Sanlam

Legal Report September 2017

Insurance | Financial Planning | Retirement | Investments | Wealth

Newsletter of Sanlam Employee Benefits: Legal

1. Financial Services Board 2017 Annual Report

The Financial Services Board ("FSB") published its annual report for the year ended 31 March 2017. The FSB stressed that it is taking a proactive approach in assessing the conduct of trustees and administrators, and that 178 on-site visits were conducted on funds and administrators during the period covered by the report. The following significant supervisory issues were identified during these visits:

- Boards not properly constituted in terms of section 7A of the Pension Funds Act ("the Act") and/or the fund rules.
- Overseas trips are sponsored for Board members by service providers.
- Delegations are not properly formulated, signed or do not exist in respect of responsibilities delegated to sub-committees and/or service providers.
- Failure by Boards to monitor compliance with provisions of the Act, specifically section 13A of the Act, and regulation 33.
- Expenses and remuneration of Board members are very high.
- Remunerating Board members for services despite the fund rules not providing for such remuneration.
- Failure to reapply for section 7B exemptions prior to the expiration of the exemption.
- Failing to timeously submit annual financial statements and valuation reports.
- Delays in distributing annual benefit statements to members or failure by Boards to distribute annual benefit statements.

2. Proposed Replacement of the Policyholder Protection Rules

The Registrar of Long-term Insurance ("the Registrar") during December 2016 issued a new set of Policyholder Protection Rules for public comment. Once finalised, these rules will replace the current Policyholder Protection Rules, issued in terms of the Long-term Insurance Act. The proposed replacement of the Policyholder Protection Rules is necessary to give effect to a number of conduct of business reforms.

Following comments on the first draft of the new Policyholder Protection Rules, the Registrar on 1 September 2017 issued revised Policyholder Protection Rules for public comment. The revised rules inter alia require an insurer to have appropriate policies and procedures in place to achieve the fair treatment of policyholders. The fair treatment of policyholders encompasses achieving at least the following outcomes:

(a) policyholders can be confident that they are dealing with an insurer where the fair treatment of policyholders is central to the insurer's culture;

(b) products are designed to meet the needs of identified types, kinds or categories of policyholders and are targeted accordingly;

(c) policyholders are given clear information and are kept appropriately informed before, during and after the time of entering into a policy;

(d) where policyholders receive advice, the advice is suitable and takes account of their circumstances;

(e) policyholders are provided with products that perform as insurers have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect;

(f) policyholders do not face unreasonable post-sale barriers to change or replace a policy, submit a claim or make a complaint.

From an employee benefits perspective the most important change introduced by the proposed new Policyholder Protection Rules is that the insurer must in the case of a retirement fund or employer policy liaise directly with the members of the fund or the employees insured in terms of the employer policy unless the insurer can demonstrate that this is not reasonably practicable.

The proposed new Policyholder Protection Rules are open for comment until 2 October 2017.

3. Draft Regulations in terms of the Protection of Personal Information Act

Draft regulations in terms of the Protection of Personal Information Act ("POPIA") were issued for public comment on 8 September 2017. The draft regulations lay down more detailed rules concerning the processing of personal information concerning a data subject's health by amongst others insurance companies, pension funds, employers or institutions working for them.

The draft regulations inter alia set out the process to be followed when a data subject objects to the processing of personal information, or when a data subject requests the correction or deletion of personal information, or the destruction or deletion of a record of personal information. The draft regulations also set out the duties and responsibilities of information officers.

The draft regulations are open for comment until 7 November 2017.

4. Commencement of the Protection of Personal Information Act

The Information Regulator (“the Regulator”) during a press briefing on 20 September 2017 confirmed that the remaining sections of the Protection of Personal Information Act (“POPIA”) will commence once the Regulator is fully operationalized. The Members of the Regulator endeavour to fully operationalize the Regulator in 2018. In terms of POPIA, all public and private bodies will be expected to be compliant with its provisions within one year of its commencement.

5. Response from National Treasury and SARS on comments received on the Draft Taxation Laws Amendment Bill, 2017

The Draft Taxation Laws Amendment Bill, 2017 (“the Draft Bill”), in terms of which certain amendments to the Income Tax Act are proposed, was published for public comment on 19 July 2017.

One of the proposals contained in the Draft Bill is that phased retirees can transfer their benefits to a retirement annuity fund. The retirement fund industry in their comments on the Draft Bill requested that phased retirees should also be allowed to transfer their benefits to pension and provident funds, and to pension preservation and provident preservation funds.

National Treasury and the South African Revenue Service (SARS) in their response to the above request confirmed that the Income Tax Act will be amended to allow phased retirees to transfer their benefits to a retirement annuity fund, and to a pension preservation and provident preservation fund. A phased retiree will however still not be allowed to transfer his benefit to a pension or provident fund. The Income Tax Act will be amended to ensure that transfers made to preservation funds after the normal retirement date cannot be withdrawn in the same manner as other transfers to preservation funds.

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