

Retirement Fund Update

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Financial Service Board (FSB): Legislation and circulars

1. New requirements for valuation exemption

The Registrar of Pension Funds published Board Notice 59 of 2014 in the Government Gazette of 6 June 2014 after considering comments received from the retirement fund industry on draft versions of the new Board Notice. The Board Notice, called the Notice on Valuation Exemption, 2014, contains the new requirements for valuation exemption and replaces Board Notice 61 of 2011 with effect from 6 June 2014.

In terms of the previous requirements contained in Board Notice 61 of 2011, the Registrar was empowered to grant valuation exemption to funds that applied indefinitely. In terms of the new requirements, valuation exemptions will apply for a maximum period of three years.

Proposed new conditions - The proposed new conditions would be as follows (the annexures referred to are annexures to the draft Board Notice, and "PFA" means the Pension Funds Act):

"2. Format and submission

2.1 A fund may apply for valuation exemption and must submit to the Registrar, at least once in every three years, an application made in the prescribed format which consists of the following:

- (a) a duly signed statement by the board of the fund, as set out in Annexure A, whereby the fund applies for valuation exemption; and
- (b) a duly completed certificate by a valuator, stating the date from which the valuation exemption is required, which date must coincide with the fund's financial year end or anniversary, in the format prescribed in Annexure B. Where a fund subject to valuation is applying for valuation exemption, the certificate must be completed by the valuator appointed to the fund. In instances where a fund is applying for the renewal of valuation exemption, any valuator can complete the certificate.

2.2 The submission to the registrar must be made electronically on the official web site (www.fsb.co.za) in portable document format (PDF).

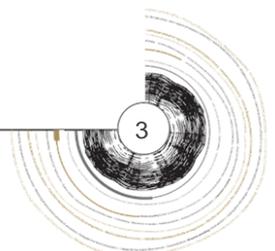
2.3 The above-mentioned documents must be submitted together as one application.

3. Conditions for valuation exemption

The registrar may grant valuation exemption to a fund, commencing on a fund's financial year-end or anniversary ("the effective date") and for a period not exceeding three years, provided that it complies with all of the following conditions:

- (a) At the effective date, A equals or exceeds B, where:

A is the fair value of the assets of the fund less any credit balances in the member and employer surplus accounts; and



B is the sum of the values of the amounts standing to the credit of all the accounts held for individual members, whether contributory or paid-up, plus the value of any other liabilities plus the amounts standing to the credit of any investment reserve account set up to facilitate the smoothing of fund return credited to member accounts and such contingency reserve accounts which are established or which the board deems prudent to establish;

- (b) All existing pension payments and any future pension that becomes payable in terms of the rules of the fund are fully secured by one or more annuity policies purchased from one or more registered long-term insurers; and/or the fund, in terms of its rules, provides and fully secures living annuities for its members upon retirement in terms of which the liability of the fund in respect of such members is limited to the amount available per member in the fund at the date of the members' retirement and at any point thereafter;*
- (c) All members of the fund, other than pensioners, belong to defined contribution categories of the fund;*
- (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) Where the fund has a contingency reserve account in terms of the rules of the fund, other than a processing error reserve account, the rules provide that such reserve account could never have a negative balance;*
- (f) The fund complied with the provisions of section 15B of the PFA in that: either a surplus apportionment scheme has been approved; a nil return has been noted; or the fund is not required to make a submission in terms of section 15B; and*
- (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 welcome the fact that in-fund living annuities will in future be allowed in valuation exempt defined contribution funds.*

“4. Withdrawal of valuation exemption

4.1 For each fund that is valuation exempt at the date of publication of this notice, the date on which the valuation exemption for a fund will terminate ('the exemption termination date'), as shown in Annexure C, has been determined as follows:

4.1.1 If a date on which the valuation exemption would expire was specified by the registrar in writing, that will be the fund's exemption termination date; and

4.1.2 If valuation exemption was granted to a fund and no expiration date was specified by the registrar, the exemption termination date will be the date, following 1 January 2015, on which will expire the earliest of the period of three, six, nine or twelve years since the effective date from which the exemption was granted, provided that, if, after the valuation exemption was granted, the date on which the fund's

financial year end falls each year was amended in terms of its rules, the exemption termination date will be the fund's financial year end immediately before what would otherwise have been its exemption termination date, or, if that date has already passed, its next financial year end.”

As a consequence of the Registrar withdrawing a valuation exemption:

- the valuation exemption granted to the fund will cease on the date it is withdrawn;
- the fund must, within 90 days from the date of the Registrar's withdrawal of the valuation exemption, appoint a valuator in terms of section 9A of the PFA; and
- the fund must submit a statutory actuarial valuation report in terms of section 16 of the PFA as at the date of the fund's financial year end following the withdrawal of such exemption.

Observation: *The final Board Notice is generally considered an improvement on the draft versions thereof, reported on previously. According to the last draft version, the board in Annexure A had to state that it has obtained the opinion of an expert who has certified that the fund is properly administered in terms of its rules and that there is no need for contingency reserve accounts to allow for contingencies resulting from the fund not being administered properly in terms of its rules. In terms of the final Board Notice the Board itself must merely confirm proper administration of the fund in terms of the rules.*

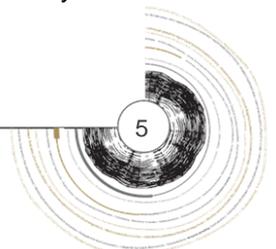
2. 2012 Annual report of Registrar of Pension Funds

The 2012 annual report of the Registrar is now available on www.fsb.co.za/Departments/retirementFund.

The following issues are currently being focused on by the Retirement Funds Division:

- The alignment of pensions regulation and supervision with the Treating Customers Fairly (TCF) principles.
- Consulting with the National Treasury about amendments to the Pension Funds Act.
- Revised conditions for benefit administrators, such as the introduction of capital adequacy requirements; increased liquidity requirements; quarterly reporting; and an analysis of audited financial statements.
- Good governance, by incorporating principles of King III and the Code for Responsible Investing in South Africa (CRISA).
- Prescribing minimum requirements that must be provided for in retirement fund rules.
- The introduction of prescribed quarterly returns for large funds.
- A revision of the annual financial statements of funds, as well as revision of the accounting framework.
- The introduction of a supervisory framework, specifically for the supervision of beneficiary and unclaimed benefit funds.

Most of these issues have not been finalised yet.



Supervisory issues

The following significant supervisory issues were identified from compliance visits by the Registrar to some funds and fund administrators:

- Boards of trustees of the funds were not properly constituted as required in terms of section 7A of the Pension Funds Act and the funds' rules. The Registrar directed that the funds had to ensure that the boards were properly constituted within 90 days, in accordance with the Act and the funds' rules. Where funds did not comply with the instruction, the Registrar exercised his powers in terms of section 26(2) of the Act and appointed board members to the funds.
- Boards of trustees and administrators failed to enter into written administration agreements prior to the commencement of administration.
- Those responsible for monitoring compliance with the law relating to the payment of contributions to funds did not fulfil their duties in terms of Regulation 33 of the Act.
- Delays in payment of benefits, due to the termination of an administration agreement.
- Rebuilding of members' data, due to maladministration by the previous administrator.
- Fund documentation was in the name of more than one fund.
- Rules did not specify the number of trustees.
- Rules were silent regarding the remuneration of the principal officer and independent trustees.
- A section 7B exemption expired without a request for extension being submitted.
- The administration system of an administrator could not calculate late payment interest.
- Abuse by trustees of remuneration per meeting attended.
- Three administrators failed to comply with the prescribed current assets and liquidity requirements and these administrators were referred to the Enforcement Committee. Administrative penalties of R10 000 per administrator were imposed.

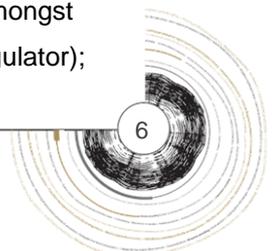
3. Compensation for Occupational Injuries and Diseases Act, 1993

The Minister of Labour prescribed the amount of R332 479 per annum as the maximum amount of earnings on which the assessment of an employer will be calculated in terms of the Act from 1 April 2014.

4. Commencement of certain sections of the POPIA

This Act was gazetted on 26 November 2013 (Government Gazette no.37067). In terms of a proclamation on 11 April 2014, the following sections of the Protection of Personal Information Act (POPIA) commenced with effect from that date:

- section 1 (the definitions section);
- part A of Chapter 5 (regarding the office of the Information Regulator including, amongst others, the establishment and powers, duties and functions of the Information Regulator);
- and



- sections 112 and 113 (regarding the regulations that may be made under POPIA, and the procedure for making those regulations).

Observation: *The remaining sections of POPIA will only commence on a date still to be determined by the President. The expectation that was created is that there will be a transitional period of one year from commencement of the Act; thereafter all processing of personal information must conform to the Act.*

5. Divorce orders:

Recent determinations by the Pension Funds Adjudicator (PFA) demonstrated an increasingly strict interpretation of the provisions of section 7(8) of the Divorce Act, read with section 37D(4) of the Pension Funds Act.

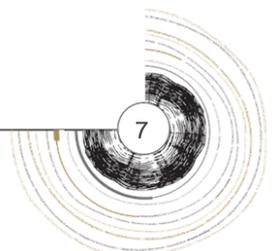
Bowyer vs Personal Portfolio Preservation Provident Fund

In this case the PFA held that a fund cannot make payment to a non-member spouse if the divorce order does not expressly order it to make such payment. It is not enough for the divorce order to contain an order that the fund's records to be endorsed. This is because section 7(8)(a)(i) of the Divorce Act expressly requires the relevant fund to be ordered to make payment to the non-member spouse.

Van Niekerk vs SACCAWU National Provident Fund

In this case the complainant merely disputed the amount that had been paid to the ex-spouse and argued that it should be a lesser amount. The PFA did not address the subject of the complaint. Instead, the PFA held that the divorce order fell short of the provisions of section 7(8) of the Divorce Act, read with section 37D(4) of the Pension Funds Act. The result is that the order is only binding between the parties and is not enforceable against the fund. The PFA ordered the fund to credit the complainant's investment account with the full amount that had been paid to the ex-spouse, along with interest thereon.

These strict interpretations of the law increase the risks for fund trustees. If the fund / the trustees are not able to recover the monies paid in error, they will have to make good any losses suffered by the fund. A claim against the fund's PI insurance policy should be successful.



These strict interpretations also increase the risks for member and non-member spouses who are parties to a divorce. To assist members and their lawyers to comply with the requirements of section 7(8) of the Divorce Act, read with section 37D(4) of the Pension Funds Act, we revised our member information brochure on divorce and added a master divorce order.

With recognition to the major contributions by
Anton Swanepoel and Jeanri de Souza of Sanlam Employee Benefits: Law Services

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