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Retirement Fund Update

February 2013

Rooted in employee benefits solutions

An authorised financial services provider

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1 The Financial Services Board (FSB): Legislation and Circulars

1.1 Draft Notice on Minimum Requirements for Fund Rules

In January 2013 the Registrar of Pension Funds circulated a draft notice for comment, setting out the minimum requirements for fund rules and amendments thereto. It introduces a wide range of new, relatively minor, requirements as well as a number of more problematic requirements. It appears that these requirements will need to be complied with by January 2014. Examples of the more problematic requirements are that the rules require that -

- at least half of the members of the board will be independent trustees - in respect of beneficiary funds, unclaimed benefit funds and preservation funds;
- a quorum will be proportionally representative of the majority constituents of the members of the board;
- any vacancy on the board must be filled within thirty days; and
- the procedure to be followed in the appointment of an administrator or service provider be specified.

Observation: *ASISA raised a number of concerns and made a number of practical recommendations. All indications, however, are that all funds will be required to review their rules within the next 12 to 18 months and introduce a number of measures in order to remain compliant.*

1.2 Regulation 28 Compliance Monitoring

1.2.1 Information Circular 2/2012: Regulation 28 compliance monitoring

This circular, issued in December 2012, summarises the revised position reached after the investigation and industry debate on the reporting requirements of Regulation 28. Daily monitoring of Regulation 28 requirements will not be required on condition that -

- the fund has appropriate systems and monitoring mechanisms in place;
- the fund's service providers confirmed that their processes and procedures are adequate to ensure continuous compliance with their mandates or contractual arrangements;
- the fund's service providers provide regular reports (at least quarterly and at the fund's financial year-end) on Regulation 28 compliance and detailed portfolio holdings.

1.2.2 Information Circular 5/2012: Regulation 28 non-compliance reporting

The deadline for submission of Regulation 28 non-compliance reports, in respect of the quarters ending March 2012, June 2012 and September 2012, was extended to 31 January 2013.

Observation: *To ensure compliance, funds are required to adjust their Governance and Risk Management Plans by incorporating the strategies adopted in respect of the following issues -*

- *Ensure an appropriate addendum to the agreement of each service provider in which their monitoring and reporting duties and requirements are spelled out. All breaches are best reported to the FSB and*

managed and resolved by the asset managers at their own cost. (Notice 6 of 2012 requires that the breach report be signed by the board unless the board delegated such duty to another person.) The design and implementation thereof will be the responsibility of the investment manager.

- *The adoption of a standing agenda point; Regulation 28 monitoring report by the service provider or a subcommittee of the board. The board of trustees must be kept informed so that it is in a position to monitor the reporting, take corrective action and report to the FSB where necessary.*
- *In respect of funds that only have Regulation 28 compliant portfolios, the preferred solution is to appoint a service provider to monitor all portfolios and report to the board on a regular basis. The question as to who is best positioned to report to the FSB will have to be considered and agreed upon.*
- *In respect of clients that do not only have Regulation 28 compliant portfolios, the preferred solution is to appoint a service provider to consolidate all the asset composition reports prepared by the asset managers, monitor all portfolios and report to the board on a regular basis. The question as to who is best positioned to report to the FSB will have to be considered and agreed upon.*

1.3 Information Circular 3/2012: Investment Administrators

With effect from 1 January 2013 the approval and supervision of investment administrators (in terms of section 13B of the Pension Funds Act) will be conducted by the Registrar of Financial Advisory and Intermediary Services (FAIS).

Observation: *In terms of the Financial Services Laws General Amendment Bill, 2012, investment administrators will no longer have to register in terms of Section 13B and will be regulated in terms of the FAIS Act.*

1.4 Information Circular 4/2012: Tax Approval and Cancellation “One-Stop-Shop”

The following requirements are laid down in order to facilitate the one-stop-shop approach in terms of which the FSB undertakes both the registration as well as the approval of retirement funds.

Retrospective approval of rules

Rules can only be approved retrospectively for tax purposes on confirmation that:

- all income tax obligations have been met, i.e.
 - Tax directives have been applied for and obtained, where applicable, and all taxes that were due in respect of all benefit payments were paid over to SARS.
 - Income tax has been deducted and paid in respect of any annuities paid by the fund.
 - IRP5 certificates were issued and reconciliations were submitted to SARS.

As of 1 April 2012, no new income tax approval numbers have been issued. The registration number will be used for this purpose, after 1 April 2012. (Due to secrecy provisions, SARS approval numbers cannot be published on the FSB website.)

Tax directive applications

- When tax directives are applied for, funds approved before 1 April 2012 must continue to use the SARS approval number issued before 1 April 2012.
- Funds approved on or after 1 April 2012 must submit manual tax directive application forms per email to Daleen Pietersen at dpietersen@sars.gov.za and the Retirement Funds team at retirementfunds@sars.gov.za.
- The heading 'FSB tax approved: tax directive application' must be indicated in the subject field of the email.
- The FSB reference number must be indicated on the tax directive application form of funds approved on or after 1 April 2012 and the FSB approval letter must be included in the directive request.
- Applications reflecting the incorrect PAYE and FSB reference numbers will not be processed.

Cancellation of Income Tax approvals

- When funds apply for the cancellation of its registration and approval, the principal officer/auditor must submit a declaration confirming that the fund has no members, assets or liabilities and that the fund has no outstanding income tax liabilities.
- Cancellation of registration by the FSB will also serve as cancellation of approval.

1.5 Notice No. 8: Eskom Guaranteed Bonds

The Eskom guaranteed bonds, as set out in a schedule to the Notice, have been classified as debt instruments guaranteed by the Republic for purposes of Regulation 28 reporting.

1.6 Notice No. 9: Exemption From 25% Limit Per Bank: Table 1 of Regulation 28

Notice No. 9 replaces Notice No. 7 and sets out the circumstances where funds are exempt from complying with the 25% limit per bank set out in Regulation 28.

These circumstances are as follows:

- the appointment of a liquidator has been approved;
- the fund is exempt from Section 28 in terms of Section 28(17);
- a Section 14(1) transfer has been approved or a Section 14(8) transfer was effected;
- the fund received assets following a transfer;
- contributions have been deposited into the fund's bank account; and
- any benefits became payable (Notice No. 7 limited benefits to those payable to an unclaimed benefits fund or beneficiary fund).

The exemption is granted on condition that the contributions, benefits or transfers referred to above are invested, paid or effected within the periods set out in the Pension Funds Act and the fund rules.

Observation: Item 1.1 to Table 1 of Regulation 28 requires that a fund may not hold more than 25% of “Notes and coins; any balance or deposit in an account held with a South African bank”. This notice clarifies a technical point by exempting funds from this requirement (with retrospective effect) for the purposes of facilitating typical transactions such as when contributions or transfers are received or when section 14’s are processed or when a fund is liquidated. In such circumstances it does not make practical sense to operate four bank accounts.

1.7 ASISA Standard on Unclaimed Policy Benefits

The new ASISA Standard (effective 1 June 2013), lays down the requirements to be followed by insurers in respect of unclaimed insurance benefits (excluding pension benefits). This includes e.g.

- Start tracing within six months;
- Repeat tracing process within three years and again within 10 years;
- If still unclaimed after 10 years, use an external tracing agency (unless benefit is less than R1 000);
- While benefit is unclaimed, the insurer must invest the assets;
- Benefit may not revert to the insurer – if the benefit remains unclaimed after the above-mentioned process has been followed, it must be used for socially responsible initiatives; and
- Insurance policies should reflect the process to be followed in case of unclaimed benefits.

Observation: The recommended Simeka trustee protocol on the unpaid and unclaimed benefits follows similar principles. It requires that all benefits that are unpaid in circumstances where contact has been lost with the member, be paid into the member’s bank account (used for salary payments) within three months. This is done in an attempt to avoid benefits from becoming “unpaid”, especially those below R1000. The cost of tracing such members and making payment often exceeds the amount available.

1.8 Mr Jurgen Boyd

The FSB announced that the Minister of Finance has appointed Mr Jurgen Boyd as the Deputy Executive Officer: Collective Investment Schemes with effect from 01 January 2013. Mr Boyd will continue to fulfil the duties of the Deputy Registrar of Pension Funds under delegation from the Executive Officer, Mr Dube Tshidi, until such time that a Deputy Executive Officer: Pension Funds is appointed.

1.9 Adjudicator Moves Office

The Office of the Pension Funds Adjudicator (PFA) will be moving from Sandton to Ashlea Gardens, Pretoria in March 2013. The relocation of the PFA to Pretoria will place the office together with the FSB in a central campus, to allow for efficiency and one-stop assistance to stakeholders. The PFA’s new contact details as of March 2013 will be:

Tel: 012 346 1738
Fax: 086 693 7472
Postal Address: P.O. Box 580, MENLYN, 0063
Physical address: Riverwalk Office Park, 41 Matroosberg Road, Ashlea Gardens

2 Retirement Reform

National Treasury released four technical discussion papers for comment, between September and October 2012. The papers dealt with preservation, annuitisation, improving tax incentives for retirement savings and incentivising non-retirement savings. Our summaries and comments on these papers are available on the website. A fifth and keenly awaited paper on costs will be published next. While some of the issues raised are subject to further discussion and debate, (such as compulsory preservation and the future of provident funds) the implementation of many others can be announced in the 2013 Budget.

Observation: *The most likely announcement is the implementation of the new limits on deductible retirement fund contributions with effect from 1 March 2014.*

3 South African Revenue Services: Legislation and Circulars

3.1 Taxation Laws Amendment Act, 2012

The Act was promulgated on 1 February 2013. The main aspects that will impact on the employee benefits industry include the following:

- Non-deductible contributions are taken into account when calculating tax on lump sum retirement benefits. Similar relief is not provided when an annuity is purchased. As from 1 March 2014 non-deductible contributions will, firstly, be applied to any lump sum and the remainder, if any, will be applied to annuities. This is only applicable in respect of annuities payable by pension funds, pension preservation funds and retirement annuity funds.

Observation: *In our view this measure should also apply in respect of annuities payable by a provident fund and a provident preservation fund.*

- The definition of pension preservation fund has, with effect from 1 March 2012, been amended to allow a transfer from such a fund not only to another pension fund or pension preservation fund, but also to a retirement annuity fund.
- The definition of 'provident preservation fund' has, with effect from 1 March 2012, been amended to allow a transfer from such a fund not only to another provident fund or provident preservation fund, but also to a pension fund, pension preservation fund or retirement annuity fund.

- With effect from 1 March 2012 any amount that becomes payable by the Government Employees Pension Fund (GEPF) to a non-member spouse, in terms of section 7(8) of the Divorce Act, may be paid immediately and is taxable in the hands of the non-member. Both the member and non-member spouse will retain relief in respect of the part of the GEPF pension interest relating to pre-1998 years of service. Any section 7(8) divorce allocation that becomes payable on or after 1 March 2012 in respect of a divorce order, issued before 13 September 2007, will be free of tax. Government's intention with the aforementioned amendments is that members of the GEPF and other public sector funds must be placed on equal footing with private sector funds in tax terms.

4 Protection of Personal Information Bill

The Bill has not been passed into legislation yet. When this happens it will come into operation on a date determined by the President. The Bill makes provision for a one to three year implementation period.

Observation: *This act will introduce far-reaching changes to the way we do retirement fund administration. The matter is under investigation and we will workshop the requirements with clients in due course.*

With recognition to the major contribution and support by Anton Swanepoel of Sanlam Employee Benefits: Law Service.

The information and opinions provided herein are of a general nature and are not intended to address the circumstances of any particular member or fund. As the information and opinions are for information purposes only and do not constitute advice, no one should act upon such information or opinion without appropriate professional advice in respect of a particular situation.