

Legal Report June 2022

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Newsletter of Sanlam Corporate: Legal

1. Arrear contributions

The Financial Sector Conduct Authority (FSCA) has issued FSCA Communication 17 of 2022 (RF), the purpose of which is to alert retirement funds and employers that the FSCA intends to publish the names of retirement funds and employers who are in arrears with their contributions.

It is stated in the Communication that the FSCA's preliminary statistics indicate that municipalities and private sector companies have approximately R1 billion and R6 billion arrear contributions, respectively. According to the FSCA this compromises good outcomes for members of funds as it results in them not receiving their full fund benefits.

Against the above background, retirement funds and employers are in the Communication formally alerted to an imminent publication of the names of employers and funds with arrear contributions. The FSCA is currently compiling the list and checking the accuracy of the value of arrear contributions.

Retirement funds are further informed that they must immediately share the Communication with their participating employers.

2. Roadmap for roll-out and implementation of cross-sectoral Conduct of Business Return (Omni-CBR)

The Financial Sector Conduct Authority (FSCA) on 8 June 2022 published a roadmap for the roll-out and implementation of a cross-sectoral Conduct of Business Return (Omni-CBR). The Omni-CBR is intended to facilitate streamlined cross-sectoral statutory reporting, and sets out the types of conduct indicators to be reported on in future by various financial institutions, including insurers, financial services providers (FSPs), retirement funds and retirement fund administrators.

According to the Communication accompanying the roadmap, the reason for the development of the Omni-CBR is as follows:

"In order to monitor whether the financial system is delivering fair outcomes to customers, the FSCA needs access to meaningful, reliable, measurable and comparable information on key conduct indicators across financial institutions. To give effect to this the FSCA embarked on a multidisciplinary project to facilitate a process for detailed and consistent conduct of business reporting by financial institutions in future."

Annexure A to the roadmap sets out the information that will have to be provided in terms of the Omni-CBR. Insurers, retirement funds and administrators will, inter alia, have to provide extensive information about their policyholders and members.

Comments on Annexure A can be provided via the FSCA Comments portal until 10 August 2022.

The Omni-CBR will be implemented over a period of four years ending in June 2026.

3. Draft adjustments to the annual levies payable by financial institutions

The Financial Sector Conduct Authority (FSCA) has published the draft adjustments to the annual levies payable by financial institutions, including retirement funds and retirement fund administrators, for the levy year 1 April 2022 to 31 March 2023.

The 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 424 plus an additional amount of R16.85 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 263 702,
- 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 424 plus an additional amount of R16.85 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 424 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 R9 092 plus an additional amount of R709 per retirement fund under its administration, and an amount of R0.85 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 R7.34 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 provided until 22 July 2022.

4. Request for information on paid-up benefits

The Financial Sector Conduct Authority (FSCA) on 7 March 2022 published an information request with regard to paid-up benefits, which was subsequently withdrawn on 18 March 2022 as a result of including old versions of the annexures to the request. The information request has now been reissued on 22 June 2022.

In terms of the information request all retirement funds and administrators must submit information relating to new paid-up members, including members whose benefits became paid-up before the default regulations came into effect, by uploading the relevant information as at 30 September 2021 to the FSCA Retirement Funds Online System on or before 31 October 2022.

Retirement funds and administrators must further also provide the following information, at least once every calendar quarter:

- ① original value of the paid-up member's benefit, being the amount in the member's minimum individual reserve as at the date that the member left the service of his/her employer;
- ② the current value or paid-up value of the paid-up benefit, being the amount in the member's minimum individual reserve as at the last day of each quarter;
- ③ where applicable, the date on which the paid-up benefit was transferred or paid to the member or his/her beneficiaries.

The above information must be submitted to the FSCA within 30 days after the last day of the relevant calendar quarter.

All information must be submitted electronically through the website of the FSCA.

According to the Communication accompanying the information request, the information request aims to achieve the following:

- ① create a register of paid-up members;
- ② create a baseline for the ongoing monitoring and assessment of the impact of the default regulations, with regard to default preservation and portability, on the behaviour of members;
- ③ gain better insight into industry practices as they relate to the implementation of the default regulations;
- ④ assist the FSCA in performing its functions;
- ⑤ complement the data previously obtained in respect of unclaimed benefits; and
- ⑥ support interested persons to, in future, search the FSCA's website for the existence of paid-up benefits.

Failure to provide the requested information by the due date constitutes an offence, punishable by a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both such fine and imprisonment.

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