

OUR INDUSTRY IS CHANGING. ARE WE?

*“Rights and obligations in an evolving Retirement Funds environment”*

**PENSION LAWYERS**



**A S S O C I A T I O N**

THE 2006 PENSION LAWYERS ASSOCIATION CONFERENCE

5 - 7 MARCH 2006

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■ Apportionment of Future Surplus – a Murky Crystal Ball

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**What is future surplus?**

## ■ What does the Pension Funds Act provide?

- Relevant sections:

15C – apportionment of future surplus

15D – utilisation of surplus for the benefit of members

15E – utilisation of surplus for the benefit of employer

15F – existing employer reserve accounts

15G – rights to share in surplus accounts on exit

15H – use of contents of any surplus accounts to fund deficits

15I – application of surplus accounts on liquidation of fund

15J – use of employer surplus to prevent job losses

## ■ Examples of sources of future surplus

- Investment return on surplus after surplus apportionment date
- Surplus apportionment scheme expense contingency reserve account. More than necessary and investment return. (Nil surplus returns.)
- Risk contingency reserve account: fewer claims than expected and investment return
- Data contingency reserve account: less data errors than anticipated and investment return

## ■ So how may a fund deal with future surplus?

*A. Do nothing?* Fiduciary duties and exercising discretion

*B. Rules.* What does 15C mean? What has the Registrar of Pension Funds allowed? Defined benefit versus defined contribution funds. Making decisions now – crystal ball gazing. Changing rules later?

*C. Trustee decision.* Meaning of “stakeholders”. What about former members? What about former members who received a *pro rata* portion of their statutory top-up?

## So how may a fund deal with future surplus? con ...

*D. Other? Rules.*

*E. An alternative – agreeing guidelines*

*F. Don't forget S15G “...members who cease to be members of the fund...” and share of the member surplus account when applicable?*

*G. Deficits (s15H) must be funded from the surplus accounts. Deficits - following a valuation. What if the fund is borderline?*

*H. Liquidation (15I).*

- Should the fund consult with the employer?
- Does future surplus have to be paid into the member or employer surplus account first, before it may be distributed?

- When does an amount become future surplus? Reserve accounts, solvency and liabilities
- When there is a positive balance in the member or employer surplus account who decides when and how it will be used?

## ■ Member surplus account

- Definition of “member surplus account”
- S15D(1) proviso – setting out the uses in the surplus scheme
- Individual benefit improvements a possibility?

## Employer surplus account

- Definition of “employer surplus account”
- Are the uses of future surplus set out in section 15E a closed list?
- “All members, or a category of members as defined in the rules...: may individual members be paid benefit increases?”
- Categories of members – must be set out in the rules (if not existing)
- May the fund pay former members from the employer surplus account?

## ■ Employer surplus account con ...

- When may the employer be paid cash from the employer surplus account?
- S15E(2)(a) control of the employer surplus account in terms of the rules of the fund ... what does this mean?
- S15J payments to avoid retrenchment and the auditor's certificate (PF 126).
- Lengthy process.
- Contribution holidays - using future surplus – when permissible?

**Conclusion: not simple or easy - but who said  
astrology was easy?**

**Thank you**

**Questions?**