

NOVEMBER 2023: SPECIAL EDITION 9 of 2023

In case you missed it...

1. [October 2023 - Seshego Insights October 2023 - NT issues response to industry on the Two-Component](#)
2. [September 2023 – Updates from the Office of the PFA and the FSCA](#)
3. [August 2023 – NT Two-Component System for retirement funds](#)
4. [July 2023 – Sanlam Benchmark Survey 2023](#)
5. [May 2023 – Draft conduct standards issued by the financial sector conduct](#)
6. [April 2023: Sustainability of Retirement Funds – an Overview](#)
7. [March 2023: Deductions in terms of Section 37D of the PF Act](#)
8. [February 2023: Budget summary 2023/2024 Tax Year](#)

Regulatory Updates

1. Financial Sector Conduct Authority (“FSCA”) Latest Service Level Commitment

1.1 Previous Service Level Commitments and their requirements

- The FSCA has issued previous Service Level Commitments (“SLCs”). The first such agreement was Information Circular 7 of 2005, which apart from setting out the turnaround times for the FSCA to deal with various submissions, also imposed certain requirements on the industry, such as the requirement that retirement funds must consolidate or revise their rules after 10 amendments.
- Rules with numerous amendments are very difficult to read and therefore it is good practice for a fund to consolidate or revise their rules. However, it is not always practical to comply with this requirement, for example in the case of a terminating fund, where the task and cost of consolidating rules and submitting them to the FSCA for registration may outweigh any potential advantage.

- Analysts at the FSCA frequently bring up the requirement for a fund to consolidate its rules when querying submissions. It is important to note that Information Circular 7 of 2005 was repealed in its entirety by Information Circular 4 of 2013. Therefore, the requirement to consolidate after 10 amendments no longer applies. Furthermore, Information Circulars are not legislation and funds are not obliged to comply with any requirement of the FSCA which is contained in an Information Circular.
- The turnaround times specified in Information Circular 4 of 2013 were reasonable (refer table in 1.2 below) but they were frequently not adhered to.

1.2 Latest Service Level Commitment

- The latest service level commitment from the FSCA reflects considerably extended turnaround times. It is noteworthy that the SLC has not been issued as an Information Circular.
- The preamble to the SLC states that these are “an indication of the maximum amount of time it will take to process 90 per cent of received applications”. The FSCA state that they are “committed to maintaining and exceeding the 90% target performance of the SLC”. They add that they will only maintain the specified turnaround times if funds respond to queries online within 30 days of receipt of the query.
- For reference, the table below is a comparison reflecting some of the new extended turnaround times compared with the turnaround times committed to in Information Circular 4 of 2013.



Submission	Turnaround PF4	Turnaround new SLC
New Rules (private fund)	30 days	180 days
Amendments	30 days	180 days
Revised Rules	75 days	Not specified
Consolidated Rules	40 days	Not specified
Special Rules	30 days	Not specified
Applications for extensions	30 days	60 days
Section 14 applications	45 days	60 days
Approval of statutory valuations	60 days	365 days
Applications for valuation exemptions	30 days	90 days
Appointment of Principal Officer	20 days	30 days
Applications for extensions	30 days	60 days
Applications for cancellation of registration	30 days	270 days
Applications for exemption from the provisions of Regulation 28 (full liquidation process)	30 days	90 days

- The new turnaround times for rules and amendments do not differentiate between revised rules, consolidated rules and special rules and no specific time frames are specified for these items. Therefore, the 180-day period apparently applies to all applications for rule registrations. This does not seem equitable, since clearly the amount of time an analyst would have to spend on the one-page amendment changing the registered address of the fund is not comparable with the amount of time spent in analysing revised or consolidated rules.
- In the introductory note, the FSCA requires the industry to respond to any queries within 30 days. This is problematic, since for various reasons the people who are in a position to address the query (the consultant, the drafter or sometimes the actuary) do not receive the query until the 30-day period has expired. The only time frame mentioned in the Pension Funds Act (“the PF Act”) is that the application will expire if it is not addressed within 180 days of receipt of a query from the FSCA.
- Delay in registration of rules and amendments can seriously impact the business of a retirement fund and cause prejudice to its members.
- The Constitutional Court recently ruled in the case of Mudau versus the MEPF that although a rule amendment can be applied retrospectively; a fund may not act on the basis of an unregistered rule amendment. Trustees need to be aware of the revised SLC and of the need to make decisions affecting members and the fund well in advance of the 180-day turnaround time set by the FSCA. The date of implementation for the Two-Pot system is 1 March 2024. It is likely the FSCA will have to deal with amendments providing for the Two-Pot system on a special project basis as application of the 180-day turnaround time would clearly make it impossible for funds to have registered amendments in place by 1 March 2024.



2. Annual Report from the Office of the Pension Funds Adjudicator (“OPFA”)

2.1 Main issues identified in complaints to the OPFA

- The Minister of Finance, Mr Enoch Godongwana wrote the introduction to the annual report from the OPFA. He commented that the OPFA created a mechanism for alternative dispute resolution that handled complaints with procedural fairness, efficiency, and cost-effectiveness. In the reviewed year, 2022/2023 the OPFA had:
 - Received 9190 new complaints (a 4% increase from the preceding year);
 - Successfully resolved 7809 of these complaints;
 - Finalised 82% of the complaints within 6 months,
- However, it was concerning that as in previous years, the majority of complaints pertained to withdrawal benefits and the failure of employers to comply with the requirements of Section 13A of the Pension Funds Act and Conduct Standard 1 of 2022.
- In her own report, the OPFA Ms Muvhango Lukhaimane confirmed that complaints about death benefits made up 6.6% of the total received. These were the third most frequent complaints, behind complaints about withdrawal benefits (50.5%) and those pertaining to the non-payment of retirement fund contributions by employers (33.6%).

2.2 The Financial Services Tribunal “the Tribunal ”

- Mr Godongwana commented that the increased use of the Tribunal by aggrieved persons was encouraging. Complainants now had access to an efficient appeals process, at little to no cost compared to the expensive and lengthy, formal court process.
- During the reviewed year, 72 applications for reconsideration of determinations by the OPFA were submitted by individuals dissatisfied with OPFA decisions. The Tribunal issued a total of 69 decisions, with 37 OPFA decisions being upheld and 32 being sent back for reconsideration. It is important to note that the powers of the Tribunal are limited to returning the determination to the OPFA for reconsideration and that they may not over-turn the determination.

- Mr Naheem Essop, senior legal officer in the OPFA, highlighted that the OPFA continues to draw from the decisions of the Tribunal and planned to implement the learnings gained therefrom in its determinations.

2.3 Return to Fund Process

- The OPFA introduced this process in 2020 as a mechanism to enable the fund to resolve a complaint expeditiously and without the involvement of her office.
- During the reviewed year, 620 complaints were resolved via the refer to fund process.
- However, the OPFA complained that some funds were guilty of failing to take advantage of the refer to fund process as there appeared to be very little or no attempt at all on their part to resolve complaints directly with their members.
- Other funds were habitually uncooperative by failing to provide proper responses to complaints. Failure to provide proper responses to complaints delayed the outcome of investigations and thereby eroded trust.
- The OPFA continued to report these habitual offenders to the FSCA for regulatory intervention. This would likely be in the form of an FSCA inspection of the non-compliant fund and at present there was no plan to “name and shame” the offenders.

Should you have any questions regarding the above, please contact your consultant to assist you.

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