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1. Draft Guidance Notice on section 7B exemptions relating to trustee composition of e.g. umbrella funds

A draft Guidance Note was issued for comment by the Financial Sector Conduct Authority (FSCA) and is about exemptions in terms of Section 7B of the Pension Funds Act. Section 7A(1) of the Act requires that every fund have a board consisting of at least four members, at least 50% of whom the members of the fund shall have the right to elect. In terms of Section 7B(1)(b) the FSCA may on written application of a fund and subject to such conditions as may be determined by the FSCA exempt a fund (e.g. an umbrella or preservation fund) from the requirement that the members of the fund have the right to elect members of the board. The draft Guidance Note among others includes the following requirements:

- Funds that currently have exemption must apply for exemption with indefinite duration.
- At least fifty per cent of the members of the board of a fund must be independent board members. Bargaining council, sectoral determination, trade union and municipal funds which provide for alternative forms of member representation other than direct member elections in their rules may apply for a specific condition that the FSCA relax or not impose this condition, subject to adherence to the member representation provisions in the registered rules.
- Every independent board member appointed to the board must have the relevant experience or expertise required for the effective fulfilment of their duties, which the fund must demonstrate it has considered before making any appointment.
- Depending on the size of an umbrella fund, the FSCA will consider it necessary that management committees at employer, sector or regional level be established, so that there is sufficient transparency and participation in the decision-making process of the fund. Management committees may take the form of committees of an umbrella fund, which are intended to assist the board of management to liaise better with members and employers, thus ensuring adequate and timeous communication, interaction and understanding of matters which impact these stakeholders.

- Upon receipt of an exemption, the fund must, within 30 days of the appointment of an independent board member, furnish extensive details of such board member to the FSCA in writing.
- If, after considering the information provided on the independent board member and any other relevant information, the FSCA informs the fund that it is not satisfied that the independent board member is a fit and proper person to occupy a position of trust in relation to the fund, the sponsor must procure the immediate termination of the board member's appointment.

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

2. Prudential Authority issues notification form for outsourcing by an insurer

In terms of Directive 159Ai an insurer must timeously, prior to entering into an outsourcing contract, notify the Registrar of Long-term Insurance of –

- the proposed outsourcing of a management, control or material function;
- the details of the third party to whom the insurer will outsource that function; and
- the key risks associated with the outsourcing and the risk mitigation strategies that will be put in place to address these risks.

The Prudential Authority (PA) issued a notification form that must be completed to notify the PA of proposed outsourcing by an insurer of a control, management or material function in accordance with Directive 159Ai. The form is available on the website of the PA: www.prudentialauthority.co.za

3. Medical Scheme related developments

3.1 Council for Medical Schemes: Guidelines for the preparation of broker agreements

The Council for Medical Schemes (CMS) issued guidelines for the preparation of broker agreements in order to comply with section 65 of the Medical Schemes Act.

The Medical Schemes Act and the regulations thereto prescribe the requirements of providing broker services to members of medical schemes. One of the requirements to be accredited as a broker is that there must be a written agreement between such broker and the medical scheme concerned, which is duly signed by authorised persons from both parties.

A comprehensive and properly drafted broker agreement ensures that both parties are fully aware of their respective rights and obligations in terms of such agreement. Signed broker agreements must be in place for all medical schemes that make use of broker services.

A specimen contract is available in Word format on the CMS website www.medicalschemes.com under "Publications"/"Brokers".

3.2 CMS Circular 20 of 2018: Imposition of levies on medical schemes

In terms of Notice 183 of 2018 the levy to be paid by medical schemes in terms of the Council for Medical Schemes Levies Act with effect from 1 April 2018 is set at an amount of R36.13 per member per year. The levy must be paid in two equal instalments, the first of which by 31 May of the levy year, and the second by 31 July of the levy year.

3.3 CMS Circular 21 of 2018: Impact of VAT increase in the medical schemes industry

Even though medical schemes are exempted from VAT, the 1% increase in VAT with effect from 1 April 2018 will have an impact on the costs of medical services and products payable by medical schemes to service providers who are registered as VAT vendors. Section 67(1) of the Value-added Tax Act, No. 89 of 1992 states that “where the VAT rate is increased in respect of the supply of goods or services, the VAT vendor may recover the VAT from the client or customer.”

The Circular states the following: “It is expected that medical schemes will absorb the increase on behalf of its members as this has already been included in the risk/sensitivity analysis for the 2018 financial year, which covers any unforeseen operational deficits. Further mitigation strategies by medical schemes are encouraged, especially concerning non-healthcare expenditure. For this reason, rule amendments relating to mid-year contribution increases will only be considered in exceptional circumstances.”

3.4 CMS Press release 2 of 2018: National Health Insurance

According to Press Release 2 of 2018 of the Council for Medical Schemes (CMS), the Minister of Health, Dr Motsoaledi endorsed the CMS's new five-year plan for the National Health Insurance (NHI) environment, which plan supports South Africa's vision to provide Universal Health Coverage (UHC) for everyone. UHC is about social solidarity and cross-subsidisation between the rich and the poor, the young and the old, and the healthy and the sick.

Minister Motsoaledi said that the CMS's new vision is in line with the National Development Plan (NDP). He also stated the following:

“One of the two targets set out in Chapter 10 of the NDP under the UHC topic, is that everyone must have equal access to healthcare services by 2030; the other target is aimed at the establishment of a common fund for healthcare services for all, regardless of income. The NDP in this regard is referring to the NHI, and we are going ahead with it. In fact, we have now entered the second phase of the implementation of the NHI, which entails putting systems in place.”

The chairperson of the board of the CMS, Dr Clarence Mini, highlighted some of the CMS' key focus areas for the new five-year cycle, which include:

- Strengthening the CMS' policy, research and monitoring capacity.
- Provision of technical support for the NHI which will entail the review of the current prescribed minimum benefits (PMBs) and the consolidation of benefit options.
- Implementation of the Health Market Inquiry recommendations.

- Building of capacity for the CMS to effectively deal with fraud, waste and abuse.
- Cost interventions for managed care.
- Establishment of a coding authority.
- Building capacity for regulation of health technology interventions.
- Coordination of medical funding regulators in the Southern African Development Community (SADC) region.

Minister Motsoaledi also stated: “On 28th March, I signed a memo to Cabinet to review the Medical Schemes Act. There is a need to extend the functions of the CMS, including among others, a review of the manner in which the regulator deals with beneficiaries, benefit options, the provision of health plans by other entities currently not regulated by the CMS, as well as brokers.”

Minister Motsoaledi highlighted the fact that the majority of people who need healthcare support are currently without health cover. These he said, are the poor who are mostly affected by the social determinants when it comes to health issues. The Minister said:

“It cannot be business as usual. The world is moving very fast towards the UHC, sadly, Africa is moving very slow. It is time for South Africa to take the lead on the provision of UHC”, the Minister said. “South Africa is moving away from a curative healthcare system to primary healthcare. We must deal with the misconception that primary healthcare is for the poor.”

4. 4.ASISA Standard: Retirement Savings Cost Disclosure

The Association of Savings and Investment South Africa (ASISA) issued the Retirement Savings Cost Disclosure Standard (“the Standard”). The Standard will be effective from 1 March 2019, and applies to sponsors of commercial umbrella funds and unclaimed benefit funds. The Standard does not apply to retirement annuity funds, preservation funds, beneficiary funds, compulsory annuities and other retail products provided that they are included in the scope of the ASISA Retail Standard: Effective Annual Cost (EAC).

In terms of the Standard all costs relating to umbrella funds and unclaimed benefit funds must be presented in a standardised manner, enabling employers to compare like with like when considering quotations from different ASISA members. This will also make it easier for the Boards of Trustees of umbrella funds and unclaimed benefit funds to consider costs as part of their fiduciary duties.

ASISA members will be required to submit a compliance certificate to ASISA annually certifying that the Retirement Savings Cost calculations and disclosures comply in all respects with the letter and spirit of the Standard. The certificate must be signed by the company’s CEO as well as either the auditor, statutory actuary, or chief compliance officer.

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