

LEGISLATIVE AND REGULATORY UPDATE – PART 2

2020 has, thus far, been nothing if not eventful.

In a world trying to find new ways to live and work in the midst of a pandemic, there has been a raft of new legislation, proposed legislation and communication affecting the operation of retirement funds in South Africa.

In fact, there has been so much communication from the regulator over the last few months that we could not do it justice in a single edition of KeyNotes. In order to provide you, our reader, with some respite, we have split what would be a very challenging read into two parts.

Clearly, with so much to cover, we have only provided a brief summary of each issue. Certain issues may be more relevant to some funds than others and significant additional detail may be required. Please contact your Keystone consultant should you wish to engage further on any of these issues.

Part 1 of our legislative and regulatory update was prepared at the end of August 2020. Part 2 covers the following:

- ❖ Financial Sector Conduct Authority (“FSCA”) General Notice 1 of 2020: Extension of period for compliance with various requirements related to the submission of statutory returns, 2020;
- ❖ FSCA Communication 11 of 2020 (RF): COVID-19 – Section 13A of the Pension Funds Act, 1956 (“the Act”) and financially distressed employers and employees;
- ❖ FSCA Communication 33 of 2020 (RF): Assumptions for the determination of minimum individual reserves of members of defined benefit categories of pension funds;
- ❖ FSCA Communication 41 of 2020 (RF): Non-compliance with Regulations 38(1)(b)(ii) and 38(1)(e)(i) of the Act by retirement funds;
- ❖ FSCA Communication 45 of 2020 (RF): Boards of retirement funds – Expiration of term of office and COVID-19;
- ❖ FSCA Communication 47 of 2020 (RF): Directive PF No. 8 of 2018: Prohibition of gratification – The role and independence of principal officers; and
- ❖ FSCA Notice 443 of 2020 – Levies on financial institutions.

FSCA GENERAL NOTICE 1 OF 2020: EXTENSION OF PERIOD FOR COMPLIANCE WITH VARIOUS REQUIREMENTS RELATED TO THE SUBMISSION OF STATUTORY RETURNS, 2020

Status: Issued by the FSCA on 3 April 2020

As a result of the impact of the COVID-19 pandemic on the operations of a number of retirement funds, administrators, auditors and actuaries, the FSCA has published general extensions to the following standard statutory submission deadlines:

FINANCIAL STATEMENTS (SECTION 15 OF THE ACT)

Financial year-end	Standard submission deadline	Extended submission deadline
30 Sep 2019	31 Mar 2020	30 Jun 2020
31 Oct 2019	30 Apr 2020	31 Jul 2020
30 Nov 2019	31 May 2020	31 Aug 2020
31 Dec 2019	30 Jun 2020	30 Sep 2020
31 Jan 2020	31 Jul 2020	31 Oct 2020
29 Feb 2020	31 Aug 2020	30 Nov 2020
31 Mar 2020	30 Sep 2020	31 Dec 2020

STATUTORY VALUATIONS (SECTION 16 OF THE ACT)

Valuation date	Standard submission deadline	Extended submission deadline
31 Mar 2019	31 Mar 2020	30 Jun 2020
30 Apr 2019	30 Apr 2020	31 Jul 2020
31 May 2019	31 May 2020	31 Aug 2020
30 Jun 2019	30 Jun 2020	30 Sep 2020
31 Jul 2019	31 Jul 2020	31 Oct 2020
31 Aug 2019	31 Aug 2020	30 Nov 2020

Our thoughts: Boards should agree reasonable timelines with their administrators, auditors and actuaries to ensure the timely submission of all statutory returns.

FSCA COMMUNICATION 11 OF 2020 (RF): COVID-19 – SECTION 13A OF THE ACT AND FINANCIALLY DISTRESSED EMPLOYERS AND EMPLOYEES – SUBMISSION OF URGENT RULE AMENDMENTS

Status: Issued by the FSCA on 26 March 2020

The FSCA invited employers who may find themselves in financial distress as a result of the COVID-19 pandemic to approach the boards of their retirement funds to amend their rules to permit the reduction or suspension of contributions for a period of time. The FSCA set out a number of conditions under which they would approve such rule amendments and committed to expediting their registration. We understand that a large number of employers have made use of this dispensation and the majority of amendments submitted have been registered by the FSCA.

Clearly, the COVID-19 pandemic has had (and will continue to have) an economic impact on all sectors of the economy. With the gradual re-opening of the economy, certain sectors are running at full capacity again, while others (for example, those relying on travel and tourism) will have a more difficult time for a prolonged period. Employers and retirement fund boards should be aware of the following issues that may affect members, retirement funding and risk benefits over the next few months:

- ❖ Many of the abovementioned rule amendments specified a period or a termination date – where an employer requires the continued reduction or suspension of contributions, rules may have to be amended again to extend the period.

- ❖ One of the requests made by the FSCA in Communication 11 was that risk benefits should continue to be provided based on pre-COVID salaries. This raises a number of important issues, including:
 - ❖ Certain employees may have returned to work, but on reduced salaries (which are unlikely to revert to pre-COVID levels in the short- to medium-term). If the “new normal” for such employees is a reduced salary, the question that needs to be answered is: how long should higher risk benefits continue to be funded?
 - ❖ Many insurers have indicated that they will continue to cover lump sum benefits based on pre-COVID salaries (provided that contributions are paid on those same salaries) but are more hesitant to continue to provide income disability benefits (and employer waivers) based on those salaries. Boards should ensure that risk benefit cover is in place and that all stakeholders understand any additional terms and conditions which may be imposed by insurers during this time.
- ❖ Where employers are undertaking retrenchment programmes, boards should ensure that communication to members highlights the risks of non-preservation (specifically when asset values are depressed).
- ❖ Boards should continue to communicate the risk of trying to time investment markets and of being invested too conservatively at younger ages.
- ❖ Government bond yields have increased dramatically in 2020 (although they have come back, to an extent, from the extreme levels experienced in March 2020). This may make certain annuity products (for example, inflation linked annuities) more affordable / attractive than they have been in the recent past. Boards could consider these annuities as part of their review of their annuity strategy.

FSCA COMMUNICATION 33 OF 2020 (RF): ASSUMPTIONS FOR THE DETERMINATION OF MINIMUM INDIVIDUAL RESERVES OF MEMBERS OF DEFINED BENEFIT CATEGORIES OF PENSION FUNDS

Status: Issued by the FSCA on 10 June 2020

In Board Notice 270 of 2013, the FSCA prescribed the assumptions to be used for the determination of minimum individual reserves of exiting members of defined benefit (“DB”) categories of funds in terms of Section 14B(2)(a)(i)(bb) of the Act. This board notice replaced similar notices issued in 2003, 2006 and 2007. Specifically, the board notice prescribed the following:

- ❖ The discount rate to be used for the period prior to the normal retirement age.
- ❖ No pre-retirement decrements may be used in determining the minimum individual reserves.
- ❖ The assumptions used to capitalise the pension at retirement must be “as per valuator”.

As a result of the extreme volatility in investment markets in the first half of 2020, the FSCA clarified that boards may make (and should consider making) more frequent changes to the valuation assumptions used for determining minimum individual reserves of DB members, provided that the assumptions used are set in a consistent manner to those used at the last valuation date.

Our thoughts: Boards of DB funds (or funds which have DB categories of members) should consult their valuator regarding changes in valuation assumptions for determining minimum benefits. Furthermore, boards should consider whether the principles of Communication 33 have relevance for the assumptions used when defined contribution members may purchase an in-Fund life annuity.

FSCA COMMUNICATION 41 OF 2020 (RF): NON-COMPLIANCE WITH REGULATIONS 38(1)(B)(II) AND 38(1)(E)(I) OF THE ACT BY RETIREMENT FUNDS

Status: Issued by the FSCA on 9 July 2020

Compliance deadline: Regulation 38, dealing with paid-up benefits, took effect on 1 March 2019 and funds were required to put measures in place to comply with such regulation from that date

The FSCA is concerned that many funds are not complying with the requirements of Regulation 38 of the Act, whereby:

- ❖ funds must provide members with a paid-up certificate within two months of leaving employment; and
- ❖ new members must be given the opportunity to elect to transfer their paid-up amounts in previous funds into the fund, and
- ❖ funds must within four months of a member joining the fund, request a list of all paid-up membership certificates in respect of any retirement savings of that member.

The above processes are important to implement without delay (where this is not yet the case) as many funds have quite a number of members who exit employment without making a benefit decision and / or a regular stream of new members.

Our thoughts: Boards must ensure that the administrator has put processes in place to meet the administrative and communication requirements of Regulation 38 (and to show compliance if necessary).

Although we are not aware of any administrative penalties having been levied for non-compliance with Regulation 38, the FSCA has indicated that this is a possibility if they become aware of continued non-compliance.

FSCA COMMUNICATION 45 OF 2020 (RF): BOARDS OF RETIREMENT FUNDS – EXPIRATION OF TERM OF OFFICE AND COVID-19

Status: Issued by the FSCA on 28 July 2020

It is clear that the COVID-19 pandemic will make conducting elections for member elected board members extremely difficult. The FSCA has confirmed that it is not empowered to grant extensions or exemptions to funds which do not have a full complement of member elected board members, even if this is as a result of not being able to hold board member elections due to the COVID-19 pandemic. If a vacancy on the board (as a result of, for example, the expiry of the term of office or resignation of board members) cannot be filled within 90 days of the date on which such vacancy arose, affected funds must apply to the FSCA to appoint board members in terms of section 26(2) of the Act, until elections can be held.

Our thoughts: Boards with upcoming elections should carefully consider how these will be conducted, taking account of the challenges brought about by the COVID-19 pandemic. Where a board cannot be properly constituted, boards should apply to the FSCA for the appointment of board members in terms of section 26(2) of the Act.

FSCA COMMUNICATION 47 OF 2020 (RF): DIRECTIVE PF No. 8 OF 2018: PROHIBITION ON THE ACCEPTANCE OF GRATIFICATION – THE ROLE AND INDEPENDENCE OF PRINCIPAL OFFICERS

Status: Issued by the FSCA on 21 August 2020

Compliance deadline: 28 February 2021

The FSCA has confirmed its position, in line with Directive PF No. 8 of 2018 (and subsequent Guidance Notice 2 of 2018 and Communication 7 of 2019), that the principal officer of a fund may not simultaneously be in the employ of a service provider to the fund as this constitutes a conflict of interest.

Funds and principal officers that are aware that they are or might be in breach of Directive PF No. 8 must approach the Authority as soon as possible (if they have not yet been approached by the Authority). Affected funds will have until 28 February 2021 to regularise the appointment of an independent principal officer, subject to the conclusion of an Enforceable Undertaking in this regard.

Our thoughts: Boards should ensure that they comply fully with the requirements of Directive PF No. 8. If this is not the case, the board should approach the FSCA and put a plan in place to ensure compliance.

FSCA NOTICE 443 OF 2020 – LEVIES ON FINANCIAL INSTITUTIONS

Status: Issued by the FSCA by notice in the Government Gazette on 19 August 2020

Commencement: Financial years ending on 30 June 2020 and thereafter

The notice sets out the updated levies on retirement funds (and other financial institutions, products and service providers). The levies relevant to retirement funds, which must be paid by 30 September each year, are as follows:

FSCA levy: R1 317.02 plus R15.58 per member ^(Note 1), subject to a maximum ^(Note 2) of R3 017 755

Adjudicator levy: R6.79 per member ^(Note 1)

Suggested action: Administrators should ensure that levy statements reflect the new levies for year-ends of 30 June 2020 and thereafter.

IF YOU HAVE ANY QUESTIONS OR WOULD LIKE MORE INFORMATION ON HOW THE ABOVE MAY AFFECT YOUR RETIREMENT FUND, PLEASE CONTACT YOUR KEYSTONE CONSULTANT DIRECTLY.

Keystone Actuarial Solutions is an actuarial consultancy based in Johannesburg, South Africa. We specialise in providing high quality, genuinely independent advice and services to the Boards of retirement funds and to the sponsors of such funds.

Our consulting actuaries share a common vision that independent, focussed consulting advice, provided by an experienced team, will result in better outcomes for retirement fund members and pensioners.

Keystone is a registered financial services provider - FAIS licence number: 48825

¹ Including all persons who receive regular periodic payments from such fund and excluding unclaimed benefit members or beneficiaries.

² The maximum is not applicable to commercial umbrella funds, pension preservation funds or provident preservation funds.

Please note

KeyNotes is a Keystone publication and provides general information of relevance to the Boards of retirement funds. It is not intended to be used as a substitute for specific professional advice (including, but not limited to, legal or tax advice). Each retirement fund's specific circumstances may be different and this publication does not take such specific circumstances into account – as such, it may not be relevant (or appropriate) in all circumstances. It should, therefore, not be used to form the basis of any decision, without specific advice relating to that decision. Keystone accepts no responsibility or liability to any party for any consequences arising from reliance placed on this publication, or on the opinions expressed herein. KeyNotes is prepared for our clients. It may not be reproduced or distributed to any other party without our prior written consent.