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COVID-19 AND RETIREMENT FUNDS

As the Coronavirus continues it trajectory across the world and in South Africa, we need to understand and consider the effect this will have on retirement funds. While retirement funds are long term investments, any investment or fund that requires money to be paid in and has assets that could potentially be paid out will become a focus in a time where jobs are on the line and money is short.

In this publication we deal with the possible effects of the Coronavirus on retirement funds. This publication does not deal with fund investment or labour relations matters. In summary, we set out:

- Briefly, what we have seen and may see in relation to the impact of the virus on funds;
- The FSCA's press releases about the Coronavirus;
- The FSCA's extension of statutory deadlines;
- The FSCA's extension of deadlines for fit and proper requirements, including CPD; and
- The FSCA's Communication about the suspension or reduction of contributions to retirement funds as a result of financially distressed employers or employees.

WHAT WE HAVE ALREADY SEEN AND MAY SEE MORE OF

We have already seen:

- Employers having to retrench staff and terminate employment;
- Employers putting staff on compulsory leave;
- Employer who cannot afford to pay employees and contractors;
- Employers that have want to put employees on unpaid leave;
- Employers that cannot pay contributions or full contributions to the fund; and
- Certain organisations wanting to withdraw funds from retirement funds whilst employees are still in employment.

What we could see more of:

- Housing loan defaults and fund guarantees being called up;
- Fraud by employees leading to more section 37D withholding and deductions as well as increased scam activity;
- Service providers, like administrators, extending turnaround times and service standards declining or *force majeur* arguments being made;
- Investment switching may become problematic as turnaround times come under strain;
- Funds and providers unable to meet statutory deadlines;
- Regulatory authorities' increased workload;
- The requirement for a lot more advice from consultants, lawyers and investment advisors around what should be done;
- Increased use of digital platforms for transacting, meeting and training; and
- Increased government and regulatory authority guidance and decision-making.

But as with everything related to the Coronavirus, we are going to have to see how things develop and adapt as required. Boards of funds are required to continue to comply with their fiduciary and statutory duties in this challenging and changing environment. Importantly, we should do what we have to do with urgency, but thoughtfully and calmly.

WHAT HAS THE FINANCIAL SECTOR CONDUCT AUTHORITY ("FSCA") SAID TO DATE?

A. FSCA PRESS RELEASES - THE FSCA HAS COMMUNICATED THE FOLLOWING:

- Stay calm;
- Treat customers fairly and they will engage with regulated entities to ensure this;
- They have enabled remote working and are using technology to facilitate all meetings;
- All face-to-face engagements with external stakeholders are suspended;
- All planned FSCA events and initiatives are postponed;
- All enquiries relating to licensing and business centre activities will be dealt with by e-mail or telephone;
- All on-sites inspections have been cancelled and new dates will be communicated;
- Desktop supervision will continue as normal and electronic engagement with financial institutions will be ongoing;
- Financial customers may call the toll-free number on 0800 20 37 22 or email info@fsca.co.za for remote assistance from the FSCA;
- All financial institutions must make provisions to assist customers remotely and physically – where necessary and possible – with reduced staff and extra precautions for the safety of both staff and customers;
- There are no instances of cash running out at ATMs, as cash availability contingency plans have been put in place;
- All investments remain safe, albeit volatile;
- In instances where customers require assistance with debt repayments, the FSCA encourages customers to engage with their respective banks and negotiate a repayment plan;
- Customers are advised not to panic and withdraw funds without advice;
- Customers are encouraged to utilise available digital platforms, where possible, and be on high alert for any fraudulent scams and investment offers that sound too good to be true; and
- If unsure about financial decisions, consult an authorised financial services provider.

B. FSCA COMMUNICATION 9 OF 2020 (GENERAL) - SUPERVISION ISSUED ON 24 MARCH 2020: IMPACT OF COVID-19 ON COMPLIANCE WITH VARIOUS REGULATORY REQUIREMENTS

The FSCA has issued this Communication dealing with the submission of statutory returns as well as fit and proper related deadlines. The issues relevant to retirement funds are:

STATUTORY SUBMISSIONS

(a) Financial statements under the FAIS Act

The period for submission of certain financial statements will be extended by four months, irrespective of any extensions that may already have been granted to individual Financial Services Providers (FSPs).

This extension does not apply to registered Banks, registered insurers or authorised users under the Financial Markets Act.

The extended submission dates are set out in a table in the Communication:

FSP Financial Year-end	Submission date as per section 19(2)(b)(iii) of the FAIS Act	Extended submission date
30 November 2019	31 March 2020	31 July 2020
31 December 2019	30 April 2020	31 August 2020
31 January 2020	31 May 2020	30 September 2020
28(29) February 2020	30 June 2020	31 October 2020
31 March 2020	31 July 2020	30 November 2020
30 April 2020	31 August 2020	31 December 2020
31 May 2020	30 September 2020	31 January 2021
30 June 2020	31 October 2020	28 February 2021

(b) Annual returns (Annexures C and D) required to be submitted by) section 13B administrators under the Pension Funds Act (the Act

The submission of the annual returns for the section 13B administrators will be extended by an additional three months as follows:

- Annual returns due on 31 March 2020 must now be submitted by 30 June 2020;
- Annual returns due on 30 April 2020 must now be submitted by 31 July 2020; and
- Annual returns due on 31 May 2020 must now be submitted on 31 August 2020.

(c) Annual returns to be submitted by pension funds in terms of section 15 of the Act

The FSCA will extend the period for submission of financial statements by pension funds by three months. The extended submission dates are set out in the table below:

FSP Financial Year-end	Submission date	Extended submission date
30 September 2019	31 March 2020	30 June 2020
31 October 2019	30 April 2020	31 July 2020
30 November 2019	31 May 2020	31 August 2020
31 December 2019	30 June 2020	30 September 2020
31 January 2020	31 July 2020	31 October 2020
29 February 2020	31 August 2020	30 November 2020
31 March 2020	30 September 2020	31 December 2020

(d) Valuation reports to be submitted by pension funds in terms of section 16 of the Act

The FSCA will extend the period for submission of valuation reports by pension funds by three months, in line with the extension for financial statements. Valuation reports must be submitted within six months from the extended submission date of the financial statements.

(e) Extensions related to Friendly Societies and Collective Investment Schemes will also be granted by the FSCA – see the Communication for detail if you require it.

Fit and proper requirements:

Please read the Communication for further detail about training, should you require it.

(f) **The FSCA will extend deadlines for 2020 regulatory exams** to 15 December 2020. Exams during the shut down period are suspended and they will make further announcements about exams due to take place after this period. The FSCA is considering an online format for exams. Candidates may postpone their examinations without fees or penalties and should contact Moonstone directly for this.

(g) **Class of Business training, Product Specific training and qualifications** that were due for completion in 2020 will have the deadline extended to 15 December 2020. FSPs will have to extend the supervision period for such affected representatives.

(h) **Continuous Professional Development (CPD):** the FSCA will give FSPs, key individuals and representatives an additional three months (until 31 August 2020) to meet the CPD requirements for this CPD cycle. The CPD requirements for this cycle will start on 1 September 2020 and end on 31 May 2021. The CPD hours for this cycle will be calculated on a pro-rata basis, that is calculated for nine months instead of 12 months, and will be reduced pro rata with three months.

The FSCA specifically state that it supports any individual efforts to achieve CPD hours through alternative methods to face-to-face events, which include webinars and on-line activities. The FSCA encourages people to continue to participate in such CPD events and activities.

(i) **Product Specific training: this type of training does not attract deadlines and no extensions are necessary.** The FSCA note that representatives may not render financial services if they have not received training on the products they render financial services against.

(j) **Qualification deadlines that were due for completion during 2020 will be extended to a deadline of 15 December 2020 and this date is subject to review.**

(k) **The FSCA provide specific contact persons and details related to the above extensions in the Communication.**

C. FSCA COMMUNICATION 11 OF 2020 (RETIREMENT FUNDS) ISSUED ON THE 26TH OF MARCH 2020 - COVID-19: SECTION 13A OF THE ACT AND FINANCIALLY DISTRESSED EMPLOYERS AND EMPLOYEES – SUBMISSION OF URGENT RULE AMENDMENTS

REASON FOR THE COMMUNICATION

As we know, many employers are in real financial distress as a result of the effects of the Coronavirus. This has led to many employers and employees not being able to pay full or any contributions to funds as required by the Act and the fund's rules.

The FSCA's Communication applies to pension and provident funds (as defined in the Income Tax Act).

LIABILITY FOR CONTRIBUTIONS

Contributions to funds are dealt with in section 13A of the Act which requires an employer to pay any contributions which, in terms of the rules of the fund, must be deducted from the employee's remuneration, and any contribution for which the employer is liable in terms of the fund's rules. Fund contributions must be paid by no later than seven days after the end of the month for which the contributions are due.

It is important to note that non-compliance with this section by any person, including employers and directors, is a criminal offence that could give rise to a fine (up to R10 million) and / or imprisonment on conviction. Every director of a company 'who is regularly involved in the management of the company's overall financial affairs' will be personally liable for the company's payment of contributions and compliance with section 13A. It is therefore essential that funds and employers follow this Communication carefully.

WHAT TO DO IF YOUR RULES ALREADY ALLOW FOR SUSPENSION OR REDUCTION OF CONTRIBUTIONS

After receiving and considering a request to reduce contributions or suspend contributions from an employer as well as engaging with the employer, funds should refer to their rules and use existing rules that apply in the circumstances. Examples of rules that may apply are rules that provide for:

- Temporary absence from work (with or without pay) or a break in service (in instances where employees are not working);
- Postponement of contribution payments; and
- Reduction of pensionable service (in respect of employees who are working reduced hours).

Our comment: note that the fund still needs a formal request from the employer as regards the suspension or reduction of contributions and that request must be retained by the fund. The fund and the employer would need to agree the date from which the rules will be applied. It is preferable that this is set down in writing. This is an important decision to be made by the fund (where the rules allow for a decision or discretion to be applied) and the Board must ensure the decision is recorded in a trustee resolution. Retain correspondence and other evidence around the fund's engagement with the employer.

WHAT TO DO IF YOUR RULES DO NOT ALREADY ALLOW FOR SUSPENSION OR REDUCTION OF CONTRIBUTIONS

If your fund rules do not provide for financially distressed employers or employees or other relevant rules permitting the suspension or reduction in contributions, after engagement with the employer and consideration of the employer's request, the fund must *urgently* submit a rule amendment to the FSCA.

The same comment as above applies with respect to the employer's request to the fund.

RISK BENEFITS

If premiums for fund risk benefits provided by way of a fund owned policy are not paid, the risk benefits will lapse. It is important that, where possible, premiums for risk benefits continue to be paid. Thus, the FSCA has stated that funds "must attempt to ensure that full risk benefit premiums continue to be paid in full in respect of the affected employees/members in order to ensure that the fund risk benefits will continue to be provided".

THE RULE AMENDMENT

As regards the relevant rule amendment:

(a) Submit your rule amendment urgently;
(b) Our comment: submit the employer request with your rule amendment (we have assumed that this will suffice and an agreement is not required);
(c) Our comment: in your covering letter refer to the fact that this is an urgent COVID-19 related amendment;
(d) Ensure that there is agreement between the fund and the employer as to the date when the contributions will be suspended or reduced, that the correspondence and the rule amendment reflects this date and the effective date of the rule amendment is correctly reflected;
(e) Only include the rule amendment about cessation or reduction of contributions and not any other rule amendments in the same amendment.

The FSCA (given their own social distancing measures and the shut down) have stated that funds will only receive a letter and an unstamped version of the rule amendment from them. Funds will then receive the stamped version of the rule amendment once business resumes as usual.

TAX IMPLICATIONS

The FSCA states it has consulted with the South African Revenue Service (SARS) in respect of the tax implications for retirement funds in the event of the reduction or cessation of employer and member contributions by an employer or participating employer. SARS has advised that it will not jeopardise the income tax approval status of the retirement fund.

ADMINISTRATION REQUIREMENTS

The FSCA require that funds keep a proper record of affected members of the fund, which they will be required to produce upon request by the FSCA. Our comment: funds should note this to their administrators and request these reports so that they can see them for themselves.

COMMUNICATION REQUIREMENTS

The FSCA requires funds to inform affected members of the employer's request to reduce or suspend contributions and of the attendant proposed rule amendments within 30 days of receipt of the request or a decision. Comment: 30 days from the request and 30 days from the decision by the fund may be two different dates, thus to be safe it is probably better to apply the earlier date when counting down your 30 days.

CONCLUSION

We are sure to see further change and guidance as Covid-19 continues to cause health, economic and social problems. However, do not ignore any issues related to retirement funds. Rather deal with them urgently and look to find a solution to the problem or at least start communicating the problem. Stay healthy.