

Legal Report August 2017

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Newsletter of Sanlam Employee Benefits: Legal

1. Retirement Funds Default Regulations

The Minister of Finance on 25 August 2017 issued the final retirement funds default regulations (“regulations”) in terms of the Pension Funds Act. The regulations state that the commencement date thereof is 1 September 2017 except for existing default arrangements which must comply within 18 months. However, in terms of Notice 3 of 2017 issued by the Registrar of Pension Funds on 30 August 2017 the Registrar has exempted all funds registered before 1 March 2018 from all the provisions of the new regulations until 1 March 2019. This means that all funds now have 18 months to comply with the regulations. However, funds that are registered on or after 1 March 2018 will have to comply immediately.

Regulation 37 requires funds to have one or more default investment portfolios for members who do not exercise any choice regarding how their savings should be invested. In terms of regulation 38 funds must offer a default in-fund preservation arrangement to members who leave the services of the participating employer before retirement. For retiring members, regulation 39 requires that funds must have an annuity strategy with annuity options, either in-fund or out-of-fund, but funds may only “default” retiring members into a particular annuity product after the member has made a choice.

All member defaults must be relatively simple, cost-effective and transparent. Funds must assist members during the accumulation and retirement phases.

The following summary of the regulations is provided in the Media Statement issued by National Treasury:

“Brief summary of the provisions in the regulations

Default investment portfolio: All retirement funds with a defined contribution category are required to have a default investment portfolio(s). The investment portfolio(s) that members are defaulted into should be appropriate, reasonably priced, well communicated to members, and offer good value for money. Trustees are required to monitor investment portfolios regularly to ensure continued compliance with these principles and rules. Performance fees will be allowed but subject to a standard to be issued by the FSB and a regulatory or policy review. Loyalty bonuses are not permitted. The default investment portfolio regulation, for now, does not apply to retirement annuity and preservation funds.

Default preservation: Funds that have members enrolled into them as a condition of employment (i.e. pension and provident funds), will have to change their rules to allow for default preservation as some of them currently do not allow resigning workers to leave their accumulated retirement savings in the fund. The employee, however, will have the right and option to withdraw, upon request, the accumulated savings or to transfer them to any other fund, thereby achieving portability. Employees will also be required to first seek retirement benefits counselling before they make a decision. The default preservation regulation does not apply to retirement annuity and preservation funds.

Annuity strategy: Two types of annuities exist, a living and life annuity. A life annuity, once chosen or defaulted into, becomes irreversible. To better manage this irreversibility, it was decided that funds should first require the active participation of members, who should indicate beforehand, which type of annuity (e.g. life or living annuity) should be paid. This required pre-selection by the members makes the purchase of an annuity a “soft default” by having the member “opt-in” instead of “opting-out”; i.e. a member must first indicate which annuity product he/she would prefer being enrolled into. The “default” annuity should also be appropriate for members, well communicated and offer good value for money. Members should be given access to retirement benefits counselling to assist them in understanding and giving effect to the annuity strategy.

Pension fund, pension preservation fund and retirement annuity funds are required to establish an annuity strategy. Provident and provident preservation funds must only establish an annuity strategy if the fund enables the member to elect an annuity. This does not mean that members of provident funds are compelled by these regulations to purchase an annuity upon retirement; the annuitisation of provident funds remains under discussion at Nedlac.”

2. 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 (Departments > Retirement Funds > Searches > Unclaimed Benefits Search) or [click here](#).

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

- ④ 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.
- ④ The search engine will establish if there is a possible match on each of the search criteria provided.
- ④ 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.
- ④ 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.
- ④ If there is no matching record(s), the enquirer will be notified that no match could be found on the unclaimed benefits search engine.

Funds and administrators will be requested to update the unclaimed benefit data base regularly and the unclaimed benefit search engine will automatically check on a regular basis if a possible match is identified on the updated records. If a possible match is identified at a later stage, the enquirer will be provided with the name and relevant contact details of the fund or administrator.

This search engine has been established to enable persons to do an enquiry free of charge and may not be used by entities or persons to do tracing on behalf of persons for a fee.

Instead of using the search engine a person may also send an e-mail to the FSB by providing an ID number only. The relevant e-mail address is:

Pensions.UBmemberID@FSB.co.za

An unsuccessful search on an ID number only does not necessarily mean that there is not an unclaimed benefit. Therefore, where a search is unsuccessful, an enquirer may send additional information by e-mail, such as name(s) and surname, fund name, employer name, date of birth and ID number to the following e-mail address:

Pensions@UBQuery@FSB.co.za or by fax to 0865781183.

An enquiry regarding a possible unclaimed benefit can also be made to the FSB's following toll-free numbers: 0800 110 443 or 0800 202 087.

3. Quarterly asset allocation reports to Reserve Bank

By means of a circular issued on 24 August 2017 the Reserve Bank announced that it has decided that reducing the period (after quarter end) within which Quarterly Asset Allocation Reports must be submitted from 3 months to 21 days (as proposed by them last year) will not be feasible. Instead, the period will be reduced to 2 months after quarter end with effect from 30 September 2018.

The reason why the reduced period will only be implemented with effect from the end of September 2018 is to allow the relevant parties to ensure that the necessary processes, procedures and systems are put in place to adhere to the new reporting period. The circular states that the Reserve Bank requests to be furnished with progress reports by the end of March 2018 regarding the move towards the implementation of the new reporting period.

4. Financial Sector Regulation Act

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;

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- ④ The fair treatment and protection of financial customers;
- ④ The efficiency and integrity of the financial system;
- ④ The prevention of financial crime;
- ④ Financial inclusion;
- ④ Transformation of the financial sector; and
- ④ 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.

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”. In the same manner as the Ombudsman for Long-term Insurance, the Pension Funds Adjudicator will accordingly after the commencement date of the Act have a so-called equity jurisdiction.

Retirement funds or other clients requiring more information should not hesitate to contact their consultant.