

Legal Report November 2017

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Newsletter of Sanlam Employee Benefits: Legal

1. Four draft Notices relating to TCF and retirement funds and administrators

The Registrar of Pension Funds published for comment 4 draft notices which relate to TCF. TCF stands for Treating Customers Fairly. According to the Notices, TCF is a consumer protection framework that requires all regulated financial institutions, including retirement funds and their service providers, to demonstrate that they have implemented and are delivering the 6 TCF outcomes in the way they conduct their business.

1.1 Guidance to boards of retirement funds for the implementation of the TCF outcomes

The 6 TCF Outcomes, from the perspective of retirement funds are as follows:

Outcome 1

Retirement funds must be confident that the fund is managed and administered in such a way that the fair treatment of members and beneficiaries is central to the fund's culture.

Outcome 2

Retirement fund products and services should be developed and administered to meet the needs and expectations of members, beneficiaries and other stakeholders in order to achieve the ultimate goal of providing appropriate retirement income.

The board must ensure that the products provided by the fund are appropriate after considering the needs and risk profile of the members and beneficiaries. The board must also ensure that members and beneficiaries have sufficient information to make an informed decision in selecting investment and other options offered by a fund.

Outcome 3

Members and beneficiaries must receive clear and appropriate information regarding the retirement fund, its benefits and the operations of the fund before joining (where applicable), on joining, and regularly during their membership of the fund.

Outcome 4

Where boards and/or members of retirement funds receive advice, the advice must be suitable and take account of their respective circumstances. Boards must ensure that the intermediaries appointed are, where applicable, appropriately licensed, understand the products and have sufficient expertise. Boards should also request and verify whether the advisor receives any incentives from the service provider for selling a specific product and whether there are similar products in the market to be compared to. Products must be suitable for the needs of the fund and its members.

Outcome 5

Retirement funds must provide products and benefits which perform in a manner that meets the needs and reasonable expectations of their members and are in line with what members have been led to expect. The products and services provided to members must be suitable, of an acceptable standard and in line with what members have been led to expect.

Outcome 6

Retirement funds and members should not face unreasonable barriers to submit a claim or make a complaint or to change product or switch provider where the rules of a fund allow for such choices. Boards must establish and implement an effective complaints management process.

1.2 Guidance to benefit administrators for the implementation of the TCF outcomes

The draft Notice states that TCF requires all regulated financial institutions, including retirement fund benefit administrators, to demonstrate that they have implemented and are delivering the 6 TCF outcomes in the way they conduct their business.

Outcome 1:

Administrators must be confident that they are providing administration services where the fair treatment of their customers (both the retirement fund itself and its members) is central to the administrator's culture.

Outcome 2:

Services provided by administrators must be designed to meet the needs and risk profile of retirement funds and their members. The services must provide value for money for their customers.

Outcome 3:

Administrators must provide regular, clear and appropriate information and reports to their customers and such communications or disclosures should take account of the needs and circumstances of the customers concerned.

Outcome 4:

Where administrators provide advice, such advice must be suitable and take account of the respective needs and circumstances of the customers. The advice must be provided by fit and proper persons suitably qualified and licensed with sufficient expertise to provide suitable advice relevant to the needs of the customer.

Outcome 5:

Administrators must provide suitable products that meet the needs and reasonable expectations of the fund's members and are in line with what their customers, i.e. retirement funds and their members have been led to expect. The service provided to funds and members must be suitable, and of an acceptable standard.

Outcome 6:

Administrators should not have unreasonable barriers when a customer intends to change a product, switch provider, submit a claim or make a complaint. The complaints management process must be accessible, understandable and must not frustrate complainants.

The FSB's approach to implementing TCF

The draft guidance Notice states that the FSB will implement TCF in its regulatory and supervisory frameworks on a gradual, incremental basis. It is stated that existing legislative and regulatory frameworks already allow the application of TCF outcomes.

Administrators are reminded that the Pension Funds Act already requires an administrator to -

- endeavour to avoid conflict between the interests of the administrator and the duties owed to the fund, and any conflict of interest or potential conflict of interest must be disclosed to the board;
- provide administration services and products in a responsible manner;
- keep proper records;
- employ adequately trained staff and ensure that they are properly supervised;
- have well-defined compliance procedures;
- inform the Registrar, in writing, when it becomes aware of any material matter relating to the affairs of a fund, which in the opinion of the administrator may prejudice the fund or its members.

The Registrar states that no regulatory change is required to enable the FSB to start taking TCF considerations into account in its supervisory approach. Increasingly therefore, regulated entities will note that the FSB has already incorporated a focus on customer fairness outcomes (over and above checking compliance with specific rules-based provisions) in conducting on-site visits or when complaints or business practices are investigated.

Administrators must also ensure that the types of management information, including management information they provide to funds or other service providers to the fund, are adequate and complete and fit for the purpose of measuring delivery of TCF outcomes.

1.3 Two draft Notices on complaints management requirements for retirement funds and administrators respectively

Two separate draft Notices on complaints management have been issued for retirement funds and administrators, but the wording of the two Notices is similar.

The draft Notices state that effective management of customer complaints by financial institutions is a vital component of TCF and contributes to the effective protection of the financial consumer. Guidance is provided in achieving the desired outcomes of the complaints management component in Outcome 6 of the TCF Outcomes, which requires that “Customers do not face unreasonable post-sale barriers imposed by firms to change product, switch providers, submit a claim or make a complaint”.

The draft Notices state that complaints management is an effective management tool for boards of retirement funds to determine if they are achieving their objectives as required in section 7C(2)(a) of the Pension Funds Act to ensure that the interests of members in terms of the rules of the fund and the provisions of the Act are protected at all times. Complaints management is also an effective management tool for administrators to determine if they are achieving their objectives in terms of financial services legislation and to ensure that the retirement fund is able to comply with its obligations in terms of the Pension Funds Act.

Every retirement fund and administrator must, in order to demonstrate compliance with the TCF principles, establish, maintain and implement an adequate and effective complaints management framework to ensure the fair treatment of their customers and complainants. Retirement funds and administrators are expected to analyse customer complaint information as an important source of management information to measure their delivery of the full set of TCF Outcomes.

Complaints must be categorised in nine broad complaints categories. Both a retirement fund and administrator will be required to submit quarterly complaints reports to the Registrar. Templates of these reports are attached to the draft Notices as Annexure A.

2. Draft directive on prohibition of inducement and acceptance of gratification by trustees

The Registrar of Pension Funds published for comment a draft Directive containing conditions in respect of inducements and acceptance of gratification by boards of funds. The purpose of the draft Directive is “to determine conditions in order to combat and prevent bribery, and corrupt conduct by and of principal officers, deputy principal officers, board members, valuers, auditors, administrators, or other officers or other service providers to funds”.

The general principle is that a board member, principal officer, deputy principal officer, auditor, valuator, administrator or service provider to a retirement fund should not be involved in any conduct constituting bribery, fraud or corruption.

The draft Directive reminds a board member, principal officer, deputy principal officer, auditor, valuator or administrator of a retirement fund of their duty in terms of the Pension Funds Act, on becoming aware of any matter relating to the affairs of the fund which, in their opinion, may prejudice the fund or its members, to inform the Registrar thereof in writing.

The Registrar proposes that, except with his written permission, “the following types of gratification are automatically not permitted to be accepted, agreed or offered to be accepted by a board member, principal officer, deputy principal officer, valuator, auditor, administrator or other officer or service provider to a fund, from any other person connected in whatsoever manner to a service provider of a fund in which such principal officer, deputy principal officer, valuator, auditor, administrator or other officer or service provider to a fund or other officer serves”:

- any gratification which objectively viewed creates a conflict of interest with their fiduciary duty towards the fund;
- token gift/s that exceed/s the annual limit set by the board in terms of the fund’s gift policy, which annual limit shall not be more than R500 per annum from any one service provider;
- travel or accommodation relating to local or international due diligences;
- travel or accommodation relating to local or international entertainment or sporting events; and
- conferencing costs or board of fund expenses.

3. Tax directive applications in respect of section 14(1) transfers

With effect from 1 March 2017 tax directives must be obtained in respect of any type of transfer from a retirement fund, prior to the amount being transferred.

In a letter of 9 November 2017 to the Institute of Retirement Funds Africa, SARS acknowledged that some retirement funds and fund administrators are experiencing practical problems in complying with the payment periods, prescribed in the Pension Funds Act, in respect of transfers that were already approved by the Registrar of Pension Funds but not yet paid to the transferee fund by 1 March 2017.

In order to facilitate transfers to be done in respect of approvals granted prior to 1 March 2017, SARS granted approval that the aforesaid transfers may be finalised without obtaining a tax directive, provided that this approval only applies to transfers that are effected from -

- An approved pension fund to an approved pension-, pension preservation-, unclaimed benefit pension preservation- or retirement annuity fund;
- An approved provident fund to an approved pension-, provident-, pension preservation-, provident preservation-, unclaimed benefit pension preservation-, unclaimed benefit provident preservation- or retirement annuity fund;
- An approved pension preservation fund to an approved pension preservation-, unclaimed benefit pension preservation- or retirement annuity fund;
- An approved provident preservation fund to an approved pension preservation-, provident preservation-, unclaimed benefit pension preservation-, unclaimed benefit provident preservation- or retirement annuity fund; and
- An approved retirement annuity fund to an approved retirement annuity fund, except where the member elects to transfer to another retirement annuity fund.

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