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THE RETIREMENT INDUSTRY NEWSLETTER

TABLE OF CONTENT

LOCAL NEWS

National Treasury announces pension funds can invest in infrastructure projects

The department said amendments will take effect on 3 January next year.

Pension funds will from next year be permitted to invest 45% of their capital in infrastructure projects, the National Treasury has announced. This comes after the department on Tuesday published the final amendments to Regulation 28 of the Pension Funds Act. Regulation 28, issued in terms of section 36(1)(bB) of the Pension Funds Act, protects retirement fund member savings by limiting the extent to which funds may invest in a particular asset or in particular asset classes, and prevents excessive concentration risk. The Treasury said the regulations widen the scope of potential investments for retirement funds, but continues to leave the final decision on any investment to the trustees of each fund, who determine the investment policy for any fund.

“These amendments follow two rounds of public comments in 2021. The aim of the amendment is to explicitly enable and reference longer term infrastructure investment by retirement funds, by increasing maximum limits that funds may invest in. “To this extent, the amendments introduce a definition of infrastructure, and sets a limit of 45% for exposure in infrastructure investment. “To further facilitate the investment in infrastructure and economic development, the limit between hedge funds and private equity has been split. There will now be a separate and higher allocation to private equity assets, which is 15% increased from 10%,” said the department. Retirement funds will continue to be prohibited from investing in crypto assets.

The excessive volatility and unregulated nature of crypto assets require a prudent approach, as recent market volatility in such assets demonstrates. Treasury said a limit of 25% has been imposed across all asset classes to limit exposure of retirement funds to any one entity (company), not just infrastructure. However, it said, one exception to the per entity limit is debt instruments issued by, and loans to, the government of the republic and any debt or loan guaranteed by the republic. “The asset allocation to housing loans granted to retirement fund members will be reduced from 95% to 65% in respect of new loans only. This is meant to curb abuse of the housing loan scheme by fund members.

The National Treasury is mindful of the important role played by housing ownership in wealth creation and in retirement and will continuously monitor this area of investment. "As part of aligning various regulatory approaches and achieving consistency, only investments in CISCA [Collective Investment Schemes Control Act] approved hedge funds will be permitted." The department said amendments will take effect on 3 January next year.

The Citizen | 6 July 2022

Be assured, the law affords a high level of protection to your pension savings

If you leave your employer and cease being a member of your pension fund, the amount you have accumulated in the fund (your retirement benefit), is essentially sacrosanct. The fund may make deductions from your retirement benefit only under the very limited conditions set out in the Pension Funds Act. The Pension Funds Adjudicator, Adv Muvhango Lukhaimane, has set the record straight after the Gauteng High Court overturned her determination about a deduction being unlawful. Lukhaimane says the High Court decision was based on an error of procedure, and that section 37A of the Act is unambiguous about the types of deduction that can be made. She assures pension fund members that there is no reason to panic and "falsely believe that their benefits are now capable of being ceded, pledged or hypothecated".

The conditions under which a pension fund may deduct money from your retirement benefit are listed in section 37D as follows:

- For a loan granted under section 19(5), which relates to a mortgage on a property;
- For compensation to your employer in respect of any damage caused by theft, fraud or dishonesty on your part, to which you have admitted guilt or been found guilty in a court of law;
- For any outstanding contributions to a medical scheme or insurance company;
- For the portion of your benefit assigned to an ex-spouse in terms of a divorce agreement;
- For anything you may owe under a maintenance order;
- For any income tax you owe to the South African Revenue Service.

Under no other circumstances is a fund permitted to make a deduction, even if, as we shall see, you have come to an agreement with your employer for such a deduction to be made.

Court order

A recent draft order endorsed by Judge Allyson Crutchfield overturned a determination made last year against the Bokamoso Retirement Fund and its administration company, Akani Retirement Fund Administrators. In November last year, Personal Finance published a story, “Pension fund 'unlawfully' deducted study loan from worker's retirement lump sum”. The case concerned one of Akani’s own employees, Mr A. On leaving Akani, Mr A had come to an agreement with his employer that it would deduct R52 252 from his benefit to repay a study loan. However, on receiving his benefit, Mr A saw that R60 879 had been deducted, and laid a complaint with the adjudicator.

While the adjudicator admits that the correct procedures were not followed by her office in dealing with the complaint, this does not alter the fact that a deduction to repay a student loan is not permitted under the Act. In a statement released on Friday last week, soon after the court order was granted, Lukhaimane wrote: “The order handed down in the unopposed motion court in favour of Bokamoso Retirement Fund did not and could not overrule what is expressly provided for in legislation and widely accepted to be the correct legal position.”
According to the adjudicator, the court order was the result of an incorrect procedure followed in reopening an investigation into a matter after it was closed, when it was discovered that deduction was unlawful.***Full Report*: *Be assured, the law affords a high level of protection to your pension savings (iol.co.za)***

Personal Finance | 5 July 2022

South Africans only think about retirement saving later in life

Research by Liberty shows that many working South African's only start to think about saving for retirement once they are over the age of 40, and are therefore not benefitting from the tax advantages that will help them build a substantial nest egg of money for their retirement. Contributing to a retirement fund allows you to save a large chunk of your earnings 'tax free' every year. This means that you will be entitled to claim a tax deduction for your contributions (subject to specified limits) and your money will grow 'tax-free' in the retirement fund itself. For example, * if you have taxable income of R500 000 a year and you contribute R100 000 to a retirement fund, you're only taxed on the remaining R400 000. The R100,000 will grow 'tax-free' while in the retirement fund. An incredible saving.

Once you retire, up to R500,000 of the lump sum taken may be tax-free, with the balance of your lump sum taxed in terms of preferential tax tables. Any annuities you take at retirement will be taxable at your marginal tax rate. A further saving. Retirement funds such as retirement annuity funds ('RAs'), are attractive retirement vehicles in that they are portable (i.e. not tied to an employer), have no contribution limits and your retirement benefits can be accessed from the age of 55. "Having a comfortable retirement or being in a position to live life the way you want, at a certain age should rate as an important life goal. But somehow many South Africans are not getting this until they are older," says Nosipho Nhleko - Lead Specialist, Investment Propositions at Liberty. Only 31% of people between 30-35 have established a proper retirement savings plan, according to our research findings conducted in an effort to understand retirement trends from an insurer perspective. By the ages of 45-49 this figure jumps from 31% to 63%. So South Africans become financially wiser as they get older, but it also indicates that too many South Africans are setting up their savings plan too late. "The fact is, the earlier a person starts saving, the easier it is and the more they can put away for a comfortable retirement."

Although RAs remain one of the popular options, our research found that at least 59% of South Africans perceive RA's as expensive. In terms of the racial breakdown of South Africans with an RA, up to 64% of Indian people have an RA, followed by 58% of white people, 51% of coloured people and only 47% of black people. Nhleko says, "it really is a perception because even small amounts can be contributed monthly to a retirement fund, which can benefit from tax savings." "Every circumstance is different and partnering with a financial adviser is the best way to plan your personal financial journey. The sooner you start, the better. You may well be saving yourself quite a bit of money in the long-term while securing the life you aspire to if you start early," says Nhleko

FA News | **4 July 2022**

Consequence of breach of fiduciary duties by trustees of a pension fund

In *Moropa and Others v Chemical Industries National Provident Fund and Others [2022]* ZAGPJHC 420 (29 June 2022), the court found that trustees who breached their fiduciary and statutory duties by committing fraud and failed to avoid a conflict of interest are not fit and proper persons and therefore, are susceptible to be removed as trustees.

The finding made by the court arises from an application instituted by the erstwhile fund administrator to the Chemical Industries National Provident Fund ("Fund") to review and set aside the appointment of certain service providers by the Fund. The central question concerned the conduct of certain trustees, whether their decision to terminate the services of the Fund's administrator was tainted by fraud and constituted a breach of their fiduciary and statutory duties owed to the members of the Fund. It was contended that the three trustees of the Board of the Fund, namely, the principal officer, chairperson and his deputy received bribes from a service provider with a view to influencing the decision to appoint the service provider as the administrator, consultant and actuary to the Fund. It was common cause that the trustees received payments from a related entity to the service provider immediately after the appointment of that service provider as the Fund's administrator without a credible and plausible explanation to the payments conferred by these trustees. The court found that the payments were evidently corrupt payments constituting bribes for the roles played by these trustees in the decision to terminate the erstwhile Fund administrator and in the appointment of the new administrator. Accordingly, the decision to terminate the erstwhile Fund's administrator was reviewed and set aside on the basis of fraud and legality. The secondary issue that the court traversed related to the statutory and fiduciary duties of the trustees.

The court remarked that in making a decision to terminate the services of a fund administrator, the Board of the Fund is constrained to act lawfully. The trustees can only act within the four corners of the Pension Fund Act ("PFA") and the Rules of the Fund and for the benefit of the Fund, when passing any resolution. In terms of section 7C of the PFA, the Board and each of its members are required to act with due care, diligence and good faith (section 70(b)) to avoid conflicts of interest; (section 7C(c)); to act independently (section 7C(e)); to exercise a fiduciary duty to members and beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, as well as a fiduciary duty to the fund, to ensure that the fund is financially sound and is responsibly managed and governed in accordance with the rules and this Act; (section 7C(f)); and to comply with any other prescribed requirements (section 7C(g)).

The court stated that when a Board makes a decision to terminate the appointment of an administrator, it acts not in its own interest, but in the interests of the Fund. It (and each member of the Board) is obliged to act in accordance with their fiduciary duties and include the duties to act with due diligence, independence and impartiality in accordance with section 7C(2) of the PFA. The found that these trustees acted in their own personal interests, not in the interest of the Fund when they accepted the bribe to appoint the new administrator and evidently, breached the fundamental duty to avoid a conflict of interest. The court also found pertinently that the trustees are clearly not fit and proper persons to be trustees.

The court remarked that the PFA requires that all trustees are fit and proper persons. The duties of the trustees to the Fund are governed both by the common law principles and by statutory law, notably section 7C of the PFA, which provides in the relevant parts that the object of the Board is to direct, control and oversee the operations of a Fund in accordance with the applicable laws and the rules of the Fund. In pursuing its object, the Board is enjoined to take all reasonable steps to ensure that the interests of members in terms of the rules of the Fund and the provisions of the PFA are protected at all times. Moreover, members of the Board are required to act with due care, diligence and good faith. Accordingly, the court ordered the removal of these trustees from the Board of the Fund.

The judgment provides some useful insight into the fiduciary duties of trustees of pension funds and re-emphasize that, at all times, the trustees must act lawfully and in the best interests of the fund and its members or beneficiaries and to avoid conflict of interests, failing which, that there is a real risk that they can be removed as trustees.

FA News | 6 July 2022

How to optimise your retirement income?

Most people realise the importance of planning for retirement, but how many know exactly how to make their retirement plan work effectively for them? Whether it be a retirement annuity, living annuity, or investment policy – every financial product has different benefits and restrictions. The key is knowing which product, or combination of products, to consider as part of a long-term financial plan. We have all heard the phrase that you are never too young to start saving for retirement, but where do you start?

And more importantly, how do you ensure you optimise your retirement income? We asked Citadel Advisory Partner, Coert Grobbelaar, about the fundamentals of a good retirement plan. “Gone are the days where all savings are poured into only a pension plan or retirement annuity. This is neither tax-wise nor cashflow effective when reaching retirement. I encourage my younger clients to start contributing to both retirement products and discretionary savings as early as possible so that they have a combination of constrained and unconstrained products in their portfolios,” says Grobbelaar.

THE BENEFITS OF A GOOD RETIREMENT PLAN

Withdrawing solely from a living annuity could mean paying more income tax in comparison with withdrawing from a combination of income streams. You are also unable to make ad hoc withdrawals from a living annuity – for example, when buying a new car or booking an overseas trip. A good long-term retirement plan will therefore include a combination of retirement and discretionary savings (your own savings which do not have the same restrictions as retirement products). This will ensure that your retirement income is designed in a tax-efficient manner, with the benefits of flexibility when you need to make ad hoc withdrawals.

THE KEY FACTORS OF RETIREMENT FUNDS

When contributing towards retirement products like a retirement annuity, pension or provident fund, the full tax benefit can be used, which is 27.5% of pensionable income restricted to a maximum of R350 000 per tax year. Upon retirement, you are allowed to withdraw one third of the value of your retirement products, with the first R500 000 withdrawal being tax-free. Unless you need more discretionary funds, it is not advisable to draw more than the allocated tax-free portion as it will result in unnecessary tax deductions. Consider moving this R500 000 to your existing discretionary (after tax) savings funds – if it is financially feasible for your personal circumstances. The remaining retirement savings can be consolidated in a living annuity from which you can withdraw between 2.5% and 17.5% per annum, or a guaranteed annuity which will pay a specified income until your death. These income streams are subject to Income Tax as per the tax tables applicable to you. According to the current SARS tax tables, the first R141 250 of your overall taxable income per annum for the 2023 tax year is tax-free for persons over the age of 65.

WHAT TO KEEP IN MIND ABOUT DISCRETIONARY SAVINGS?

Contributions towards discretionary investment products are made using after-tax funds. These funds are accessible for any elective withdrawals before and after retirement, and most are 100% liquid. You can also make monthly withdrawals to supplement your retirement income, or the funds can be used for ad hoc expenses, unlike living annuities which do not allow for ad hoc withdrawals. Discretionary funds from which you make withdrawals to supplement your annuity income or ad hoc withdrawals, could be subject to capital gains tax (CGT) or tax on interest earned, depending on the kind of investment, whether it be interest bearing assets, bonds, equities, unit trusts, etc.

STAYING MOTIVATED

Your retirement plan should be personalised to your age, lifestyle, assets, and financial goals. Grobbelaar says the long-term investment goal should always be to build a portfolio which can withstand volatility when the markets are under pressure, participate in upward trends and bull market runs when they occur, but remain within acceptable risk parameters, while keeping relevant tax implications in mind. If you can get that right, you should have an optimised retirement plan with the result of adding real value despite planned withdrawals. “When planning for a successful retirement that maintains your current standard of living do not underestimate the role of a financial advisor, who will partner with you and guide you on your journey to retirement. This will result in optimised retirement income,” concludes Grobbelaar.

FA News | 6 July 2022

INTERNATIONAL NEWS

How to plan your retirement

You can also opt for a systematic withdrawal plan (SWP) to ensure an efficient way to withdraw funds from your retirement corpus without the consequences of running out of it.

Retirement is a new journey of life that helps you experience a different phase with a new kaleidoscope. How smoothly it goes depends on how well you have executed the planning phase. Anup Bansal, Chief Business Officer, Scripbox points out, “Two of the most important components of having a worry-free retirement life are: a) Investing and planning for retirement and b) Efficient withdrawal planning from retirement funds.” It is always better to start investing and saving for your retirement from an early age, i.e. once you start earning. According to industry experts, this will give you a long time horizon to invest in a small amount regularly and yet create a sizable corpus when you retire.

Bansal explains, “When starting early, you may have some vague idea about your expenses (inflation-adjusted) at the time of retirement. Still, as you near retirement, you will be more clear about how best to estimate the required expenses to sustain your lifestyle and the resultant corpus.” Additionally, you should consider inflation while planning for your retirement. For May 2022, the annual inflation rate in India was 7.04 per cent so you may use historical numbers for the planning and keep revising as years go by. “You should make sure that the investment instruments you are choosing help you with gaining returns at or above par with inflation.

The planning may assume an extra return that you will earn over inflation in your calculation of the corpus,” adds Bansal. Note that, the higher the extra return assumed, the smaller is the regular savings required so it is important to be conservative and assume no more than 1-2 per cent return over inflation at any point in time.

Efficient withdrawal rate from retirement funds

Once you retire, the ultimate goal of your investment funds is to provide you with a regular income. However, deciding at what rate you should withdraw funds to avoid outliving it is a challenge. Bansal explains, “While the withdrawal rate is directly related to your income requirements, in general, a 4 per cent withdrawal rate is considered ideal. It is also called the 4 per cent rule of retirement.” You can also opt for a systematic withdrawal plan (SWP) to ensure an efficient way to withdraw funds from your retirement corpus without the consequences of running out of it. Bansal points out, "It not only allows you to enjoy a regular income inflow, but your remaining fund stays invested and continues to grow, yielding returns. You should calculate the lifestyle cost of your post-retirement life and decide on a withdrawal rate for efficient planning of your latter days."

Financial Express | 4 July 2022

What can pension savers do in bleak markets?

There are ways to manage inflation and recession, but safety comes at a price Financial market conditions appear bleak. Inflation has driven interest rates higher, leading to falling prices in the equity and bond markets. The contrast with a prolonged period of rising prices in both markets is huge. It's natural for retirement savers to feel depressed, not just about the present but also about future prospects. And it's particularly gloomy because the ballast traditionally provided by bonds when equities fall can no longer be taken for granted. So the big question is: what can you do? I'll focus on three aspects. What can savers do? What can retirees do? And what can you do to prepare for the inevitable next visitation of adverse conditions? The first question is the most comforting to answer.

Savers should recognise that their assets no longer conform to their planned allocation (whatever it might be). So the first thing is to rebalance back to it. This has the fortunate effect of buying into whatever has fallen furthest, taking advantage of the new lower prices. In fact, falling markets are, perhaps paradoxically, good for savers. Think of the falling prices as a sale. The amounts you had planned to invest regularly will now buy more units of each asset class than they would at the previous higher prices. Of course that advantage only holds if falls are temporary. But they usually are. That's the good news. There's always the possibility that markets never recover. That's what author William Bernstein calls "deep risk" — and frankly there's no satisfactory way to deal with that.

It's little comfort that the whole world will be seriously affected, not just you — but that's the reality of it. So let's assume that the falls are not so much long-term as short-term or medium-term. And short-term falls are not a problem if you don't panic and sell. The only defence against panic is to think rationally rather than emotionally. The savers most affected by a medium-term fall are those who are relatively close to having to start cashing out gradually as they approach retirement. And the same problem is even worse for those who are already in retirement and see their pension pot fall in value. So let's focus on them, and get to the second question I mentioned earlier. Retirees are particularly vulnerable to what is termed, in the jargon, "sequence of returns risk". They don't have the luxury of waiting to allow future high returns make up for current negative returns, because their assets are declining as they make withdrawals to sustain their spending needs, and those future high returns act on a smaller asset base. So a sequence of returns that starts low or negative can't be balanced by later high returns. That means it's essential to have a part of your pension pot that's relatively immune to falling asset prices. And the only such assets are cash-like assets, or at any rate short-term assets, which decline little as interest rates rise. I think of this as a "safety pot", in contrast to the rest of the pot, which is your "growth-seeking pot". Of course there's a further problem right now, in that stable-value assets are no protection against high inflation. The only protection lies in assets with returns that are themselves linked to inflation. ***Full Report:*** ***What can pension savers do in bleak markets? | Financial Times (ft.com)***

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Switchboard: 011 450 1670 / 081 445 8722
Fax: 011 450 1579
Email: reception@irfa.org.za
Website: www.irf.org.za

3 Williams Road
Bedfordview
Johannesburg 2008