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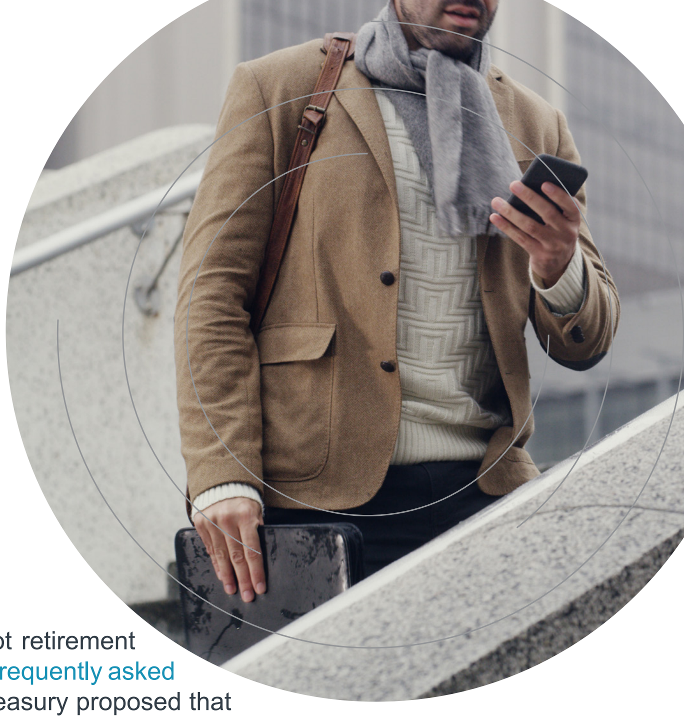

Retirement Matters
6/2023

Two-pot retirement system

As discussed in Retirement Matters 2 of 2023 and subsequent Two-pot retirement system communication (Early access to retirement benefit, Guidance on frequently asked questions and answers and Adjusted retirement tax tables), National Treasury proposed that one-third of retirement fund members' future retirement savings be allocated to a savings pot and two-thirds to a retirement pot, with current savings allocated to a vested pot. The Revenue Laws Amendment Bill was published on 1 November 2023 and a parliamentary session is scheduled for 21 November 2023, when the final decisions on the proposals will be clarified.

The following noteworthy changes to what was proposed in the draft Bill are made:

Previous proposal	New proposal
Implementation date of **1 March 2024**.	It is proposed that the **implementation date of the two-pot retirement system be postponed to 1 March 2025.**
The initial withdrawal amount proposed was **10% capped at R25 000**.	It is proposed that the initial amount available to withdraw from a member's retirement funds (the "seed capital") **be increased to R30 000. Members may therefore withdraw 10% of their money in their fund, capped at R30 000**.
Provident fund members who were **55 years and older as at 1 March 2021 by default, would have formed part of the two-pot retirement system with the opportunity to opt out**.	Provident fund members who were **55 years and older as at 1 March 2021 will, by default, be excluded from the two-pot retirement system with the opportunity to opt in should they choose to**. Those members who continue to contribute to the vested component, will not have a seed capital amount, and will therefore not be able to make a savings withdrawal.

A new proposal was included that upon retirement (the date a member elects to start receiving their retirement benefit), a member will have three options in respect of their savings component:

1. make a withdrawal, which will be taxed in accordance with the retirement lump sum tax table;
2. transfer a portion or the full value to the retirement component, from where it will have to be annuitised; or
3. leave the balance in the savings component, which may later be withdrawn in accordance with the savings withdrawal rules and will be taxed at marginal rate (the rate of tax you pay on your income).

Financial Sector Transformation Council (FSTC) Reporting Notice 1 of 2023

The Financial Sector Code in terms of the Broad-Based Black Economic Empowerment (B-BBEE) Act, states in Schedule 2 that many aspects of South Africa's B-BBEE dispensation are not relevant to retirement funds. However, funds have a critical role to play in the transformation of the financial sector itself in its appointment of service providers. Retirement funds are therefore encouraged to measure themselves annually against certain aspects of the B-BBEE scorecard in the amended Financial Sector Code (refer Retirement Matters 4/2023).

The FSTC issued a reporting notice for funds that submit B-BBEE reports for the 2021/2022 measurement period, for which the deadline was 13 October 2023. Three aspects need to be submitted, the B-BBEE scorecard, CEO report, and B-BBEE certificate. The submission remains voluntary **for the time being**. Funds are however encouraged to submit, especially the top 100 largest funds. The FSTC wants to establish why there is so little progress in this regard and what challenges funds face that keep them from submission.

Financial Sector Conduct Authority (FSCA)

- **Service Level Commitment (SLC)**

The FSCA published their SLC for retirement funds supervision. These are the time frames within which the FSCA promises to complete registrations or approvals of submissions from the industry.

The FSCA promises that 90% of applications will be finalised within the time frames indicated. No information was given on the remaining 10% or what that would entail.

All submissions to the FSCA must be online and replies to queries must be submitted within 30 days of the FSCA request for further information on cases.

The following time standards for approval was included in the SLC:

- Rule amendments: The FSCA now has 180 calendar days to register rule amendments, consolidations, and revisions. This includes the entire process, i.e. queries and replies thereto.
- Section 14 transfers: The FSCA has 60 calendar days to finalise.
- Acceptance of submission of valuation reports: 365 calendar days applies.
- Applications for cancellation of registration of a retirement fund: 270 calendar days.
- All exemption applications from the following provisions: applications in terms of section 7B of the Pension Funds Act, section 14 transfer applications, exemption from provisions of Regulation 28, valuation exemptions, financial statements, completion of the trustee toolkit, exemption from the default regulations and exemptions from Directive 8: 90 calendar days.

The SLC also contains an escalation process and the names of FSCA employees to escalate to. The SLC came into effect from 1 October 2023.

- **Levies and fees**

The FSCA has published its budget and estimates of expenditure, levies and fees proposals and invited comments on the proposed levies and fees until 2 November 2023. A 6% increase is suggested on the registration of a fund, rule amendments, or special rules, or the issuing of copies of rules, as well as an application to operate as an administrator in terms of section 13B of the Pension Funds Act.

New fees are introduced for several items, including inter alia applications for exemption from section 7A in terms of section 7B of the Pension Funds Act, applications for valuation exemption, applications for exemption from the default regulations, extension of submission of financial statements, extension of submission of a section 14 transfer scheme or payment within 60 days, or to submit an actuarial valuation within 12 months. Fees will also be charged for cancellation of a fund, appointment of a principal officer and auditors, authorised person in terms of section 13A and termination of a participating employer.

- **Trustee training toolkit**

The Pension Funds Act provides in section 7A(3) that board members must attain prescribed levels of skills and training and retain such prescribed levels throughout their term of appointment. Conduct Standard 4 of 2020 prescribes the Trustee Training Toolkit as the official minimum training requirement for all board members of retirement funds in South Africa.

The new e-learning toolkit platform was launched by the FSCA on 26 September 2023 via FSCA RF Notice 21 of 2023. Eleven modules were launched, with the remaining modules due in 2024. These modules are available at: https://elearning.fsca.co.za/home. A “How to guide” was also made available by the FSCA to guide board members through the process.

The purpose of the new toolkit is to better equip board members in performing their fiduciary duties by ensuring that they have more comprehensive and up to date knowledge and skills. The toolkit is free of charge and although board members cannot fail, it does contain module assessments and a summative assessment. Each module takes 30 to 60 minutes to complete.

- **Compulsory nature**

Completion of the new toolkit is compulsory for all board members, even if they had completed the previous toolkit. The new toolkit replaced the previous one, and the previous toolkit is therefore no longer available.

All existing board members appointed or elected on or before 26 September 2023 must complete the first eleven modules of the new toolkit within six months of 26 September 2023, i.e. by 26 March 2024.

All new board members appointed or elected after 26 September 2023 must complete the first eleven modules of the new toolkit within six months of the date of their appointment or election.

Board members that cannot complete the new toolkit before 26 March 2024 or within six months for new board members, must apply to the FSCA for an extension, but compelling reasons will be necessary.

- **Supervision**

According to Conduct Standard 4 of 2020, the new toolkit must be completed under the supervision of the principal officer or chairperson, who must provide the fund with a declaration that the board member completed it without assistance. Where it is impractical to be supervised, the board member may complete the toolkit without supervision, provided that such board member submits a declaration to the fund confirming that the toolkit was completed without assistance. Funds must retain the declarations and provide it to the FSCA on request.

- **Monitoring and regulatory action**

The FSCA will monitor board members’ completion of the toolkit. The completion of the toolkit will also be monitored by the FSCA as part of the Omni CBR submissions and fund onsite inspections.

The FSCA can take regulatory action against board members or funds for non-completion of the toolkit, which can include administrative penalties. The FSCA is further of the view that principal officers should report non-compliance to the FSCA.

Section 26(2) of the Pension Funds Act provides that where a board member fails to comply with any requirements prescribed by the FSCA, the FSCA may, notwithstanding the rules of the fund and at the cost of the fund, appoint a person to make up the full complement or quorum of the board.

IRFA conference feedback

The Institute of Retirement Funds Africa (IRFA) Annual Conference was held from 17-19 September 2023 at the Cape Town International Conference Centre and the following noteworthy remarks made:

- **The Office of the Pension Funds Adjudicator (OPFA)**

The OPFA alerted attendees to the following:

- When the Conduct of Financial Institutions Act (COFI Act) comes into effect, the definition of complaint will be expanded to include oral complaints.
- The COFI Act will place complaints regarding financial advice under the jurisdiction of the OPFA, which will overlap with the FAIS Ombudsman's jurisdiction.
- The OPFA will start issuing default determinations if no response is received from retirement funds after a preliminary determination. The OPFA has found that funds sometimes do not respond and as a result complaints remain open at the OPFA. It is unfair for complainants to not have their complaints resolved due to a lack of response from funds.
- Funds must act quickly when the employer doesn't pay contributions in terms of section 13A of the Pension Funds Act and not wait too long. The OPFA has accepted that there are challenges with enforcing the criminal process in relation to section 13A but highlighted that funds can institute civil proceedings against defaulting employers for non-payment of contributions.
- The OPFA has taken a decision to expedite section 13A complaints.
- The OPFA will dedicate time and capacity for the implementation of the two-pot retirement system. Its implementation will increase the number of complaints and the OPFA is concerned regarding defined benefit funds.

- **The Financial Sector Conduct Authority (FSCA)**

The FSCA shared the following:

- The FSCA sees the need to do more training in risk management.
- The FSCA acknowledged the challenges in reporting section 13A of the Pension Funds Act (the collection of contributions) to the SAPS. The FSCA is in the process to get a memorandum of understanding between themselves and the SAPS and is currently drafting a manual for the SAPS to increase their understanding of the provisions of section 13A.
- The Conduct Standard on Cyber Risk should be incorporated into a fund's risk management policy.
- Funds must continuously monitor their data and it must be audited to ensure completeness and the integrity of the data.
- A Conduct Standard on Governance will be issued soon.
- Fiduciary responsibility remains that of the board of management of a fund. The board is required to understand the risks that the fund faces and the risks that the service providers to the fund face as well. Therefore, the board must obtain an understanding of the risks and the impact that the risks might have should these materialise.
- In relation to the implementation of the two-pot retirement system, the FSCA will issue a guidance notice on the rule amendments required and reach agreement with industry on standard changes and custom rules with standardisation as far as possible. The FSCA aims to engage at administrator level to vet proposed amendments prior to the implementation of the two-pot system. Additional staff capacity will be created and the FSCA may place a hold on other rule amendments for a three month-period to focus on the two-pot retirement system amendments. They will however still consider urgent amendments.
- It is the view of the FSCA that section 14 transfers will not be required for intra fund transfers between different pots, but fund rules must make provision for the movement of funds between the pots.
- The FSCA will be embarking on a benchmarking exercise on fees and costs in 2024.

Q&A

What does the *de minimis* rule mean?

The *de minimis* rule is a legal principle which allows for matters of insignificant importance to be exempted from a rule or requirement. The Income Tax Act provides for instance as a requirement that members must on retirement use at least two-thirds of their benefit to provide them with a pension. The *de minimis* amount in the context of retirement funds therefore means that if a fund member's benefit is less than a certain amount, the member may take their benefit in a cash lump sum without it being subject to the requirement to purchase an annuity with two-thirds of the retirement benefit. The *de minimis* rule applies if the value of the remaining two-thirds of the retirement interest of the member does not exceed R165 000.

This in effect means that if the total retirement interest does not exceed an amount of R247 500 (R165 000 x 3 ÷ 2), the full amount can be commuted for a single lump sum benefit on retirement date.