



Retirement Matters

2/2023

Annual Financial Sector Conduct Authority (FSCA) conference

The FSCA held their annual conference on 7 March 2023.

The following topics were discussed:

Treating Customers Fairly

The FSCA stressed that from this year it will focus more on promoting TCF outcomes in the retirement fund industry as part of pre-empting outcomes-based supervision.

FSCA Conduct Standard 1 of 2022 – Requirements Related to the Payment of Pension Fund Contributions

The Conduct Standard was discussed in [Retirement Matters 2 of 2022](#). The FSCA understands that arrear contributions can arise because of financial distress. However, it does not accept the practice where employers deduct retirement fund contributions from employees' salaries and then do not pay it over to the fund. This is a criminal offence and boards of management should deal with this before it becomes a major problem or risk for the fund. Where the employer is in genuine financial distress, it will be prudent for the board to engage with the employer and employees on how best to manage employee benefits and whether entering into an interim contribution holiday might be useful.

National Treasury Retirement Reform Discussion Papers – the two-pot system and auto-enrolment

National Treasury is still working on auto-enrolment, and more research on this topic is being undertaken. As mentioned in the National Budget, four areas relating to the two-pot system require additional work: a proposal for seed capital, legislative mechanisms to include defined benefit funds in an equitable manner, legacy retirement annuity funds and withdrawals from the retirement portion if one is retrenched and has no alternative source of income. The first three matters will be clarified in forthcoming draft legislation. The final matter will be reviewed as a second phase of implementation.

The second Bill will be published soon for commentary, but no date was confirmed for release. The intention is still that the two-pot system will come into effect on 1 March 2024.

Conduct of Financial Institutions (CoFI) Bill

It is anticipated that the CoFI Bill will be tabled before Parliament this year. An important change to the Bill is the classification of an employer as a "supervised entity" to empower the FSCA to take action against recalcitrant employers.

Regulation 28 Quarterly Reporting Requirements for Pension Funds

The FSCA has on 4 November 2022 published a draft Prudential Standard on the Regulation 28 quarterly reporting requirements.

A fund must report on compliance and non-compliance with Regulation 28 by submitting a quarterly report to the FSCA. The draft Prudential Standard prescribes a revised and updated quarterly reporting format. The new reporting format includes reporting in respect of infrastructure, an overall limit for infrastructure across all classes and an overall limit for all instruments per entity or issuer. Non-compliance or breaches in terms of sub-Regulation 3 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 (ESG) 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 quarterly report and submit it 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; and
- (b) for all subsequent quarters within 90 days after quarter-end.

The final reporting format is awaited from the FSCA, and it was confirmed that the quarterly reporting requirements which deals with infrastructure and ESG, may move to annual reporting in the revised annual financial statements (a review is currently underway).

Pension Lawyers Association (PLA) annual conference

The Pension Lawyers Association's 27th annual conference was held in conjunction with the International Pension and Employee Benefits Lawyers Association (IPEBLA) in March 2023. Several topics were discussed, with the following being of interest:

The future licensing framework for retirement funds (Chantal Manson and Zareena Camroodien)

Once the Conduct of Financial Institutions (CoFI) Bill is enacted, retirement funds will have to be licensed for providing a financial product and providing a financial service. The regulator confirmed that funds will transition to being licensed over time. A timeline of three years (and possible extensions beyond that) is envisaged. Going forward, retirement funds will have to be dual-licensed: they will have a prudential license in terms of the Pension Funds Act and a conduct license in terms of the Financial Sector Regulations Act (FSRA). The FSCA will follow a streamlined approach where funds will only have to submit one application and will be issued with the two licenses. For registered funds, the current registration status will be converted to being licensed. Funds will be able to do business as if they are licensed, and the FSCA will have to grant the new licenses within three years. Self-administered funds who are currently not licensed, will have four months after promulgation of the CoFI Bill to obtain their license to do administration business.

The appointment of valuers and principal officers will remain within the scope of the Pension Funds Act, unless they perform a “CoFI activity”, in which case they will have to be licensed under the FSRA.

Retirement Reform (Alvinah Thela from National Treasury)

The following was discussed with regard to retirement reform:

- A second draft of the Bill providing for the two-pot system (through the Revenue Laws Amendment Bill) will be issued before the normal tax law bills are published (the tax law bills are usually published during June of each year). Consequential amendments to the Pension Funds Act to cater for the two-pot system will be released soon after the draft Revenue Laws Amendment Bill is published. The Bill will be released for comment, but might not include the issues that are still being researched such as retrenchments, defined benefit funds and legacy retirement annuity funds, meaning that the system will be phased in. There will be opportunity for the retirement funds industry and public to comment on the Bill.
- A different strategy will have to be followed for defined benefit funds and the proposal from National Treasury is to reduce the period of service to provide for early withdrawals or a fund may choose a methodology verified and accepted by the FSCA.
- If a member has withdrawn an amount from the savings pot and resigns within 12 months of such withdrawal, the member will have to wait until 12 months after the withdrawal before a further withdrawal may be made.
- Auto-enrolment remains difficult for the informal sector. National Treasury will therefore introduce auto-enrolment for the formal sector and will encourage the informal sector to adopt some system to provide for savings.
- Too much emphasis is being placed on the protection of retirement savings during pre-retirement and focus will shift to post-retirement as well. The review of the annuities market will provide focus on post-retirement.
- Consolidation to umbrella funds cannot be encouraged until the governance issues have been addressed, which will therefore receive priority attention from National Treasury. Barriers preventing consolidation will

also receive attention, such as section 14 transfers and tax directives.

- Most commentators found National Treasury’s proposal to formalise joint forums for employers participating in umbrella funds acceptable and desirable.

FSCA press release affirming tougher stance to combat money laundering and terrorist financing

In reaction to South Africa’s greylisting, the FSCA issued a press release wherein they confirm their firm stance on efforts to ensure a swift resolution of remaining deficiencies identified by the Financial Action Task Force and to help expedite the country’s removal from the grey list.

Being the market conduct regulator of all financial institutions in South Africa, the FSCA is responsible for supervision of the anti-money laundering (AML) and counter-terrorism financing (CFT) risks in the financial sector. It plays a vital role in safeguarding the integrity of, and preserving public trust in, South Africa’s highly interconnected financial system. The FSCA has made progress by establishing a dedicated department responsible for AML/CFT supervision; enhancement of internal and external awareness and understanding of AML/CFT risks at a sector-wide and institutional level; introduction of market entry requirements to enhance transparency of ownership information and prevent criminals from being the beneficial owners of, or holding key management positions in, supervised entities; development and implementation of a risk-based supervision methodology for AML/CFT risks; and increasing ML/CFT-related sanctions against non-compliant institutions.

Role of a joint forum in an umbrella fund

National Treasury has over the past years emphasised the need to consolidate retirement funds to improve governance and lower costs. South Africa has too many registered funds to allow economies of scale and value for money benefits. A more appropriate vehicle could be an umbrella fund consisting of multiple participating employers.

An umbrella fund is managed by a board of management and the participating employers can have varying levels of involvement.

There is no definition of umbrella fund in existing legislation. However, “umbrella fund” will be defined in the Pension Funds Act for the first time once the CoFI Bill is enacted.

On 15 December 2021 National Treasury issued the paper *Governance of umbrella funds* for comments. The implementation year was anticipated to be 2023, and in the national budget of 2023/2024 it was confirmed that legislative amendments to improve governance of retirement funds, particularly commercial umbrella funds, will be published in 2023 and tabled in Parliament thereafter. The recommendation in the paper is that management committees (“manco”, also referred to as an “employer forum” or “joint forum”) be formalised and standardised and be given added responsibility of establishing value for money for members.

Participating employers should therefore consider the establishment of a joint forum. The primary duty of such a joint forum is to ensure the facilitation of consultation

and decision-making process between the employer, the umbrella fund, and the members. The main objective of the joint forum is to ensure that the employer and the members' interests are represented and communicated to the umbrella fund.

Depending on the needs of the employer, a joint forum will either have the power to make decisions on behalf of the employer or will only make recommendations to the employer. Where a joint forum may make decisions, it should consult the employer where a decision may have a potential financial or labour relations impact.

A joint forum is not responsible for the operation and management (governance) of the umbrella fund. That remains the responsibility of the board of management of the umbrella fund. A joint forum is also not responsible for the day-to-day administrative management in the umbrella fund, which resides with the fund administrator.

Governance, composition, and operation

Although not a legal requirement, it is recommended that a joint forum comprise of both member and employer representatives and in the case of a large participating employer, that an election by the members be held to fill the positions. Although there are no regulatory requirements at this stage, joint forum members should have sufficient understanding of, and be suitably qualified to, fulfil the role of a joint forum member, or gain such understanding through training, and studying documents related to the umbrella fund and participating employer.

The joint forum cannot be held accountable and liable for any losses that may arise as a result of participation in the umbrella fund and therefore the members of the joint forum cannot incur personal liability.

Members of the joint forum may not provide financial advice. It is a criminal offence to do so unless properly licensed in terms of the Financial Advisory and Intermediary Services Act, 2002.

Duties and responsibilities

The duties and responsibilities of the joint forum are:

- **Benefit structure and risk benefits**

A joint forum should be involved in setting up or reviewing the employer's benefit structure in the umbrella fund, by considering the suitability of risk benefits and contribution levels of its membership base. The joint forum may only make recommendations to the employer or make decisions within the parameters of the rules of the umbrella fund and special rules pertaining to the employer. Risk benefits may include lump sum death or disability benefits, income disability benefits, education benefits, dread disease cover and funeral benefits and the employer may wish to hold a separate insurance policy with unapproved risk benefits for its employees.

The joint forum should also consider and review any premium increase and recommend alternatives where appropriate within the parameters of the umbrella fund. It can also assist with the finalisation of specific risk benefit claims, where requested by the fund or employer, and may be involved in the monitoring of medical underwriting requirements for members with potential insured benefits in excess of any free cover limit.

- **Communication**

The joint forum should establish a line of communication with members and seek to educate them on all aspects of their participation in an umbrella fund, such as contribution levels, risk benefits and investments. This can be done via personal sessions, email, or a website, depending on the membership profile. The joint forum can also provide members with general fund information and developments in the retirement fund industry (such as the two-pot system) and remind members to update their beneficiary nomination forms and consider their investment choices.

The joint forum should also monitor whether members receive their benefit statements from the fund and whether the umbrella fund's website works optimally and contains useful information.

- **Administration**

The joint forum may meet with the administrator of the umbrella fund from time to time. They should monitor whether the umbrella fund's administration is performed on a reliable administration system and that the umbrella fund complies with the provisions of the Protection of Personal Information Act (PoPIA) and has contingency plans in place in the case of electronic or telecommunication failure or other events affecting business activities. It can also monitor whether fees and/or expenses related to service providers are market-related and whether fees are correctly charged by the umbrella fund, peruse the administration report, investments, cash flow, and other reports provided by the administrator and pose any questions.

- **Death benefits**

Depending on the arrangement with the employer and the umbrella fund, the joint forum may be responsible to complete the full death benefit allocation investigation and provide the board of management of the umbrella fund with a recommendation for distribution and any additional information. Alternatively, it may only be responsible to gather information for the board of management. In both scenarios, the board of management of the umbrella fund remains responsible for decision-making and allocation of the death benefits.

- **Investments**

Although asset manager selection and risk profile strategies lie with the board of management of the umbrella fund, the joint forum may consider the appropriateness of the umbrella fund's investments for its member base. It could also monitor investment performance and compliance with Regulation 28 of the Pension Funds Act, and verify that the umbrella fund has an appropriate default investment portfolio in terms of Regulation 37.

- **Payment of contributions and provision of membership schedules**

The joint forum should verify whether the umbrella fund has notified the employer prior to commencement of its participation in the fund, and on an annual basis thereafter, of the employer's duties, obligations, and liability under section 13A of the Pension Funds Act and Conduct Standard 1 of 2022 and that the employer provided the details to the fund.

The joint forum should verify whether the employer pays contributions to the fund's bank account by the 7th of the month following the month in respect of which the

contributions are due and whether a contribution statement reflecting the contributions payable in respect of members is supplied to the fund by the 15th of the month. Should contributions not be paid as prescribed, the joint forum will work with the monitoring person of the umbrella fund to ensure that contributions are paid, and that penalty interest is paid as prescribed.

- **General**

- The joint forum may assist in collecting the information needed by the umbrella fund to assess and pay divorce, maintenance, or section 37D employer claims.
- The joint forum may maintain a complaints management system and procedure and monitor member complaints and concerns to determine trends and improve service delivery.
- The joint forum should verify the correctness of the special rules pertaining to the participating employer and recommend amendments if necessary.
- The joint forum may prepare all applicable documents required for the transfer of any members from and into the umbrella fund in terms of section 14 of the Pension Funds Act or may only monitor the administrator's progress with preparation of the applicable documents.
- A member of the joint forum must be seen to act independently and thus, when exercising any discretion, it must be done in a manner which is impartial, fully informed, and not influenced by inappropriate considerations.
- Any conflict of interest, as well as the way the joint forum dealt with such situation, must be fully recorded in the minutes of the meetings of the joint forum.
- Each joint forum member will, at least annually, complete a Declaration of Interests form setting out all the financial and other interests of a joint forum member and should not accept gifts for voting in a particular manner on any umbrella fund-related matters.

Bulking payments to members of deregistered funds

In 2008, changes were made to the Income Tax Act to make provision for the Minister of Finance to prescribe an event in terms of which the so called "bulking settlement payments" by retirement funds will qualify for income tax exemption. When this notice to prescribe an event was issued, some of the affected retirement funds had already been deregistered. Fund administrators could therefore not pay the bulking settlement payments to the fund to be distributed to its members. These bulking settlement payments are currently still held by the respective fund administrators.

Consequently, in 2019, changes were again made to the Income Tax Act, allowing the Minister of Finance to issue a notice in the Government Gazette making provision for the payment of bulking settlement payments to former members currently held by fund administrators on behalf of deregistered funds to qualify for tax exemption, if they meet the criteria to be determined by the Minister of Finance in the notice.

The Minister has now issued a draft notice making provision for the tax-free payment of bulking settlement payments to former members of deregistered retirement funds, if they meet the following criteria:

- the bulking settlement payments relate to amounts that became due and payable by the administrator to the relevant retirement fund before 1 January 2008;
- such bulking payments have not been allocated due to the fact that the fund has been deregistered; and
- the administrator has entered into an agreement with the FSCA to make such bulking settlement payments directly to the former members of the deregistered fund.

It was made clear that this will be the last opportunity to rectify the situation. As such, it is proposed that once the bulking payments are finalised, the provisions relating to bulking payments in the Income Tax Act be repealed.

The draft notice is open for public comment until 6 April 2023.

Q&A

Q: May the board of management grant a member a housing loan or housing loan guarantee to purchase solar panels or an inverter?

A: The Pension Funds Act states in section 19(5)(a)(iii) that a fund may grant a loan or furnish a guarantee for the member to make additions or alterations or to maintain or repair the residence. It follows that such additions must be fixtures – these are structures that are affixed to the walls, floors or ceilings of a property, meant to permanently belong to the property.

Solar panels and inverters are fixed features that form an integral part of the property, that cannot be removed without causing damage to the property. UPS batteries and generators are not fixed features. Loans or guarantees may therefore be provided for solar panels and inverters, but not for UPS batteries and generators.