

Legal Report April 2021

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Newsletter of Sanlam Corporate: Legal

1. Guidance note on information officers and deputy information officers

The Protection of Personal Information Act (“POPIA”) and the Promotion of Access to Information Act (“PAIA”) require responsible parties to appoint an information officer. A responsible party is any public or private body, or any other person, which, alone or in conjunction with others, determines the purpose of, and means for, processing personal information. A retirement fund is a responsible party in relation to the processing of its members’ personal information. It is the duty of the information officer to ensure compliance with the provisions of POPIA and PAIA.

The Information Regulator has on 1 April 2021 published a Guidance Note for the registration of information officers and deputy information officers in terms of POPIA and PAIA. The Guidance Note is available on the Information Regulator’s website.

In a media statement accompanying the Guidance Note it is said that the Information Regulator is developing an online portal for the registration of information officers, which is expected to be live by the end of April 2021. The registration of information officers and deputy information officers is accordingly expected to commence on 1 May 2021.

Responsible parties are encouraged to submit their applications for registration through the online registration portal. Responsible parties may however also from 1 May 2021 submit their applications by manually completing the application form attached to the Guidance Note.

2. Deduction from a benefit to compensate the employer for damages suffered because of theft or fraud by a member

The Board of Trustees of a retirement fund (“the Board”) can in terms of section 37D of the Pension Funds Act authorise a deduction from a member’s benefit in respect of damages caused to the employer by reason of theft or fraud on the part of the member, provided that the member has either admitted liability in writing or the employer has obtained judgment against the member. The Board is also empowered to withhold a member’s benefit so as to enable the employer to obtain judgment against him/her.

The Pension Funds Adjudicator (“the Adjudicator”) was until recently of the view that a deduction cannot only be made from a member’s benefit in the case of a civil judgment, but also in the case of a compensation order made by a criminal court in terms of section 300 of the Criminal Procedure Act. The Financial Services Tribunal (“the Tribunal”) has however in two recent cases ruled that a deduction can only be made from a member’s benefit in the case of a civil judgment, and not in the case of a compensation order in terms of section 300 of the Criminal Procedure Act. The Tribunal accordingly further held that a member’s benefit may only be withheld in the case of a civil action, and not in the case of a pending criminal case against the member.

The Adjudicator’s office during a webinar confirmed that it will in future follow the same approach as the Tribunal, in other words:

- a deduction can only be made from a member’s benefit in the case of a civil judgment, and not in the case of a compensation order in terms of section 300 of the Criminal Procedure Act;
- a member’s benefit may only be withheld in the case of a civil action, and not in the case of a pending criminal case against the member.

The above is an important development that the Boards of retirement funds will have to take note of.

3. Appointment of Commissioner of the Financial Sector Conduct Authority

The Minister of Finance has appointed Mr Unathi Kamlana as Commissioner of the Financial Sector Conduct Authority (FSCA). The appointment is for five years and is effective from the date of assumption of duty, which is expected to be 1 June 2021.

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