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AN UPDATE ON UPCOMING LEGAL AND REGULATORY CHANGES FOR RETIREMENT FUNDS

THE CONDUCT OF FINANCIAL INSTITUTIONS BILL (COFI)

Treasury is urgently finalising this legislation. COFI is likely to be sent to Parliament by Treasury towards the middle to end of this year.

TWO-POT SYSTEM

The date for implementation of the two-pot system remains 1 March 2024. It is unlikely that the next draft of the two-pot legislation will be seen before June 2023. The relevant legislation is likely to be published in July 2023. Funds and their service providers have pointed out that this severely curtails implementation time.

Two-pot matters that Treasury is still consulting and deciding upon:

- How the two-pot system will apply to members of provident funds who were 55 or older on 1 March 2021 (and are still in the same provident fund).
- The seeding debate: which is, whether to permit the transfer of some of what has already been built up by a member in a fund before 1 March 2024 into the member's savings pot and allow the member access to it whilst they are still in employment. Treasury stated that Government is open to allowing once-off seeding, if it does not have adverse implications on liquidity and the costs of such withdrawal is not imposed on members choosing not to withdraw. This requires further consultation to take the relevant risks and benefits into account as well as possible trade-offs on vested rights. (Treasury could consider allowing phased withdrawals from the savings pot if the savings pot is seeded.)
- Proposals related to defined benefit funds.
- Legacy (old) Retirement Annuity Funds will be given the option to apply to the Financial Sector Conduct Authority (FSCA) individually for exemption from the two-pot system.
- Amendments to the Pension Funds Act to allow for the two-pot system, including deductions like divorce and housing loans. These amendments will be made with the Conduct of Financial Institutions Bill.

Access to the retirement pot on retrenchment of a member by an employer will only be considered in phase two of the implementation of the two-pot system and will not form part of the initial phase.

Once the two-pot system legislation has been finalised, we will be able to provide further information to you.

THE DRAFT OMNI CONDUCT OF BUSINESS RETURN (OMNI CBR)

The Omni CBR requires new quarterly returns to the FSCA by funds and their service providers (among other types of financial institutions) across a number of broad reporting themes. It will be the main supervisory tool of the FSCA once it is implemented.

The FSCA is busy working through the comments and will issue an updated version of the Omni CBR. It intends to issue questions to the industry to allow it to gauge the financial impact of the Omni CBR on financial institutions.

THE FINANCIAL ACTION TASK FORCE (FATF) AND THE GREY LISTING

Implementation of the FATF recommendations is a priority for the FSCA. These recommendations include:

(a) The substantial increase of resources at the FSCA to deal with anti-money laundering (AML) and counter-terrorism financing (CTF). This could affect levies payable by financial institutions going forward as the FSCA recruits more people in its Financial Intelligence Centre Act supervision department. In addition, it will result in more inspections and meetings; and

(b) The imposition of sanctions in relation to AML and CTF. The FSCA is revising its enforcement methodology and sanctions and will communicate further with the industry on this issue.

The FSCA has said it will focus more on groups in relation to AML and CTF inspections. These inspections will be done jointly by the FSCA and Prudential Authority (PA).

UPDATE ON THE CONDUCT STANDARD RELATING TO THE PAYMENT OF CONTRIBUTIONS

What is the date of calculation of penalty interest?

In terms of the Pension Funds Act and the Conduct Standard, interest is payable on arrear contributions. This interest is calculated from the first day following the expiration of the period contributions were payable for until the fund receives the contributions - at the prime rate plus 2%.

There is confusion as to whether the penalty interest starts to run from the 1st day of the month or the 8th day of the month. The FSCA will provide its view on this.

Naming and shaming

The FSCA has previously said it will name and shame both employers and funds where there are arrear contributions owing to a fund. Recently, it stated that it is finalising its work to 'name and shame' non-compliant employers through its website. The FSCA also stated that where employers are in genuine financial distress they must engage with their funds and the FSCA.

STANDARDS IN THE PIPELINE

WHAT	CONTENT	WHEN ISSUED	COMMENT AND EXPECTED NEXT STEPS
Joint Standard on cybersecurity and cyber resilience	Standards for financial institutions (including retirement funds) on the management of cyber risks. Objectives: • Sound, robust processes for managing cyber risks; • Adoption of cybersecurity fundamental practices; • Undertake systematic testing and assurance; • Establish & maintain cyber resilience; and • Provide for notification of material cyber incidents.	On 14 December 2022, a revised draft of the Joint Standard on Cybersecurity and Cyber Resilience Requirements Standard was published for a second round of public consultation.	The FSCA has stated that cyber-resilience of financial institutions is a priority for it. Comments are now being considered and the Standard will be revised if necessary. The Standard will then be tabled in Parliament this year.
Draft Conduct Standard – conditions for living annuities in annuity strategy	Fund boards are required to establish an annuity strategy. This Standard establishes the criteria for living annuities forming part of a fund's annuity strategy.	The FSCA first published this draft Conduct Standard in November 2018.	Comments received through the public consultation process have been processed and a revised version of the Conduct Standard was shared with industry associations that commented on the draft Conduct Standard for "fatal flaw" input before it is finalised for submission to Treasury (to forward on to Parliament). These comments are being processed by the FSCA.
Draft Conduct Standard - communication of benefit projections to members of funds	Deals with the communication of benefit projections to members to standardise the provision of minimum information to them and to ensure that benefit projections are communicated to members through the various stages of fund membership.	The FSCA, published this draft Conduct Standard on 8 June 2020.	Comments received through the public consultation process have been processed and the Conduct Standard underwent refinement. The FSCA will finalise the Conduct Standard and share it with commentators who submitted comments on the Conduct Standard during the consultation process for "fatal flaw" input only. Thereafter, it will be finalised for submission to Treasury (and then Parliament).
Draft Conduct Standard – conditions for investment in derivative instruments for funds	The Conduct Standard sets overarching principles for the uses of derivative instruments by funds.	On 8 June 2020, the FSCA published this draft Conduct Standard for comment.	The Parliamentary period for comment has elapsed and the Standard will be made final within the next two months.
Draft Conduct Standard - conditions for securities lending for pension funds	According to the FSCA, fund assets represent a significant portion of investable assets of financial institutions and such assets form a large base of the securities lending in the financial industry. In addition, securities lending enables a fund to earn additional income to the benefit of the fund and its members. Thus, to balance the benefit with the possible risks associated with securities lending, the FSCA will prescribe conditions by providing for general principles and requirements pertaining to service providers, agents, counterparties, lending limits and collateral etc.	The draft Conduct Standard was issued on 7 October 2020.	Due to the broader regulatory developments in respect of Securities Financing Transactions this Conduct Standard has been pended until further notice.
Draft Prudential Standard – financial statements and regulatory reporting requirements for retirement funds	This Standard includes important new financial statement and audit requirements for retirement funds. This will lead to substantial changes in the financial reporting and audit requirements of funds. In addition, the proposals include that the financial statements of all retirement funds will be required to be audited, irrespective of the asset size of a fund.	This Prudential Standard was published for public consultation on 9 November 2022.	The draft of the revised format and requirements resulted in extensive commentary. The comment period closed on 18 January 2023 and submissions are currently being considered by the FSCA. The Prudential Standard will be revised if necessary.

Draft Prudential Standard - Regulation 28 reporting requirements for funds	The current Regulation 28 quarterly reporting requirements for retirement funds is to be brought in-line with the recent amendments to Regulation 28, including the requirement to report on infrastructure investments. The timing to revise reporting is tight for retirement funds, and their service providers, including to implement the processes and system changes required to produce accurate and complete quarterly reporting. Thus, the first quarterly report due in 2023 will be given an extended time for submission (that is, submission on or before 30 September 2023).	The FSCA published the draft Prudential Standard for public consultation on 4 November 2022.	The FSCA is currently considering comments from the industry. The next version will be a final version to send to Treasury to table in Parliament. No further consultation will be done by the FSCA. The FSCA has stated that if the Prudential Standard is not finalised in time for the reporting at the end of September 2023, that the FSCA will issue a request for information (which is mandatory) in order to ensure it receives the specified information. The FSCA recently stated that it will be revising the draft format such that Table 2 (Infrastructure) and Table 3 (ESG) will be removed from the quarterly Regulation 28 report (as revised) and will be required only annually instead. This is because the infrastructure and ESG information is unlikely to change on a quarterly basis. The FSCA is not yet sure in what format it will require the annual report from funds. The FSCA stated that the broader definition of infrastructure recently included in Regulation 28 to the Pension Funds Act could lead to possible inconsistent classification of infrastructure assets and it is considering issuing an Interpretation Notice / Guidance Notice.
Development of a Joint Standard – corporate governance and culture	This Standard will apply to retirement funds as well as their service providers (in addition to other financial institutions).	This Joint Standard is in the process of being developed by the FSCA and the Prudential Authority (PA). The industry has not yet seen a draft. The FSCA expects that the draft Joint Standard will be published for public consultation during the latter half of 2023.	A Joint Governance Work Group (JGWG) consisting of various representatives from the FSCA and PA has been established to develop the governance framework.
Draft Conduct standard on the conditions applicable to fund administrators	The section 13B conditions applicable to administrators of retirement funds (a replacement of the current conditions)	The FSCA made a decision to pend this Standard because of the work it is doing around transitioning to COFI. However, recently it has said that it has urgent reasons for wanting to proceed with a watered-down version of this Standard. Watered-down in the sense that it will remove issues that could misalign with COFI.	There is unlikely to be any further consultation by the FSCA on the Standard, except that it may be issued to industry bodies for a final "fatal flaw" check.