



SUBJECT: Covid - 19 relief – early-access to retirement benefits by employees of companies in financial distress and temporary suspension or reduction of employer/employee contributions impact Analysis

DATE : May 2020

SCOPE: Retirement Funds and Retirement Fund Administrators

Introduction

The prudent management of Retirement funds during this Covid 19 pandemic is fundamental to the continuity and sustainability of the Retirement Funds in Eswatini. The Authority recognises the fact that some employers are financially distressed considering the unprecedented financial challenges that Covid-19 presents, which may impact retirement fund's ability to comply with the Retirement Fund Act 2005.

The Authority has taken heed of the Press Statement on Employment Contingency Measures in response to the Covid-19 National Emergency issued on 8 April 2020 by the Ministry for Labour and Social Security, requesting employers and employees in consultation with the Registrar of Retirement Funds to explore, where feasible, the granting of employees advance salaries or pre-access to any other form of social security measures as may be available within the enterprise for medium or long term contingencies such as pension schemes and provident funds.

This circular poses a threat to the financial viability of Retirement Funds in Eswatini, hence the Board of Trustees are responsible for ensuring that funds are not disinvested recklessly whilst providing financial relief to members who are in severe financial distress due to COVID 19.

The Retirement Fund Trustees are expected to ensure compliance with the measures put in place by the circular. This circular applies to all locally registered retirement funds and retirement fund administrators.

Phase I: Description of the Problem

The FSRA has noted the following challenges faced by retirement funds whose employers are in financial distress as a result of the Covid 19 pandemic:

- a. Failure to remit retirement fund contributions as per the rules of the fund, and
- b. Failure of employers to pay full salaries or any salaries at all to employees, (members).

The Retirement Funds Act, 2005 empowers the FSRA to establish requirements to ensure proper management of the fund's assets and maintaining its financial soundness. The prudent management of the Retirement fund's assets is important to ensure that funds continue to preserve retirement benefits for members to utilize at retirement stage.

The Covid 19 relief circular will help to address the above-mentioned problems.

Phase II. Policy Objectives

The FSRA issued the Covid-19 relief circular to:

- a. Outline the measures that the retirement fund trustees are required to take into consideration on receipt of the following requests from members of funds who are employees of employers who are in financial distress as a result of Covid-19 :
 - Requests for the suspension or reduction of retirement fund contributions; and
 - Requests for early access or payment of a special relief benefit from the retirement fund.
- b. Outline the process to be followed by a retirement fund when applying for the approval to give effect to the above requests.

Phase III. Policy Options

1. Assessed Options

a. Option 1 – Status Quo

The option poses no regulatory burden on the retirement funds but does not address the objectives listed above. This option means that where employers are unable to remit contributions as per the rules of the fund, the fund may lose its tax status as per the Income Tax Order. The option also means that the Authority will be in denial of the predicament faced by employers in financial distress as a result of Covid-19 as well as the adverse financial impact the pandemic is having on the livelihoods of the members of retirement funds.

b. Option 2 – FSRA issues the Covid 19 relief circular to outline the factors that board of trustees will be expected to take into consideration in providing relief to the employers and members of the retirement funds

This option involves the FSRA issuing the Covid 19 relief circular clearly outlining the factors that retirement funds are expected to take into consideration in assisting their members by providing relief to them and also managing the financial soundness of the fund. This option will achieve the above objectives, including providing guidance on how to extend such relief to the affected members and employers.

c. Option 3 – FSRA issues the Covid-19 retirement funds relief regulations promulgated under the Retirement Funds Act

This option involves the FSRA issuing Covid 19 retirement funds relief regulations, which would create specific legal obligations to be discharged by the management board. This option will achieve the above objectives. However, the major disadvantage of this option is that the duration of this pandemic is unknown to everyone and the relief sought by employers and members is immediate. Given that the legislative process to be followed in promulgating regulations is long, the turnaround time may also be longer and may not meet the immediate needs of the members and employers.

2. Legal authority for issuing the-circular

The FSRA derives the mandate to issue the circular from Sections 5(d) and 33 of the Financial Services Regulatory Authority Act, 2010.

3. Groups likely to be affected

The Covid 19 relief circular will affect all Retirement Funds and Retirement Funds Administrators registered under the Retirement Funds Act.

4. Enforcement strategy for ensuring compliance

Retirement funds will be expected to adhere to the provisions of this circular, ensure that members are provided with the necessary relief without depleting the fund's assets. The FSRA will monitor compliance with this circular through periodic reporting and intervene where necessary.

PHASE IV. Impact Analysis

The analysis below captures the assessment of all the factors likely to be impacted by the introduction of the Covid 19 relief circular. After consideration of the comments received from Industry, the analysis remained unchanged.

Legal Economic Administrative Social Environmental Analysis

Impact Analysis	LEASE ANALYSIS
LEGAL / ENFORCEMENT /	
Explore: • Effects on Financial Sector • Effects on market conduct • Legislative gaps	• The introduction of the Covid 19 relief circular might require Retirement funds to revise their fund rules and existing investment strategies. • Similar practices on financial soundness should be followed by all Retirement Funds. • Impact should not take longer than one month for the affected retirement funds to adapt to the new circular.
ECONOMIC Explore: • Consumer behavioural changes e.g. Causing a substitution effect (increase in price of products can drive consumer behaviour) • Cost to industry:	• Review of existing fund rules will require additional implementation costs; however, no major financial costs will be required.

• Affordability • Cost of additional resources and expertise needed to comply with circular • Cost of employing additional staff/consultants to work on regulatory compliance; • Cost of buying further resources to help with regulatory compliance; • Information that the circular requires funds and retirement funds to report or keep; • Cost of administration.	• No additional staff should be needed, as the existing Boards, trustees, and senior management, will have to implement the member and employer requests. • Actuarial expertise may be required in some cases to assess impact of Circular on the financial soundness of some funds. However, the benefit of the circular to members outweigh the cost. • Since these will be mass withdrawals, there might be additional fees for the processing of these withdrawals.
ADMINISTRATIVE Explore: • High or low political commitment Government policy • MOF • CBE jurisdiction • Taxation implications • Technological barriers • Technology required to introduce the regulation • Compatibility with existing technological infrastructure	• Ministry of Labour should support the Covid 19 relief circular, as it would provide relief to members and employers at the time of the National emergency. • The Ministry of Finance supports the issuance Covid 19 circular as it is meant to safeguard the best interests of stakeholders in furtherance of principal objects of the FSRA as set out in section 4 of the FSRA Act. • Taxation implications for members who would apply for early access of benefits. An approval from the Commissioner General is sought before members can access their benefits. • No technological barriers.
SOCIAL (include risks) Explore • Groups in society are being affected • Size of each group • Impact on Target group/s • (how large is the impact on other groups) • Impact on vulnerable group/s	• The circular will have a positive impact on the target groups since it will provide the necessary financial relief to members affected by this pandemic.

• Negative & positive effects on society • Length of impact • Social benefits to consumers and industries	
ENVIRONMENTAL Explore: • Effect on environment • Length of Impact	• No impacts are anticipated on the environment.

Phase V. Consultation with Industry

- The Covid 19 relief circular draft was circulated on 07th May 2020 to all retirement funds and retirement fund administrators via BSA and emails to the Heads of these organisations and Compliance Officers for review and comment. These FSPs were requested to send back their comments, per the FSRA comments template, by the 11 May 2020.
- Relevant industry comments were incorporated into the circular after they were received. However, consultations were not conducted in compliance with the social distancing regulations imposed by the Ministry of Health to curb this pandemic and the fact that the Authority had to issue the circular urgently as there were entities who had already submitted requests to the Authority. Notwithstanding that there was no face to face consultation with the industry, the FSRA considered each comment objectively.
- The finalised circular has been published on the FSRA website and circulated to industry through the BSA system and a Public Notice was made in the local newspapers

Phase VI. Enforcement and review of the implementation of the circular

The FSRA will review the retirement funds applications as stated in the circular. The FSRA will deal with any significant supervisory concerns regarding implementation of this circular in accordance with its Intervention Policies and Procedures.