Retirement Matters 3/2024

The two-pot retirement system - updated requirements for rule amendments

The FSCA has published Communication 16 of 2024, dealing with the updated requirements for rule amendments to be submitted to give effect to the two-pot retirement system and withdrawing Communication 3 of 2024. This new communication outlines the approach that the FSCA will be taking towards the rule amendments.

All funds are expected to communicate the proposed legislative changes to members. In the communication it is stated that the FSCA may request a copy of the communication issued by or on behalf of the fund to its members when submitting the rule amendment. It is proposed that member communication is submitted with the amendment to avoid delays.

Funds and/or administrators may commence submitting two-component amendments from 2 May 2024 until 15 July 2024 to enable the FSCA Retirement Fund Reviews and Authorisations department to process and approve these timeously before the 1 September 2024 deadline. These rule amendment submissions will be processed on a first come first served basis and any submissions made after 15 July 2024 will only be processed once the first batch has been completed.

Rule revisions and consolidations will not be accepted between 2 May 2024 and 15 July 2024. If revisions or consolidations were submitted before 2 May 2024, it will be considered simultaneously with the fund's two-pot retirement system rule amendment.

Other rule amendments not related to the two-pot retirement system and submitted in addition to the two-pot retirement system rule amendments will be considered simultaneously with the fund's two-pot retirement system rule amendments. Funds are requested to alert the FSCA accordingly in their covering letters.

A Framework for Unclaimed Financial Assets in South Africa – FSCA's response to comments on the discussion paper

In 2022, the FSCA published the discussion paper on A Framework for Unclaimed Financial Assets in South Africa and invited public comment on it (refer to Retirement Matters 5/2022). The FSCA has now published its response to comments on the discussion paper.

The aim of the work is:

- to explore ways to mitigate the accumulation of unclaimed assets;
- establishing a shared understanding of unclaimed assets;
- addressing the lack of awareness among beneficial owners and their beneficiaries regarding assets rightfully owed to them;
- rectifying the lack of reliable data concerning the number and value of unclaimed assets; and
- exploring avenues for the socially beneficial use of unclaimed assets.

The FSCA notes that the transfer of unclaimed assets to a central fund and/or the National Revenue Fund presents various complexities, especially regarding the liquidation of non-cash assets, customers' legal and contractual rights, limited restitution, and tax neutrality. The FSCA recognises that these complexities require further consideration before advancing the recommendation to establish a central unclaimed assets fund.

The next steps that are planned by the FSCA are to:

- develop a framework that outlines the requirements relating to the identification, monitoring, management, tracing, and reporting of unclaimed assets;
- continue to actively engage all relevant stakeholders to obtain their insights, expertise and perspectives;
- solicit input and feedback from the broader public and relevant stakeholders on the proposed Framework for Unclaimed Financial Assets in South Africa before the end of 2024; and
- continue to support the National Treasury in its efforts to establish a central unclaimed fund.

The FSCA has started engagement with stakeholders by liaising with financial industry bodies to develop a definition of "unclaimed asset" in respect of different product types and to establish how long it typically takes to reunite beneficial owners with their assets and at what stage it would be appropriate to determine that further tracing and reunification efforts are likely to be futile.

FSCA Sustainable Finance Consumer Risks Study

The FSCA has published a Sustainable Finance Consumer Risk Report and Roadmap. This flows from National Treasury's Technical Paper 2021 - Financing a Sustainable Economy, first published in May 2020 (see Retirement Matters 6 of 2021). The paper raised the importance of the FSCA and National Treasury working together to develop a strategic framework that guides the financial sector's role in and ability to promote climate change and promote sustainable ESG (environmental, social and governance) practices relating to sustainable investments.

More recently the Prudential Authority has published its draft guidance on Climate-Related Disclosures for banks and insurers. The guidance "builds on domestic and international initiatives on climate-related disclosures, specifically the standards developed by the International Sustainability Standards Board (ISSB)". The FSCA anticipates releasing similar voluntary disclosure guidance for non-bank and non-insurance financial institutions, including retirement funds.

The FSCA's publication consists of two sections:

- **Part A** contains research on risks posed to financial customers in the sustainable finance landscape. The study outlines the potential risks, and the consumer protection tools and responses available to policymakers and regulators.
- **Part B** outlines recent developments and planned actions related to the FSCA's Programme of Work on Sustainable Finance. It recognises the FSCA's vital role in promoting the availability of credible and consistent information in South Africa's financial market.

The FSCA will engage, coordinate, and cooperate with stakeholders as it implements its sustainable finance programme of work. Insights from stakeholders will inform further refinement and integration within the regulatory and supervisory landscape.

PLA Conference feedback

The Pension Lawyers Association's 28th annual conference was held In Cape Town on 9 and 10 April 2024.

- **Two-pot retirement system**
  - Legislation is unclear whether provident fund members older than 55 years should have been a provident fund member **and** remain a member of the same provident fund to qualify to not be part of the two-pot retirement system and to be excluded from receiving the seed amount. The majority view is that the member must still be a member of the same provident fund. Clarity has been requested from National Treasury.
  - For these members, who have the option to elect within 12 months, the seed amount must be calculated at the end of the month of election. Members should know that they will only be able to receive a savings withdrawal benefit in the next month.
  - With regard to section 14 transfers, the FSCA indicated that they are considering a moratorium/freeze period for section 14 transfers to address certain risks they have identified. The FSCA is consulting with industry bodies to try find a solution.
  - It was stressed that a lot of misinformation is reaching members, and funds should communicate as soon as possible.

- **Feedback provided by the FSCA**
  - The FSCA's strategic objective for the future is to be more engaging. It is for this reason that it has held its first FSCA conference and issued a newsletter, the RF talk magazine.
  - The FSCA agreed that their time and effort should be spent on active funds, but currently too much of their effort and time is spent on terminating funds. They have indicated that they will therefore speed up the process of terminating a fund. In addition, the bulk of their attention currently goes to the same funds, and they indicated that those funds will in the immediate future be closely scrutinised.
  - According to their records, there is a current compliance rate of 75% for submission of funds' annual financial statements and valuation reports. One of their focus areas will be to improve this compliance rate.
  - Regarding arrear contributions, they expressed the view that members do not generally expect a lesser benefit because of outstanding contributions. They will revisit the prescription of the type of communication that must be sent to members who are impacted by arrear contributions.
  - The implementation of CoFI is also one of their focus areas and they are currently looking at the data and integrity of employer detail they have and should have on record. The promulgation of CoFI will however be postponed because of the two-pot legislation that currently enjoys priority.

- **Office of the Pension Funds Adjudicator feedback**
  - Funds were cautioned from giving a loose interpretation to the definition of life partnership and should go deeper in their investigations.
  - Funds should consider the wishes of the deceased member and determine how long ago a nomination form was signed and to see if anyone was excluded who would ordinarily be included.
  - Due regard must be given to signed agreements between parties. If the parties for example agreed to not share in each other's death benefits, such an agreement cannot be ignored.

Prudential Standard on the Regulation 28 reporting requirements

The FSCA published Prudential Standard 1 of 2024 dealing with Regulation 28 quarterly reporting requirements for pension funds.

The Prudential Standard includes a high-level reporting requirement pertaining to reporting non-compliance with or breaches of Regulation 28. If no non-compliance or breaches occurred, a fund does not have to submit the report. Where funds exceed the investment limits for reasons other than due to a change in the fair value or characteristic of an asset and have not been granted exemption in terms of Regulation 28(9), they must complete the non-compliance section of the quarterly report in respect of the fund and in respect of each member.

Funds are not required to submit a quarterly report where:

a) a liquidator has been appointed and such appointment has been approved by the Authority in terms of section 28(2) of the Act;
b) a fund has been exempted from liquidation in terms of section 28(17) of the Act and all the conditions of the exemption has been complied with; or
c) a full transfer was approved by the Authority in terms of section 14 of the Act and all the provisions of section 14 have been complied with in giving effect to the Authority's approval.

The quarterly reports must be completed electronically on the FSCA's online portal. The format has also been prescribed in FSCA RF Notice 8 of 2024.

The Prudential Standard came into operation on 2 April 2024. Funds must complete all fields of the quarterly report and must submit the quarterly report to the FSCA within 90 days after the last day of the respective quarters. The first report is therefore due by the end of September 2024 for the 2nd quarter of 2024, which is the period from 1 April until 30 June.