

Legal Update

4 of 2021:

Early access to retirement savings



There has been a lot of speculation in the news about the possibility of allowing financially distressed retirement fund members early access to their retirement savings following the devastating effect that the Covid-19 pandemic has had on our economy. Recent comments made by the Minister of Finance have raised expectations amongst retirement fund members that they will be allowed immediate access to their retirement savings.

These comments were however clarified in media statements issued by the Minister of Finance on 28 July 2021 and 11 August 2021, respectively, in which it was confirmed that discussions with NEDLAC on a proposal for limited withdrawals from retirement funds in respect of those members who lost part of their income during the Covid-19 pandemic, were still underway. The Minister emphasised that it is important to obtain the right balance between providing members financial relief and also ensure the sustainability of retirement funds so that when members retire they could still receive a regular and sufficient monthly income.

Government is in essence proposing that limited early access to retirement savings should be allowed under certain conditions (for example, during emergencies or extra-ordinary circumstances) in exchange for enforcing preservation of the balance of members' retirement savings until such time as they retire. This will be done by amending legislation which currently allows members to take in cash their entire retirement savings benefit upon resignation from a job. This will however only be applicable to future contributions made by members after the effective date of the proposed compulsory preservation legislation by way of a proposed "two bucket system" that will enable the restructuring of all future contributions. One "bucket" of a member's future contributions will have to be preserved until retirement, and the other "bucket" may then be used for pre-retirement access to retirement savings.

It seems therefore as if Government is proposing that the accrued retirement savings benefits of retirement fund members will be protected. This will mean that a member will still be able to take in cash that part of their retirement savings benefit that they had accumulated in the fund as at the proposed effective date of the compulsory preservation rules.

As this is a significant policy shift in current legislation, it requires broad consultation and agreement from all the stakeholders. Government will therefore continue to engage with trade unions, regulators and other stakeholders to discuss how to allow limited withdrawals linked to tightening preservation without creating liquidity and investment risks.

To date, however, no policy decision has been made by government. Even if a policy decision is made by government tomorrow to allow the early access to retirement benefits, it would still mean that legislation like the Income Tax Act and possibly the Pension Funds Act, as well as fund rules must be changed, and fund administrators will have to make extensive changes to their systems to cater for the early access of retirement savings payments. Government therefore confirmed that it is expected that the earliest that any changes would become effective for a new early access withdrawal mechanism is 2022.

This means that the FundsAtWork Umbrella Funds cannot allow any request for access to a member's retirement benefit other than that currently provided for in their Rules and the Income Tax Act, namely on a member's retirement, retrenchment, resignation, dismissal, disability, liquidation or withdrawal of a participating employer in the Funds or when the members are no longer eligible employees. We will however keep you informed as to any progress made to these important debates regarding the changes to the retirement funding landscape.