



Retirement Matters

1/2023

Taxation Laws Amendment Act

The Taxation Laws Amendment Act of 2022 has been promulgated on 5 January 2023. The provisions of the draft legislation were summarised in [Retirement Matters 4/2022](#).

The draft was accepted as such, except for the following:

- **Transfer of total interest in a retirement annuity fund**

The value of the contract(s) being transferred to another retirement annuity fund should be more than R371 250 (the draft proposed R495 000). If the individual is not transferring all existing contracts, the total value of the remaining contracts should be more than R371 250 (draft proposed R495 000).

- **Protection of vested rights when transferring to a public sector fund**

Historic vested rights will remain protected, even if transferred to a public sector fund, irrespective of the date on which such transfer is effected. The proposed amendment will be deemed to have come into operation on 1 March 2023 and not 1 March 2021 as proposed in the draft legislation.

Cybersecurity and Cyber Resilience

The Financial Sector Conduct Authority (FSCA) and the Prudential Authority published a revised draft Joint Standard: Cybersecurity and Cyber Resilience Requirements for further consultation on 14 December 2022.

The draft Joint Standard sets out the minimum requirements and principles for sound practices and processes of cybersecurity and cyber resilience for categories of specified financial institutions, which include insurers, administrators, and retirement funds. It seeks to ensure that these financial institutions implement processes, and have tools and technology, which will prepare them for cyber-attacks. It addresses requirements relating to governance, cybersecurity strategy and framework, cyber resilience fundamentals, cybersecurity hygiene practices, as well as notification and regulatory reporting related thereto.

It is stated in the draft Joint Standard that it will be the responsibility of the governing body of a financial institution to ensure that the financial institution meets the requirements set out in the Joint Standard on a continual basis.

The Regulator has agreed that financial institutions will be provided with 12 months after the publication date within which to implement the requirements of the Joint Standard.

The draft Joint Standard is open for comments until 28 February 2023.

Financial Sector and Deposit Insurance Levies Act

The Financial Sector and Deposit Insurance Levies Act 11 of 2022 ("the Levies Act") was published on 9 December 2022.

The Levies Act provides for the imposition of levies on supervised entities to fund the Prudential Authority, the FSCA, the Financial Services Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator and the Ombud for Financial Services Providers. The levy year is the period from 1 April in each year to 31 March the following year.

In addition, a supervised entity that is a licensed financial institution, which includes a retirement fund, must pay a special levy in respect of the first two levy years immediately following the date of the coming into operation of the Levies Act. The special levy is payable to the FSCA and is 7.5% of the amount of the levy payable by that supervised entity as set out in the applicable schedules to the Act.

Interest may be charged on the outstanding levy and such interest is payable to the FSCA.

The Levies Act will come into effect on a date to be determined by the Minister and replaces any current levies regulation.

Section 14 transfers submission process

The FSCA on 23 January 2023 published FSCA Communication 1 of 2023, setting out the enhancement to the online submission process of section 14 transfer applications. The following were listed as mandatory documents and requirements for an application:

- (a) Cover letter;
- (b) Prescribed transfer application forms;
- (c) Member communication (if applicable);
- (d) Trustee registers;

- (e) For a full transfer, the submission of the transferor fund's valuation reports must be up to date;
- (f) The status of the funds must still be active;
- (g) The status of the participating employer must be active.

The changes to the online submission system will be effective from 1 February 2023.

In a webinar held on 30 January 2023, the FSCA advised that the backlog of section 14 approvals is almost cleared, as new personnel were appointed, and the system streamlined. The FSCA will not consider any new section 14 application from 1 February 2023 where the above information is incomplete. All trustee registers submitted must comply with Regulation 31A of the Pension Funds Act.

Regulation 31A states that a trustee register must contain the following in respect of every board member:

- Full names and surname;
- Identity number;
- Date of birth;
- Nationality;
- Occupation,
- Residential address, business address and postal address;
- Date of appointment.

Any changes to the constitution of the board of management must be indicated on the register.

The FSCA stressed that there may not be a vacancy in the board of management for longer than 90 days. If so, the board of management is not fully constituted, and the section 14 transfer will not be considered.

Exemption from liquidation requirements

The FSCA published FSCA RF Notice 5 of 2023 on 31 January 2023. The notice allows for the exemption of certain funds from having to meet all the conditions set out in Directive 4 (Board Notice 75 of 2009). Directive 4 makes provision for exemption from the full liquidation provisions, where –

- (a) the average benefit per member is less than R50 000;
- (b) the fund or the relevant participating employer withdrawing does not have more than 50 members;
- (c) the fund or the relevant participating employer has assets less than R50 million; and
- (d) the surplus apportionment scheme or nil return has been approved or noted by the Authority.

This RF Notice exempts funds from requirements (a) and (b), provided that the fund specifically requests to be exempted from (a) and (b), the request confirms compliance with the rest of the provisions set out in Directive 4 and the fund or relevant participating employer does not have more than 100 members.

The exemption will apply to all applications from 1 February 2023.

FICA requirements for beneficiaries of life insurance policies

The Prudential Authority published a directive on 15 December 2022, in terms of the Financial Intelligence Centre Act (FICA), requiring life insurers to obtain the particulars of the beneficiaries of life insurance policies, as soon as the beneficiary is identified, designated, or amended.

The requirement is based upon the understanding that when a life insurer makes a pay-out of a life insurance policy's proceeds, it is entering into a single transaction with the receiver of the proceeds. The receiver of the proceeds (beneficiary) becomes the client of the insurer (the accountable institution), and the resulting FICA obligations come into effect.

At a minimum, identification particulars must be obtained at onboarding stage. This does not prohibit life insurers from applying a risk-based approach and requiring further identification and verification information about the nominated beneficiary to satisfy its understanding of the risk associated with the beneficiary. The intention is not to determine the risk profile of the beneficiary.

Insurers will have to consider the Directive and how to apply the requirements to unapproved group risk policies held by employers.

Q&A

Q: May a board member appoint another board member to vote on his or her behalf at a board meeting?

A: The Collins English Dictionary defines proxy vote as “a vote cast by a person's representative”.

Section 58 of the Companies Act 71 of 2008 specifically provides shareholders the right to be represented by proxy appointment. However, the Pension Funds Act does not have a similar provision and it is therefore not possible for a board member to appoint another board member to vote on his or her behalf at a board meeting.

The rules of a fund will provide the quorum requirements for concluding the business of the fund. PF 96 states that the fund rules must specify the majorities required for decisions in board meetings. In addition, PF 130 states that the board members should act jointly and if the rules of a fund permit a decision of the board to be carried by a majority of its members voting in favour of it, then the minority should respect the majority decision. If a board member is not able to attend a board meeting, his or her absence will be duly recorded in the minutes of the meeting (PF 98).

It is also important to note that board members should act with independence of mind (King IV).

It is therefore recommended that the board rather appoints alternates for member elected and employer appointed board members. Alternates may replace board members in board meetings and will have their own voting powers (the board member may not instruct the alternate on how to vote).