

Legal Report June 2021

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Newsletter of Sanlam Corporate: Legal

1. Draft Binding General Ruling on the purchase of annuities at retirement

South African Revenue Service (SARS) General Notes 18 and 18A previously set out the requirements in respect of annuities purchased on the retirement of a member of a retirement fund. General Notes 18 and 18A were withdrawn on 26 February 2021, which created uncertainty with regard to the requirements applicable to such annuities. The purpose of the proposed Binding General Ruling (“the Ruling”) is to resolve this uncertainty.

The Ruling confirms that the rules of retirement funds may provide for:

- the retirement fund paying the annuity directly;
- purchasing the annuity in the name of the retirement fund; and
- purchasing the annuity in the name of a retiring member.

It is further confirmed that no annuity provided on retirement may be transferred, assigned, reduced, hypothecated or attached by creditors, and must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member.

Comments on the Ruling can be submitted to policycomments@sars.gov.za by 31 July 2021.

2. Registration of information officers

A responsible party as contemplated in the Protection of Personal Information Act is required to register its information officer with the Information Regulator. 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, and as such needs to register its information officer with the Information Regulator.

The Information Regulator has on 22 June 2021 issued a media statement confirming that there will be no deadline for the registration of information officers and deputy information officers. No responsible party will accordingly be held liable for not registering its information officer by 30

June 2021. This decision follows technical glitches with the registration portal and numerous concerns raised by responsible parties regarding the registration process.

A further aspect which caused a lot of concern is that the Information Regulator's registration portal has up till now not allowed a person to register as information officer of more than one entity. This especially created problems in the case of so-called hybrid funds, in other words where an employer participates in both a pension fund and a provident fund, and the two funds have the same principal officer. The Information Regulator has in this regard in the above-mentioned media statement confirmed that the registration portal is currently being configured to make it possible to register as information officer of more than one entity. The Information Regulator will announce when the registration portal has been updated.

3. Prior authorisation in terms of the Protection of Personal Information Act

Responsible parties must in terms of section 57(1) of the Protection of Personal Information Act (POPIA) in certain instances obtain authorisation from the Information Regulator ("the Regulator") prior to processing personal information. This inter alia applies to the processing of information on criminal behaviour or on unlawful or objectionable conduct on behalf of third parties.

Section 58(1) of POPIA stipulates that in instances where prior authorisation is required, the responsible party must notify the Regulator. Section 58(2) then stipulates that responsible parties may not carry out information processing that has been notified to the Regulator until the Regulator has completed its investigation or until they have received notice that a more detailed investigation will not be conducted.

The Regulator has now postponed the commencement date of section 58(2) to 1 February 2022. It is important to note that this does not mean that applications for prior authorisation do not have to be submitted to the Regulator. In instances where prior authorisation is required, a responsible party must still submit an application for prior authorisation to the Regulator as required by section 58(1) of POPIA. The only effect of the postponement of the commencement date of section 58(2) is that responsible parties do until 1 February 2022 not have to wait until the Regulator has processed their applications. Responsible parties may in other words until 1 February 2022 continue processing personal information which is subject to prior authorisation, despite the fact that the Regulator is still processing their applications.

4. Commutation limit for paid-up retirement annuities

Previously a member of a retirement annuity fund who discontinued his/her contributions prior to his/her retirement date, was entitled to a lump sum benefit if his/her fund value was less than R7 000. The Minister of Finance has now with effect from 1 March 2021 increased this amount to R15 000.

5. Unemployment Insurance Fund (UIF) contributions

The Minister of Finance has with effect from 1 June 2021 increased the UIF contribution ceiling from R14 872 per month to R17 712 per month. This means that whereas previously no UIF contributions were payable on remuneration exceeding R14 872 per month, this amount has now been increased to R17 712 per month.

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