

## 1. Effective date of Joint Standard on Cybersecurity and Cyber Resilience Requirements

The Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) on 16 May 2024 published Joint Standard 2 of 2024 on Cybersecurity and Cyber Resilience Requirements for Financial Institutions.

The following was said in the Communication accompanying the Standard:

*“The Joint Standard is envisaged to commence on 1 June 2025. Notwithstanding the fact that the Joint Standard will likely take effect after 12 months, the Authorities urge the industry to prepare for its implementation. The Authorities will, as contemplated in paragraph 10.1 of the Joint Standard, formally determine the effective date in due course.”*

The FSCA and the PA have now, pursuant to the above, officially determined the effective date of the Joint Standard as 1 June 2025.

## 2. New rules for the Ombud for Financial Services Providers

The Ombud Council has published new rules for the Ombud for Financial Services Providers (“FAIS Ombud”). The rules came into operation on the date of publication, being 1 July 2024, and replace the previous rules that were in place since 2004.

The most significant change to the rules is the increase in the jurisdictional limit from R800 000 to R3.5 million. Since the rules remained unchanged since its inception in 2004, the increase in the jurisdictional limit is welcomed as it takes inflation into account and offers greater assistance to complainants. Previously, complainants had to abandon the claim amount in excess of R800 000 if they wanted the FAIS Ombud to proceed with an investigation. The office of the FAIS Ombud acknowledges that the increase in the jurisdictional limit may potentially lead to an increase in complaints, but says that it is confident that it will be able to meet this challenge.



Potential complainants are reminded that in order to seek assistance from the FAIS Ombud, they must be able to show that they first took up the complaint with the respondent and that the respondent failed to satisfactorily address the complaint within six weeks of receipt thereof. If a respondent was not provided with an opportunity to address the complaint, it is first sent to the respondent using the Premature Complaints Handling Process, similar to the “Refer to Fund” process used by the Office of the Pension Funds Adjudicator.

### 3. FSCA Regulation Plan

The Financial Sector Conduct Authority (FSCA) has published its three-year regulation plan for the period 1 April 2024 to 31 March 2027. Amongst others, the following is of interest for the employee benefits industry:

- Apart from the Joint Standard on Outsourcing by Insurers, which was published on 17 May 2024, no other insurance specific interventions are earmarked for completion within the next three years. However, various insurance related matters will be considered as part of the process focused on transitioning the existing sectoral laws to the Conduct of Financial Institutions (COFI) Bill framework.
- The FSCA has taken a decision to progress the draft Conduct Standard relating to retirement fund administrators. The draft Conduct Standard was revised during 2023/2024 and a final draft Conduct Standard has been compiled. The FSCA is intending to embark on informal consultation on the revised Conduct Standard during the second half of 2024, after which the draft Conduct Standard will be submitted to Parliament.
- Following the public consultation process, work on the Prudential Standard on the requirements related to regulatory reporting and audited financial statements for retirement funds is ongoing. This Prudential Standard has been earmarked for completion at the end of the 2024/2025 period, or early in the 2025/2026 period.
- The FSCA is in the process of reconsidering the Conduct Standard on the conditions for living annuities in an annuity strategy, especially the assumptions used for the Conduct Standard. At this stage it is not sure when this Conduct Standard will be progressed, nor in what form.
- Regarding the draft Conduct Standard on communication of benefit projections to members of retirement funds, the FSCA is in the process of considering whether this project should not perhaps be collapsed into the COFI Bill Transition Project. In addition, the FSCA appreciates the significant implementation impact flowing from the introduction of the Two-pot system and is concerned that requiring implementation of this Conduct Standard at this point in time will place excessive pressure on the retirement fund industry.
- The comments received on the so-called holistic reporting Prudential Standard on regulation 28 reporting requirements for retirement funds are in the process of being considered and this Prudential Standard has been earmarked for completion at the end of the 2024/2025 period, or early in the 2025/2026 period. This Prudential Standard will replace the exception reporting Prudential Standard, which applies currently.



- As was indicated in the previous regulation plan(s), the Conduct Standard on conditions for securities lending for retirement funds was placed on hold because of overlaps with other developments surrounding security financing transactions, which include securities lending transactions. It was explained previously that this Conduct Standard will be pended due to the broader ongoing work and the impact that this might have on the Conduct Standard. This status remains the same for now, but since progress has been made on some of the broader securities financing transactions proposals, this project might be resuscitated in due course.
- The FSCA is also in the process of considering potential reviews and/or interventions in respect of various other areas in the retirement fund environment. These potential reviews include Directive 8, Pension Fund Circulars 86 and 90, practices in the employer environment, retirement fund liquidation requirements and retirement fund costs and fees. The aforementioned are still under consideration and no final decisions have been made. Should any of the aforementioned reviews be conducted and result in proposed legislative interventions, these interventions will be prioritised as appropriate and will be incorporated into the regulation plan.
- A new Joint Standard on the requirements relating to third-party service provision/outsourcing is planned. This project is motivated by the need to harmonise and strengthen requirements pertaining to third party service provision (outsourcing). This Joint Standard will apply to all financial institutions, and should not be confused with the Joint Standard on Outsourcing by Insurers. Technical work relating to the development of this Joint Standard will take place during the 2024/2025 period.
- Work has progressed well on the planned Joint Standard on Culture and Governance requirements for financial institutions, and this remains a priority. An initial framework has been developed and the Prudential Authority (PA) and the FSCA are intending to embark on informal targeted consultation during the 2024/2025 period.
- Revisions were made to the draft Conduct Standard on requirements for financial institutions providing financial education initiatives, and the FSCA is intending to submit the final draft Conduct Standard to National Treasury, for onforwarding to Parliament, during the second half of 2024/2025.
- Regarding the planned Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets, policy work has continued following the publication of the FSCA's discussion paper in this regard on 22 September 2022. It is expected that regulatory framework interventions will be developed flowing from the discussion paper consultation process. The FSCA envisages that formal regulatory framework interventions, in the form of a Conduct Standard, will be published for public consultation during the 2025/2026 period.
- Although Artificial Intelligence (AI) and Machine Learning (ML) is still largely unexplored by the FSCA, the FSCA acknowledges the potential impact of AI and ML on the financial sector. Exploratory work in relation to AI and ML will occur during the course of the next year or two and may result in specific policy recommendations. Notwithstanding this work, the FSCA, in conjunction with the PA, is considering



including high-level governance principles relating to the use of AI machine learning by financial institutions into the Joint Standard on Culture and Governance requirements for financial institutions. The FSCA will use the targeted and formal consultation processes to further engage on these topics. In addition, the FSCA might consider how existing frameworks that are outcomes- and principles-based can be leveraged to explain how these should be applied in an AI and MI context - e.g. potentially through a Guidance Notice.

## 4. Amendments to the Pension Funds Act

The following amendments to the Pension Funds Act (“the Act”) have been made, which will come into effect on 1 September 2024.

The amendments are mainly aimed at making provision for the Two-pot system, but also deal with certain other aspects. Some of the more important amendments are as follows:

- A definition of “pension interest” is inserted in the Act, which will apply instead of the definition of “pension interest” in the Divorce Act. In terms of this definition a member of an occupational fund will not cease to have a pension interest when his service is terminated, and it will accordingly be possible to also make a pension interest allocation in the case of a paid-up member and a deferred retiree.
- The new definition of “pension interest” will also make it possible for a non-member spouse to receive a portion of the member’s pension interest in the case of the dissolution of a marriage in terms of the tenets of a religion. This is in line with the recent amendments to the Divorce Act, which were discussed in the May 2024 Legal Report.
- The maximum housing loan that may be granted to a member is limited to a maximum of 65 percent of the member’s benefit. This is to bring it in line with the recent amendments to regulation 28 of the Pension Funds Act, which limit housing loans granted by retirement funds to a maximum of 65 percent of the fund’s total assets.
- Section 37D of the Act is amended so that it is no longer possible to make a deduction from a member’s benefit in respect of a housing loan granted to the member by the employer.
- Section 37D of the Act, with regard to damage caused to the employer by reason of theft, dishonesty, fraud or misconduct by the member, is amended to stipulate that a deduction can also be made from the member’s benefit in the case of a compensation order in terms of section 300 of the Criminal Procedure Act. This is to resolve the problem caused by decisions by the Financial Services Tribunal to the effect that a deduction can only be made in the case of a civil judgment, and not in the case of a compensation order as aforesaid.



- A fund will not be able to permit a member to take a savings withdrawal benefit where there is a judgment, or a written admission of liability, in favour of the employer that has not yet been satisfied, unless the remaining fund value will be sufficient to satisfy the judgment.
- A fund may, for a period of 12 months, refuse a member to take a savings withdrawal benefit where the employer has not yet obtained judgment against the member, and the withdrawal will result in there being insufficient remaining value to comply with the pending judgment.
- A retirement fund may not without the consent of the member's spouse grant a housing loan to a member, or allow a member to take a savings withdrawal benefit, if the fund received written notification, with proof, from the member or spouse that a divorce action has been instituted.
- A deduction from a member's benefit in respect of maintenance must be made as a lump sum in respect of arrear or future maintenance, or in monthly payments in respect of future maintenance, as directed by the maintenance order.
- A retirement fund may not allow a member to take a savings withdrawal benefit where there is a maintenance order against the fund in place, unless the fund is satisfied that the remaining fund value will be sufficient to comply with the order.

## 5. Extension for submission of Two-pot rule amendments

The Financial Sector Conduct Authority (FSCA) on 30 April 2024 published FSCA Communication 16 of 2024 (RF), which required funds to submit their two pot rule amendments from 2 May 2024 until 15 July 2024. The FSCA on 19 July 2024, in terms of FSCA Communication 24 of 2024 (RF), extended the deadline for the submission of two pot rule amendments until 31 July 2024.

Rule amendments lodged after 31 July 2024 will not be prioritised, but will be dealt with in the normal course in terms of the FSCA's current Service Level Commitment. It is stressed in the above-mentioned Communication that funds will not be able to implement the Two-pot system until such time as the relevant rule amendment has been registered. If a fund's two pot rule amendment has not been registered by 1 September 2024, a communication must be sent to members explaining why they may, despite the Two-pot legislation, not be allowed access to their benefits.



## 6. Proposed conditions for legacy retirement annuity policies to be excluded from the Two-pot system

The Financial Sector Conduct Authority (FSCA) has published the proposed conditions for legacy retirement annuity policies to be excluded from the Two-pot system, which are open for comment until 16 August 2024.

The relevant retirement annuity fund must, inter alia:

- be able to evidence that the application of the Two-pot system will result in a significant negative impact on the fair value of certain of the members' retirement benefits in the fund;
- be able to evidence that all members are afforded the option to transfer to a different product in the same retirement annuity fund that is subject to the Two-pot system or to a different retirement annuity fund;
- develop a comprehensive communication strategy explaining to all affected members why the fund is acting in the best interest of the members in relying on these conditions to be excluded from the application of the Two pot system, and the impact this has on the members.

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