

# Dashboard

## Legal Updates

Edition 13 | December | 2023

### A legal and regulatory update for retirement funds – what can we expect going into 2024?

#### Two-pot system

The Revenue Laws Amendment Bill (“RLAB”) (containing the two-pot system changes to the Income Tax Act) went to the Minister of Finance for a response to the Standing Committee on Finance (“SCOF”). The Minister recommended 1 September 2024 as an implementation date and SCOF accepted this date. The RLAB must now go to the National Assembly and thereafter the National Council of Provinces for concurrence. Both the RLAB and Pension Funds Bill (containing amendments to the Pension Funds Act related to the two-pot system) will be tabled on 8 February 2024 when Parliament re-convenes.

The FSCA intends publishing a Guidance Notice (or other instrument) in December 2023 setting out the principles of what should be in the fund rules to address the two-pot system.

#### Conduct of Financial Institutions Bill (“COFI”)

As a reminder, COFI contains far-reaching changes for financial institutions, including retirement funds, that will address the following matters, amongst others:

##### Market conduct

COFI is a key pillar in government’s Twin Peaks financial sector regulatory reform process that aims to entrench better financial customer outcomes in the South African financial sector.

##### Principles-based

It is a principles-based, financial institution-facing law that will be supported by Conduct Standards and Guidance Notes.

##### Rationalising laws

COFI will significantly streamline the legal landscape (that is, the laws that financial institutions are currently subject to) for the regulation of the conduct of financial institutions in relation to customers and others.

COFI will significantly streamline the legal landscape (that is, the laws that financial institutions are currently subject to) for the regulation of the conduct of financial institutions in relation to customers and others.

##### Making Treating Customers Fairly law

COFI will give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. COFI ensures that the TCF principles are legally binding and enforceable on all financial institutions.

##### Update

National Treasury received the final certificate to request Cabinet to approve the introduction of COFI to Parliament, however, National Treasury must still receive the certification by the State Law Advisor. COFI remains a priority and National Treasury aims to introduce it to Parliament in the first quarter of 2024. The implementation of the COFI requirements will be phased-in and there will not be a big bang approach.

## Omnibus Bill

National Treasury has received an urgent request from the Financial Sector Conduct Authority (“FSCA”) and the Financial Intelligence Centre to publish an Omnibus Bill, for comment in January 2024, which addresses the FATF recommendations. The Omnibus Bill will include the consequential amendments to the Financial Sector Regulations Act that were going to be submitted with COFI in respect of the FSCA’s enforcement powers (e.g. take down notices), the inclusion of alternative investment funds as a financial product, the Prudential Authority and FSCA mandate in respect of sustainable finance and transformation and the power to issue Standards on these matters. With respect to alternative investment funds, this Bill will give the FSCA the power to proceed with licensing these funds if COFI is delayed.

## The Omni Conduct of Business Return

As a reminder, the FSCA issued its draft Omni Conduct of Business Return (“Omni CBR”) in June 2022. This was the first phase in a process that was designed to end in June 2026, with many financial institutions, including retirement funds, administrators and Financial Services Providers, submitting online quarterly answers (returns) to the FSCA on an extensive list of questions (risk indicators). This will be the cornerstone of the FSCA’s supervisory approach.

Please see [Dashboard 9, 2022](#) which was the original publication providing information about the Omni CBR.

Recently, the FSCA published Communication 33 of 2023 “Update on roll-out and implementation of cross-sectoral Conduct of Business Return for financial institutions”, which provides that the FSCA will issue an updated timeline for the roll out of the Omni CBR in 2024 (with updates being provided in July 2024).

The FSCA provided times for certain actions as follows, which times may change depending on when COFI is enacted:

- Continuation of industry engagements on the current version of the Omni CBR until 1 April 2024.
- Publishing of a revised version of the Omni CBR spreadsheet template by 1 July 2024.
- Publishing an industry survey on the impact of the revised Omni CBR by 1 July 2024.
- Launch of the industry pilot in the second half of 2024.

## Revised Interpretation Ruling

As dealt with in [Dashboard 9, 2023](#), the FSCA issued FSCA Communication 20 of 2023 (RF) and a draft Interpretation Ruling intended to replace the current Interpretation Ruling 1 of 2020. This current Interpretation Ruling, which took effect on 25 March 2020, is an interpretation of section 37C of the Act affecting paid-up members, unclaimed benefit members and deferred retirees. The FSCA believes that it made an error in its interpretation of section 37C about unclaimed benefits and wants to replace the existing Interpretation Ruling with a revised version.

This Interpretation Ruling should be issued in mid-December 2023.

## Transformation and inclusion

National Treasury has published its Financial Inclusion Policy, which sets out recommendations for the financial services sector, including retirement funds. The industry is currently considering the recommendations.

## The FSCA to continue with the prudential supervision of retirement funds for now

The Prudential Authority and FSCA continue to develop the road map on prudential supervision and regulation of retirement funds. The FSCA has written to the Minister of Finance to request an extension of the transitional prudential powers of FSCA for another period, possibly two years.



## Ombud schemes update

The National Treasury policy position paper on ombud reform will be ready for publication early 2024.

On 13 November 2023 the Ombud Council published for comment draft Governing Rules for the National Financial Ombud Scheme (“NFO”). The comment period ends at the end of December 2023. The NFO is an amalgamation of the Credit Ombud Association, the Ombudsman for Banking Services, the Ombudsman for Long-term Insurance, and the Ombudsman for Short-term Insurance, following a mandate two years ago to amalgamate these Ombuds. This is in response to the World Bank’s recommendation to consolidate the existing ombud system into a new, independent single scheme covering the entire financial sector. It is expected that NFO will become effective towards the end March 2024. The new Board for the NFO, which is a separate legal entity, has been set up.

The updated FAIS Ombud Council Rules were published for comments. Next steps are to prepare the consultation report and thereafter submit to Parliament early next year.

The Ombud Council has had informal consultations with the Office of the Pension Funds Adjudicator (“OPFA”) in respect of drafting Ombud Council Rules for the OPFA. It is anticipated that this will be published for public consultation next year.

Eileen Meyer has been appointed as Chair of Ombud Council Board.

## Other regulatory instruments in progress

Regulatory instrument	Feedback
<p>Regulation 28 revised financial reporting:</p> <p>Prudential Standard 1 of 2023 - Regulation 28 Reporting Requirements for Pension Funds;</p> <p>and</p> <p>Prudential Standard – Regulation 28 Quarterly Reporting Requirements for Pension Funds (holistic reporting)</p>	<p>This is receiving high priority.</p> <p><i>Draft Prudential Standard 1 of 2023</i> changed the “exception reporting” approach as with the current Board Notices to an approach where pension funds report on assets held in compliance with Regulation 28 (holistic reporting).</p> <p>Public comments received on this Standard raised concerns about the change in approach, timing pressures as well as some of the specific proposed reporting obligations.</p> <p>The FSCA then removed the requirement to report on assets held in compliance with Regulation 28 from the Standard and decided to proceed with submitting the draft Prudential Standard (exception reporting) to Parliament. Submission to Parliament is imminent.</p> <p><i>Prudential Standard – Regulation 28 Quarterly Reporting Requirements for Pension Funds (holistic reporting)</i></p> <p>On 14 November 2023, the FSCA published this draft Standard, as there is a need to implement holistic (unaudited) quarterly reporting on assets in terms of Regulation 28 for retirement funds. Once the holistic reporting Prudential Standard is made final, it will repeal the above exception reporting Prudential Standard.</p> <p>The new draft Prudential Standard published for public consultation incorporates both non-compliance reporting and reporting on assets held in compliance with Regulation 28.</p> <p>There will be consultation with stakeholders on the holistic reporting requirements.</p> <p>For now, the reporting on ESG and infrastructure has been removed, as further consultation is required. In addition, the FSCA’s work on sustainable finance will impact the ESG and infrastructure reporting requirements.</p> <p>The FSCA will be issuing an exemption notice shortly in respect of the 2023 annual financial reporting in respect of Schedule D and IB.</p>

<p>Financial Education Conduct Standard</p>	<p>The FSCA is working on the comments received on this draft Conduct Standard. The FSCA is aiming to finalise this during early 2024.</p> <p>There will be a request for information on consumer education initiatives from financial institutions early next year with the aim of understanding how financial institutions currently deal with financial education.</p> <p>The FSCA is looking at gamification, for example in financial literacy education as well as other digital strategies for financial education.</p> <p>The FSCA is also engaging with different financial institutions on pilot consumer education initiatives.</p>
<p>Development of Joint Standard – corporate governance and culture</p>	<p>A Joint Standard is in the process of being developed by a Joint Governance Work Group (JGWG) consisting of representatives from the FSCA and PA. The refined version of the draft Joint Standard will be canvassed through targeted consultation with identified technical experts on governance during the first half of 2024, following which the draft Joint Standard will be readied for public consultation.</p>
<p>Conduct Standard for Financial Consumer Education</p>	<p>The FSCA developed the draft Financial Consumer Education Conduct Standard, including all supporting documents thereto which documents was published for public consultation on 31 March 2023 until 15 May 2023. Comments received through the public consultation process have been processed and the next steps for the finalisation of the Standard is under consideration.</p>
<p>Joint Standard (FSCA and Prudential Authority) on Cybersecurity and Cyber Resilience Requirements</p>	<p>On 30 November 2023, the draft Joint Standard and supporting documents were submitted to Parliament.</p>
<p>Conduct Standard – requirements pertaining to section 13B (pension fund benefit) administrators</p>	<p>The FSCA stated it had identified to need proceed urgently with the section 13B pension fund benefit administrators Conduct Standard. This will be a “watered-down” version of the Conduct Standard that addresses the main risks and conditions but avoids misalignment with the future COFI framework under development as far as possible. Next steps are still being considered, that is, whether the Standard should be published for another round of public consultation or whether it should be submitted to Parliament. If the decision is taken to submit directly to Parliament, the submission will be preceded by an informal consultation process providing commentators with an opportunity to provide “fatal flaw” input.</p>
<p>Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets</p>	<p>The Conduct Standard will only be drafted once the relevant Discussion or Position Papers have been finalised.</p>
<p>Draft Conduct Standard [-] of 2020 (RF) – Conditions for Living Annuities in an Annuity Strategy; and Draft Conduct Standard [-] of 2020 (RF) on Communication of Benefit Projections to Members of Pension Funds</p>	<p>Considering two-pot system and other developments, these two draft Conduct Standards have been moved down in the priority list and will not be going to Parliament soon.</p>



## Finding a better way

Talk to us today!

[info@nmg.co.za](mailto:info@nmg.co.za)

(+27) 011 509 3000

[www.nmg.com](http://www.nmg.com)



**Healthcare | Retirement | Investment Consulting | Financial Planning | Actuarial  
| Short-Term Insurance**

T&Cs apply. NMG Employee Benefits (Pty) Ltd (FSP number 33426)

This publication is provided as general information only. It is not advice and should not be relied upon without a discussion regarding your own facts and circumstances.