# Legal Report November 2022

Insurance | Financial Planning | Retirement | Investments | Wealth

*Newsletter of Sanlam Corporate: Legal*

## 1. Draft Prudential Standard on the regulation 28 quarterly reporting requirements

The Financial Sector Conduct Authority (FSCA) has published a draft prudential standard on the quarterly reporting requirements in terms of regulation 28 of the Pension Funds Act. The quarterly reports are updated to take into account the recent amendments to regulation 28.

The new reporting format inter alia includes quarterly reporting in respect of investment in infrastructure. Non-compliance or breaches of regulation 28 at fund and member level must also be reported along with the asset allocations at fund level, as well as matters related to environmental, social and governance issues. Some of the other changes include the splitting of the hedge funds and private equity asset allocations and the revised housing loans and private equity limit.

A fund must complete all fields of the prescribed quarterly report, and must submit the quarterly report to the FSCA, in accordance with the following time periods:

(a) for the first quarter ending 31 March 2023, on or before 30 September 2023;

(b) for all subsequent quarters within 90 days after quarter-end.

Comments on the draft prudential standard can be provided to the FSCA until 7 December 2022.

## 2. Draft Prudential Standard - regulatory reporting requirements and the prescribed format of financial statements

The Financial Sector Conduct Authority (FSCA) has issued a draft prudential standard (hereinafter referred to as “the Standard”) on the regulatory reporting requirements for retirement funds and the prescribed format of financial statements, for public comment.

Besides providing for a prescribed format for financial statements, the Standard proposes to consolidate all audit and regulatory reporting requirements for retirement funds into one instrument by replacing, amongst others, the existing Board Notices 14 and 77.

The Standard is based to a large degree on Board Notices 14 and 77. The Standard however provides enhanced detail relating to reporting concepts, additional definitions and expands certain paragraphs of the regulatory reporting requirements in line with amendments to the relevant sections of the International Financial Reporting Standards and the International Accounting Standards.

The purpose of the concepts contained in the Standard, which relate to the preparation and presentation of the financial statements, is to assist:

- drafters of the financial statements in applying the regulatory reporting requirements and in dealing with topics that are not specifically dealt with in the regulatory reporting requirements;
- auditors in forming an opinion as to whether the financial statements comply with the regulatory reporting requirements; and
- the FSCA in interpreting the information contained in the financial statements.

In terms of FSCA Guidance Notice 1 of 2019, which relates to the sustainability of investments and assets in the context of a fund's Investment Policy Statement (IPS), funds are encouraged to adopt sustainable reporting practices. In this regard, a fund's board of trustees will, in terms of the Standard, be required to disclose certain information relating to how their IPS is aligned to the Guidance Notice.

Board Notice 77 exempts funds with assets below R50 million from the requirement to have their financial statements audited. The Standard proposes that this exemption be removed. The Standard will accordingly be applicable to all funds, including funds with assets below R50 million.

The Standard will become effective 6 months after the date of final publication. Comments on the

Standard can be provided to the FSCA until 18 January 2023.

## 3. Draft exemption of retirement funds from certain of the conditions for exemption from section 28 of the Pension Funds Act

Board Notice 75 of 2009 (Directive PF No. 4), hereinafter referred to as "the Board Notice", sets out the requirements with regard to the dissolution or partial dissolution of retirement funds. Paragraph 9(2) of the Board Notice sets out the conditions for exemption from the liquidation requirements contained in section 28 of the Pension Funds Act.

These conditions are as follows:

(a) the average benefit per member is less than R50 000;

(b) the fund or the relevant participating employer withdrawing does not have more than 50 members;

(c) the fund or the relevant participating employer has assets of less than R50 million; and

(d) the surplus apportionment scheme or nil return has been approved or noted by the Financial Sector Conduct Authority (FSCA).

The FSCA has published a draft exemption for public comment, which proposes that funds be exempted from the requirements of paragraphs (a) and (b) above, on the following conditions:

(a) that on the date that the fund takes a resolution to liquidate or partially liquidate the fund, the fund or the relevant participating employer does not have more than 100 members; and

(b) that all remaining requirements and conditions in the Board Notice are complied with.

The above in effect means that a fund can, in an application for exemption from the requirements of section 28, also request to be exempted from the conditions that the average benefit per member is less than R50 000 and that the fund or the withdrawing participating employer does not have more than 50 members. The exemption from both the aforesaid conditions is subject thereto that, on the date that the fund takes a resolution to liquidate or partially liquidate the fund, the fund or the relevant participating employer does not have more than 100 members.

Comments on the draft exemption can be provided to the FSCA until 14 December 2022.

## 4. Spreadsheet to be submitted together with valuation report

The Financial Sector Conduct Authority (FSCA) has issued FSCA Communication 32 of 2022 (RF), in which it requests funds to also submit information as set out in a prescribed spreadsheet, together with the valuation report. The information in the spreadsheet will summarise the financial position of the fund, to streamline the process of consideration of the submitted valuation report, by the FSCA.

The spreadsheet does not replace the fund’s actuarial valuation report, and must be submitted in addition to the valuation report, the duly signed statement from the board of trustees and the certificate in terms of section 16(8) of the Pension Funds Act. The submission of the spreadsheet must be made on the FSCA Retirement Online system.

The spreadsheet must be submitted by defined contribution funds together with all valuation reports that are submitted on the system after 1 January 2023.

## 5. Extension for submission of information requested on paid-up members

On 22 June 2022, the Financial Sector Conduct Authority (FSCA) published FSCA Information Request 5 of 2022, in terms of which all retirement funds and administrators were requested to submit information relating to paid-up members, as at 30 September 2021, on or before 31 October 2022. The FSCA has on 9 November 2022, by means of FSCA Communication 34 of 2022 (RF), extended this deadline to 15 December 2022. The information on paid-up members of retirement funds, as at 30 September 2021, must be uploaded to the FSCA Retirement Funds Online System on or before 15 December 2022.

## 6. Proposed repeal of regulation 33 of the Pension Funds Act

The requirements relating to the payment of retirement fund contributions are currently contained in regulation 33 of the regulations under the Pension Funds Act. On 19 August 2022, the Financial Sector Conduct Authority published Conduct Standard 1 of 2022 (RF), which will replace regulation 33. It has accordingly become necessary to repeal regulation 33. National Treasury has therefore given notice of the intended repeal of regulation 33.

Comments on the proposed repeal could be provided to National Treasury until 28 November 2022.

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