Sanlam

Legal Report May 2017

Insurance | Financial Planning | Retirement | Investments | Wealth

Newsletter of Sanlam Employee Benefits: Legal

1. Draft notice in terms of regulation 28: Exemption in respect of debt instruments issued or guaranteed by a South African bank

The Registrar of Pension Funds published for comment a draft proposal to exempt retirement funds from items 2.1(c)(i), (ii) and (iii) of Table 1 of Regulation 28 under the Pension Funds Act.

Regulation 28 provides that a fund may only hold assets and categories of assets referred to in Table 1 and that a fund must comply with the limits set out in the regulation. Items 2.1(c)(i), (ii) and (iii) of Table 1 determine that funds may invest in debt instruments issued or guaranteed by a listed South African bank against its balance sheet, subject to limits based on the market capitalisation of the bank (issuer).

The draft notice states that in practice the controlling company of the South African bank is listed and not the South African bank. An exemption is therefore required to regularise the application of the limits.

Sanlam will provide comments on the draft notice via industry bodies.

2. Minister of Finance Budget 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.

This year, together with the Department of Postal Services and Telecommunications, we will complete the process that will enable the Postbank to obtain a banking license.

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.

The long-awaited Financial Sector Regulation Bill is expected to be passed by Parliament next month to ensure the implementation of a comprehensive system for better regulating the financial sector.

The Insurance Bill also currently before Parliament builds on the Twin Peaks model of financial regulation envisaged in the Financial Sector Regulation Bill, particularly in respect of prudential supervision of insurers."

3. Binding General Ruling (BGR) number 31: Interest on late payment of benefits (second issue)

The second issue of BGR 31 of SARS, which was issued on 23 May 2017, replaces the previous version of the BGR issued during 2016.

The 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 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.

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