

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

SPIER, STELLENBOSCH, CAPE TOWN

■ Apportionment of Future Surplus – a Murky Crystal Ball

**Leanne van Wyk,
Alexander Forbes Financial Services**

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?