

HEARING BY THE STANDING COMMITTEE ON PUBLIC ACCOUNTS (SCOPA)

UPDATE ON THE COURT MATTER FILED BY THE RAF REGARDING THE ACCOUNTING STANDARDS



**Road
Accident
Fund**

UPDATE ON 2020/21 ANNUAL REPORT

- Subsequent to the SCOPA hearing of 20 September 2022, the RAF received a request from the Minister of Transport to table the 2020/21 Annual Report of the RAF.
- As the Audit Report for the 2020/21 financial year had already been tabled by the AGSA earlier in the year, the RAF heeded the request of the Minister of Transport and submitted the Annual Report to the DoT for tabling on 16 November 2022.
- RAF had planned to present the 2020/21 Annual Report at the Parliamentary Committee on Transport (PCOT) Hearing in March 2023. This PCOT hearing was however postponed due to the Cabinet reshuffle which occurred on the evening prior to the planned meeting.
- The 2020/21 Annual Report will be tabled at PCOT at the first available opportunity.

**FACTS OMMITTED BY THE ASB
AND THE OAG IN ADDRESSING
SCOPA**

- The existence of the ASB Due Process Handbook
- Nature and authority of ASB Pronouncements
- The Authority of the ASB functionaries to advice of GRAP Standards or Standards of other Standard Setters
- The involvement of the ASB in litigation between the AGSA and auditees
- The court order that ordered the joining of the ASB and the MoT to the court proceedings

**NOTEWORTHY DOCUMENTS
IDENTIFIED SUBSEQUENTLY**

The ASB Due Process Handbook

- As indicated in the presentation to SCOPA in September 2022, letters from the ASB are not authoritative.
- This fact has been confirmed by the ASB in their letters to the RAF management of February and August of 2021, and the subsequently released ASB Due Process Handbook (“Handbook”) that the ASB has approved and released in July 2022, which the ASB regrettably failed to bring to the attention of SCOPA in September 2022.
- The Handbook, which sets out the way positions of the ASB are communicated, makes mention of the following documents: Conceptual Framework; Standards of GRAP; Interpretations of Standards of GRAP; Directives and Guidelines. It must be noted that letters from the ASB Secretariat do not form part of the documents listed above

The Institutional Sector Classification Guide for South Africa

- This guide was issued in March 2017 by the South African Reserve Bank.
- The guide defines Social Security Funds as follows:
 - “Social security funds are autonomous funds that manage and operate social security schemes.” (own emphasis)
- The following entities were classified as social security funds as at 31 March 2016:
 - Compensation Commissioner for Occupational Diseases in Mines and Works (CCOD)
 - Compensation Fund
 - **Road Accident Fund (RAF)** (own emphasis)
 - Unemployment Insurance Fund (UIF)
- This guide therefore affirms that the RAF has been classified as a Social Security Fund at least since 31 March 2016.

The Road Accident Fund Classification Guide

- This guide was issued on 12 January 2023 by the Public Sector Classifications Committee (PSCC).
- The PSCC, a structure reporting to the National Treasury, re-affirms RAF's classification as a Social Security Fund.
- The PSCC has resolved to maintain the classification of the RAF as a Social Security Fund as defined in the Government Finance Statistics Manual of 2014 (GFSM 2014).
- In accordance with the guide, an SSF is recognised as an institutional unit if it:
 - Is organized and managed separately from the other activities of government units.
 - Hold its assets and liabilities separately from other government units, and
 - Engage in financial transactions on their own accounts.

NOTEWORTHY DOCUMENTS IDENTIFIED

- These documents were raised by RAF in communication with the AGSA in an attempt to reopen the 2021/22 audit based on “*facts that become known to the auditors after the date of the audit report*”, in accordance with International Audit Standards.
- It is also worth noting that the standard which the AGSA had indicated RAF should use for the purpose of reporting Claims Liabilities – IFRS 4 Insurance Contracts, has since expired on 31 December 2022 and has since been withdrawn by the relevant standard setter.
- This standard has been replaced by IFRS 17 effective 1 January 2023, due to the fact that IFRS 4 is considered to have:
 - Lack of comparability
 - Little transparent or useful information*

* IFRS Standard Fact Sheet (IFRS 17 Insurance Contracts)

LEGISLATION TO CONSIDER

- The following legislative sections are worth to consider in determining to authority to approach the courts:
 - Section 4(2)(g) of the RAF Act – *“the Fund may... take any other action or steps which are incidental or conducive to the exercise of its powers or the performance of its functions”*
 - Section 34 of the Constitution – *“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”*

RAF's EFFORTS TO RESOLVE THE DISPUTE

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
23 September 2022	The Board responded to the AGSA's letters requesting assistance to finalise the audit for 2021/22. The Board indicated that its position had not changed and urged the AGSA to reconsider agreeing to postpone issuing the Audit Report until the outcome of the review application was known.
29 September 2022	The then Minister of Transport wrote to the Board and requested that the RAF Board consider withdrawing the litigation and pursuing alternative dispute resolution mechanisms.
30 September 2022	The AGSA issued the Audit Report for the 2021/22 financial year despite the on going engagements and attempts to resolve the dispute through alternative mechanisms.
3 October 2022	RAF Board met with the Minister of Transport to discuss the matter.

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
7 October 2022	The RAF Board responded to the Minister of Transport indicating that the Board would withdraw the litigation and attempt to pursue alternative dispute resolution mechanisms.
21 October 2022	The RAF wrote to the OAG requesting further engagements on the accounting standards and to facilitate the way forward as inputs from the RAF, OAG, ASB and AGSA would be more easily facilitated by the OAG.
31 October 2022	The Board wrote to Ms Maluleke requesting a meeting to explore alternative dispute resolution mechanisms.
2 November 2022	Ms Maluleke responded indicating that she was not available, but delegated the matter to the Head of Audit and the Chief Risk Officer to deal with the matter proposed for discussion by the RAF at the meeting.
10 November 2022	The RAF Board met with the AGSA in order to attempt to resolve the matter using less confrontational means.

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
10 November 2022	<p>The AGSA indicated that the RAF should put in writing its proposals and requests regarding:</p> <ol style="list-style-type: none">1. The withdrawal of the litigation2. Proposal regarding alternative dispute resolution3. Re-opening the 2021/2022 financial year end audit to allow management to address other matters not under dispute, but concluded on by the AGSA.
15 November 2022	<p>The Board wrote to the AGSA and proposed:</p> <ol style="list-style-type: none">1. The litigation be withdrawn and each party pays for its own costs2. The disagreement be referred for mediation with a renowned mediator3. The 2021/2022 financial year end audit be re-opened as there were material items which did not arise from the dispute concluded upon by the AGSA while RAF management were requesting the finalisation of the audit be postponed.

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
24 November 2022	A response was received from the OAG indicating that it would not facilitate any engagements as requested by the RAF on advice from their legal counsel, despite the OAG not being party to the litigation.
12 January 2023	The RAF followed up with the AGSA on 12 January 2023 as a response to the proposal letter sent on 15 November 2022 had not been received. The AGSA indicated that a response had been sent on 1 December 2022, however, this response was only received on 12 January 2023.
	In their response, the AGSA rejected all proposals put forward by the RAF and referred the RAF to further consult with the ASB and the OAG.

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
12 January 2023	The Public Sector Classification Committee issued the RAF classification guide confirming the classification of the RAF as a Social Security Fund, as set out in the 2017 Institutional Sector Classification Guide for South Africa issued by the South African Reserve Bank (SARB).
6 February 2023	The RAF Board again wrote to the AGSA to request the AGSA to reconsider the proposals put forward. The attention of the AGSA was drawn to the RAF Classification Guide of the PSCC and the Institutional Sector Classification Guide for South Africa of the SARB and that the RAF had been economically classified as a Social Security Fund at least since 31 March 2016.
	The RAF Board also drew attention to the fact that the ASB had failed to mention the existence of their Due Process Handbook at the previous SCOPA hearing. The Handbook sets out which pronouncements of the ASB are authoritative. Letters from the ASB Secretariat are not authoritative in accordance with the Handbook and are not to be interpreted as a directive.

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
14 February 2023	The RAF received notice from counsel that the AGSA had requested a meeting with the Deputy Judge President, and had repudiated that they were in any discussion with the RAF. The AGSA further rejected all additional documents that the RAF had drawn attention to, and persisted to meet with the Deputy Judge President.
20 February 2023	The RAF received a response directly from the AGSA, indicating that the AGSA disagreed that the Classification Guides and ASB Handbook did not change their position.
20 March 2023	The RAF Board then wrote to the AGSA detailing the attempts the RAF Board had made to pursue alternative dispute resolution mechanisms and the rejection of the AGSA of all proposals put forward by the RAF as well as the fact that no proposals were put forward by the AGSA to attempt to resolve the matter.

EFFORTS TO RESOLVE DISPUTE

DATE OF ENGAGEMENT	DETAIL OF ENGAGEMENT
31 March 2023	The AGSA responded and contended that the AGSA was always amenable to resolve the matter in an amicable and reasonable manner within the bounds of the law and had instructed their counsel to approach the Deputy Judge President.
11 April 2023	RAF Management wrote to the ASB seeking clarity regarding the ASB's representations made to SCOPA and the courts as the omission of pertinent facts that would clarify the guidance given to the RAF when the ASB was approached by the Fund during 2021.

Thank You



