1. Second Draft of Conduct of Financial Institutions Bill

The first draft of the Conduct of Financial Institutions (COFI) Bill was published for comment in December 2018. National Treasury on 29 September 2020 published a second draft of the Bill, taking into account the comments received on the first draft. In the media statement accompanying the second draft it is stated that "*Treasury aims to finalise the Bill after taking account of these second-round comments, and thereafter to submit the Bill to Cabinet for approval and tabling early next year*".

The media statement further inter alia states as follows:

"*The COFI Bill is a key pillar in government's Twin Peaks financial sector regulatory reform process that aims to entrench better financial customer outcomes in the South African financial sector. It is a financial institution-facing law that sets requirements for financial institutions to meet and outcomes to deliver.*

The Bill aims to significantly streamline the legal landscape for conduct regulation in the financial services sector, and to give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. These principles are currently not enforceable, and while customer outcomes may have somewhat improved, this has not been consistent across the sector. The COFI Bill will ensure that the TCF principles are legally binding and enforced on all financial institutions."

The draft Bill also proposes certain amendments to the Pension Funds Act ("the Act"), whereunder the following:

- The name of the Act is changed to "the Retirement Funds Act".
- The Act is made applicable to all public sector retirement funds.
- A Central Unclaimed Retirement Benefit Fund is established.
- The assets and liabilities of each participating employer in an umbrella fund must be held separately.

- A principal officer has a fiduciary duty to the fund and its members, must be independent and must have the requisite knowledge of, or experience in, relevant laws. The principal officer must also provide the board with guidance as to their duties, responsibilities and powers, make the board aware of any law relevant to, or affecting, the fund, and report to the board any failure on the part of the fund or a board member to comply with the registered rules of the fund or relevant laws.

- On the death of a pensioner who receives an in-fund living annuity, the benefit must be paid to the pensioner's nominees, or where the pensioner has not designated any nominees, to his/her estate.

- Where a member has an outstanding housing loan, the member's pension interest is deemed to be the amount as contemplated in the definition of "pension interest" in section 1 of the Divorce Act, reduced by the outstanding loan amount as at the date of divorce.

- A deduction from a member's benefit in respect of future maintenance must be made in monthly payments or annually in advance, where a fund is unable to make monthly payments.

- Currently a non-member spouse cannot take a portion of the amount awarded to him/her in cash and transfer the balance to another fund. He/she must either take the full amount in cash or transfer the full amount. It is proposed that the Act be amended so as to enable the non-member spouse to take a portion in cash and transfer the balance to another fund.

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

2. Private Member's Bill in respect of loans to retirement fund members

The Democratic Alliance (DA) has given notice of its intention to introduce a bill ("the Bill") in Parliament in respect of loans to retirement fund members. Members of retirement funds can currently only obtain loans for housing purposes. In terms of the Bill it is proposed that section 19(5) of the Pension Funds Act be amended so as to allow a fund to "*furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member, which guarantee may not exceed 75 per cent of that member's share in the value of the fund*".

In the notice accompanying the Bill it is stated that the purpose thereof is to amend the Pension Funds Act "*in order to allow for pension fund members to obtain a loan, secured by a guarantee from a registered pension fund, to alleviate financial pressure during the COVID-19 emergency or any other emergency similar to COVID-19*". The ambit of the Bill in its current form is however not limited to loans for the aforesaid purpose, and it makes provision for a loan for any purpose whatsoever.

Sanlam will provide comments on the Bill via industry bodies.

3. Notice in respect of termination of group scheme policies

In terms of rule 20 of the Policyholder Protection Rules an insurer must notify the Financial Sector Conduct Authority (FSCA) when a group scheme policy is terminated by either the insurer or the policyholder. The FSCA has now on its website published the notification form that must be completed when notice is given to the FSCA.

4. Regulatory Framework Update - September 2020

The Financial Sector Conduct Authority (FSCA) in its Regulatory Framework Update for September 2020 gives feedback on various regulatory developments. Amongst others, the following is of interest to the employee benefits industry:

- The FSCA and Prudential Authority (PA) are in the process of developing a Joint Standard relating to outsourcing by insurers. The Standard will be largely based on the current prudential outsourcing standard, but will also incorporate various conduct specific requirements. It is envisaged that the draft Joint Standard will be published for comment during the fourth quarter of 2020.

- Further amendments to the Policyholder Protection Rules and insurance regulations will be published for comment before the end of 2020. The amendments will, amongst other things, be focused on accommodating various Retail Distribution Review (RDR) developments, such as carving out advice from intermediary services to facilitate the charging of advice fees, as well as a prohibition on paying commission on investment policies.

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