

# Legal Report May 2021

Insurance

Financial Planning

Retirement

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*Newsletter of Sanlam Corporate: Legal*

## 1. Levies on financial institutions

The Financial Sector Conduct Authority (FSCA) has published, for public comment, the proposed adjustments to the annual levies payable by financial institutions, including retirement funds, for the levy year 1 April 2021 to 31 March 2022.

The new proposed levies which are relevant for the retirement fund industry are as follows:

### Levy on retirement funds

- (a) The levy in respect of a retirement fund registered in terms of the Pension Funds Act, excluding a retirement annuity fund, pension preservation fund, provident preservation fund and a commercial umbrella fund, is an amount of:
- R1 369.70 plus an additional amount of R16.20 per member of such fund and in respect of every other person who receives regular periodic payments from such fund (excluding any member or person whose benefit in the fund remained unclaimed, and beneficiaries of death benefits), or
  - R3 138 465,
- whichever total amount is the lesser.
- (b) The levy in respect of a commercial umbrella fund, pension preservation fund and provident preservation fund is an amount of R1 369.70 plus an additional amount of R16.20 per member of such fund and in respect of every other person who receives regular periodic payments from such fund (excluding any member or person whose benefit in the fund remained unclaimed, and beneficiaries of death benefits).
- (c) The levy in respect of a retirement annuity fund is an amount of R1 369.70 plus an additional amount equal to 0.0097% of the value of the assets of the fund.

### Levy on fund administrators

The levy in respect of an administrator approved in terms of section 13B of the Pension Funds Act is an amount of R8 743.49 plus an additional amount of R681.62 per retirement fund under its administration, and an amount of R0.82 per member and in respect of every other person who receives regular periodic payments from such fund, excluding any member or person whose benefit in the fund remained unclaimed, and beneficiaries of death benefits.

### Levy for Pension Funds Adjudicator

The levy for the Pension Funds Adjudicator in respect of a retirement fund registered in terms of the Pension Funds Act, including a pension preservation fund, provident preservation fund, a retirement annuity fund and commercial umbrella fund, is an amount of R7.06 per member of such fund and any other person who receives regular periodic payments from such fund, excluding any member or person whose benefit in the fund remained unclaimed.

Comments on the proposed levies can be submitted until 17 June 2021.

## **2. Draft regulations in terms of the Promotion of Access to Information Act**

The Information Regulator has issued new draft regulations in terms of the Promotion of Access to Information Act ("PAIA") for public comment. Some of the changes applicable to private bodies, including retirement funds, are the following:

- The Human Rights Commission has compiled a guide in each of the official languages containing information required by a person who wishes to exercise any right contemplated in PAIA. The information officer of the private body must make this Guide available on its website in each of the official languages. A copy of the Guide, in at least two of the official languages, must also be available at each of its offices for public inspection during normal office hours.
- The Head of a private body must compile and keep a description of the categories of records that are automatically available, without a requester having to request access thereto. This description must be updated every month, or as soon as any amendment to the description occurs. The description must be made available to the Information Regulator, on the website of the private body, and at its offices during normal office hours.
- The information officer must, if a request for access to a record is made orally as a result of illiteracy or disability, complete the prescribed request form on behalf of the requester.
- A person whose request for information has been refused, may from 30 June 2021 submit a complaint to the Information Regulator. The draft regulations set out the procedure applicable to such complaints. It is inter alia stipulated that the information officer must respond to the complaint within 10 working days after receipt of the complaint from the Information Regulator.

Comments on the draft regulations had to be submitted by 17 May 2021.

## **3. Draft Administrative Action Procedures**

The Financial Sector Conduct Authority (FSCA) has published draft administrative action procedures for public comment. It sets out the procedures to be followed by the FSCA in the case of regulatory action against a financial institution based on non-compliance.

The procedures aim:

- to promote a fair and consistent approach to regulatory action taken by the FSCA;
- to be consistent with the principles of the Promotion of Administrative Justice Act and any applicable requirements of a financial sector law, specifically affording affected persons the right to be heard;

- to inform affected persons what to expect and what their rights are.

The draft procedures are open for comment until 21 June 2021.

## **4. Automated reminders about outstanding Recognition of Transfer (ROT) forms**

The South African Revenue Service (SARS) has in a letter to the Institute of Retirement Funds Africa confirmed that, as part of the enhancement of the Recognition of Transfer (ROT) process, the retirement industry will in future be provided with automated correspondence / a list of outstanding ROTs with sufficient information to enable the affected entity to comply with the obligations of the ROT process.

The automated correspondence entails the following:

- Activation of the outstanding ROT validation rules;
- A first reminder will be issued informing the fund that a ROT must be submitted within 21 working days from the date of issue of the tax directive;
- A second reminder will be issued once the 21 working days have expired and the ROT is still outstanding. The fund will have an additional 5 days after the 21 working day period has expired in which to comply;
- A final reminder will be sent to the tax payer if the ROT remains outstanding. The tax payer will be given a further 5 days to ensure that the fund complies with the prescriptions of the ROT process.
- The first and second reminder to the fund will be in a statement format which will be comprised of all the outstanding ROTs for that specific fund.

## **5. Appointment of Ombud Council Board**

The Minister of Finance has appointed the first Ombud Council Board and Chief Ombud for the Council, giving effect to the new financial Ombud system in terms of the Financial Sector Regulation Act. The Minister has appointed Ms Eileen Meyer as Chief Ombud as a transitional measure until a full-time Chief Ombud is appointed.

The objective of the Ombud Council is to assist in ensuring that financial customers have access to, and are able to use, affordable, effective, independent and fair alternative dispute resolution processes for complaints about financial institutions in relation to financial products, financial services and services provided by financial infrastructures.

The Ombud Council will have oversight powers over both the statutory and industry Ombuds, namely:

1. Office of the Pension Funds Adjudicator
2. Office of the Ombud for Financial Services Providers (FAIS Ombud)
3. Office of the Credit Ombud
4. Ombudsman for Long-term Insurance
5. Ombudsman for Short-term Insurance

6. Ombudsman for Banking Services

7. Johannesburg Stock Exchange Ombud.

The Ombud Council will recognise industry schemes such as the Ombudsman for Long-term Insurance. It will further set enhanced governance and accountability requirements, and harmonise and strengthen standards of practice for each Ombud scheme through rule-making and enforcement powers. This is to develop a uniform and consistent framework for external dispute resolution mechanisms across the financial services sector.

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