Sanlam

Legal Report March 2021

Insurance | Financial Planning | Retirement | Investments | Wealth

Newsletter of Sanlam Corporate: Legal

1. Amendments to regulation 28 of the Pension Funds Act

National Treasury has published draft amendments to regulation 28 of the Pension Funds Act for public comment. The amendments are aimed at making it easier for funds to invest in public infrastructure.

Infrastructure is not introduced as a new asset class, but is recognised within the existing asset classes specified in regulation 28. It is proposed that the overall investment in infrastructure across all asset classes may not exceed 45% in respect of domestic exposure and an additional 10% in respect of the rest of Africa. The aggregate exposure per issuer or entity will be limited to 25% of the total assets of the fund.

There is no obligation to invest in infrastructure, and the decision to invest in any asset class, including infrastructure, remains that of the board of trustees of the fund. The board must in this regard take into account the best interest of the fund and its members.

It is further proposed that private equity should be an asset class on its own with its own limit. Currently hedge funds, private equity funds and "*other assets not referred to in this schedule*" is a single asset class with a collective limit of 15%. Private equity has a limit of 10%, hedge funds also 10% and "*other assets not referred to in this schedule*" is limited to 2.5%. It is proposed that the limit for private equity be increased to 15%. Hedge funds and "*other assets not referred to in this schedule*" will remain unchanged at 10% and 2.5% respectively.

Comments on the draft amendments had to be provided to National Treasury by 29 March 2021. Sanlam has provided comments via industry bodies.

2. Withdrawal of SARS General Note 18

South African Revenue Service (SARS) General Note 18 (GN 18), which dealt with the requirements for the purchasing of an annuity on retirement, was withdrawn on 26 February 2021. GN 18 inter alia stipulated that a member cannot choose a combination of an annuity provided by the fund (such as an in-fund living annuity) and an annuity purchased from an insurer. The member had to choose one or the other.

The withdrawal of GN 18 means that the above is no longer disallowed, and that a member can now choose a combination of an annuity provided by the fund and an annuity purchased from an insurer. This is to be welcomed as it provides members with greater flexibility, and the retirement industry has made several submissions to National Treasury and SARS in this regard.

3. FSCA Communication 5 of 2021 (RF): extension to provide information about pending section 14 transfers

The Financial Sector Conduct Authority (FSCA) on 14 December 2020 in terms of FSCA Information Request Notice 6 of 2020 (RF) requested all retirement funds and administrators that have section 14 transfers pending or overdue to provide the following information to the FSCA:

- a list of all the pending section 14 transfers on their books; and
- a brief project plan of how the fund intends on actioning and finalising each of these section 14 transfers in a structured and prudent manner.

In terms of the information request the above information had to be submitted by not later than 31 March 2021. This date has now been extended to 31 May 2021. The FSCA has also received requests from the retirement fund industry to provide direction relating to the format in which the information can be submitted. The FSCA in response to these requests provided a format for the submission of the information.

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