

2004 Pension Lawyers Association Conference

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Topic: Legal Issues Relating to Fund Rules
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CHANGING TOMORROW

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SHARING KNOWLEDGE AND EXPERIENCE.

PREPARING FOR THE FUTURE.

Legal Issues relating to fund rules

- Pension Funds Act provisions
- SARS requirements
- Surplus
- Minimum benefits
- Valuation exemption
- Unclaimed benefits
- Spouses'/childrens' pensions

Legal Issues relating to fund rules

- Fund benefits
- Retrospective rules/amendments
- Unconstitutional provisions
- Membership
- Contributions
- Fund salary
- Boards of management

Pension Funds Act

“rules” means the rules of a fund, and includes

- (a) The act, charter, deed of settlement, memorandum of association, or other document by which the fund is constituted;*
- (b) The articles of association or other rules for the conduct of the business of the fund; and*
- (c) The provisions relating to the benefits which may be granted by and the contributions which may become payable to the fund*

Pension Funds Act

Section 11(1) – Rules to comply with prescribed format, form and other requirements – regulation 30

Pension Funds Act

Section 12

- **Amendment of rules**
- **Submitted in 60 days of passing resolution**
- **Registrar shall register if not inconsistent with the Act and if financially sound**

Pension Funds Act

Section 13

- **Rules binding on fund, members, shareholders, officers and beneficiaries**

Pension Funds Act

Regulation 30

- **Format, form and provisions to be included in the rules, e.g.:**
 - **Type of fund and objects, name changes, physical address or registered office, financial years, definitions, eligibility conditions, contributions, benefits, appointments, financial, investment and management powers, dispute resolution, transfers and terminations etc**

Pension Funds Act

Act overrides rules provisions:

- definitions
- board of management
- payment of contributions
- approval of surplus apportionment schemes and use of surplus
- housing loans and guarantee limits

Pension Funds Act

- Overriding provisions contd.
 - Adjudication of complaints
 - Death benefits
 - Reduction of benefit
 - Deduction of amounts

Surplus legislation

- Surplus apportionment powers and provisions
- Existing reserve accounts
- Distributed surplus – vested rights/liability
- Contingency reserve accounts
- Pre/post surplus apportionment

Minimum benefits

- Defined benefit
- Defined contribution
- Expenses
- Tracing costs

Valuations / Exemption

- Regulation 2
- Regulation 36

Unclaimed benefits

- Practice policy
- Accrual for tax
- Withholding periods
- Investment policy
- Interest
- Tracing costs and expenses

Spouses' and Childrens' pensions

- Definition of “dependant”
- Section 37C
- Funding of benefits

Fund benefits

- Housing loan offsetting
- RF1/98 and transfers
- Paid-up benefits
- Telkom v Blom

Retrospective rules and amendments

- Retrospective resolutions
- Effective dates
- Reductions in benefits
- SARS requirements – proof of registration
- Service Level Agreement proposals

Unconstitutional provisions

- Differentiation in benefits
- Discrimination test
- Registrar's and Adjudicator's powers –
read-in

Flexible Membership and Contributions

- Compulsory versus voluntary membership
- Post retirement medical aid funding
- Multiple membership
- Employee/employer relationship
- Employment re-instatements
- Contribution scales

Fund salary

- Taxable earnings
- Cost to company
- Deemed income on disability
- Temporary absence

Management boards

- Powers and delegation
- Dead-lock breaking
- “Default” management
- Remuneration