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Retirement Fund Update Quarter 3 of 2017

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1. Financial Sector Regulation Act | Implementation of Twin Peaks

The Financial Sector Regulation Act, 9 of 2017 was signed by the State President on 21 August 2017. The Act provides for the Minister of Finance to determine the commencement date of the Act by notice in the Government Gazette (“Commencement Notice”). It is anticipated that different sections of the Act will come into effect on different dates, to coincide with the establishment of the following two separate regulators:

- The Prudential Authority (PA) within the South African Reserve Bank to oversee the safety and soundness of financial institutions; and
- The Financial Sector Conduct Authority (FSCA) which will replace the Financial Services Board and will be responsible for matters relating to market conduct and aimed at ensuring that financial customers are treated fairly by financial institutions.

It is expected that the authorities will be established in early 2018.

The Act also provides for regulations to be issued to facilitate transitional arrangements for the existing regulatory bodies into the FSCA and PA. Draft regulations to this effect will be published along with the Commencement Notice for public consultation.

The Act aims to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with other financial sector laws, a regulatory and supervisory framework that promotes the following:

- Financial stability;
- The safety and soundness of financial institutions;
- The fair treatment and protection of financial customers;
- The efficiency and integrity of the financial system;
- The prevention of financial crime;
- Financial inclusion;
- Transformation of the financial sector; and
- Confidence in the financial system.

The Act amends various financial sector laws in order to take account of the new dispensation. For example, in the Pension Funds Act all references to the Registrar of Pension Funds or the Financial Services Board must be read as a reference to the Financial Sector Conduct Authority.

Observation: *One particular amendment of the Pension Funds Act is of significance: The Pension Funds Adjudicator must in dealing with complaints “apply, where appropriate, principles of equity” and “have regard to the contractual arrangement or other legal relationship between the complainant and any financial institution”. This will align the Pension Funds Adjudicator with the Ombudsman for Long-term Insurance, who already has a so-called equity jurisdiction.*



2. Retirement Funds Default Regulations

The default regulations were discussed in a Simeka Comment of September 2017. A link is provided in the covering email.

The default regulations will become effective in 18 months' time on 1 March 2019 in respect of existing funds. The devil may as usual be in the detail, but we must applaud the positive and pragmatic way in which National Treasury has responded to industry concerns.

Observation: *The default regulations will require all pension and provident funds to establish default investment and preservation strategies that would be appropriate for their members. All pension funds and most provident funds, specifically where the rules allow members to purchase a compulsory annuity, will also need to establish an annuitisation strategy.*

The regulations seek to ensure that retirement savings are invested with clear retirement objectives in a prudent and cost-effective manner and that they enjoy the strategic advantages and the economies of scale that a group arrangement offers. It also re-emphasises that boards of retirement funds have the responsibility to secure and protect the interests and investments of fund members during and post the accumulation stage.

3. FSB Levies

The Financial Services Board levies for the period from 1 April 2017 to 31 March 2018 were announced in Board Notice 458 of 2017. The levy for a preservation fund and commercial umbrella fund (i.e. a fund for the benefit of employees of various employers which are not subsidiaries of a single holding company) will in future be calculated on a different basis as in the past, as indicated below.

The levies relevant for the employee benefits industry are as follows:

3.1. Levy on retirement funds

- a) The levy on any registered retirement fund (excluding retirement annuity funds, preservation funds and commercial umbrella funds) is the lesser of:
 - R1 138, plus an additional amount of R13,46 per member of the fund and in respect of every other person who receives regular periodic payments from the fund (excluding any member or person whose benefit remained unclaimed and beneficiaries); or
 - R2 607 564.
- b) The levy on any preservation fund and commercial umbrella fund is R1 138 plus R13,46 per member and every other person who receives regular periodic payments from the fund (excluding any member or person whose benefit remained unclaimed and beneficiaries).



Observation: *The levy in respect of standalone funds is therefore capped at a maximum of R2 607 564. A preservation or commercial umbrella fund with more than 193 642 members will however be liable to pay in respect of all additional members.*

3.2. Levy on fund administrators

Such levy is R7 264,44 plus an additional amount of R566,31 per fund referred to in 3.1 that is under the administration of the administrator, as well as an amount of R0,69 per member and in respect of every other person who receives regular periodic payments from the fund (excluding any member or person whose benefit in the fund remained unclaimed or a beneficiary in a beneficiary fund).

3.3. Levy for Pension Funds Adjudicator

The levy for any registered retirement fund is R5,51 per member and any other person who receives regular periodic payments from such fund (excluding any member or person whose benefit in the fund remained unclaimed).

Observation: *These rates are adjusted every year to align with inflationary and other pressures. The good news is that the increases this year is well below inflation .*

4. Information Circular 2/2017: Cancellation of Registration / Termination of Participation

This information circular provides clarity on the requirements for the cancellation of the registration of a fund in terms of Section 27(1) of the Pension Funds Act, 1956 ('the Act') and for the termination of participation of an employer in an umbrella fund.

The pre-requisite for a "fund or participation" to have ceased to exist is that there are:

- No assets;
- No liabilities or members or;
- No pending litigation against it.

The Registrar will, on application, make a decision to terminate once it is satisfied that all the requirements have been met.



4.1. Fund ceased to exist

Application is expected to be made by the board, the administrator or the employer. A fund may cease to exist where -

- a) **Section 14:** Where an approved Section 14 transfer has been effected leaving the transferor fund without any assets, liabilities and members;
- b) **Exemption from Section 28:** Where a fund has been wound-up in compliance with all the requirements and conditions of the exemption;
- c) **Exit of the last member:** Where a fund ceases to exist due to members receiving their benefits from the fund and the fund having no remaining assets, liabilities and members or any pending litigation against it;
- d) **A fund was registered but never commenced business as a fund:** In circumstances not amounting to fraud.

The information as set out in Annexure A must be included in the application.

4.2. Termination of the participation of an employer in an umbrella fund

A participating employer's participation in an umbrella fund may terminate in the same four circumstances as set out above.

An umbrella fund must provide the information in Annexure B.

The board of the umbrella fund should, in addition:

- inform the Registrar of the termination of the participation of the employer within 60 days; and
- where applicable, submit a rule amendment to the special rules of the fund which records the termination of participation in the fund of the participating employer.

4.3. Publication of a notice of the intention to cancel the registration

The Registrar will publish a notice of the intention to cancel the registration of a fund on the Financial Services Board website for a period of 30 days.

During this period any person aggrieved by the intended cancellation of registration of the fund may submit an objection to the proposed cancellation, which the Registrar will consider and thereafter make a decision as to whether to proceed with the cancellation of the fund's registration. The aggrieved person/s will be informed of the Registrar's decision.



4.4. Effective date

Applications already submitted to the Registrar will continue to be processed. However, where there is a need for additional information to satisfy the Registrar that the fund has ceased to exist or that an employer has ceased participation in an umbrella fund, this must be provided.

All applications made after 6 July 2017 should comply with the requirements set out herein.

Applications must be submitted electronically to the Registrar on the Retirement Funds' On-line System.

***Observation:** We welcome the clarity and structure provided by this circular. Some of the time frames are on the tight side and the new procedures will require more work but they will provide an appropriate audit trail for the benefit of all stakeholders.*

5. Information Circular 3/2017: Appointment of Trustees by the Registrar in terms of Section 26(2)

In this circular, dated 6 July 2017, the Registrar unpacks the duties of a Section 26(2) trustee. This section empowers the registrar to establish a functional board in circumstances, where one is not properly constituted. As such, a Section 26(2) trustee will have to comply with Section 7D and all the other common law duties.

In the Circular, 15 examples of duties are provided for clarity.

These include, among others:

- Constituting a board in terms of the rules of the fund;
- Management of the fund;
- Ensuring compliance with applicable laws;
- Submitting rule amendments to the Registrar for approval;
- The approval and submission of outstanding annual financial statements and actuarial valuations;
- Collection of outstanding contributions;
- Paying benefits;
- If a valid board cannot be established, apply to the Registrar for the approval of a liquidator or the cancellation of the fund, as the case may be.

Section 26(2) trustees must perform the duties determined in their appointment letters, which may be supplemented or altered at the discretion of the Registrar.

***Observation:** This circular will assist the FSB (and all stakeholders) to deal more effectively with problematic funds and appoint one or more persons to restore order.*



6. Information Circular 4/2017: Conditions for the temporary exemption from Section 14 transfer periods

Changes to the Schedules of the Income Tax Act from 1 April 2017 resulted in a requirement that a tax directive be obtained in respect of each member involved in a Section 14 transfer. This has caused delays, as a result of which funds are not able to transfer the benefits within 60 days (90 iro Section 14(8) transfers) of registration of the transaction.

New applications

All new application must only be submitted if the fund has sufficient information to be able to obtain a tax directive and funds must provide certification to that effect.

Applications submitted before 6 July 2017

Applications submitted before 6 July 2017 will be subject to an automatic exemption provided that payment is made no later than 1 August 2017 and that fund return is added to the final transfers. This applies in respect of both Section 14(1) and 14(8) transfers.

Submitted but not approved

Where a fund has submitted an application but it has not been approved by 6 July 2017, it is required to assess the position and where necessary submit a revised application on the same number to section14@fsb.co.za

Application to withdraw or revise

If the application is approved before the revised draft has been received, the PO can, before 1 August 2017, submit an application to withdraw or revise in terms of Section 14(6)(2).

Observation: SARS amended the Income Tax Act and introduced measure to help combat fraud and provide them with more detailed and more current member data. While we support the principle, we are of the view that it is not appropriate to hold Section 14 transfers back until individual members have cleared their tax issues with SARS or performed duties and requirements that are entirely outside the control of the board of trustees. The unintended consequences include the cost of administering and maintaining two funds for extended periods of time and the possibility of entering a fresh financial year in respect of which an audit etc. has to be done that has not been budgeted for.



7. Unclaimed Retirement Benefit Search Engine

The Registrar of Pension Funds on 16 August 2017 advised that the Unclaimed Retirement Benefit Search Engine is available on the FSB website via the following link:

http://www.fsb.co.za/Magic94Scripts/mgrqispi94.dll?APPNAME=Web&PRGNAME=UB_Partial_Search

According to an explanatory document, the search process will be as follows:

- An enquirer will be provided with a unique reference number for each enquiry logged through the FSB search engine. This reference number must be used for future correspondence or enquiries regarding the specific case with the FSB.
- The search engine will establish if there is a possible match on each of the search criteria provided.
- If a possible matching record(s) is identified, the enquirer will be provided with the name(s) and contact details of the administrator and/ or fund(s). A message will also be e-mailed to the administrator/ unclaimed benefits contact person informing them of the possible match and provide them with contact details as furnished by the enquirer.
- Once the enquirer has been provided with the contact detail, he/she will be required to contact the fund / administrator directly and then follow the normal claims process of a fund to lodge a valid claim.
- If there is no matching record(s), the enquirer will be notified that no match could be found on the unclaimed benefits search engine.

Observation: *Registered administrators, such as Sanlam, agreed to help update the FSB's unclaimed benefit database on a regular basis. We encourage members to make use of the search engine to identify benefits that may be payable to them. An enquiry regarding a possible unclaimed benefit can also be made to the following FSB toll-free numbers: 0800 110 443 or 0800 202 087.*

8. Draft Taxation Laws Amendment Bill, 2017

The main provisions of the draft Bill affecting retirement funds were discussed in a Simeka comment of July 2017. A link is provided in the covering email.

Observation: *It appears that National Treasury is prepared to relax their requirements on one important provision in the Bill – the portability of fund benefits after retirement. We requested National Treasury to allow phased retirees to transfer to any other retirement fund including a preservation fund. It would make sense for a member of a fund with a restrictive or costly benefit structure, to be able to transfer to another fund with a more attractive or cost effective offering.*



The draft Bill however only made provision for a transfer of post-retirement benefits to a retirement annuity fund.

However, in their subsequent response to industry comments, NT agreed to allow these members to transfer to preservation funds as well. Although preservation funds are typically retail in nature, there are exceptions that are institutionally priced. This relaxation will allow these members to transfer to a more compelling solution, where required, and will also allow them to consolidate any benefits they may have in other funds, after retirement date, in a preservation fund.

9. Minister of Finance Budget Vote Speech

The Minister of Finance, Mr Gigaba, gave his Budget Vote Speech on 23 May 2017. As regards the financial sector, he stated the following:

“The financial sector plays a critical role in our country, but this must be enhanced to achieve the aspirations of all South Africans.

The Joint Standing Committees on Finance and Trade and Industry have had a number of hearings on the transformation of the financial sector.

Coming out of those hearings the following stands out:

- *We need to reinvigorate the Financial Sector Charter to ensure all South Africans participate fully in the ownership, management, supply and take-up of financial services;*
- *Transforming the financial sector to serve South Africa better is key, including supporting SMEs and ensuring that financial institutions procure from SMEs and emerging businesses;*
- *Increased attention must be given to mutual based organisations that provide financial services like stokvels, burial societies and cooperatives, to build these into credible competitors to the highly concentrated banking and insurance sectors;*
- *Good conduct practices and financial inclusion result in a financial sector that helps South Africans to save for university and retirement, buy a home, make and receive payments and insure against theft and other losses.*

National Treasury will continue to support our parliamentary process in developing a comprehensive plan that sees our financial sector fully reflect South Africa’s demographics.

It is well established that a well-regulated and resilient financial system is a key foundation of any economy, and reduces the likelihood of claims on tax-payer funds to bail out failing banks and other financial institutions during times of crisis.”



Observation: *The message from the Minister of Finance is clear: “Transforming the financial sector to serve South Africa better is key ...”*

At present, compliance with the Financial Sector Charter is voluntary for retirement funds. The two aspects that funds are encouraged to comply with is procurement and ensuring that the board of trustees are representative of its membership.

Some commentators are concerned that one of the ways the financial sector may be required to serve South Africa better is to help provide investment and funding of Government owned enterprises in the context of SA’s credit rating.

10.BGR Number 31: Interest on late payment of benefits

SARS published a revised version of Binding General Ruling (BGR) number 31 on 23 May 2017 to replace the 2016 version.

This BGR provides clarity on when an amount constitutes interest, as opposed to forming party of the lump sum retirement fund benefit. The BGR states that:

- Interest on the late payment of benefits is any interest that is defined, as such, in terms of the rules of the fund.
- Any interest that increases a fund's benefit liability does not form a separate component from the benefit that is payable to the member and will be subject to tax in terms of the Second Schedule to the Income Tax Act.
- The full amount transferred (including fund growth) from one fund to another is considered to be a lump sum benefit and will be subject to tax in terms of the Second Schedule.
- Interest that arises as a result of the late payment of the benefit and therefore in addition to the benefit liability must be reflected separately and an IT3(b) certificate must be issued and submitted to SARS as per the prescribed processes.

Observation: *The arrangement is a pragmatic one. If a member’s retirement benefit is R1 000 000 on 1 October but the amount grew to R1 000 100 by the end of that month when it is paid / transferred, the latter amount will be treated as the benefit payable for the purposes of the retirement fund tax table. If the rules however identifies any growth on the benefit as late payment interest, then it must be reflected separately and an IT3(b) certificate must be issued.*



11. Demarcation regulations (medical scheme business vs. insurance business)

The FSB published a “Frequently asked questions” (F&Q) document relating to the Demarcation Regulations issued in terms of the Long-term Insurance Act and the Short-term Insurance Act, which came into effect on 1 April 2017. The Regulations “seek to clearly demarcate the responsibility for supervision of medical schemes and health insurance products, and ensure that health insurance products do not undermine the social solidarity principles inherent in medical schemes, resulting in better protection for consumers.”

The (F&Q) document among others, states the following:

“The demarcation regulations identify the types of contracts that, despite the contracts meeting the definition of business of a medical scheme, are health policies or accident and health policies that are subject to the jurisdiction of the Long-term Insurance Act (LTIA) or the Short-term Insurance Act (STIA) and not the MSA.” (MSA refers to the Medical Schemes Act)

Observation: *In short, the demarcation regulations stipulate that an insurance policy may not defray expenditure incurred in connection with the rendering of a health service, and may only provide lump sum benefits unrelated to expenditure. A health policy or accident policy must further fall within one of the categories listed in the regulations.*

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