

**2004 Pension Lawyers Association Conference**  
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**CHANGING TOMORROW**  
**SHARING KNOWLEDGE AND EXPERIENCE.**  
**PREPARING FOR THE FUTURE.**

**Topic:** **IMPLEMENTING THE “SURPLUS  
LEGISLATION”**

**Speaker:** **Antony Lester**

**Employer /**

**Organisation:** **Fifth Quadrant Actuaries &  
Consultants**

# Implementing the “surplus legislation”

- Broadly involves:
- Minimum individual reserves for members
- Set up contingency reserves
- Minimum pension increases
- Determine actuarial surplus
- Allocation of actuarial surplus
- Allocation of future surplus

# Step 1 : Background information

- Umbrella or stand alone fund?
- Defined benefit or defined contribution?
- Valuation and/or audit exempt?
- Date of previous statutory valuation?
- History of fund – commencement date / mergers / transfers / benefit improvements / contribution holidays

## Step 2 : Determine surplus apportionment date

- Valuation exempt?
  - Financial year end after 7.12.2003
  - Appoint an actuary!
- Audit exempt?
  - Fund anniversary after 7.12.2003
- Next statutory valuation date
- Bring forward?

## Step 3 : Collect data

- Pensioner data since retirement
- Former member data (*not necessary if there is no surplus*):
  - Administrator records
  - Company records
  - Funds to which former members transferred
  - Union records
  - Advertise
- Must wait between 6 and 9 months for members to come forward

## Step 3 (cont) : Collect data

- Improper use of surplus
  - Benefit improvements for executives
  - Additional service for selected members
  - Post retirement medical aid
  - Contribution holiday since 7.12.2001
- Trustees to determine if improper use
- Actuary to quantify

# Step 4 : Actuarial valuation of the Fund

- Liabilities on valuation basis
- Increase for minimum individual reserves
- Allow for pensioner accumulation account?
- Set up appropriate contingency reserves
  - Actuary must motivate level of these reserves
  - Mortality, expenses, investments, data, etc
- Add in improper use of surplus
- Balance is actuarial surplus (or deficit)

# Step 5 : Pension increases

- Determine pension increase policy
  - Linked to inflation
  - Linked to affordability
  - Communicate to pensioners
- Grant increases to bring pensions up to inflation
  - Subject to affordability
  - Must be done on first financial review after  
7.12.2001

# Step 6 : Enhanced benefits on exit

- Minimum individual reserves
  - All exits for any reason
  - 12 months after surplus distribution date
  - Apply earlier?
- Surplus and reserve accounts
  - All exits for any reason
  - From effective date of the Act (7.12.2001)
  - Investment reserve and member surplus account must be paid
  - Other reserves at discretion of trustees

# Step 7 : Valuation deficit

- Notify Financial Services Board
- Communicate to members and former members?
- Funding plan (or reduce future accrual of benefits) to amortise deficit
- Maximum 9 years

# Step 8 : Valuation surplus – first level of allocation

- 15F : Employer Reserve Account
- Appoint former member representative
- Pragmatic approach if surplus is negligible
- Surplus apportionment
  - Former member benefits up to minimum individual reserves – pro rata down if insufficient
  - Balance at the discretion of the trustees
  - Hedge surplus (cash?) to protect capital value?

# Step 9 : Second level of allocation at trustee discretion

- ❑ Examine history of the Fund
  - ❑ Sources of surplus
- ❑ Prescribed “equitable” bases
  - ❑ Secondary top up to retrenchments, transfers and conversions
  - ❑ Establish pensioner accumulation account
  - ❑ Actuarial reserve value plus investment margin on exit for in-service members
  - ❑ Split in proportion to accumulated member and employer contributions to the fund
- ❑ Allocate to Member and Employer Surplus Accounts

# Step 10 : Allocation of future surplus

- ❑ Trustee discretion
  - ❑ Member Surplus Account or Employer Surplus Account
  - ❑ Must be set out in the Rules
  - ❑ If not in rules – determined by the trustees at each future actuarial valuation

# Step 11 : Approval of proposed allocation

- 75% approval of trustees required
- Approval by outside parties must not be a requirement
- Actuary must certify that:
  - Apportionment complies with the Act
  - Any trustee discretion is reasonable
- Former member representative report
  - Adequate effort to include former members
  - Discretion with regard to former members reasonable

# Step 12 : Communication

- Communicate proposed scheme to all stakeholders
  - Members
  - Pensioners?
  - Former members
  - Funds to which former members transferred
  - Employer
- Must specify Rand amounts
- 12 week objection period
- Address all objections

# Step 13 : Registrar and the special ad hoc tribunal

- Submit scheme to the Registrar for approval
  - Within 18 months of apportionment date
  - May request a report from an independent actuary
- Referred to a special ad hoc tribunal if:
  - Registrar unhappy with the scheme
  - Member objections not resolved
  - Former member rep objects to the scheme
  - No scheme submitted to the Registrar
  - Requested by the trustees

# Step 14 : Registrar approval received

- Payments to former members
- “Move” assets into appropriate reserves and surplus accounts
- Member trustees determine use of Member Surplus Account
- Employer trustees determine use of Employer Surplus Account
- Communicate to stakeholders?

# Step 15 : Rule amendments

- Minimum benefits on exit
- Establish reserve accounts and “rules” for inflows and outflows
- Establish Member and Employer Surplus Accounts
- Allocation of future surpluses

# Step 16 : Trustee policies

- Pension increase policy
- Payment of reserve accounts on exit
- Investment smoothing policy
- Levels of contingency reserve accounts
  - Minimums and maximums

# Step 17 : Other issues

- Reapply for valuation and/or audit exemption (if appropriate)
- Review investment strategy of the Fund

# Timeline



# The way forward

- Number of “holes” and ambiguities in the legislation
- Legislation may be challenged
- May require precedent or case law to interpret legislation
- PF Circulars and Board Notices may especially be successfully challenged
- Proceed with care!!*