

Pension Lawyers Association Conference 2005

The Way Forward

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Minimum Benefits

- *"The Pension Funds Second Amendment Act, 2001, introduced a minimum benefit regime, which is designed to ensure that the fund pays an adequate benefit whenever a member leaves service, defined as the member's "minimum individual reserve" by 7 December 2005, all members of retirement funds subject to the Pension Funds Act will benefit from the minimum benefit regime. There are drafting and implementation problems in the minimum benefit provisions, which need to be addressed.*
- *The National Treasury Task Team recommends that the minimum benefits regime introduced in the Pension Funds Second Amendment Act, 2001, be preserved in the new Act".*

National Treasury
Retirement Fund Report
- a discussion paper



Section 14A(1) provides

"Every registered fund shall provide the following minimum benefits to a member:

- the benefit paid to a member who ceases to be a member of the fund prior to retirement in circumstances other than liquidation of the fund shall not be less than the minimum individual reserve;"*



An issue

Whether the minimum benefit payable by the Fund in terms of section 14A(1) of the Pension Funds Act 1956 ("the Act") should be calculated in terms of section 14B(1) as required for a defined contribution category of a fund or in terms of section 14B(2) as required for a defined benefit category of a fund.



Defined contribution and defined benefit funds

A typical defined contribution fund provides a benefit which is equal to the total of contributions made to the fund by or on behalf of the member, plus investment returns and less expenses. The typical defined benefit fund provides a benefit based on a formula, the variables of which are a percentage of final salary and years of service.



Defined contribution and defined benefit funds cont.

There is no direct correspondence between, on the one hand, the amounts paid into the fund by or on behalf of the member, investment earnings and expenses, and on the other hand, the value of the benefit.



Definitions

The Act contains the following definitions:

- *"defined benefit category of a fund" means a category of a fund other than a defined contribution category of a fund".*
- *"defined contribution category of a fund" means a category of members in respect of whom the benefit on retirement has a value equal to the value of –*



Definitions cont.

- a) *the fixed-rate contributions paid by the member and by the employer on behalf of the member, where such fixed rates are defined in the rules,*
- b) *less such expenses as the board determines should be deducted from the contributions paid,*



Definitions cont.

- c) *augmented by such investment returns and any share of actuarial surplus or transfer from a contingency reserve account as the board determines".*



Definitions cont.

The defined contribution category of a fund has been reasonably precisely and narrowly defined. On the contrary, the defined benefit category of a fund is not defined at all and is simply a residuary category into which all other arrangements fall which do not fit within the definition of the defined contribution category.



Minimum Individual Reserve

Section 14B(2)(a) sets out the method for determining the minimum individual reserve of a member of a defined benefit category of a fund. An abbreviated description of the minimum individual reserve in these circumstances is the following – the greater of the present value of the member's accrued deferred pension and an amount equal to the value of the member's contributions less expenses plus growth and plus employer contributions which have vested.



Minimum Individual Reserve cont.

Section 14B(2)(b) sets out the method for determining the member's individual reserve of a member of a defined benefit category of a fund. In abbreviated form, it consists of the member's individual account plus a proportionate share of the investment reserve account, the member's surplus account and such contingency reserve accounts as the board may decide.



Amendments required

- Reference to defined benefit and defined contribution "category" of a fund
- Flexibility in determining minimum individual reserves
- Liquidation and recovery of debt owed by an employer in terms of section 30(3)
- Conversion and reduction of minimum individual reserves
- Miscellaneous



Interpretation

"The general rule is that the words of a statute must be given their ordinary, grammatical meaning unless to do so – '... would lead to absurdity so glaring that it could never have been contemplated by the Legislature, or where it would lead to a result contrary to the intention of the Legislature, as shown by the context or by such other considerations as the Court is justified in taking into account ...'. (per Innes CJ in Venter v R 1907 TS 910 at 915). In the event the court may depart from the ordinary effect of the words to the extent necessary to remove the absurdity and give effect to the true intention of the Legislature".

- *Summit Industrial Corporation v Claimants* .
- *MV Jade Transporter* 1987 (2) SA 583 (A)



The golden rule

"The golden rule has been designed to "salvage" and not to "sink literalism" and has therefore been held to sanction the avoidance of an inconvenient, inept or absurd construction only in extreme cases. This means that the language of a provision must fairly and properly admit of a departure from the literal meaning. It must furthermore be obvious that a result that an interpreter subjectively conceives of as being absurd, could not possibly have been intended by the legislature".

The Law of South Africa, Vol 25(1) at paragraph 309



Absurdity

"the court does not impose its notion of what is absurd on the legislature's judgment as to what is fitting, but uses absurdity as a means of divining what the legislature could not have intended and therefore did not intend thus arriving at what it did actually intend".

Poswa v Member of the Executive Council for Economic Affairs, Environment and Tourism, Eastern Cape 2001 (3) SA 582 (SCA) at paragraph 11

