

# Legal Report June 2019

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*Newsletter of Sanlam Employee Benefits: Legal*

## 1. **Guidance Notice 1/2019: Sustainability of investments and assets in the context of a retirement fund's investment policy statement**

The FSCA has published a Guidance Notice to guide the boards of retirement funds on how to comply with regulation 28(2)(b) of the Pension Funds Act, read together with regulation 28(2)(c)(ix). In terms of regulation 28(2)(b) all funds must have an investment policy statement, while regulation 28(2)(c)(ix) requires that a fund must “*before making an investment in and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the asset including, but not limited to, those of an environmental, social and governance character*”.

FSCA Communication 1 of 2019 was released together with the Guidance Notice and provides background and more information on the purpose of the Guidance Notice as well as future developments in the financial sector.

The Guidance Notice aims to guide boards of funds on how its investment philosophy and objectives, as specified in its investment policy statement, should seek to ensure the sustainability of the fund's investments and assets. The Guidance Notice also sets out the FSCA's expectations for reporting and disclosure on issues of sustainability.

The Guidance Notice refers to the preamble to regulation 28 and in particular, the fact that prudent investment requires that appropriate consideration should be given to any factor that may affect the sustainable long-term performance of the fund's assets, including environmental, social and governance (ESG) considerations. The preamble to regulation 28 provides as follows:

*“A fund has a fiduciary duty to act in the best interest of its members whose benefits depend on the responsible management of fund assets. This duty supports the adoption of a responsible investment approach to deploying capital into markets that will earn adequate risk adjusted returns suitable for the fund's specific member profile, liquidity needs and liabilities. Prudent investing should give appropriate consideration to any factor which may materially affect the sustainable long-term performance of a fund's assets, including factors of an environmental, social and governance character. This concept applies across all assets and categories of assets and should promote the interests of a fund in a stable and transparent environment.”*

The following guidelines are provided in the Guidance Notice with regard to a fund's investment policy statement (IPS):

- A fund should in its IPS reflect how its investment philosophy and objectives will ensure the sustainability of its assets, including, among others:
  - When the IPS was approved and by whom;
  - How often the IPS will be reviewed;
  - How the fund intends to monitor and evaluate sustainability of its assets, including the extent to which ESG factors have been considered, and the potential impact thereof on the assets;
  - The fund's active ownership policy, meaning the prudent fulfilment of responsibilities relating to the ownership of, or an interest in, an asset.
- The IPS should state that the matters referred to above will also be reflected in the relevant investment mandate(s).
- If a fund holds assets that limit the application of ESG factors, sustainability criteria or the application of an active ownership policy, the reasons why this is to the advantage of the fund and its members should be stated.

The Guidance Notice states that, in the interest of transparency, accountability and the fair treatment of members, every fund is encouraged to:

- Make the IPS or an abridged version thereof available on request, and at no cost, to each member;
- Make the IPS available on the fund's website;
- Annually provide a copy of the IPS and any changes thereto to stakeholders, or inform them that these are available on the fund's website.

In order for the FSCA to monitor compliance with regulation 28(2)(b) of the Pension Funds Act, read together with regulation 28(2)(c)(ix), funds are requested to report on the extent to which its IPS reflects the matters set out in the Guidance Notice.

Boards of funds are encouraged to include details of the following by means of a note in the Report by the Board of the Fund in the fund's annual financial statements and in its annual report or other appropriate communication to members:

- How the IPS reflects the matters set out in the Guidance Notice;
- Any significant changes in the IPS during the reporting period.

According to the FSCA, it would be prudent to include in the annual financial statements information on, among others, assets held in compliance with the Guidance Notice and the value of such assets.

## **2. Retirement Fund Standard: Effective Annual Cost (EAC) for Individual Fund Members**

The Association for Savings and Investment South Africa (ASISA) announced that members of umbrella retirement funds will as from October 2020 be able to assess the total impact of charges on their individual retirement benefits, when members of ASISA implement a new Retirement Fund Standard: Effective Annual Cost (EAC) for Individual Fund Members.

ASISA said that the significance of the new EAC Standard is that individual umbrella fund members will be able to review and compare charges on retirement fund products and then assess the impact on investment returns.

In terms of the new Standard, ASISA member companies administering umbrella retirement funds will have to communicate with fund members at least once a year, reminding them that they are entitled to request an EAC calculation.

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