

Legal Report March 2019

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Newsletter of Sanlam Employee Benefits: Legal

1. **Information Circular 1 of 2019: Cancellation of registration & reinstatement of deregistered funds**

The Circular states that Information Circular 2 of 2017, which deals with the cancellation of registration of funds (and the withdrawal of the participation of an employer in an umbrella fund), will be withdrawn and a Guidance Notice setting out revised requirements will be issued soon.

The FSCA states that in order to manage enquiries with respect to applications for the cancellation of the registration of funds, funds and administrators are required to confirm that -

- "their internal and administration platforms I systems (both administrators and investment managers) have been checked and there is no additional information or assets that will impact on the application for the cancellation of a fund already submitted to the FSCA;
- the records and accounts held by the funds or administrators, e.g. suspense accounts, "slush funds", etc. have been checked and there are no remaining assets due to the funds in respect of which applications for cancellation have been submitted to the FSCA for consideration; and
- an external auditor has verified and confirmed that the fund to be cancelled does not have assets, liabilities, members or a board, and attach proof thereof." [Although not stated in the Circular, indications are that what the FSCA will require in this regard is for each fund administrator to obtain confirmation from an external auditor with regard to the reliability of the administrator's systems.]

The confirmations referred to above must be accompanied by a list of the funds that they relate to. Applications for the deregistration of funds already submitted to the FSCA will only be considered once these confirmations have been submitted.

The Circular also contains requirements regarding the reinstatement of any fund that was deregistered in error, while it still had members, assets or liabilities.

2. PF Information Circular 2 of 2019: Default Regulation exemption applications

Funds that still require any exemption or extension with regard to the Default Regulations had to submit their exemption/extension application by 25 March 2019 in order to prevent penalties being incurred.

3. CMS Circular 18 of 2019: Status update on Demarcation Regulations & Low Cost Benefit Package

The Circular provides a status update on the Demarcation Regulations (issued in terms of insurance legislation) and the development of a so-called Low Cost Benefit Package (LCBP) by government. The LCBP is envisaged to be provided as part of a medical scheme offering for the part of the population who currently cannot afford medical scheme contributions.

The Demarcation Regulations came into effect on 1 April 2017 and identified the categories of health and accident policy contracts that may conduct the business of a medical scheme, while remaining insurance contracts outside the regulatory provisions of the Medical Schemes Act. The government however realised that some health and accident policies could not be amended without negatively affecting access to healthcare services from private health care providers for people who cannot afford medical scheme contributions and rely on these policies. Therefore providers of certain indemnity products (e.g. primary healthcare insurance) were given the opportunity to apply for exemption from certain provisions of the Medical Schemes Act for a two-year period from 1 April 2017 to 31 March 2019, while a LCBP is developed by the Department of Health.

Circular 18 of 2019 states that the two-year period for the development of a LCBP has proved to be insufficient and entities that were granted exemption until 31 March 2019 should apply for extension of the exemption for a further two-year period until 31 March 2021. According to the Circular, renewal applications will be evaluated on merit. Circular 25 of 2019 and Circular 30 of 2019 contain more details with regard to the requirements for renewal applications, which had to be submitted to the Council for Medical Schemes by 29 March 2019.

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