Sanlam

Legal Report April 2020

Insurance | Financial Planning | Retirement | Investments | Wealth

Newsletter of Sanlam Corporate: Legal

1. FSCA Communication 12 of 2020 (General): Impact of Coronavirus (Covid-19) - what FSCA expects of regulated entities

The FSCA states that it is aware of the impact of COVID-19 on financial institutions and their customers, and that the uncertainty that this pandemic is creating exposes financial institutions to additional conduct risk and the risk that they will not treat their customers fairly.

The FSCA emphasises that regulated entities should bear in mind the current circumstances and assist their customers with even more empathy, flexibility and understanding during these difficult times. This may include considering relief and support options, especially for vulnerable customers.

Some of the main expectations of the FSCA regarding the culture and main responsibilities of financial institutions during this crisis include the following:

Business Continuity

All regulated entities should have reviewed their business continuity plans and assessed the impact of COVID-19 on their operational ability. Plans should be put in place to deal with the current situation and mitigate any risks or potential risks that have been identified.

There should be clear and continuous communication to all internal and external stakeholders and customers regarding the current business continuity plan, processes or procedures that might change and the way forward regarding the mitigation of the risks.

If any major risks have been identified as a result of COVID-19, which could materially impact fair outcomes to customers, the relevant entity should immediately communicate this risk, the impact thereof and mitigation plans to the FSCA.

Insurers

The Communication states that although the FSCA understands that the industry needs to manage their risks and any additional exposure during this time, it expects insurers to consider additional measures to -

- assist policyholders where possible not to lapse a policy due to the impact of COVID-19, and possible alternative options should be communicated clearly and in advance to policyholders; and
- ensure that any communication regarding non-payments and possible lapses are communicated to policyholders directly and clearly.

With regard to insurance claims, there should be no delay in any claims payments after a decision to settle the claim has been taken.

Retirement funds and administrators

The boards of funds should keep abreast of risks that COVID-19 brings to the fund, and take necessary steps to mitigate such risks. The board is also encouraged to clearly communicate COVID-19 developments and risk management strategies to fund members in order to promote calm and minimise the risk of premature fund withdrawals.

Retirement fund benefit administrators must inform all relevant stakeholders such as funds and their members, as well as third parties, of any changes to their processes, procedures and ensure that the necessary communication is sent in this regard.

Investment Providers

Asset managers and collective investment scheme managers must appropriately manage liquidity risks that COVID-19 brings to the portfolios while enabling investments that can benefit investors and the wider economy.

All financial institutions

Entities are reminded that the necessary due diligence, monitoring and control over all third parties should remain intact and alternative measures to ensure fair outcomes to customers should be considered during the pandemic. The frequency of reporting and the analyses of trends and concerns are of the utmost importance.

Entities should also take additional measures to inform and educate intermediaries of any changes to processes, procedures and products and ensure that the necessary communication is sent in this regard. The intermediaries should be made aware of any changing circumstances which might affect the suitability of their advice.

The complaints management process and turnaround times on resolving complaints should not be compromised.

Financial institutions should explicitly consider cyber-risk exposures and potential for breaches that may be heightened over the lock-down period due to wide roll-out of remote working capabilities.

2. FSCA General Notice 2 of 2020: Extension of submission dates of certain statutory returns

The FSCA extended the submission dates of certain annual statutory returns including, among others, the following:

Audit report and management letter of retirement fund administrators

The submission dates in respect of retirement fund administrators that must submit a report by its auditor and a letter by its management between 31 March 2020 and 31 May 2020 have been extended as set out below:

Financial Year-end	Submission date in terms of legislation	Extended submission date
30 September 2019	31 March 2020	30 June 2020
31 October 2019	30 April 2020	31 July 2020
30 November 2019	31 May 2020	30 August 2020

Audited annual financial statements of retirement funds

The submission dates in respect of funds that must submit their audited financial statements between 31 March 2020 and 30 September 2020 have been extended as set out below:

Financial Year-end	Submission date in terms of legislation	Extended submission date
30 September 2019	31 March 2020	30 June 2020
31 October 2019	30 April 2020	31 July 2020
30 November 2019	31 May 2020	31 August 2020
31 December 2019	30 June 2020	30 September 2020
31 January 2020	31 July 2020	31 October 2020
29 February 2020	31 August 2020	30 November 2020
31 March 2020	30 September 2020	31 December 2020

Valuation reports of retirement funds

The submission dates in respect of funds that must submit their valuation reports between 31 March 2020 and 31 August 2020 have been extended as set out below:

Financial Year-end	Submission date in terms of legislation	Extended submission date
31 March 2019	31 March 2020	30 June 2020
30 April 2019	30 April 2020	31 July 2020
31 May 2019	31 May 2020	31 August 2020
30 June 2019	30 June 2020	30 September 2020
31 July 2019	31 July 2020	31 October 2020
31 August 2019	31 August 2020	30 November 2020

3. Draft Government Notices on living annuities

Two draft Notices regarding living annuities were issued for comment, as well as Explanatory Notes on these. The two draft Notices entail the following:

Draft Notice allowing changing of drawdown percentages during May - August 2020

For a limited period of 4 months, beginning 1 May 2020 and ending on 31 August 2020, living annuitants may increase or decrease the percentage of the capital they receive as annuity income instead of waiting up to one year until the next “anniversary” of the living annuity. During this period the maximum percentage will be 20% and the minimum 0.5% (currently the maximum is 17.5% and the minimum 2.5%).

It should however be noted that most funds providing in-fund living annuities prescribe much lower maxima than the aforesaid statutory maximum. These funds may also have to amend their rules to allow the adjustment of drawdown percentages during the 4 months period even if the anniversary date of a particular living annuity does not fall within this period.

According to the Explanatory Notes "*any elections made during this period will only be applicable for the above mentioned four-month period. The lapsing of this period will result in the draw down rates automatically reverting to the rates applicable before said election*."

The Explanatory Notes also state the following:

"*Individuals whose anniversary date falls within the proposed four-month relief period, beginning 1 May 2020 and ending on 31 August 2020 may elect to amend their draw down rate either in accordance with the existing provisions of the current GN290, Government Gazette 32005 of 11 March 2009 (thereby making their election valid until their next anniversary date), or in accordance with the above-mentioned proposal, which applies for a limited period of four months, (thereby resulting in their draw down rate automatically reverting to the draw down rate elected at their previous anniversary date after the four-month period).*"

Draft Notice increasing the de minimis amount

Currently the full remaining value of the living annuity capital may be paid as a lump sum when the value thereof at any time becomes less than either R50 000 (where part of the retirement interest was commuted upon retirement) or R75 000 (where there was no previous commutation). The proposal is that the said "de minimis amounts" of R50 000 or R75 000 be replaced by a single threshold of R125 000 from 1 March 2020 onwards (i.e. not only for the 4 month period).

It is expected that the final Notices will be published shortly.

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