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An Update on the Default Regulations – Part Three of Three: Retirement Fund Default Annuity Strategy and Retirement Benefits Counselling

Regulation 39 - Fund Default Annuity Strategy

Requirement to have an annuity strategy

Guidance Notice 8 of 2018: in terms of this Notice and the Regulations, provident funds and preservation provident funds are not required to have an annuity strategy **unless the rules of the fund enable a member to elect an annuity**. Beneficiary funds and funds in voluntary liquidation are also not required to have an annuity strategy.

Clarifications as regards an annuity strategy

Both traditional and living annuities may be paid directly from the fund, through a fund-owned policy or purchased from a financial institution. With respect to living annuities: the living annuity investment choice must be limited to a maximum of **four** investment portfolios.

The regulations provide that **living annuity drawdown levels** must be compliant with the prescribed standard. In addition, living annuities have to be compliant with regulation 28 and regulation 37 (default investment portfolios). The Financial Sector Conduct Authority ("FSCA") has issued a *draft* Conduct Standard which sets out drawdown rates and deals with other issues related to living annuities in default annuity strategies.

Where the living annuity is paid by the fund or through a fund-owned policy the fund must **monitor the sustainability of income** drawn by retirees in these living annuities and make such members aware if their drawdown rates are deemed not to be sustainable. (The FSCA has issued a *draft* Conduct Standard dealing with the meaning and measures of sustainability of income for living annuities that form part of the default annuity strategy.)

Retirement benefits counselling

As we know, withdrawing members and members coming up to retirement are required to be provided with retirement benefits counselling.

Retirement benefits counselling means the disclosure and explanation in a clear and understandable language, *including risks, costs and charges* of:

- a. The available investment portfolios;
- b. The terms of the fund's annuity strategy;
- c. The terms and process by which a fund handles preserved benefits (paid-up benefits); and
- d. Any other options available to members. (For example, this may include what type of fund a member may opt to transfer to.)

Guidance Notice 8 of 2018 re-iterates the requirement that retirement benefits counselling must include the above components. All of (a) to (d) must be provided whenever a member withdraws from the fund.

Guidance Notice 8 of 2018 provides the following with respect to retirement benefits counselling:

- Retirement benefits counselling may be provided **in person or in a written format**. Comment - it is assumed that “written” in the Guidance Notice includes an online training format;
- Funds must **retain a record** of the retirement benefits counselling provided to each paid-up member. Comment - funds should ensure that any service provider to the fund providing this counselling has contractually bound themselves to this requirement and that this clause will survive the termination of the agreement and/or that a proper hand-over of records to the new provider takes place;
- Persons providing retirement benefits counselling do not have to be registered Financial Service Providers or financial advisors under the Financial Advisory and Intermediary Service Act (FAIS). The Board must be satisfied that the person is **suitably qualified and experienced** and is able to **manage conflicts of interest**. Funds will have to ensure they consider, from time-to-time, whether or not conflicts are being managed;
- Retirement benefits counselling **does not include advice**, even on tax matters. Members must be informed of this. If advice (including tax advice) is provided then such persons providing the advice must be registered as a financial advisor or a tax practitioner (whichever applies); and
- Access to retirement benefit counselling must be provided no longer than **six months before** the member's retirement. The board must make “every effort” to ensure that the information provided is still relevant and appropriate at retirement age. Comment - note that “every effort” requires more than a “reasonable effort”.

In terms of the regulations, members must be given access to retirement benefit counselling **not less than three months** before their normal retirement age (determined from the rules). This format may also be prescribed. In terms of Guidance Notice 8 of 2018 the FSCA expects that funds will exercise reasonability and consider the interests of members as to when to provide counselling. The FSCA recommends that, to ensure relevancy of information, the counselling should take place **not longer than six months** before retirement. Thus, reading the regulations and the Guidance Notice together, retirement benefits counselling should be provided **between three and six months before normal retirement date**.

Note that in terms of the Guidance Notice, with respect to living annuity information to members about to **retire**, retirement benefit counselling **need only include**: the terms of the fund's annuity strategy and any other option available to the member when retiring.