

# *Goals for 2010 & beyond*

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2010 PLA CONFERENCE - SPIER - WESTERN CAPE  
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- Speaker* GRAHAM DAMANT
- Company* BOWMAN GILFILLAN INC
- Topic* WHAT HAPPENED TO EMPLOYER RIGHTS  
IN PENSION FUNDS?

# THE OVERSEAS EXPERIENCE

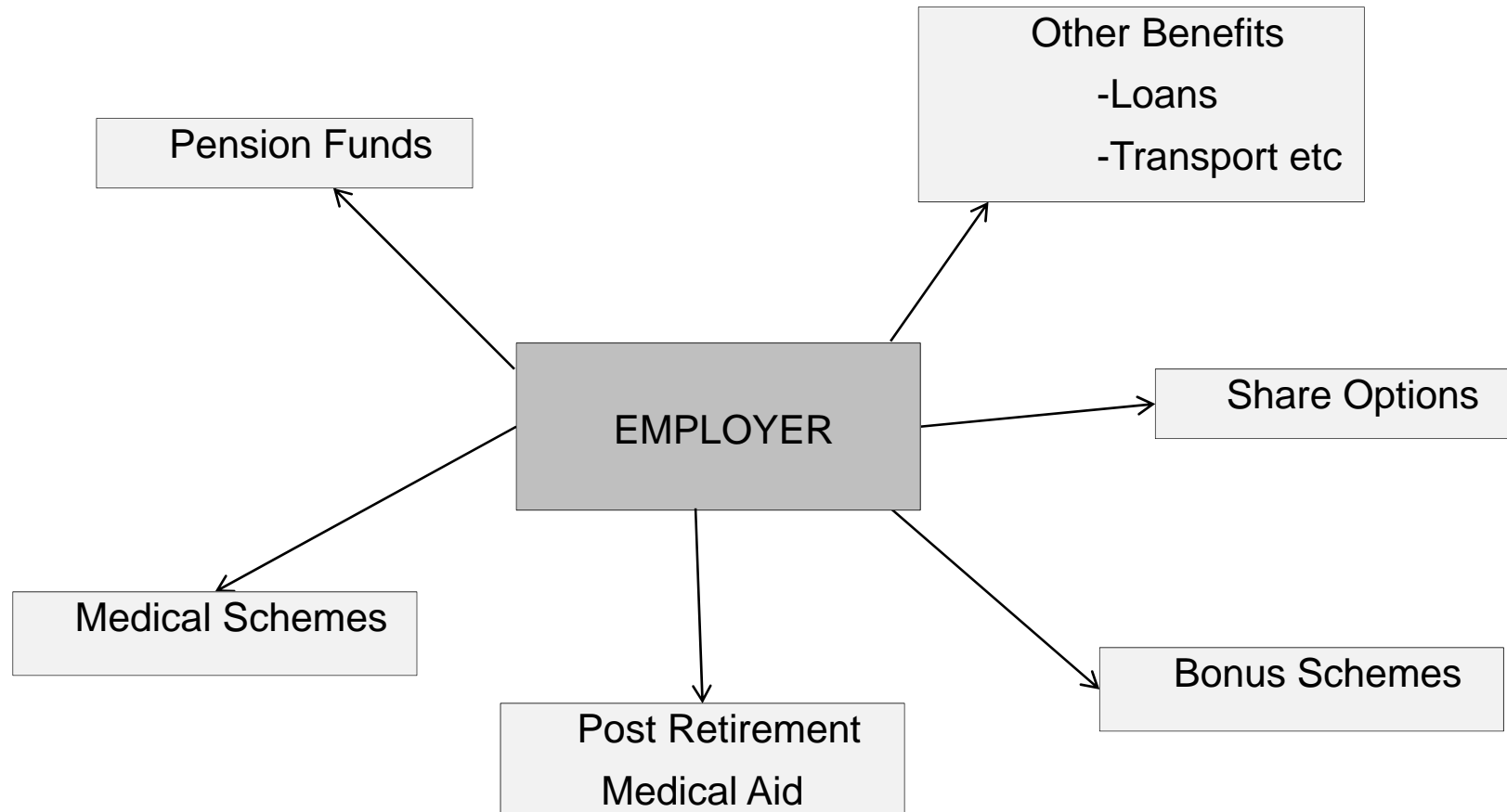
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## A. CLEAR DISTINCTION

- Employee Benefits Lawyers (Labour Law Department)
- Pension Lawyers

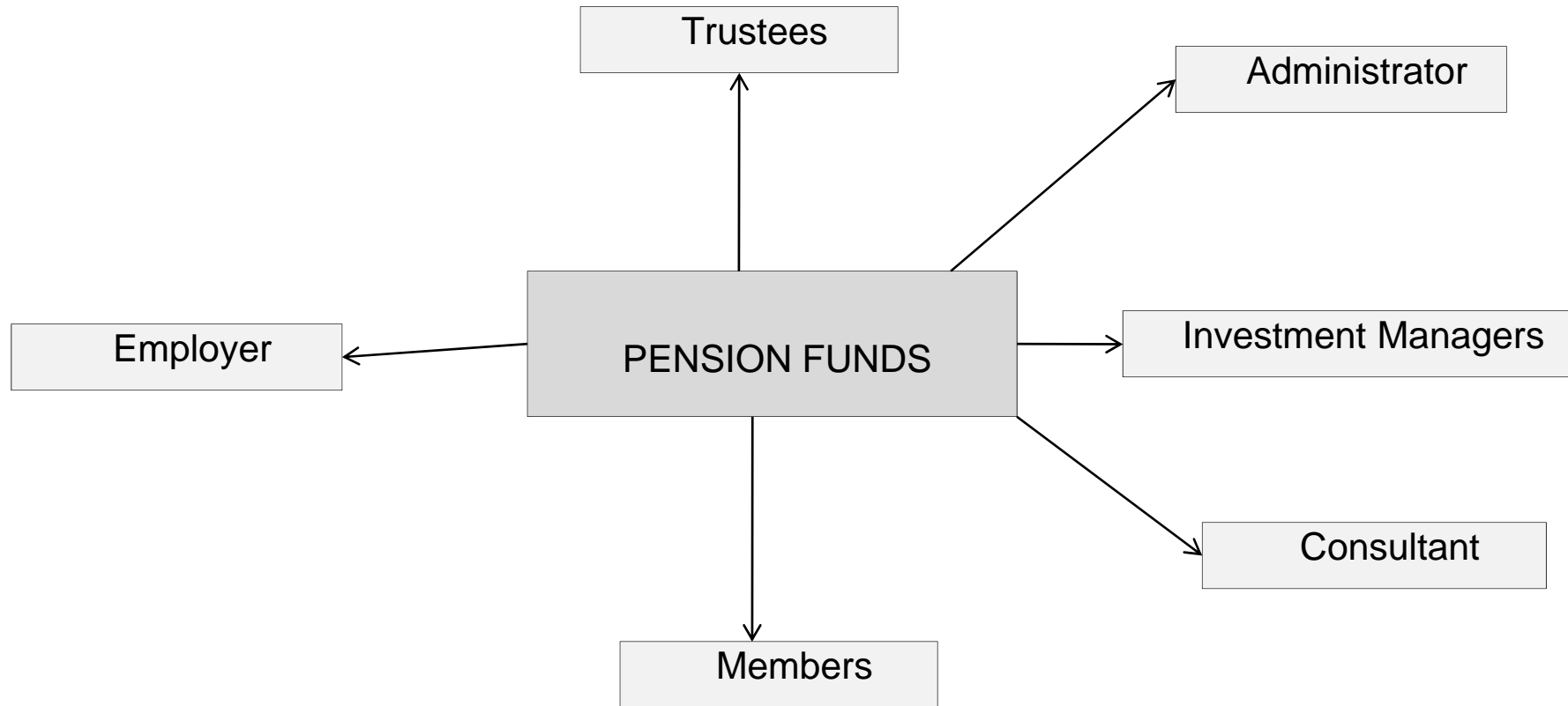
# EMPLOYEE BENEFIT LAWYERS

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# PENSION LAWYERS

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# EMPLOYEE BENEFITS LAWYERS PROVIDE ADVISE TO EMPLOYER ON

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- Obligations and rights
- Amending benefits
- Employment contract wording
- Tax structuring
- Different Schemes
- Improper use
- Surplus rights
- Legislative amendments
- Conflicts of interest
- Mergers and acquisitions

## Dispute Handling:

- Unfair labour practice claims
- Discrimination claims
- Improper use claims
- Surplus issues
- Trustee conduct

# PENSION LAWYERS PROVIDE ADVISE TO

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## Trustees

- Fiduciary duties
- Governance
- Rule amendments
- Amending benefits
- Investment policy
- Death benefit distribution
- Divorces and maintenance
- Deductions
- Regulators powers
- Surplus apportionment
- Reportable irregularities
- Contracts with administrator/others
- Insurance
- S14 transfers
- Tax
- Pension increase policy

## Dispute Handling:

- Adjudicator complaints
- Appeals from Registrar
- High Court claims

# PENSION LAWYERS PROVIDE ADVISE TO

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Administrators, Investment Managers, Consultants, Actuaries and Auditors

- Contracts
- Liabilities
- Duties
- Errors and omissions
- Regulators power

Dispute Handling:

- Breach of contract claims
- Delictual claims
- Adjudicator complaints
- Regulator complaints

# PENSION LAWYERS PROVIDE ADVISE TO

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## Members

- Rights

## Disputes:

- Adjudicator complaints
- Investment choice
- Discrimination
- Rule amendments



# THE SOUTH AFRICAN EXPERIENCE

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Pre 2000's:

- The Industry
- The Law Firms:
  - Labour Lawyers
  - Trust Lawyers
  - Litigation Lawyers

# KIND OF ADVICE

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- Defined Benefits to Defined Contributions conversions
- Capping of Post Retirement Medical Aid
- Early Surplus Distribution

# EMPLOYEE BENEFIT LAWYERS DEVELOPING EMPLOYER RIGHTS

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Employer Centric View:

- The Pension promise
- Deferred pay?
- Wide Discretion (limited review)

# THE 2000's

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- The defection
- The Hybrid employee benefit/pension lawyer
- Not sufficient work for specialists
- Labour lawyer do not see employee benefits as labour law
- No longer developing jurisprudence
- Jurisprudence worse off as a consequence

# WHAT ARE EMPLOYER ISSUE?

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- Rights in future surplus distribution
- Rights in pension increase policy
- Right to change funds
- Right to amend benefits

*Thank you*