Themes underlying legislative developments in the past decade

- **Optimising well-established 3rd tier retirement funding arrangements**
  - **Stronger regulation of more funds** (not a "light touch")
  - **Governance** (for example, managing conflicts of interest);
  - **Preservation** (for example, so that members don't take withdrawal benefits in cash and spend all of their retirement savings each time they change jobs);
  - **Annuitisation** (so that retirement saving are used to provide regular income for the rest of the life of a retired member, rather than being taken as cash on retirement and spent immediately);
  - **Harmonisation/standardisation** of retirement funds (pension, provident, retirement annuity etc), including their taxation.

- **No legislative progress on social security/solidarity beyond 1st tier**

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Early 2007

- 2nd discussion paper released by Task Team on Social Security and Retirement Reform. Highlights:

- Contributions:
  - Compulsory for all employed people
  - Collected by SARS
  - 15% before-tax income, capped at R750 p.m. (based on SITE tax threshold of R60,000 p.a.) balance to occupational fund;
  - Simultaneous wage subsidy for people earning less than R45,000.00 p.a.

- Benefits:
  - Retirement, death and disability;
  - DC retirement;
  - Cross subsidized death and disability (lower risk profile pays same as higher risk);
  - Old age grant remains - considering abolishing means test.

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Pension Funds Amendment Act, 2007

- Extend scope - bargaining council funds now regulated under Pension Funds Act;
- Clarify minimum benefits and dealing with actuarial surplus;
- Clean break on divorce;
- Deputy Pension Funds Adjudicator;
- Provide for obligations and proper conduct of fund administrators and sanctions for misconduct (including: Registrar's directives, name and shame, admin penalties)

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Circular PF130 (11 June 2007)

- Guidance (not legally binding) on best practice for governance of retirement funds
- based on King III;

- King IV report on corporate governance for South-Africa, 2016
- includes a sector supplement for retirement funds;
- "*Apply and explain"* approach could be problematic for occupational funds unless purposive interpretation adopted (e.g. Principle 3.2 re: independence on board of DB fund where at least 50% trustees must be elected by members)
- Expect FSB to update PF130

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Financial Services Laws General Amendment Act, 2008

- Extend scope - include Beneficiary Funds in the Pension Funds Act;
- Introduce the "fit and proper" requirement and regulate the appointment and removal of principal officers, auditors and valuators of funds;
- Define "unclaimed benefits" with respect to the 24 months period;
- Introduce the enforcement committee and administrative sanctions under the Financial Services Board Act;
- Remove criminal sanction (e.g. for late/non payment of contributions)

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“ A Safer Financial Sector to Serve South Africa Better” (23 February 2011)

- “Red Book” - published by National Treasury;
- 4 policy priorities:
  - Financial stability;
  - Consumer protection and market conduct;
  - Expanding access through financial inclusion;
  - Combating financial crime;

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Red book (cont.)

Policy priority 1 - financial stability

- Strengthening prudential regulation of banks;
- Solvency assessment and management for insurers (SAM);
- Strengthen financial regulatory system;

•Twin Peaks – Financial Sector Regulation Bill (to become law in 2017)

Prudential Authority	Financial Sector Conduct Authority
SARB	FSB (and National Credit Reg)
financial strength and prudential management of the institution	fairness, efficiency and integrity of services and way products sold, administered and traded (“TCF”); licensing authority, setting standards

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Redbook (cont.)

Policy priority 2 - Consumer protection and market conduct

- Treating customers fairly = "TCF" (launched 2010);
- Managing fees - Umbrella Funds offer economies of scale;
- *"Consumer education will be ramped up";*
- Reforming pensions to increase savings:
  - New Regulation 28 published March 2011;
  - Compulsory preservation;
  - Compulsory annuitisation.

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Redbook (cont.)

Policy priority 3 - Expanding access through financial inclusion;
- Financial sector charter - banking and credit;

Policy priority 4 – Combatting financial crime;
- e.g. regulating trust and beneficiary funds.

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2011 Budget Speech

- Uniform contribution system;
  - Standardized tax deduction for contributions to provident, pension and retirement annuity funds. (Taxation Laws Amendment Act, 2013 – effective 1 March 2016)
- Compulsory annuitisation;
  - Change for provident funds = limit to ⅓ cash on retirement (like pension and RA funds) with "*transitional relief for those with vested rights*"
- Expand list of eligible living annuity providers to other intermediaries (e.g: collective investment schemes, government retail bond issues)

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Financial Services Laws General Amendment Act, 2013

- Governance
  - Whistleblowing and protection of disclosures;
  - Prescribe period to fill vacancy on board – 90 days (FSB Information Circular 3 of 2016)
  - Prescribe levels of skill and training of trustees (still awaiting)
  - Clarify/expand objects and duties of board;
  - Permit express delegation;
- Wider powers to Registrar (and Deputy Registrar) e.g. grant exemptions, inspections and on-site visits, prescribe communication by funds or administrators
- Re-introduce criminal sanctions (e.g. for late/non payment of contributions – S13A) - also Info Circular 1 of 2016
- Expand scope to include unclaimed benefit funds;
- Deputy PO;
- Apply company "business rescue" provisions to funds

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Draft default Regulations (July 2015)

- Draft regulation 37 RE: Default investment strategy ;
- Draft Regulation 38 RE: Default preservation and portability;
- Draft Regulation 39 RE: Default annuity;

- **Revised draft published in December 2016;**

- From 1 March 2015 changes to Income Tax Act meant retirement fund members could defer drawing their retirement income beyond date of retirement from employment

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Taxation Laws Amendment Act, 2013 (effective 1 March 2016)

2013

initially passed changes to Income Tax Act to harmonise tax treatment of all retirement funds and application of annuitisation to all – to take effect 1 March 2015

2014

delay to allow more consultation in NEDLAC

2015

further TLAA refines 2013 TLAA to extend coverage and increase *de minimus* (below which no annuitisation required) to R247,500 – all changes to take effect on 1 March 2016

18 February 2016

Minister of Finance announces annuitisation postponed

20 May 2016 (with retrospective effect)

Revenue Laws Amendment Act -no provident fund annuitisation

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Taxation Laws Amendment Act, 2013 (effective 1 March 2016) cont.

No change in relief to employers re: contributions to retirement funds

Main changes to deductibility in hands of employees:
- Employer contributions to retirement funds are taxed as fringe benefits in hands of employees (for tax purposes, these contributions are deemed to have been made by the employees)
- Employees may deduct
  - up to 27.5%
  - of the greater of remuneration or taxable income
  - in respect of total contributions (EE and ER, including for admin fees and tax approved insured benefits) to all funds to which they belong
  - subject to an annual cap of R350,000

Formula to determine DB fund contributions

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Taxation Laws Amendment Act, 2013 (effective 1 March 2016) cont.

Objectives:
- Simplify tax treatment of contributions to retirement funds (current system is complex and confusing)
- Improve vertical equity between high and low income taxpayers by imposing a limit on the total allowable deduction
- Improve horizontal equity by harmonising the same deduction across all retirement funds

Primary impact on funds – consider rule amendments to allow member choice/flexibility re: contributions

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Revenue Laws Amendment Act, 2016 and compulsory annuitisation

S1(3) of Revenue Laws Amendment Act, 2016 obliges Minister of Finance to "deliberate with interested parties" including in NEDLAC and to report results to National Assembly by 31 August 2017

FEDUSA and NACTU (non-political trade union federations)
- support annuitisation, prefer higher *de minimus*

COSATU, NUMSA, AMCU, NUPSAW
- oppose retirement fund changes until comprehensive social security
- oppose denial of access to "deferred wages" (want retirement savings to be available to pay off bond, pay school/tuition fees, use as capital for business)

If no agreement, what about tax relief on provident fund contributions?

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Comprehensive Social Security - Discussion Papers

2012 (released Nov 2016)	**2015**
Identified absence of a public <u>fund</u> for pensions & life insurance.	Absence of mandatory social insurance for all workers
NSSF	Option 1: NSSF Option 2: Default retirement fund for excluded or poorly serviced single risk pool for death & disability
Contributions: 12% incl. UIF + compensation funds. No common pooling in NSSF.	Funding streams continue as is with alignment adjustments where applicable
Contr. Subsidy: payment from fiscus for low-income workers	Gov to cover part of contribution costs below tax threshold, with payment deferred on B/S of state
Funeral cover: for all NSSF members.	Option available to all NSSF members

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Comprehensive Social Security - Discussion Papers

2012 (released Nov 2016)	2015
Compulsion NSSF	Focus on auto-enrolment
Preservation	Promote preservation
Funds framework for “approved” funds	Funds framework, emphasis on simplification
Tighten regulation for industry	Consolidation of occupational funds
Common gov. annuity product	Annuity product for portion of mandatory contributions
Low-cost PF: DC fund alongside NSSF	Default DC fund alongside NSSF
Single department overseeing social security	Single authority for social security policy making

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THANK YOU

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