

1. FSCA regulation plan

The Financial Sector Conduct Authority (FSCA) has published its regulation plan for the period 1 April 2023 to 31 March 2026. The FSCA in the plan, inter alia, provides the following feedback on the current status of various regulatory developments:

- The Conduct Standard on the conditions for living annuities forming part of a fund's annuity strategy has been delayed because of capacity constraints. A final round of informal consultation on the Standard however took place during the first quarter of 2023 and the final draft Conduct Standard will be submitted to National Treasury, for tabling in Parliament, soon.
- The Conduct Standard on the communication of benefit projections to members of retirement funds has been delayed because of capacity constraints. The Conduct Standard will be progressed as and when resources become available noting, however, that it is currently being reconsidered following certain industry engagement.
- A draft Prudential Standard on regulation 28 quarterly reporting requirements for retirement funds was published for public comment in November 2022 and the finalisation of this Standard is being prioritised.
- Work on the Prudential Standard on the requirements related to regulatory reporting and audited financial statements for retirement funds is on track, and it is envisaged that this Standard will be finalised during the course of 2024.
- Work in respect of a draft Standard focused on conditions for securities lending for retirement funds has been placed on hold pending the finalisation of broader work focused on securities lending transactions generally.
- Although the 2022 Regulation Plan indicated that the draft Conduct Standard relating to retirement fund benefit administrators will likely be collapsed into the Conduct of Financial Institutions (COFI) Bill transition work, this project was reprioritised as problems in the section 13B administrator environment persist and are exacerbated by the lack of an appropriate framework. As an alternative, this project will be progressed in some other form. This could entail that the FSCA proceeds with a slightly "watered down" version of the Conduct Standard that addresses critical deficiencies in the framework, but still avoids, as far as possible,



potential misalignment with the future framework that will be in place under the COFI Act. Further communication in this regard will follow in due course.

- The FSCA will continue to support National Treasury in developing the COFI Bill and believes that good progress has been made in preparing the Bill for submission to Parliament.
- The Joint Standard on outsourcing by insurers remains a priority and it is envisaged that this Joint Standard will be submitted to National Treasury for onforwarding to Parliament during the second half of 2023.
- The Joint Standard on information technology governance and risk management has already been submitted to Parliament and is therefore expected to be finalised soon.
- The Joint Standard on cyber security and cyber resilience requirements has been subject to two rounds of public consultation and will be submitted to Parliament in due course.
- Policy work is underway on a Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets, but formal legislative proposals will only follow at a later stage. The 2022 Regulation Plan indicated that formal draft legislative proposals are expected to be published during the first quarter of 2024, but now it seems more likely that legislative proposals will only be published during the course of 2025.

2. Open Finance

The Financial Sector Conduct Authority (FSCA) has published a draft position paper on Open Finance. Open Finance is described in the paper as “*the practice of consent-based financial data sharing and payment initiation, with suitably authorised third parties, safely and ethically*”.

Policy proposals with regard to Open Finance are made in the paper, which very briefly are as follows:

- Persons participating in Open Finance should be regulated for the safe and ethical sharing of user consent-based financial data to Third Party Providers.
- Regulatory requirements imposed should be proportionate to risks identified and foster positive competition and customer outcomes.
- Informed consent must be obtained from customers for the use of their data.
- Customers must be protected by implementing appropriate risk management and disclosure frameworks.
- Data protection and data sharing standards must be implemented.



- There must be complaints and dispute resolution mechanisms for customers that participate in the Open Finance ecosystem.

Comments on the above policy proposals can be provided until 15 August 2023.

3. Format for submission of annual financial statements and regulation 28 quarterly reporting returns

The Financial Sector Conduct Authority (FSCA) has issued FSCA Communication 19 of 2023 (RF) (“the Communication”), the purpose of which is to provide clarity on the format to be used when submitting annual financial statements and regulation 28 quarterly reports for financial years ending in 2023.

The background is that amendments to regulation 28 of the Pension Funds Act, which came into effect on 1 January 2023, have resulted in misalignment between the requirements of regulation 28 and the reporting requirements contained in Schedule IB of the prescribed format for financial statements. The FSCA has in November 2022 published a draft Prudential Standard on the requirements related to financial statements. This Standard has however not yet been finalised and it is stated in the Communication that, pending the finalisation of the Standard, funds should take into account the changes impacting Schedule IB and ensure that the annual financial statements are completed in line with the amended regulation 28. It is set out in the annexures to the Standard how Schedule IB must be adjusted.

It is further stated in the Communication that although the impact on Schedule IB, as set out in the Communication, does not take into consideration the additional reporting requirements in relation to infrastructure assets and the removal of the exclusions that were previously allowed on look-through of collective investment schemes, insurance policies and assets issued by an institution that is regulated by the FSCA, the Prudential Standard referred to above will take these matters into account. It is stated in the Communication that *“in the interim, administrators and service providers (which includes asset managers, insurers and collective investment schemes) are urged to supply the boards and auditors of funds with sufficient evidence to test compliance with Regulation 28”*.

The FSCA has also in November 2022 published a draft Prudential Standard on regulation 28 quarterly reporting requirements. The FSCA has in the Communication provided the following update in this regard:

“The FSCA wishes to clarify that since the draft Regulation 28 Reporting Standard (quarterly reporting) has not yet been finalised, quarterly reporting as contemplated in that Standard is not yet in effect.

However, existing Board Notices dealing with quarterly reporting of non-compliance with Regulation 28 will still apply and funds must continue to complete these reports pending the finalisation of the Regulation 28 Reporting Standard.

It is likely that the current non-compliance reporting (mentioned in paragraph 3.7) will continue throughout 2023, and that quarterly reporting on Regulation 28 as contemplated in the draft Regulation 28 Reporting Standard will



only commence in 2024 (subject to the finalisation of the draft Regulation 28 Reporting Standard). This is, however, still under consideration and a final decision will be communicated in due course.”

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