

Dashboard

Legal Updates

Edition 4 | May | 2023

- A. Interest on arrear contributions – date of calculation**
- B. Finalised Conduct Standard - conditions for investment in derivative instruments for pension funds, 2023**
- C. A report by funds and companies to the Information Regulator**

A Interest on arrear contributions – date of calculation

In the Dashboard 3, 2023 we stated the following:

“Uncertainty on date of calculation of penalty interest

As we know, interest is payable on late payment of contributions or unpaid contributions, where contributions (or part of contributions) are paid after the prescribed period for payment. This interest is calculated from the first day following the expiration of the period contributions were payable for until the fund receives the contributions - at the prime rate plus 2%.

There is confusion as to whether “the first day following the expiration of the period contributions were payable for” refers to the 1st day of the month or the 8th of the month. The FSCA has stated that it is deciding on a final view on this and we await this view.”

The FSCA has now provided its view on this in Communication 15 of 2023 (RF).

Contributions must be paid not later than seven days after the end of the month for which the contribution is payable. The FSCA’s view is that interest must be calculated from the day after the 7th day, that is the 8th day.

Example:

ABC Company is paying contributions for May 2023. These contributions must be paid into the retirement fund’s bank account by the 7th of June 2023 at the latest. ABC Company does not pay the contributions by the 7th of June 2023. The interest payable on these arrear contributions will then run from the 8th of June.

Finalised Conduct Standard - conditions for investment in derivative instruments for pension funds, 2023

In the Dashboard 3, 2023 we provided the following information:

“11. Draft Conduct Standard – conditions for investment in derivative instruments for funds

On 8 June 2020, the FSCA published this draft Conduct Standard for comment. The Conduct Standard sets overarching principles for the uses of derivative instruments by funds. The Parliamentary period for comment has elapsed and the Standard will be made final within the next two months.”

This Conduct Standard has now been finalised and published and will take effect twelve months after date of publication (which was 11 May 2023). We will issue a separate edition about this Conduct Standard.

A report by funds and companies to the Information Regulator

All private bodies, for example companies and retirement funds, have been requested by the Information Regulator to provide it with a specific report.

Providing this report is compulsory.

On 7 May 2023, the Information Regulator published a notice requesting the heads of all private bodies (which includes companies and retirement funds) to submit a report to it under the Promotion of Access to Information Act (PAIA) (section 83(4)).

This report must be submitted by **30 June 2023**.

What is a PAIA section 83(4) report?

This section¹ permits the Information Regulator to request the heads of private bodies to submit reports to it about requests for access to records that the private body holds.

The Information Regulator must then submit an annual report to the National Assembly.² If the Information Regulator chooses, it can include information about access requests that private bodies receive in its annual report to the National Assembly.

Please note the difference between a section 32 report and a section 83(4) report –

- The section 32 PAIA report applies to information officers of public bodies; and
- A section 83(4) PAIA report applies to heads of private bodies.

¹Section 83(4) of the Promotion of Access to Information Act: For the purpose of the annual report referred to in section 84 and if so requested by the Information Regulator, the head of a private body may furnish to that Commission information about requests for access to records of the body.

²See section 84 of the Promotion of Access to Information Act.

The Information Regulator has not asked private bodies to submit a report like this before.

Why does the Information Regulator want the report?

The Information wants to:

- Determine whether public and private bodies are receiving and recording requests for information,
- Obtain a picture of the status of compliance with PAIA and its implementation in public and private bodies and
- Ascertain the usage of PAIA by members of the public when it comes to access to information and measure or indicate the levels of awareness of PAIA from the side of the requester and public and private bodies.

The Information Regulator said the report requires bodies to indicate whether the requests for information that were received were responded to within the time frames stipulated in PAIA and whether there were any internal appeals and the outcomes of those appeals.

What is a private body?

According to PAIA, “private body” means –

- a natural person who carries or has carried on any trade, business, or profession, but only in such capacity,
- a partnership which carries or has carried on any trade, business or profession,
- any former or existing juristic person or
- a political party,
- but excludes a public body.

A retirement fund is a private body.

The “head” of a private body has been interpreted by many people to refer to the Principal Officer of a fund. Thus, the principal officer of the fund would have the responsibility to submit this report. How do you submit the report? The head of a private body must submit the report through the Information Regulator’s online portal. The following banner appears on the Information Regulator’s website (infoeregulator.org.za):

How do you submit the report?

The head of a private body must submit the report through the Information Regulator’s online portal. The following banner appears on the Information Regulator’s website (infoeregulator.org.za):



- There is a section 32 annual report [user manual](#) to submit the report. This seems to also apply to section 83(4) reports.
- Register the fund/company on the Information Regulator's portal so that you can sign it and submit the report. This requires you to create your profile using an OTP.
- Once you sign in on your profile, you should see a PAIA section 83(4) report button.
- Once you click on the button to submit the report, you can complete the required information. There is a list of questions you must answer and then click "submit".

Please complete all the questions and fields properly, otherwise you may find yourself in receipt of an Information Notice from the Information Regulator.

Please note that we have not yet been able to successfully navigate the online portal and were told (at the time of writing this publication) by the Information Regulator's office that the system was offline as many people have been trying to access it. We trust that this will be resolved.

What are the questions in the report about?

We expect that the questions that will be required to be answered in the report will relate to the below. As these are the questions asked currently of public bodies, there may be changes to the questions for private bodies. Once we have seen the questions for private bodies, we can update you further.

- The number of requests for access to information under PAIA received,
- The number of requests for access granted in full,
- The number of requests for access granted in terms of section 46 of PAIA (mandatory disclosure in the public interest),
- The number of requests for access refused in full and refused partially and the number of times each provision of PAIA was relied on to refuse access in full or partially,
- The number of cases in which the periods stipulated in section 25(1) of PAIA were extended in terms of section 26 (1) of PAIA (periods relating to granting of requests and notifying of decisions),³
- The number of internal appeals lodged with the private body and the number of cases in which, as a result of an internal appeal, access was given to a record,
- The number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 of PAIA (failure to give a decision is a deemed refusal),
- The number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 (7) of PAIA (failure to give notice of a decision in an internal appeal).

What happens if you don't submit the report on time?

Compliance with the Information Regulator's request for a section 83(4) report is compulsory. All heads of private bodies must submit the report by 30 June 2023.

Failure to comply may result in the Information Regulator, on its own initiative, conducting a compliance assessment on the private body in question .

³ PAIA - the Information Regulator, on its own initiative, or at the request by or on behalf of an information officer or head of a private body or any other person may make an assessment in the manner prescribed of whether a public or private body generally complies with the provisions of this Act insofar as its policies and implementation procedures are concerned.

Keeping information about requests

It is important that fund's keep information about requests under PAIA as well as certain requests under the Protection of Personal Information Act. This could be done in many ways, but a register should be kept in your chosen manner. Please let your consultant know if you need assistance with this.

It is important that the Information Officers of funds report requests through to the Board and that such requests are properly considered and replied to within the relevant time periods. In addition, these requests should be analysed by the fund for possible learnings and improvements.





Finding a better way

Talk to us today!

info@nmg.co.za

(+27) 011 509 3000

www.nmg.com



**Healthcare | Retirement | Investment Consulting | Financial Planning | Actuarial
| Short-term Insurance**

T&Cs apply. NMG Employee Benefits (Pty) Ltd (FSP number 33426)

This publication is provided as general information only. It is not advice and should not be relied upon without a discussion regarding your own facts and circumstances.