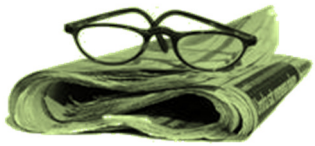
ENSIMINI
FINANCIAL SERVICES

Industry Update
Issue 2017.02



INDUSTRY FORCES TREASURY 'TO BACK DOWN' ON RETIREMENT PROPOSALS

Strong lobbying by the financial services industry has resulted in National Treasury capitulating on a number of tough proposals for retirement funds, to the detriment of savers, the chief executive of a financial services company that recently expanded its retirement fund services, says.

But Treasury says the second draft of its proposed regulations signals that it is serious about correcting practices in the retirement industry that cost you, the fund member, while acknowledging that the financial services industry needs time to adjust to new measures.

Magda Wierzycka, the chief executive of the Sygnia Group, says the relaxation of the proposed regulations on default investment, annuity (monthly pension) and preservation strategies for retirement funds followed lobbying from companies whose interests were threatened.

Sygnia, which started as a multi-asset manager serving retirement funds and other institutional investors, recently started offering retirement annuities (RAs) and umbrella funds.

If adopted, Treasury's revised proposals under the Pension Funds Act will require retirement funds to:

- Implement a suitable investment strategy for your savings in a fund, unless you select alternative investment options available within the fund;
- Preserve your savings if you leave the fund before retirement, unless you specifically request that the money is paid out or is transferred to another fund; and
- Provide you with a suitable annuity at retirement, either from within the fund or from a financial services company with which the fund has contracted, unless you choose an annuity from a financial institution.

The far-reaching proposals were designed to ensure that you retire with a better pension than most people currently have.

Performance Fees

In the first draft of the regulations, released in 2015, Treasury proposed that retirement fund trustees should be obliged to draw up default investment strategies that do not use investments that charge performance fees (where the amount of the fee depends on the investment returns).

A number of investment managers charge performance fees on all or selected key funds. Wierzycka says these fees have a large impact on your savings, particularly in retirement funds where your savings are invested for a long time.

In the second draft of the proposed regulations, released late last year, Treasury reversed its initial decision, stating that retirement funds can include investments that charge performance fees in their default investment strategies, as long as funds can provide adequate justification for using such investments and the fees are in line with industry standards on methodology and disclosure.

Ismail Momoniat, Treasury's deputy director-general of tax and financial sector policy, says although Treasury has had to consider the impact of banning performance fees on existing investments in retirement funds, the proposals are only a draft. And even if they were implemented in their current form, it would be only the first step towards tighter regulation.

Ultimately, Treasury would like the Financial Services Board to set a regulated standard for performance fees, he says.

The exclusion of investments that charge performance fees could also affect the inclusion of hedge funds, private equity funds and infrastructure investments in retirement funds' investment strategies. These alternative asset classes are regulated under regulation 28 of the Pension Funds Act, and Treasury says they can be useful to diversify investment opportunities and risk, thereby enhancing your long-term retirement fund returns.

Wierzycka says, typically, performance fees are deducted annually from members' savings, irrespective of whether or not a member actually benefited for the entire year. She suggests that performance fees be calculated daily, so that members pay only for performance received.

She also criticises Treasury's change of heart on the use of smoothed-bonus investments within retirement funds. In terms of the second draft of the proposals, funds will be able to use as default investments funds that smooth returns (some of the returns are held back when markets are doing well, to provide higher returns when markets are performing badly).

Wierzycka says retirement funds should be allowed to use smoothed investments, but expensive guarantees on the returns, as well as penalties for withdrawing before the term expires, should not be permitted.

Steven Nathan, the chief executive of 10X, a provider of low-cost investments, says that before Treasury released the proposed default regulations it did a lot of research and came to the conclusion that performance fees do not add value and that guarantees are complex and opaque. Its original regulations were based on this research, which identified best practice for retirement investments, he says.

The second draft does not adequately explain why the research has been discounted, or how the revised proposals will still achieve the best outcome for fund members, he says.

Nathan says the regulations refer to charging "reasonable" fees on investments and annuities, but do not define "reasonable". There is also reference to the pension you draw from a living annuity being in line with industry standards, but the only such standard is the drawdown tables from the Association for Savings & Investment SA. Nathan says these tables are ill-conceived, because they fail to take into account an individual pensioner's investment portfolio and market volatility.

Wierzycka also criticises the second draft of the proposals for introducing a provision – known as a grandfathering provision – that exempts existing retirement funds from the proposals.

She says a reasonable period during which existing funds could transition to compliance with the regulations should have been introduced, rather than making the regulations applicable only to new default investment strategies and annuities offered by retirement funds.

Momoniat says getting existing products to comply is a complex issue that has to take into account all the implications for members and companies.

Since the regulations are available for comment, he did not want to respond in detail, but he invited critics to submit comments to National Treasury.

Denver Keswell, a senior legal adviser at Nedgroup Investments, says it is encouraging that Treasury has considered the retirement industry's views, and he is still believes that the legislation will ensure that fund members are in a much better position when they reach retirement.

The deadline for comments is February 28.

Obligation to Provide Fund Members with Advice 'Watered Down'

Proposals to oblige your retirement fund to guide you on your options when you leave a fund or retire have been watered down, Magda Wierzycka, the chief executive of Sygnia, says.

The second draft of National Treasury's proposed regulations directs funds to provide "retirement benefits counselling", rather than a "retirement benefits counsellor", which allows funds – particularly smaller funds that cannot afford a counsellor – to decide how to provide this service.

Wierzycka says this will give funds the option of providing you with static information, rather than real financial advice or education. This, she says, "is not different to what is happening right now and will not eliminate the practice of many unscrupulous middlemen being inappropriately incentivised to steer members towards particular financial advisers".

It also maintains the status quo, which results in many members being steered into high-cost retail products, or pension products that do not have enough protection against the risk that they could outlive their savings.

The original proposals suggested that members who do not instruct their funds how they want to buy a pension at retirement would, by default, be put in the fund's default pension. But if the default annuity pays a guaranteed pension for life, being "opted in" in this way could be irreversible.

The second draft proposes that you have to choose or "opt in" for the default annuity.

Wierzycka says trustees need to take greater responsibility for ensuring that members receive appropriate advice about their annuity choices at retirement. At the very least, she says, they should be forced to ensure that such advice is independent, objective and provided by credible financial advisers accredited by the board of trustees. The fund's proposed default annuity should be included in the advice given on options at retirement, she says.

Steven Nathan, the chief executive of 10X, says he agrees that members need guidance when they resign or retire, but he is sceptical about the financial services industry's ability to be transparent about costs. Until regulations force the industry to be transparent, counselling will not work, he says.

4 February 2017
Laura du Preez

PENSION FUND CENSURED FOR UNLAWFUL PAYOUT DEDUCTIONS

The Pension Funds Adjudicator, Muvhango Lukhaimane, has come down hard on a pension fund that is flouting the Pension Funds Act. The adjudicator has asked the Registrar of Pension Funds at the Financial Services Board to investigate the conduct of Bokamoso Retirement Fund and its administrator, Akani Retirement Fund Administrators, for repeatedly allowing unlawful deductions from members' withdrawal benefits.

Late last year, Personal Finance covered two similar cases involving Bokamoso and Akani.

In the most recent determination, Ms N of Hammanskraal complained that she was not paid her full withdrawal benefit. She had been employed by Akani from March 2006 until she was dismissed on March 11, 2016. Her benefit statement, dated October 31, 2015, reflected a fund credit of R684 106, but her payout was just under R400 000.

In response, Bokamoso submitted that Ms N had been charged with misconduct, because she had breached her employer's operational procedure in authorising the payment of a death benefit, resulting in Akani incurring a loss.

Ms N had been found guilty by a disciplinary committee, had signed a letter of apology and, on her dismissal, had been made aware that all the money owed to her employer would be recovered, Bokamoso said.

The breakdown of Ms N's payout showed that her fund credit at the time of her dismissal was R633 513. Tax of R109 532 had been

deducted, as had an amount of R139 504, which was labelled "Mahlebe's death benefit". In other words, the payment that Ms N had incorrectly authorised had been deducted from her retirement savings.

Bokamoso said the amount had been deducted in terms of section 37D of the Pension Funds Act, which states that an employer can recover a financial loss suffered due to an employee's misconduct.

In her determination, Lukhaimane says that, as a general rule, the Act provides that pension benefits shall not be reducible, transferable or executable. However, there are certain exceptions. A pension fund may deduct any amount due by a member to his or her employer as compensation for "any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member and in respect of which the member has, in writing, admitted liability to the employer or judgment has been obtained against the member in court".

Lukhaimane says, however, that in the matter of Ms N, it appears Bokamoso relied on Ms N's apology letter and the signed dismissal letter as an admission of liability. For a deduction to be allowed based on admission of liability, she says, the admission must be clear in its terms, must be signed by the member, and must contain:

- An admission by the member that she or he caused the loss;
- A statement as to the amount of the loss; and
- A statement that the loss was caused through theft, fraud, dishonesty or misconduct that involved dishonesty.

She says these requirements were not met by Ms N's employer, and Ms N did not admit to causing the loss through theft, fraud, dishonesty or misconduct.

She ordered the pension fund to pay Ms N her outstanding benefit plus interest.

Lukhaimane says this was not the first time Bokamoso and Akani had made unlawful deductions, and she had raised the issue with the two organisations in the past.

It was on this basis that she recommended that the fund and its administrator be investigated.

4 February 2017
Martin Hesse

COURT CONFIRMS LAW ON SHARING OF PENSION SAVINGS ON DIVORCE

If you and your spouse are married in community of property and you get divorced, your spouse's pension or provident fund savings are automatically deemed to be part of your joint estate, a recent Supreme Court of Appeal judgment has confirmed. This means that your spouse's savings (his or her fund value at the date of divorce – or "pension interest", as it is known) do not have to be specifically mentioned in your divorce settlement agreement for you to be entitled to your share.

Until the judgment, Ndaba vs Ndaba (SCA 2016), there was some confusion about whether a person married in community of property could claim a portion of his or her spouse's pension interest unless it was spelled out in the divorce agreement.

The Divorce Act was amended in 1989 to introduce the "clean-break" principle, whereby a fund member's pension interest is shared at the date of divorce. The changes to the Act stated that, "in the determination of the benefits to which the parties to any divorce action may be entitled, the pension interest of a party shall … be deemed to be part of his or her assets".

Although there is now clarity on this issue, for the pension fund in question to effect the claim and make a payment to you as a non-member spouse, the divorce agreement must nonetheless comply with the provisions of the Pension Funds Act regarding the deduction and payment of the pension interest. A pension fund will act only on a correctly-worded court order, or decree, arising from such a divorce agreement.

In a recent article on the case, Kara Barnard, an associate in the pension law department at Shepstone & Wylie Attorneys, says: "The Supreme Court of Appeal has now confirmed that a non-member spouse does not lose the right to claim [his or her] share of pension interest of the member spouse, despite the divorce court not making an order in terms of Section 7(8) of the Divorce Act.

"If the non-member spouse seeks to claim a share of pension interest, [he or she] is required to seek an amendment to the decree of divorce of the settlement agreement before requesting payment from the [pension] fund. Retirement funds should ensure that each decree of divorce or settlement agreement that is received complies with the provisions of Section 7(8), as it is only then that the fund is required to effect payment to the non-member spouse. "Should the order not comply with these provisions, the fund is to request the non-member spouse to seek an amendment to the decree of divorce, as they are now able to do so post-divorce proceedings."

In other words, if you didn't receive a portion of your ex-spouse's pension interest because it was not mentioned in the divorce agreement, you can still claim your portion by getting the court order arising from your divorce agreement amended.

23 January 2017
Martin Hesse

All articles were sourced from the Personal Finance website.

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Prepared by:
Ensimini Financial Services (Pty) Ltd
February 2017