# VERBATIM

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## 1. OFFSHORE ALLOWANCE FOR RETIREMENT FUNDS

### 2022 Budget Review

On 23 February 2022, the Minister of Finance, Enoch Godongwana, included the following in the 2022 Budget Review:

"Institutional investors
The offshore limit for all insurance, retirement and savings funds is harmonised at 45 per cent inclusive of the 10 per cent African allowance. The previous maximum limits were set at 30 per cent or 40 per cent for different investors."

Included within the meaning of "institutional investors" is retirement funds.

### South African Reserve Bank (SARB) Circular

Shortly after the Budget Review, the SARB issued Exchange Control Circular 10/2022, dated 23 February 2022.

The SARB Circular provides:
"...that with effect from 2022-02-23, the prudential limits of 30 per cent and 40 per cent, respectively as well as the African allowance of 10 per cent have been **combined into a single limit of 45 per cent** of total retail assets under management, applicable to all qualifying institutional investors". (Own emphasis.)

This is reflected in the following amended wording of the limit:
"Prudential limit: the foreign exposure of retail assets may not exceed: 45 per cent in the case of pension funds; the linked and non-linked business of life insurers; CIS managers; and discretionary financial services providers registered as institutional investors with the Financial Surveillance Department".

### Rest of Africa limit fallen away but reporting remains

It is clear that the rest of Africa limit of 10% has fallen away and a single overall offshore limit now applies. SARB states that:
"The prudential limits of 30% and 40%, respectively as well as the African allowance of 10% have been **combined into a single limit of 45%**". (Own emphasis.)

However, please note that SARB states in the Circular that for statistical purposes the *reporting of the African exposure* on the quarterly asset allocation report will remain.

For the submission of the quarter end December 2021 quarterly asset allocation reports, the limits of 30% and 40% respectively as well as the 10% African allowance, will still be applicable.

### Regulation 28 provides for SARB to set the limit, thus an amendment of regulation 28 is unnecessary

Regulation 28 provides that: the aggregate exposure to foreign assets, referred to in [the Regulation 28 table] and expressed as a percentage, must not exceed the maximum allowable amount that a fund may invest in foreign assets *as determined by the South African Reserve Bank*, or such other amount as may be prescribed.

Thus, SARB has the authority to determine the limit without an amendment to Regulation 28.

### Financial Sector Conduct Authority (FSCA) Communication 8 of 22 (Retirement Funds)

On 18 March 2022, the FSCA issued a communication confirming the offshore limit as determined by SARB. The communication does not contain additional information.
The communication provides that: "Where necessary, the Board of the fund may revise their investment policies and mandates in accordance with the principles contained in Regulation 28".

## 2. TAX CHANGE FOR PENSIONERS WHO RECEIVE INCOME FROM TWO OR MORE SOURCES

The South African Revenue Services ("**SARS**") will implement changes to tax laws from 1 March 2022. The changes will affect pensioners who receive income from more than one source, and where one of the sources is a pension from a retirement fund or insurer.

### Avoiding an unexpected tax bill for pensioners

The change is being made to avoid a situation where a pensioner receives an unexpected, unaffordable tax bill after they have been assessed. The tax liability should be spread evenly over the relevant tax year.

Where a pensioner has only one source of income in a tax year, the tax payable at year-end is usually fully paid through monthly withholding of PAYE. However, if a pensioner has more than one source of income, at the end of the tax year SARS will combine all sources of income to determine taxable income and the tax the pensioner must pay. This aggregation of income results in pensioners having to unexpectedly pay additional tax.

Pensioners have always had the right to ask SARS to deduct a higher amount of PAYE during the year so that the tax payable at the end of the year is fully paid, but not many pensioners have exercised this choice.

### SARS' solution

Changes to the tax legislation allow SARS, using the data it has, to determine the effective rate of tax for the combined income sources of a pensioner. SARS will provide this fixed rate (a fixed percentage) through an annual directive to the retirement fund administrator (or insurer) so it can withhold the correct amount of PAYE for the pensioner.

If a pensioner's circumstances change during the year, such as one source of income ceases or if the pensioner passes away, the retirement fund administrator (or insurer) may apply the normal PAYE withholding rate (the PAYE withholding rate under the normal PAYE withholding tables) as opposed to the fixed withholding rate provided by SARS, with effect from the month in which the administrator or insurer becomes aware of the change.

As PAYE tables change on 1 March 2022, an administrator must apply the *updated* fixed rate provided by SARS from **1 April 2022** (unless the pensioner opted out – see below).

Where the administrator of the fund is providing the pensioner with a preview of the impact of the fixed PAYE rate provided by SARS (to see if the pensioner wants to opt out or not), the administrator can decide whether to apply the fixed PAYE rate from 1 March 2022 or 1 April 2022 or where there is an updated fixed rate, whether it will apply the updated fixed PAYE rate from 1 March 2022 or 1 April 2022.

The PAYE rate is applied to the gross value of the pension and if there is more than one pension, then to each separately.

### A pensioner's choice

A pensioner may ask the fund administrator (or insurer) to:

- withhold PAYE at a rate higher than the fixed rate percentage provided by SARS; or
- withhold PAYE at a rate that is equal to the PAYE withholding rate under the normal PAYE withholding tables. If this option is exercised, the fund administrator (or insurer) should tell the pensioner that there is a possibility that the PAYE withholding rate will be insufficient to cover their tax liability when they are assessed.

The administrator will then, according to SARS's communications, decide the date from which this choice will be applied and inform the pensioner.

If SARS has not provided the fixed PAYE withholding rate for a particular pensioner, the fund administrator or insurer will continue to apply the normal PAYE withholding rates.

## 3. THE FSCA'S TRANSFORMATION STRATEGY

### Background

Parliamentary hearings regarding transformation of the financial sector were held in the first half of 2017. Submissions from the public emphasised, amongst others, concerns with high barriers to entry for new or emerging entrants and the need for much stronger support of black industrialists and small to medium enterprises (SMEs). Submissions also noted the prevalence of poor market conduct practices and financial exclusion, compromising the transformative effects of the sector.

The Financial Sector Regulation Act, 2017 (FSR Act), which establishes the Financial Sector Conduct Authority (FSCA), includes as an object of the Act the promotion of transformation of the financial sector. The FSR Act defines "transformation of the financial sector" as transformation as envisaged by the Financial Sector Code for B-BBEE issued under the B-BBEE Act.

The FSCA has issued its draft transformation strategy and called for public comment on the document, the main objectives of which are –

- to outline the FSCA's approach to promoting financial sector transformation within the existing policy framework, including the FSR Act, and
- to outline an approach for the FSCA to promote transformation under the future Conduct of Financial Institutions Act (COFI) framework.

### A two-phased approach

The FSCA proposes implementing its transformation strategy in two phases (given COFI has not yet been promulgated):

- **Phase 1** will focus on the role that the FSCA will play within the current legislative framework i.e. the FSR Act, B-BBEE Act, and Financial Sector Code.
- **Phase 2** will focus on the role that the FSCA will play within the COFI legislative framework. A summary of the FSCA's two-phase approach (from the FSCA's document) is set out below:

**PHASE 1**

- Engaging with financial institutions on existing transformation plans and the extent to which targets identified in the plan are achieved
- Improving availability and quality of transformation data, especially in relation to ownership
- Build strong co-operative relationships with the Financial Sector Transformation Council (FSTC)and the B-BBEE Commission
- Coordinate supervisory transformation initiatives with the Prudential Authority
- Support initiatives of NEDLAC and the FSTC related to financial sector transformation
- Support small businesses in the financial sector
- Developing regulatory frameworks that promote transformation of the financial sector
- Internal readiness for Phase 2

**PHASE 2**

- Subject to the final approved framework for transformation in financial sector laws,
- undertake regulatory and supervisory actions to promote transformation,
- including requiring transformation plans that target specified minimum B-BBEE levels
- Regular engagement with the FSTC and B-BBEE Commission
- Continual evaluation of the effectiveness of legislative frameworks and their application

After phases 1 and 2 have been implemented, it is envisaged that the final framework for overseeing transformation of the financial sector will be structured as follows:

| | |
|---|---|
| B-BBEE ACTB | BBEE COMMISSION supervises adherence to Act |
| FINANCIAL SECTOR CODE | FINANCIAL SECTOR TRANSFORMATION COUNCIL sets and enforces FS Code |
| FSR ACT and COFI | FSCA supervises transformation requirements at an institutional level |

### Possible actions by the FSCA

Possible actions by the FSCA to promote transformation within the financial sector include:

- require financial institutions to have a transformation plan (as required by COFI), aimed at achieving targets set under the Financial Sector Code;
- set minimum B-BBEE levels that must be targeted by each firm and documented in the transformation plan, especially for larger firms within the financial sector, and particularly to require progression through the levels of transformation over defined periods of time;
- consider transformation plans during the licensing process;
- supervise the progress of financial institutions against their plans;
- take action when there is a lack of commitment to, or achievement of targets set in transformation plans;
- minimise regulatory barriers to entry for small, black-owned entities in the financial sector; and
- supporting small black businesses with suitably enabling regulatory compliance requirements.

### Implementation

The Regulatory Policy Division of the FSCA, through its Market, Customer and Inclusion Research department, will be responsible for overseeing the implementation of the FSCA's approach to transformation. An annual implementation plan will be developed, setting out the activities to be undertaken by different FSCA departments and divisions in each financial year, aligned to the approach. It will be updated annually to cater for changes in the sector and in the legislative landscape.