

SIMEKA



CONSULTANTS
& ACTUARIES

Retirement Fund Update

July 2013

Rooted in employee benefits solutions

An authorised financial services provider

EDITOR:

Kobus Hanekom

Head: Strategy, Governance and Compliance

Tel: +27 21 912 3311

Email: kobus@simekaconsult.co.za

Contents

Section	Page Number
1 The Financial Services Board (FSB): Legislation and Circulars	3
1.1 Directive PF No. 7: Revised financial statements	3
1.2 Information Circular PF1/2013: Method of payment of surplus	3
1.3 Information Circular 2/2013: The right to share in surplus upon exit	3
1.4 Information Circular 3/2013: Apportionment of future surplus	4
1.5 Information Circular 4/2013: SLC between the Registrar and industry	4
1.6 Draft Notice: Requirements for valuation exemption	4
1.7 FSB levies	5
1.8 Progress on Financial Services Laws General Amendment Bill (Omnibus Bill)	5
1.9 Twin Peaks model	5
1.10 PFA determination on divorce orders	6
1.11 New appointments at the FSB	6
2 Retirement Reform	7
3 Protection of Personal Information Bill	7
4 Compensation for Occupational Injuries and Diseases Act.....	8

1 The Financial Services Board (FSB): Legislation and Circulars

1.1 Directive PF No. 7: Revised financial statements

In this directive (issued on 3 May 2013 and published in the Government Gazette on 10 May 2013) the Registrar advised that it intends to publish new prescribed annual financial statements during May 2013. The revised format has not been published as at date of publication. In the directive funds are requested to use the revised format.

In order to ensure that all 2013 statements are in the revised electronic format, the Registrar granted an extension to funds with financial year-ends at the end of January, February, March or April 2013. These funds have until 30 November 2013 to submit their financial statements. We have however been informed by the FSB that audits that have commenced prior to the issue of Directive 7 will be accepted in the current prescribed format.

1.2 Information Circular PF1/2013: Method of payment of surplus

In terms of this Circular, Information Circular 8/2008 was withdrawn with immediate effect. The latter circular provided that the method of payment of section 15B surplus contained in an approved surplus apportionment scheme may be altered in certain ways by the board of a fund without the Registrar's approval. In view of the withdrawal of the circular, this may no longer be done.

1.3 Information Circular 2/2013: The right to share in surplus upon exit

The Registrar reiterated that section 15G of the Pension Funds Act requires that, where a retirement fund has set up surplus accounts in which members are to share, the board of the fund must ensure that the administrators include a proportionate share of such accounts in the exit benefits of fund members (including pensioner members).

Comment: *In the event that a fund did not comply with the requirements of section 15G, it must correct the position without any undue delay by paying the members that exited any additional amount which they may be entitled to. The Registrar indicated that in cases where a fund acts contrary to the provisions of the Act, the Registrar may refer such cases for further investigation, which may result in the contravention being referred to the Enforcement Committee of the Financial Services Board.*

1.4 Information Circular 3/2013: Apportionment of future surplus

The Registrar provided the following guidance to the boards of defined benefit (DB) funds in cases where 'future surplus' arises, as contemplated in section 15C of the Pension Funds Act.

Where the rules set out how future surplus is dealt with, the rules must also take into account the interests of all the stakeholders of the fund.

- As a general rule, the two most important criteria for a board to consider, when apportioning future surplus are the reasonable benefit expectations (as set out in the rules and the pension increase policy of the fund) of the members and pensioners, and the level of risk borne by each stakeholder group. The employer does not carry all the risk in a defined benefit fund, even where there is an unlimited balance of cost obligation. Where pension increases are given on an affordable basis, the pensioners carry the pension increase risk. Active members are also exposed to some degree of risk as the quantum of their minimum individual reserves is linked to the performance of the markets.
- The Registrar is therefore not supportive of an approach whereby all future actuarial surplus is automatically allocated to the employer surplus account, unless there is a corresponding enhancement of the benefit promise during the inter-valuation period.
- The fund should consider maintaining a solvency reserve or a certain level of unallocated actuarial surplus as an implicit solvency reserve to protect itself and its members from potential adverse future experience.
- Another factor that the board should consider, in determining how future actuarial surplus should be apportioned (where the rules are silent), relates to the strength of the actuarial valuation basis e.g. where a conservative basis is used, it would not be unreasonable for the employer to argue that it is entitled to a higher share of actuarial surplus because the stronger valuation basis would require a higher contribution rate on its part.

Observation: *We would encourage all DB funds to develop an appropriate protocol on future surpluses and incorporate it in the rules of the fund so that the position is clear and enforceable.*

1.5 Information Circular 4/2013: SLC between the Registrar and industry

The latest service level commitment (SLC) between the Registrar and the retirement funds industry replaces the SLC in Information Circular 7/2005.

The SLC contains the Registrar's turnaround times for various functions performed by the Registrar in terms of the Pension Funds Act. Funds are encouraged to submit applications (for the performance of any function) electronically.

Comment: *Many consultants indicated that their experience over the past year has been positive and that the FSB's turnaround times have in fact come down.*

1.6 Draft Notice: Requirements for valuation exemption

Earlier this year the Registrar issued a new draft Notice for comment detailing the requirements for valuation exemption of a fund. The draft does not contain major changes. The main change is that the following two

criteria contained in paragraph 4 of the current Board Notice 61 of 2011, will become part of the conditions for valuation exemption:

- A section 15B surplus apportionment scheme must have been approved or a nil return noted.
- The statutory actuarial valuation following such valuation as at its surplus apportionment date has been accepted by the Registrar (unless the fund has been exempted after its surplus apportionment date).

Observation: *These requirements are not new.*

1.7 FSB levies

The FSB levies, adjusted for inflation, for the year 1 April 2013 to 31 March 2014 are as follows:

- Pension and provident funds (including preservation funds):

The lesser of R1 138 plus R11.63 per member and pensioner (excluding a person whose benefit is unclaimed or who is a beneficiary in a beneficiary fund),

or

R2 251 850.
- In addition, each retirement fund must pay a levy for the Pension Funds Adjudicator (PFA) of R4.11 per member and pensioner (excluding a person whose benefit is unclaimed).
- Retirement fund administrators: R6 273.28 plus R489.06 per fund under administration and R0.60 per member and pensioner (excluding a person whose benefit is unclaimed or who is a beneficiary in a beneficiary fund).

Comment: *Based on our calculations the threshold of R2 251 850 p.a. will only be reached by a fund with around 193 500 members or more. In addition they will have to pay R4.11 p.m. in respect of the PFA levy. The total levy will therefore amount to around R15.75 p.m. p.a. (or R1.31 p.m. p.m.). Administrators may be inclined to pass on the additional cost of R489.06 p.a. to stand-alone funds. In respect of a fund with R100 members that would mean an additional R 4.89 p.m. p.a.*

1.8 Progress on Financial Services Laws General Amendment Bill (Omnibus Bill)

The above-mentioned Bill will amend the Pension Funds Act in a number of ways as previously discussed. Progress has however been very slow. Public hearings were concluded on 24 April 2013 and the Standing Committee on Finance (SCOF) is expected to meet in June 2013 to receive National Treasury's response to the public hearings.

1.9 Twin Peaks model

The Financial Regulatory Reform Steering Committee (FRRSC), comprising the National Treasury, South African Reserve Bank and Financial Services Board, published for public comment a summary of the proposals for implementing the Twin Peaks model of financial regulation earlier this year. The Twin Peaks

model was proposed by the Minister of Finance in the 2011 Budget as was part of a broader financial regulatory reform agenda. These proposals were contained in the Government's policy document, "A safer financial sector to serve South Africa better" and were approved by Cabinet in July that year.

The Twin Peaks approach entails creating a prudential regulator housed in the South African Reserve Bank (SARB), and transforming the Financial Services Board (FSB) into a dedicated market conduct regulator.

- The objective of SARB, as the prudential regulator, will be to maintain and enhance the safety and soundness of regulated financial institutions. It implies the continued financial health of regulated institutions.
- The objective of the FSB as the market conduct regulator will be to protect consumers of financial services and promote confidence in the South African financial system.

1.10 PFA determination on divorce orders

In the recent matter of *Bowyer v Personal Portfolio Preservation Fund a. o.* the complainant was not satisfied with the calculation of the amount that was allocated to her (as non-member spouse) in terms of a divorce order. Although the complaint was dismissed, it is of interest that the Adjudicator stated that in actual fact the fund should not have complied with the divorce order because it does not comply with the requirements of the Divorce Act and Pension Funds Act regarding allocation of pension interest upon divorce.

In this case the settlement agreement that was made an order of court provided that the complainant will be entitled to 33,3% of the net value of the member's preservation provident fund and the member must ensure that an appropriate endorsement is made to the fund.

The Adjudicator however ruled that the order was unenforceable against the fund because:

- It does not state that "pension interest" as defined in the Divorce Act must be paid (in fact no reference was made to pension interest, but rather to "net value of the Fund").
- The fund was not expressly ordered to make payment of pension interest.

Comment: *Funds and administrators should ensure divorce orders comply with the strict requirements laid down. We reviewed our member information brochures on divorce and will arrange that they are posted on the administrator's websites.*

1.11 New appointments at the FSB

In a media statement on 28 June 2013 the FSB announced that:

- Ms Rosemary Hunter has been appointment as FSB Deputy Executive Officer: Pensions, with effect from 1 August 2013.
- Ms Caroline da Silva as Deputy Executive Officer for Financial Advisory and Intermediaries Services, with effect from 1 August 2013.

- Ms Muvhango Lukhaimane as Pension Funds Adjudicator, with effect from 1 July 2013.

Observation: *We welcome these appointments and trust that the industry experience and track records of these ladies will assist them to bring about the desired change in the industry.*

2 Retirement Reform

The time period within which comments were invited on the 2013 retirement reform proposal expired at the end of May. We must now wait for the consultation process to take its course. We were promised that a first draft of legislation, dealing with these proposals, will be published towards the end of the year.

In a media statement released on 25 June 2013 National Treasury stated the following:

“The Minister of Finance met the CEOs of service providers in the retirement fund industry on Thursday, 20 June 2013 to discuss the 2012 and 2013 Budget Retirement Reform proposals. At the meeting, the retirement fund industry representatives were informed that the paper ‘Charges in South African Retirement Schemes’ contains some findings on poor market practices, despite significant progress and improvements made by the retirement fund industry over the last couple of years.

The meeting focused on costs and charges, recognising the primary role that the industry and Government, working together, can play in bringing down costs and charges. The primary objective for both the industry and Government is to ensure that the savings and investment industry serves the interest of customers, in line with the principles of the Treat Customers Fairly (TCF) initiative.

The major service providers agreed to consider the paper in a constructive manner over the next three months, and to engage with the Treasury on the findings.”

Comment: *The reform proposals focus on legislative changes that can and should be made in respect of the private retirement fund industry while discussions on more fundamental reform such as the NSSF are taking place. The proposals appear an honest attempt to bring about the necessary changes in the most appropriate and effective way. In many instances however, it is a choice between imperfect solutions and some criticism can therefore be expected.*

The cost paper will put a number of industry practices under the spotlight and will identify inefficiencies that will have to be improved or removed “to ensure that the savings and investment industry serves the interest of customers” The Simeka benefit structure approach has been an attempt to achieve this result in the interim and we trust it will stand the test.

3 Protection of Personal Information Bill

The Bill has not been passed into legislation yet. When this happens it will come into operation on a date determined by the President. The Bill makes provision for a one to three year implementation period.

Observation: *This act will introduce far-reaching changes to the way we do retirement fund administration.*

4 Compensation for Occupational Injuries and Diseases Act

The maximum amount of earnings of employees on which an employer will be assessed in terms of the Act has been increased to R312 480 p.a. from 1 April 2013.

With recognition to the major contribution and support by Anton Swanepoel of Sanlam Employee Benefits: Law Service.

The information and opinions provided herein are of a general nature and are not intended to address the circumstances of any particular member or fund. As the information and opinions are for information purposes only and do not constitute advice, no one should act upon such information or opinion without appropriate professional advice in respect of a particular situation.