



**TITLE: SURPLUS APPORTIONMENT
AND THE OMNIBUS AMENDMENTS**

BG *Bowman Gilfillan*
Attorneys

Retrospectivity

Employer

Selected

Fund Return

Valuations

Minimum Benefits

Cost

RETROSPECTIVITY :

Section 15B(6)(b) provides:

The board shall investigate any improper utilisation of surplus by the employer prior to the surplus apportionment date which shall consist of any of the following amounts incurred from 1 January 1980 or since the date of the fund's commencement or such earlier date agreed to by the employer to the surplus apportionment date+

THE EMPLOYER:

The employer is defined to mean:

The employer or employers participating in the fund at the time of the improper utilisation of surplus, determined in accordance with this section, and whom benefited from the improper use: Provided that where a subsequent employer or employers by contract or law became liable for the employee-related liabilities of the previous employer or employers, the subsequent employer is also liable for the apportionment of surplus used improperly+.

EMPLOYEE RELATED LIABILITIES?:

- Pre 1995 Transfers:
- Transfers between 1995 and 2002
 - “ All rights and obligations transfer:
 - “ Anything done before the transfer by the old employer is considered to have been done by the new employer.
- Post 2002:
 - “ Section 197 distinguishes between rights and obligations and liabilities.

SELECTED:

Defined to mean :

~~%~~ In relation to members, means, in the case of a granting of benefits, a group of members to whom the benefits were granted to the exclusion of other members, and, in the case of a granting of benefits conditional on election by the member, a group of members to which the election was granted to the exclusion of other members+

Read in conjunction with Section 15b(6)(b)(ii):

~~%~~ The costs of any additional pensions or deferred pensions or lump sum benefits granted to selected members in lieu of the employer's obligation to subsidise medical costs of those members after retirement+.

FUND RETURN ON IMPROPER USE:

Section 15B(6)(e) provides:

~~Any~~ Any surplus utilised improperly shall be increased or decreased by fund return from the effective date of the use until the date of receipt thereof by the fund+.

VALUATION:

Section 15B(9)(a) provides:

~~%A~~n apportionment in terms of this section shall be of no force or effect unless the scheme, [including a copy of every] the statutory actuarial valuation as at the surplus apportionment date of the fund, as well as a copy of any other actuarial or other statement taken into account for purposes of the scheme and the report by the person appointed in terms of subsection (3), has been submitted to the registrar and the registrar is satisfied that the statutory actuarial valuation has been prepared on actuarially sound and acceptable principles prescribed.

CONTINGENCY RESERVE ACCOUNT DEFINED TO MEAN:

in relation to a fund, means an account of the fund, which has been amended in accordance with the requirements of the registrar, or which has not been disallowed by the registrar, and to which shall be credited or debited such amounts as the board shall determine, on the advice of the valuator where the fund is not exempt from actuarial valuations, in order to provide for explicit contingencies.

MINIMUM BENEFITS:

Section 14B(2)(a)(i)(aa) provides:

~~W~~here there is not a uniform rate of accrual over the full period of membership of the fund, the accrued deferred pension shall be calculated assuming a uniform rate of accrual as if the member had remained in service until normal retirement date as defined in the rules of the fund, but which uniform rate of accrual will not be less than the uniform rate of accrual that is calculated based on the period of service completed up to the date of calculation+

COSTS:

Means the difference between the accrued liabilities in the fund as determined by the valuator immediately before, and immediately after, the improper utilisation of surplus: Provided that, where more than one use of actuarial surplus occurred simultaneously, the valuator shall determine how the difference between the accrued liabilities before any of the uses, and the accrued liabilities after all the uses at that date, shall be split between those uses+