

SIMEKA

# Retirement Fund Update

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## Financial Service Board (FSB): Legislation and circulars

### 1. The Financial Services Laws General Amendment Act, 2013

The changes to the Pension Funds Act contained in this Act were signed into law on 16 January 2014. The amendments, (save for one section) will, however, only come into effect on a date/s announced by the Minister of Finance by the gazette. In January this year, we discussed these changes in more detail.

**Observation:** *We have had a number of enquiries as to the meaning of the phrases like “signed into law”, “assented to”, “promulgated”, “gazette”, “effective” and so on. In this instance, the Bill was worded in such a way that it would become an Act of Parliament on the date it is signed by the State President. Interesting thought, with the exception of one section, none of these provisions have become effective yet. In terms of the Act this will only happen if and on a date/s to be announce in the gazette.*

*In December last year we reported that the Taxation Laws Amendment Act 2013 was assented to by the State President on 12 March 2013. In this instance the Bill also became an Act of Parliament on the date it was signed by the State President, but in terms of the Act, most of the relevant operating provisions such as T-day will only become effective 1 March 2015.*

### 2. Information Circular 6/2013: Submission of prescribed annual returns

The implementation of revised annual financial statements prescribed in Directive 7 has been postponed and will only apply in respect of annual financial year-ends after 1 January 2014.

**Observation:** *This information circular did not follow the usual communication path and caught many by surprise.*

### 3. Information Circular 7/2013: Street name rule change

Retirement funds have been exempted from the Registrar’s prescribed fee for a rule amendment, where only the registered address of the fund has to be amended as a result of a street name change.

### 4. Rand amount contributions

In a letter dated 3 October 2013 to the Institute of Retirement Funds, the South African Revenue Service (SARS) advised that the rules of pension and provident funds can only be approved if contributions are expressed as a percentage of an employee’s remuneration. SARS has reviewed this decision and decided that it will be acceptable for funds to provide for either rand amount of

percentage based contributions.

## 5. Assistance policies

The maximum amount that may be insured under an assistance policy has been increased from R18 000 to R30 000 with effect from 11 November 2013.

**Observation:** *This will mean that funeral policies which are sold under the license category may increase the level of cover to R30 000.*

## 6. Notifications of section 13A contraventions

In a letter to funds and administrators dated 11 November 2013, the Registrar advised that contraventions of section 13A of the Pension Funds Act (regarding payment of contributions) can in future be reported to the Registrar on [www.fsb.co.za](http://www.fsb.co.za) online system.

**Observation:** *In our January 2014 commentary on the Financial Services Laws General Amendment Act, 2013 we discussed the criminalisation of the non-payment of retirement fund contributions in more detail.*

## 7. BN 270/2013: Assumptions for determination of MIR of DB members

The Board Notice sets out the method and assumptions that defined benefit funds should use when calculating a member's Minimum Individual Reserve (MIR). This replaces the previous Board Notice 37 of 2007 with effect from 20 December 2013.

The Financial Services Board introduced minor changes to the method and assumptions to be used when calculating the MIR. The new Board Notice makes it clear that the board of each fund is responsible for the calculation of the prescribed minimum benefits, although it may take advice from a person with the appropriate expertise to perform the calculations. The board must also choose the actuarial methods and assumptions which are not prescribed in the new Board Notice (e.g. the post-retirement discount rate, allowance for pension increases and the post-retirement mortality rate.)

The Board Notice requires that the board choose between two methods to determine the pre-retirement discount rate for the MIR calculations. The method may be changed from any method previously selected, with the consent of the Registrar.

The first method ("index linked gilt method") depends on the yield available on long-dated government bonds. Previously the FSB specified the use of the yield on long-dated index linked gilt yields (with a term to maturity of 10 years or more), weighted according to the amount of

bonds in issue. This has now been amended to the 10 year rate on the real government zero yield curve. The pre-retirement discount rate is then set as the relevant yield plus 0.05% per annum.

The second method (“earnings yield method”) remains unchanged. The discount rate is set as 40% of the earnings yield on the JSE All-Share Index as last published by the JSE.

**Observation:** *When a member of a defined benefit (DB) fund leaves the fund (e.g. through resignation or transfer to another fund) on or after the surplus apportionment date, the MIR sets the minimum amount a member should receive as a benefit from the fund. Section 14B of the Act specifies that the Registrar may determine the assumptions to be used in the calculation of the MIR.*

*The changes to the derivation of the pre-retirement discount rate is unlikely to have much of an effect on most DB funds, as most use the second method which remains unchanged. Even for those clients using the first method, the impact of the change in assumptions is likely to be small.*

## 8. Information Circular 1/2014: Late submission of valuation reports

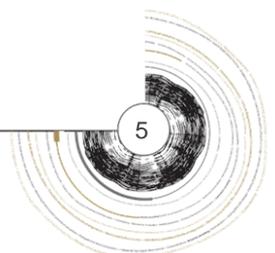
Funds that are not valuation exempt must submit a statutory valuation report within 12 months of the valuation date. The Registrar gave notice of its intention to impose administrative penalties (of up to R1 000 a day) with effect from 1 July 2014 for the late submission of statutory actuarial valuation reports by the funds. The penalty will be calculated from the date of a fund’s failure to timeously submit its statutory valuation report.

No penalties will be imposed if funds submit their outstanding statutory actuarial valuation reports to the Registrar’s office on or before 30 June 2014, or within the time period specified where an extension was granted.

**Observation:** *Simeka’s actuarial team has taken measures to ensure that an application will be made for an extension in respect of those funds where all data may not be available for the valuation to be submitted timeously.*

## 9. Information Circular 2 of 2014: Withdrawal all existing valuation exemptions

The information circular discusses a draft notice in terms of which the FSB intends to withdraw all exiting valuation exemptions and reinstate the three year application period, subject to new requirements. The new requirements are primarily that umbrella funds may not be valuation exempt and that in-fund living annuities will be allowed in defined contribution (DC) funds if the liability of the fund in respect of such living annuities is limited to the amount available in the fund at the date of the members’ retirement and at any point thereafter.



The measure will be rolled out as follows:

- Funds' valuation exemptions will be withdrawn (where applicable) with effect from the end of the financial year, three years from the effective date of the current valuation exemption.
- During this time the fund must (still) notify the Registrar if in the opinion of its board, principal officer, chairperson, auditor, administrator or any other person acting in an advisory capacity, the fund no longer complies with any of the conditions in paragraph 3, or a fund submits a rule amendment which would cause the fund to no longer qualify.
- The registrar may in future grant a three-year valuation exemption to a fund if all the following conditions are complied with:
  - a. The fund is not an umbrella fund
  - b. All pension payments are fully secured by an annuity policy and/or the fund, in terms of its rules, provides and fully secures living annuities for its members upon retirement and the liability of the fund in respect of such living annuities are limited to the amount available in the fund at the date of the members' retirement and at any point thereafter
  - c. All members (other than pensioners) are in DC categories
  - d. Where any benefit payable to a member exceeds the value of the member's individual account, the excess is fully insured with one or more registered insurers
  - e. A contingency reserve account (other than a processing error reserve account), could never have a negative balance
  - f. The fund complied with the provisions of section 15B of the PFA (surplus distribution)
  - g. Unless the fund was valuation exempt subsequent to its surplus apportionment date, the statutory actuarial valuation following such valuation as at its surplus apportionment date, has been accepted by the Registrar.

**Observation:** *We will consider and discuss the implications and will provide comment to the FSB. We would also like to use this opportunity to try and ensure that the speed and efficiency of the section 14 procedures are improved, not compromised. The big investigation of course will be on the value that will be added to umbrella funds if they are required to be valued every three years (i.e. a cost vs benefit analysis will have to be done) and how that will fit into the regulatory framework.*

## South African Reserve Services: Legislation and circulars

### 10. Taxation Laws Amendment Act, 2013

The Taxation Laws Amendment Act, 2013 was assented to by the State President on 12 December 2013. Most of the operating provisions such as T-day will only become effective on 1 March 2015.

**Observation:** *We commented on this Act in a separate document in December 2013.*

### 11. Protection of Personal Information Act, No 4 of 2013

This Act has, after many years of deliberation, was gazetted on 26 November 2013 (Government Gazette no.37067). The Act aims to:

- Promote the protection of personal information processed by public and private bodies
- Introduce certain conditions, so as to establish minimum requirements for the processing of personal information
- Provide for the establishment of an information regulator to exercise certain powers and to perform certain duties and functions in terms of this Act and the Promotion of Access to Information Act, 2000
- Provide for the issuing of codes of conduct
- Provide for the rights of persons regarding unsolicited electronic communications and automated decision making
- Regulate the flow of personal information across the borders of the Republic of South Africa
- Provide for matters connected therewith.

**Observation:** *The Act comes into operation on a date to be determined by the State President in the Government Gazette. There will be a transitional period of one year from commencement of the Act where after all processing of personal information must conform to the Act.*

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

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