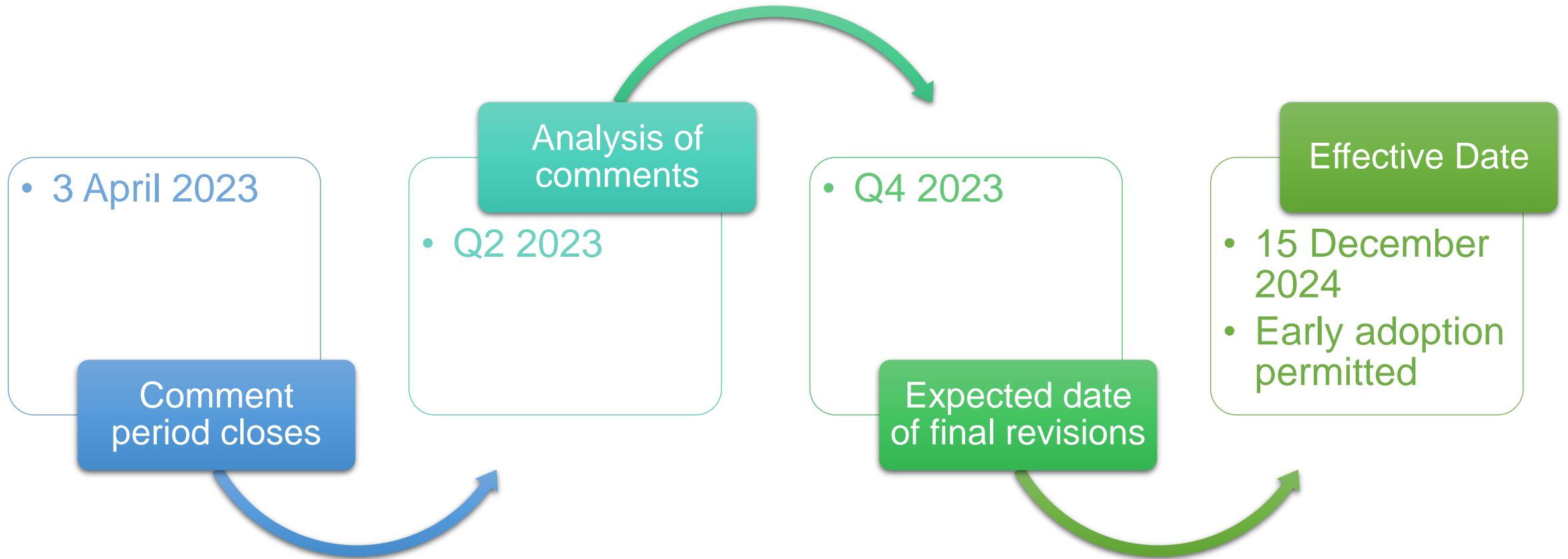
- (k) Financial Services Providers as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), with assets under management in excess of R50 billion holding financial products and funds on behalf of clients in excess of R10 billion.
- (l) Medical Schemes as defined in the Medical Schemes Act, 1998 (Act No. 131 of 1998) with a membership in excess of 89 000 beneficiaries as at financial year-end, that are open to the public (commonly referred to as “open medical schemes”) or are restricted schemes with a large number of members.
- (m) Authorised users of an exchange as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012), who hold or are otherwise responsible for safeguarding client assets in excess of R10 billion.
- (n) Other issuers of debt and equity instruments to the public⁵.

The Proposed Amendments

Requests for specific comments

- Questions about the usefulness of the guidance to help registered auditors in determining whether an entity is a public interest entity?
- Questions on the types of entities scoped in and thresholds
- Proposed definition of Publicly traded entity
- Effective date - Effective for audits of financial statements for periods beginning on or after 15 December 2024, in line with the effective date of the IESBA Code revisions. Early adoption will be permitted.

What's next?





Update: Public Sector Sustainability Reporting Landscape

Odwa Benxa

RECAP

- Proposal for the IPSASB to develop public sector specific sustainability reporting
- Consultation Paper, *Advancing Public Sector Sustainability Reporting*
 - *Comment by 09 September 2022*
 - *IPSASB's decision by December 2022*

FURTHER DEVELOPMENTS

- IPSASB's decision:
 - Establish a Sustainability Task Force
 - Three projects -
 - General Requirements for Disclosure of Sustainability-related Financial Information
 - Climate-Related Disclosures, and
 - Natural Resources – Non-Financial Disclosures (parallel with the development of financial reporting guidance per Consultation Paper, *Natural Resources*)

FURTHER DEVELOPMENTS

- Consultation Paper, *Natural Resources*
 - Accounting for natural resources (*in their original state*) by public sector entities
 - Recognition
 - Measurement
 - presentation

FURTHER DEVELOPMENTS

- IPSASB Exposure Draft 83
 - Provide additional guidance to facilitate the reporting of sustainability program information by public sector institutions
 - Enhance **awareness** and assist in **applying**:
 - Recommended Practice Guide (RPG) 1, *Reporting on Long-Term Sustainability of an Entity's Finances*
 - RPG 3, *Reporting Service Performance Information*

RESPONSE & WAY FORWARD

- Comment letters submitted
[Submissions | SAICA](#)
- Standing Project Group on Public Sector Sustainability Reporting
- Continuous engagements



Practical Considerations of IFRS 17 for Medical Schemes

Carolyn Clark



About the speaker

Carolyn is a Principal in the Actuarial, Risk and Quants practice of PwC, and has 16 years of actuarial consulting and specialist audit support experience. She led the development of a market-leading capability providing actuarial consulting support to insurers for the implementation of IFRS 17 and oversaw numerous advisory projects. She subsequently set up PwC's Global IFRS 17 Managed Service and co-led a Centre of Excellence designed to ensure maximum leverage of PwC's implementation experience in its IFRS 17 early audit work.

An overview of IFRS 17 for medical schemes



Why the change?

	IFRS 4	IFRS 17
IFRS for Insurance Contracts	✓	✓
Permanence	Temporary	"Final"
Classification (scope)	✓	✓ (some changes/additions)
Measurement	✗	✓
Presentation	✗	✓
Disclosure	✓	✓ (some additions)

=> Consistency => Comparability => Transparency



Timing for medical schemes

Effective date of IFRS 17

1 January 2023

First year-end date

31 December 2023

Comparative year year-end date

31 December 2022

Opening balance sheet ('transition') date

1 January 2022

- Recognition and measurement as if IFRS 17 was always in force
- Add IFRS 17 accounts and reverse balances that no longer exist under IFRS 17, recognising the net difference in Members funds and reserves



Key principles of IFRS 17

1. Consistent **recognition and treatment of insurance** (inwards) and reinsurance (outwards) contracts (separately)
2. **Separating distinct components** of contracts with no insurance risk and applying other accounting standards to them to ensure consistency
3. **Measuring** insurance and reinsurance contract **liabilities** using consistent principles and relevant assumptions
4. Ensuring **no up-front recognition of profit**, but **immediate recognition of losses** from writing insurance contracts
5. Recognising reinsurance profits upfront which offset losses on the underlying insurance contracts
6. **Recognising profit as the services are provided** over the coverage period
7. Deferring to future periods the recognition of changes in profitability relating to future service
8. **Grouping** (by portfolio, cohort and profitability) contracts so that the impacts on profitability of subsequent changes may offset each other within the group (in limited circumstances: profits and losses **offset at initial recognition**)
9. **Separately presenting**:
 - a. Insurance revenue which represents earned premiums, excluding deposit-type components
 - b. Insurance service expenses
 - c. Finance income or expenses (the financing effects of insurance contracts, i.e. discounting)

=> Consistency => Comparability => Transparency



Changes to the income statement

IFRS 4 Statement of Comprehensive Income

Risk contribution income

Relevant healthcare expenditure

Net claims incurred

 Risk claims incurred

 Third-party claim recoveries

Accredited managed healthcare services (no risk transfer)

Net income on risk transfer arrangements

 Risk transfer arrangement fees paid

 Recoveries from risk transfer arrangements

Gross healthcare result

Administration fees and other operating expenses

Net impairment losses on healthcare receivables

Net healthcare result

Other income

 Investment income

Other expenditure

 Interest paid on savings accounts

TOTAL COMPREHENSIVE INCOME

IFRS 17 IFRS 4 Statement of Comprehensive

Insurance revenue

Insurance service expenses

Net profit/expense from reinsurance

Insurance service result

Finance income or expenses

Other operating expenses

Other income

 Investment income

Other expenditure

 Finance costs

TOTAL COMPREHENSIVE INCOME



Changes to the balance sheet

IFRS 4 Statement of Financial Position

ASSETS

Current assets

Financial assets at fair value through profit or loss

Trade and other receivables

Cash and cash equivalents

TOTAL ASSETS

FUNDS AND LIABILITIES

Members' funds

Accumulated funds

LIABILITIES

Current liabilities

Outstanding claims provision

Personal Medical Savings Account liabilities

Trade and other payables

TOTALS FUNDS AND LIABILITIES

IFRS 17 Statement of Financial Position

ASSETS

Insurance contract assets

Reinsurance contract assets

Financial assets at fair value through profit or loss

Trade and other receivables

Cash and cash equivalents

TOTAL ASSETS

FUNDS AND LIABILITIES

Members' funds

Accumulated funds

LIABILITIES

Insurance contract liabilities

Reinsurance contract liabilities

Trade and other payables

TOTALS FUNDS AND LIABILITIES



Liability measurement – profitable contracts





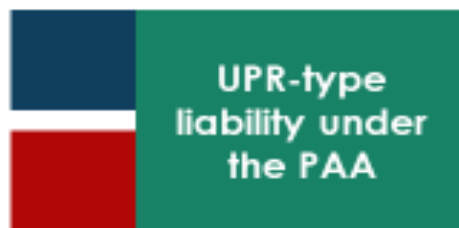
Liability measurement – onerous contracts

Liability for remaining coverage (LRC)

Liability for incurred claims (LIC)

Best estimate liability

Risk adjustment





Application of the principles for medical schemes

1. Consistent **recognition and treatment of insurance** (inwards) and reinsurance (outwards) contracts
2. **Separating distinct components** of contracts with no insurance risk and applying other accounting standards to them to ensure consistency
3. **Measuring** insurance and reinsurance contract **liabilities** using consistent principles and relevant assumptions
4. Ensuring **no up-front recognition of profit**, but **immediate recognition of losses** from writing insurance contracts
5. Recognising reinsurance profits upfront which offset losses on the underlying insurance contracts
6. **Recognising profit as the services are provided** over the coverage period
7. Deferring to future periods the recognition of changes in profitability relating to future service
8. **Grouping** (by portfolio, cohort and profitability) contracts so that the impacts on profitability of subsequent changes may offset each other within the group (in limited circumstances: profits and losses **offset at initial recognition**)
9. **Separately presenting**:
 - a. Insurance revenue which represents earned premiums, excluding deposit-type components
 - b. Insurance service expenses
 - c. Finance income or expenses (the financing effects of insurance contracts, i.e. discounting)

=> Consistency => Comparability => Transparency



Application of the principles for medical schemes

1. Consistent **recognition and treatment of insurance** (inwards) and reinsurance (outwards) contracts
 - Contracts issued to members are insurance contracts
 - Need to identify all cash flows required to fulfil the insurance contracts (but no others), including acquisition costs, admin fees, managed care fees etc.
 - Risk transfer arrangements to be treated as reinsurance

2. **Separating distinct components** of contracts with no insurance risk and applying other accounting standards to them to ensure consistency
 - Medical Savings Accounts (MSA's) are not distinct as they are highly interrelated with the insurance component and cannot be purchased separately
 - Consideration is required for wellness programmes and other services

=> Consistency => Comparability => Transparency



Application of the principles for medical schemes

3. **Measuring** insurance and reinsurance contract **liabilities** using consistent principles and relevant assumptions
 - Medical scheme contracts are generally ≤ 12 months and are recognised on 1 January or when cover starts
 - Assuming coverage period ≤ 12 months, PAA can automatically be used, and if aligned to the financial year, only a LIC is required at the year-end (unless contracts are onerous – see principle 4)
 - A risk adjustment is required
 - Discounting is not required for most schemes given that claims run-off is ≤ 12 months (as are coverage periods)
4. Ensuring **no up-front recognition of profit**, but **immediate recognition of losses** from writing insurance contracts
 - Contracts will be onerous if the scheme (or option) is priced at a deficit
 - Onerous contracts (and their losses) are recognised “when [they] become onerous”, so therefore at the previous year-end – need to estimate the future fulfilment cash flows at this date

=> Consistency => Comparability => Transparency



Application of the principles for medical schemes

5. Recognising reinsurance profits upfront which offset losses on the underlying insurance contracts
6. **Recognising profit as the services are provided** over the coverage period
 - Will be fully recognised by year-end for contracts with coverage period = financial year, with adjustment for debtors, impairments, and outstanding claims and recoveries
 - Only relevant where the PAA cannot be used and the general model must be used instead
7. Deferring to future periods the recognition of changes in profitability relating to future service
8. **Grouping** (by portfolio, cohort and profitability) contracts so that the impacts on profitability of subsequent changes may offset each other within the group (in limited circumstances: profits and losses **offset at initial recognition**)
 - Portfolio usually at the scheme level as the contracts are subject to similar risks and managed together (the IFRS 17 definition of a portfolio), but assessment must still be made
 - If contracts would fall into different profitability groups because law or regulation specifically constrains pricing for policyholder characteristics, the entity may include those contracts in the same group – relevant for schemes which usually have one group

=> Consistency => Comparability => Transparency



Application of the principles for medical schemes

9. Separately presenting:

- a. Insurance revenue which represents earned premiums, excluding deposit-type components
 - b. Insurance service expenses
 - c. Finance income or expenses (the financing effects of insurance contracts, i.e. discounting)
- MSA's are likely to be non-distinct investment components, the cash flows of which are excluded from revenue and service expenses
 - Impairment losses related to contribution and claim receivables would be included in the relevant cash flow
 - Need to exclude non-attributable expenses and other cash flows, for example, investment expenses and other operating costs
 - Finance income or expenses zero if no discounting, unless there are MSA's, then interest in FIE

=> Consistency => Comparability => Transparency



Summary of scenarios which result in an up-front loss

		"Profitability" (IFRS 17 basis, therefore depends on calibration of risk adjustment)		
		All options "profitable"	One or more options at a deficit, but not scheme	Whole scheme priced at a deficit
Portfolio decision	Option	No up-front loss	Recognise loss up-front	Recognise loss up-front
	Scheme	No up-front loss	No up-front loss	Recognise loss up-front

=> Consistency => Comparability => Transparency



PROPOSED REVISED
DUE PROCESS POLICY
November 2022

OCTOBER 2022 **Comments requested by 31 March 2023**

Committee for Auditing Standards

Proposed Due Process Policy for the Development, Adoption and Issue of Quality Management, Auditing, Review, Other Assurance and Related Services Pronouncements (Revised November 2022)



About the speaker

Yussuf Choonara CA(SA)

- Professional Manager in the Standards Department at IRBA
- +12 years experience in standard setting

Background

- The Due Process Policy - facilitating an understanding of the Committee for Auditing Standards (CFAS) objectives and operating procedures in the development, adoption and issue of high-quality standards and pronouncements developed by the CFAS.
- Adoption of the original text of the International Auditing and Assurance Standards Board (IAASB) International Standards as the standards to be applied by all registered auditors in South Africa
 - a) The Public Accountants' and Auditors' Board - from 1 January 2005.
 - b) The IRBA - confirmed the continued adoption of and prescription for use of the IAASB Standards by all registered auditors in South Africa.
- [IRBA Regulatory Strategy](#) (issued via Government Gazette No. 45389 on 27 October 2021) – includes the option to make targeted enhancements to the IAASB Standards for the local environment without eroding the initial baseline.
- The scope of updating the proposed Revised Due Process Policy was to establish the due process requirements for the CFAS to follow when making limited modifications, as necessary, to a new/revised IAASB Standard.

Development of a Due Process for Making Modifications to the IAASB Standards - Compelling Reasons Test and Criteria for Making Modifications

- Any final IAASB Standard should be adopted in South Africa as is, and only limited amendments, deletions and/or additions (modifications) should be made, if there are compelling reasons to do so (the Compelling Reasons Test).
- The [IAASB Policy Position: Modifications to International Standards of the IAASB – A Guide for National Standard Setters that Adopt IAASB's International Standards but Find It Necessary to Make Limited Modifications \(July 2006\)](#) (IAASB's Policy Position) sets out the policy of what modifications a National Standard Setter (NSS) that adopts the IAASB Standards as its national standards may make to these Standards while still asserting that the resulting national standards conform to them.
- The Compelling Reasons Test developed adheres to the principles set out in the IAASB's Policy Position.

Modifications to International Standards

- The IRBA comments on proposed new/revised IAASB Standards and/or consultation papers. The CFAS establishes a task group to prepare the IRBA comment letter on the proposed new/revised IAASB Standard and/or consultation paper.
- When the final new/revised IAASB Standard is issued, the same task group that prepared the IRBA comment letter on the proposed new/revised Standard will:
 - a) Review the final Standard;
 - b) Consider whether the IRBA comments have been adequately addressed;
 - c) Consider if there are reasons for the final Standard not to be adopted (as is) in South Africa; and
 - d) Also consider the comments from its members and stakeholders submitted during the exposure period, to determine whether there is a need for modifications to be made.
- Limited modifications should be proposed (made) to only new/revised IAASB Standards (prospective) that are issued on exposure by the IAASB after the revised Due Process Policy has been issued.

High Level Summary of the Current Due Process

IRBA communication is issued to stakeholders on the proposed new/revised IAASB Standard, requesting comments.



CFAS task group prepares and submits IRBA comment letter to the IAASB.



The final new/revised Standard is issued by the IAASB.

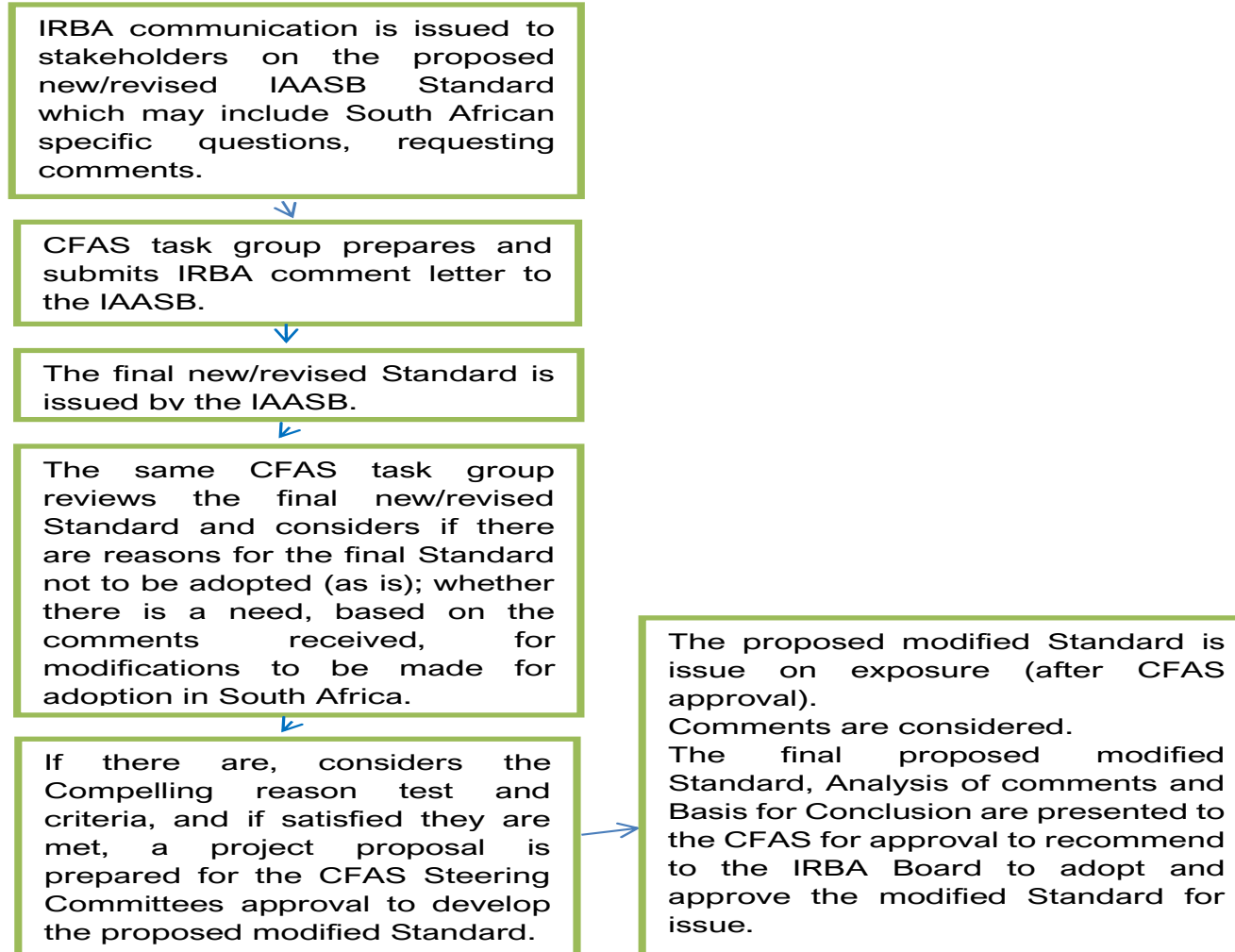


A Board recommendation is prepared for consideration of the CFAS setting out the process followed and possible implementation issues affecting adoption in South Africa and if there are any, determines how they are addressed.



If satisfied, the CFAS approves the recommendation to the IRBA Board to adopt and approve the Standard for issue.

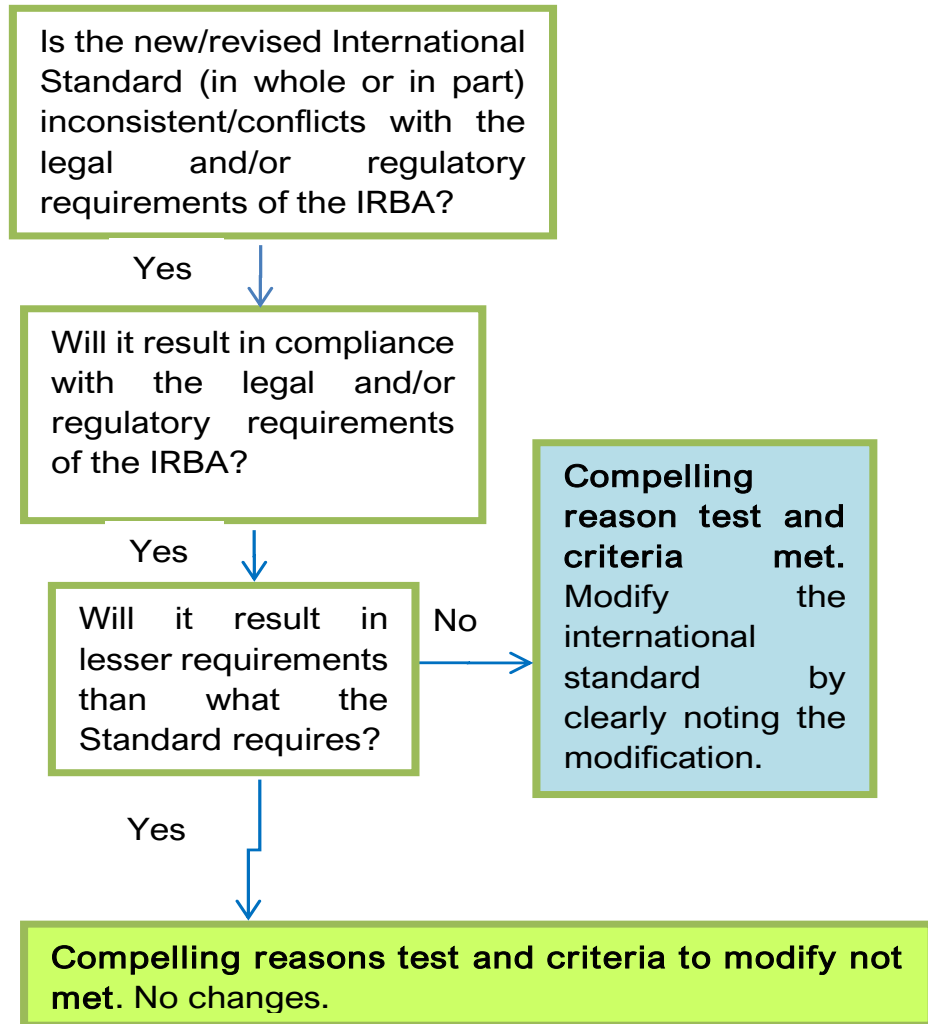
High Level Summary of the Proposed Revised Due Process



Deletions and/or Amendments to the Final New/Revised IAASB Standard (Final IAASB Standard)

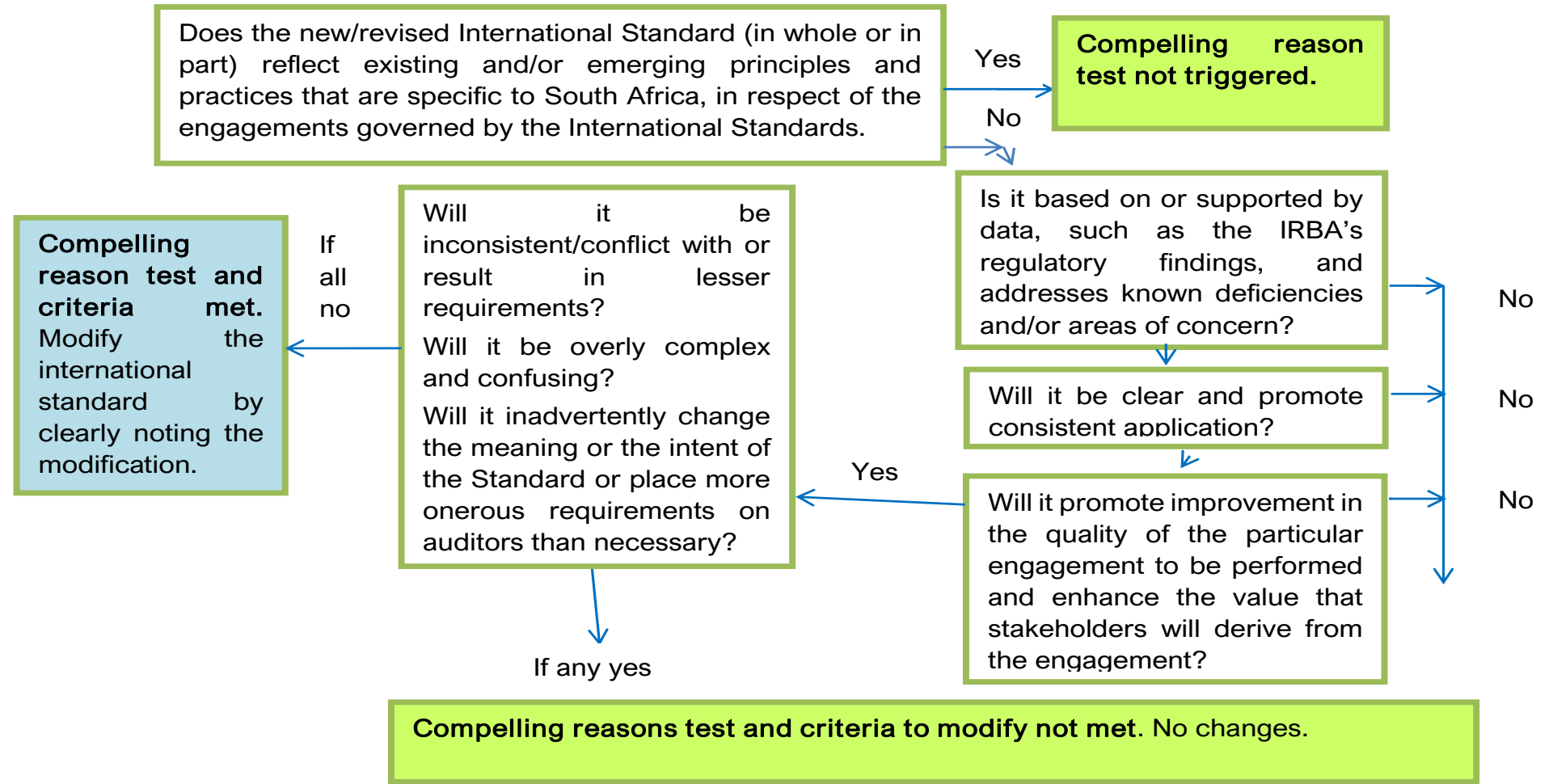
- Deletions and/or amendments to the final IAASB Standard will include:
 - a) The elimination of options or alternatives provided for in the final IAASB Standard.
 - b) Requirements or application guidance where the final IAASB Standard recognises that different practices may apply in different jurisdictions, and that is the case in South Africa.
 - c) Amendments and/or deletions to be made where the final IAASB Standard is not consistent/conflicts with legal and/or regulatory requirements.

Deletions and/or Amendments to the Final New/Revised IAASB Standard (Final IAASB Standard) Continued



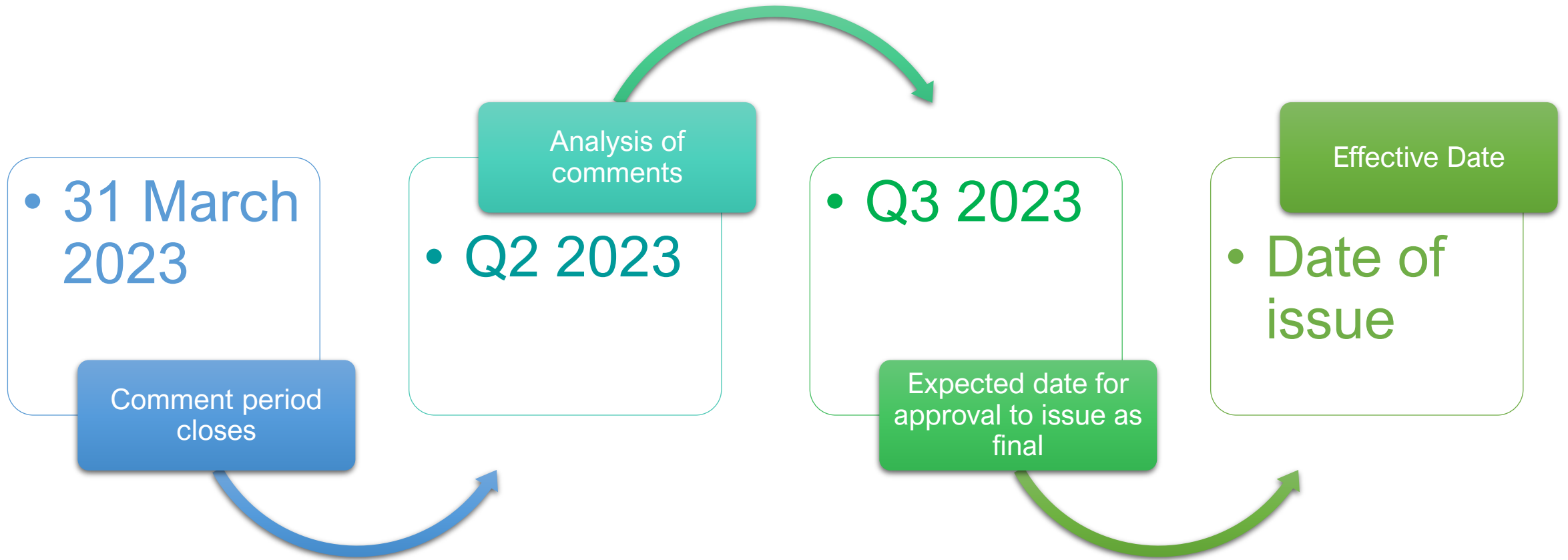
- **Stand-back** - Per the IAASB's Policy Position when deleting a requirement under paragraphs (b) and (c) (refer to previous slide), the objective of any deleted requirement must still be met. Consequently, it will be necessary for the relevant task group and the CFAS to consider the replacement of the deleted requirement with an appropriate alternative that meets the test of the Preface of the IAASB Standards.

Additions to the Final New/Revised IAASB Standard (Final IAASB Standard)



- Before making any modifications to the final International Standard, the CFAS will consider
 - a) if it may be more appropriate to develop a new, or update an existing, IRBA pronouncement, if the modification to be made only relates to the explanatory and application material; and
 - b) The consequences of the modifications proposed, the impact on the protection of the financial interest of the public and the additional work effort for auditors to comply.
- Effective date - In determining the effective date of the modified Standard - the CFAS will consider whether it should be:
 - a) Aligned to the effective date of the final IAASB Standard;
 - b) Later than the effective date of the final IAASB Standard; or
 - c) Aligned to the effective date of the final IAASB Standard, with the modifications becoming effective at a later stage.

What's next?





Anit-Money Laundering and CIPC Changes

Juanita Steenekamp

Anti-money laundering legislative changes

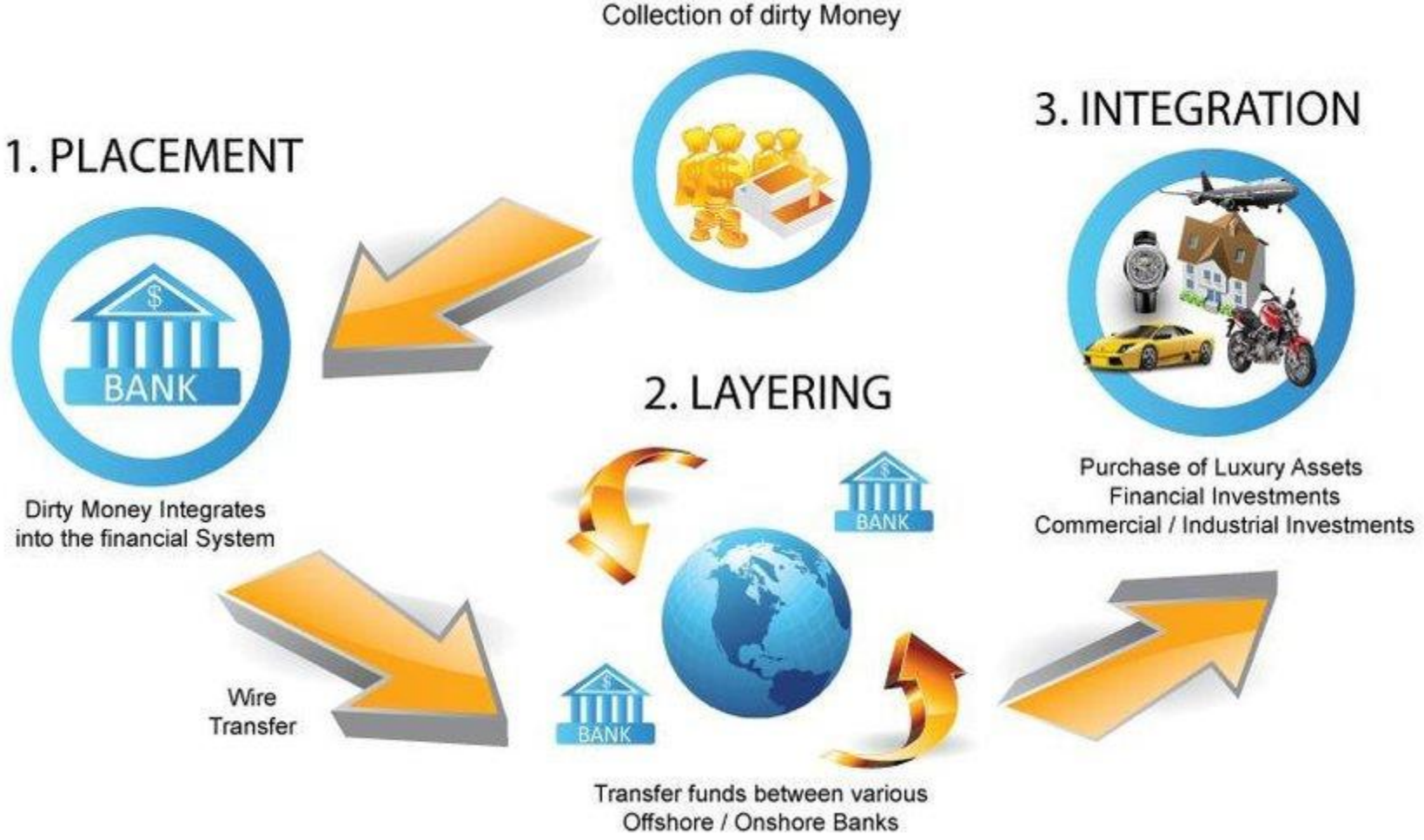


Anti-money laundering legislative changes

- October 2021- FATF mutual evaluation
- 28 November 2022- Post Observation Period Report submitted to FATF
- 16 December 2022 – FATF responded with preliminary response
- 3 January 2023 – SA responded to Joint Group
- 13 January 2023 – SA F2F meeting in Morocco
- Joint Group will respond to FATF International Co-operation Review Group before final recommendation to FATF Plenary
- 22 – 24 February – FATF meeting



Why change Schedule 1 of FIC Act



Schedule 1 of FIC Act

Change to who is an accountable institution

- Legal practitioners
- Co-operative banks
- Credit providers
- High value goods (valued in R100 000 or more)
- South African Mint Company (RF)(Pty)(Ltd)
- Persons carrying on the business dealing with various crypto-assets
- Trust and company service providers. (TCSP)



Effective 19 December 2022

Schedule 1 – list of accountable institutions



TCSP

A **person** who carries on the business of preparing for, or carrying out, transactions for a client, where client assisted in planning / execution of

organisation of contributions necessary for the **creation, operation or management** of a company, external company, foreign company,

the **creation, operation or management** of a company, external company or foreign company

operation or management of a close corporation

Schedule 1 – list of accountable institutions

TCSP

A **person** who carries on the business of

creating a trust arrangement for a client



preparing for or carrying out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property within the meaning of the Trust Property Control Act



FIC – TCSP Draft Public Compliance Communication 6A

Guidance on Trust and Company Service Providers Guidance in terms of Schedule 1 of the FIC Act for public comment.



Comments due 20 January 2023

Definitions:

Business is that of a commercial activity or institution, as opposed to a charitable undertaking or government institution. Therefore, persons who are appointed as providing TCSP functions on an occasional basis, or who perform this function in a personal capacity, as opposed to doing so on a commercial basis as a regular feature of their business for clients are not required to be registered as a TCSP

Creation includes the registration or administrative processes with relevant government organisations for the client to commence with trading using the type of institution.

Operation of the company entails the assisting with the daily operations of the client, and

Management would entail managing the company, for example, being on the board of management and making management decisions regarding the company.

Questions on TCSPs?

- Administrators / liquidators
- Business rescue practitioners - Companies Act, a person appointed as a business rescue practitioner (BRP) is appointed to manage a company whilst under business rescue. Section 128(1)(b) states that when in business rescue the company is under the temporary supervision of the practitioner and the BRP is managing its affairs, business and property.
- Businesses that outsource staff, such as CFOs
- With regards to tax services provided by accountants there are numerous questions on when a person providing tax services would be classified as an accountable institution and which tax services would be scoped in.
- Practitioners providing accounting, auditing and tax services (completion and submitting of tax returns) are excluded from the ambit of “operation or management”. The majority of practitioners primarily perform accounting and tax services in relation to financial statements, including the preparation of management accounts, compilation of annual financial statements. With regard to tax services, practitioners prepare and submit tax returns, PAYE and VAT schedules on behalf of employers which services might be viewed as operational. With regard to specialised tax services, such as tax opinions this could be seen as “creation, operation or management”.

What must you do if you are an accountable institution?



Customer due diligence



Record keeping



Compliance officer



Risk management and compliance programme



Reporting



Training of employees



Registration with the FIC

Transitional provisions



No
transitional
provisions

Changes effective from 19 December 2022.

FIC media release

- First 18 months from the date of commencement of the amendments, the FIC and supervisory bodies will focus on entrenching the FIC Act risk and compliance provisions and implementation among the new sectors.
- Supervisory bodies conducting inspections and, where warranted, issue remedial administrative sanctions, based on a risk-based approach, to correct identified areas of non-compliance.
- TCSPs the FIC and supervisory bodies do not envisage issuing financial penalties for non-compliance with the FIC Act during the transitional 18-month period

Guidance

- **FIC Draft Directive 7 of 2022** – Submission of risk and compliance returns, comments were due by the 20th of December 2022. Final directive not yet published.
- **FIC draft public compliance communication** – included draft PCC 47A, draft PCC 6A, draft PCC 23A, draft PCC 118, draft PCC 119 and draft PCC 120.
- **Reference Guide for all Accountable Institutions** : This guide sets out all the requirements and where the accountable institution can obtain FIC guidance to assist in meeting the requirements.
- **Public Compliance Communication No. 53** on the Risk Management and Compliance Programme in terms of section 42 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) for Designated Non-Financial Business and Professional.
- **Guidance Note 7** on the implementation of various aspects of the Financial Intelligence Centre Act, 2001
- **Webinar** - SAICA has hosted a webinar that outlines the responsibilities of accountable institutions.

General Laws Amendment Act, 22 of 2022

- Financial Intelligence Centre Act, 2001
- Nonprofit Organisations Act, 1997
- Trust Property Control Act, 1988
- Companies Act, 2008
- Financial Sector Regulation Act, 2017



Effective 31 December 2022
And 1 April 2023 (with some
exceptions)

Financial Intelligence Centre Act

- Insert definitions of beneficial owner
- “Domestic prominent influential person” TO “domestic politically exposed person”
- “Foreign prominent public official” TO “foreign politically exposed person”
- Adoption of United Nations Security Council resolutions
- Provisions regarding access and safeguarding of information
- Offences and administrative sanction

Nonprofit Organisations Act

NPOs will now be required to register with the Registrar if they:

- make donations to individuals or organisations outside South Africa or
- provide humanitarian, charitable, educational or cultural services outside South Africa.

NPOs that are not organs of state may apply to be registered.

DSD must establish an administrative and regulatory framework

All registered NPOs must in writing provide the **prescribed information**

The director must keep a register in the prescribed form of the **prescribed information**

Prescribed information

- Office-bearers
- Control structure
- Governance
- Management
- Administration &
- Operations

Trust Property Control Act

Beneficial owner of a trust includes

- the natural person who **directly or indirectly owns** the trust property
- the natural person who **exercises control of the administration** of the trust arrangements
- it includes **the founder** of the trust or if the founder is a **legal person, a person acting on behalf** of the partnership or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership
- each **trustee** of the trust and if the trustee is a **legal person a person acting on behalf** of the partnership or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership
- each **beneficiary** referred to by name in the trust instrument or founding statement or if a beneficiary is referred to by name is a **legal person**, a partnership or a person acting on behalf of the partnership or a person acting in pursuance of the provisions of the trust instrument, the natural person who directly or indirectly exercises effective control of the legal person or partnership of relevant trust property.

Trust Property Control Act

TRUSTEES

- Disqualification requirements
- Disclose position as trustee to AI &
- Identify transaction relate to trust property
- Establish and record BO
- Keep record of info
- Lodge register with Master
- Update information
- Make information available when required as prescribed

MASTER

- Keep register of disqualified persons
- Notify trusts of trustees – with order /conviction
- Approve persons appointed as trustees from outside SA
- Keep register of prescribed information re BO
- Make info available when requested

Regulations relating to BO registers and records of details of AIs

TRUSTEE must keep information on BO

- Name
- Date of birth
- Nationality
- Official ID, indicating type and country of issues
- Residential address
- Address for service notice
- Other mean of contact
- Grounds on which person is BO
- Date on which person became BO
- Date on which person ceased to be BO
- Certified copy of ID of EACH BO

Public comment – 13
February 2023

Regulations relating to BO registers and records of details of AIs

MASTER's register (electronic)

- Access through username & password
- Security measures
- Trustee to load and update info on each BO
- Trustee to upload documents

Public comment – 13
February 2023

A beneficial owner is defined in respect of a company as an

- individual who directly or indirectly ultimately owns the company or
- exercises control through various options including
 - holding of beneficial interest,
 - exercise of control of the voting rights,
 - exercise or control the right to appoint or remove members of the board of directors

Affected company - regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of circumstance contemplated in section 2(2)(a) or 3(1)(a).

S56(7)(aA) Requirement of affected company

- establish and maintain a register of persons who hold beneficial interest equal to or in excess of 5% of the total number of securities issued by the company,
- register must be updated as per the information received via a notice.

Section 33 – Annual return

Act

Every co must file AR including a copy of its AFS if it is required to have such statements audited in terms of section 30(2) or the regulations contemplated in section 30(7)

Amendment

- Submit copy of securities register
- Submit copy of register of disclosure of beneficial interest as prescribed in S56(7)(aA) (AFFECTED COMPANY)
- Commission must make AR available to persons as prescribed

56(7)(aA) An AFFECTED COMPANY must establish and maintain a register of persons who hold beneficial interest equal to or in excess of 5% of the total number of securities issued by the company, which register must be updated as per the information received via a notice.

S50(3A) Companies that are not an “affected company”

MUST must record in its securities register

- prescribed information regarding the natural persons who are the beneficial owners of the company,
- in the prescribed form, and
- must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred

S56(12)

- ❖ Must file a record with the Commission
- ❖ In the prescribed form
- ❖ Containing the prescribed information
- ❖ Update by filing notice with the CIPC
- ❖ Within the prescribed period after changes happened

Protection of Constitutional Democracy Against Terrorism and Related Activities Amendment Act

- Include cyber-terrorism
- Refining offence of terrorist financing
- Improving process for implementation of financial sanctions against supporters of terrorist organisations

Effective 4 January 2023

Conclusion

- SAICA will keep you informed
- Newsletter / webinar / articles

