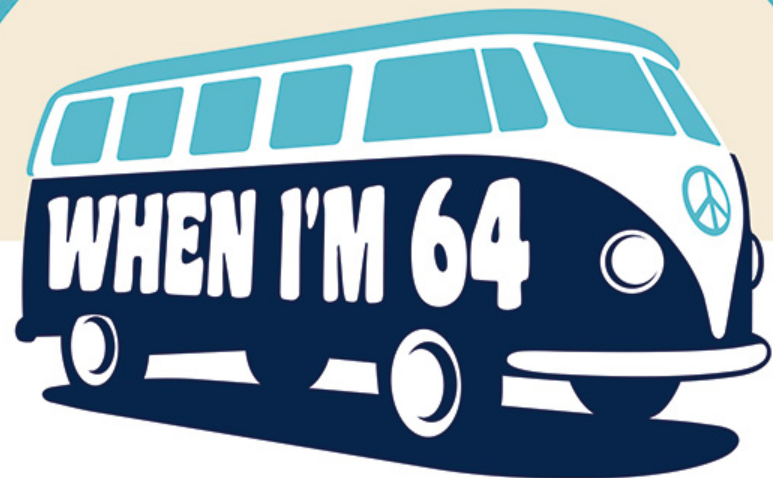


Implications for retirement funds of the Financial Services Laws General Amendment Act 45 of 2013

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Agenda – Jonathan Mort

- Miscellaneous Provisions
- Benefit Provisions
- Surplus Provisions
- Personal liability for contributions
- Board responsibilities



Effective Date of PFA Changes

Effective date is **28 February 2014** except

- Fund return definition (power of board to use approximate return) – 7 December 2001
- Fund registration requirements (s. 4 of PFA) – 30 May 2014
- Power to determine financial soundness criteria (s.18 of PFA) – 29 August 2014



Miscellaneous Provisions

- “Complainant” now includes spouse
- Contingency Reserve Account must be specified in the rules, must specify contingency (data, risk, etc.)
- New definitions for preservation funds, unclaimed benefit funds
- Unclaimed benefits include death benefits, non-member spouse pension interests
- Investment restriction - the Fund cannot, without Registrar’s approval, directly or indirectly have a financial interest in another entity which allows it to control that entity



Benefit Provisions

- “DC Fund” definition
 - member’s **interest at least** equal to
 - “less such reasonable expenses as board determines”
- Same change in calculation of MIR (Section 14B)
- Pension increase policy (PIP) not required to comply with section 14B(3)(a) on insourcing if annuity reflects PIP and annuity reflects full pensioner liability of fund
- Section 37A – can pay benefit to third party if member or beneficiary can’t open a bank account



Benefit Provisions (cont)

- Section 37C – unpaid death benefit can be paid to unclaimed benefit fund
- Section 37D – deductions can also be from a deferred pensioner or capital value of pensioner's pension
- Divorce Provisions (Section 37D)
 - divorce order provisions also apply to division of assets made by Court in respect of an Islamic marriage
 - divorce order provisions also apply to deferred pension benefits
 - fund return payable on non member spouse's portion from earlier of date of division or within 120 days of request to elect (not 120 days after being requested to make election)



Surplus Provisions

- S.16(9) – Registrar can reject valuation at SAD also if does not take into account interests of stakeholders
- Member surplus need not be routed through MSA (S.15A(1), s.15C)
- Registrar can withdraw SAS approval if fund requests it
- Employer can require amount to credit of ESA to be used in a certain way



Surplus Provisions (cont)

- s.15K – additional grounds for appointment of tribunal
 - improper use
 - nil return
 - non compliance s.15B(11)
- Registrar can replace tribunal member
- still only has power to apportion surplus
- if no surplus then Registrar can terminate appointment



Surplus Provisions (cont)

- S. 15K Tribunal – still only has power to apportion surplus
 - has responsibilities of board to s.15B
 - quorum is 2 (before it was 3)
 - must notify stakeholders of decision
 - must consider objections
 - can appoint an actuary regarding apportionment
 - costs recoverable from surplus if there is surplus
- Registrar must accept determination, as before



Personal liability for contributions

- Section 13A(8)(1)- Personal liability for payment of contributions
- Note this is for both employer and employee contributions

Company – every director “regularly involved in the management Co’s overall financial affairs”

CC– every member who controls or per director above

Other Employer – every person authorised by governing body of employer who “acts or controls or is regularly involved in management of employer’s overall financial affairs”

- Employer should be clear about who the person is



Personal liability for contributions (cont)

- Fund must request employer to notify it of person personally liable
- If employer does not comply with request then
 - all directors** (of company),
 - all members** (of CC) and
 - all persons of managing body** (of other employer)are personally liable
- Fund challenges – regular notification to employers
 - umbrella funds
- Employer challenges – indemnity to responsible employee?
 - incorrect notification consequences?



New Board Provisions

- S.7A – composition/filling vacancy must comply with rules
 - must have prescribed skills and training within 6 months of appointment
 - must retain prescribed skills and training
 - prescribed skills and training appears to apply also to independent trustees
- Obligation to report to Registrar
 - when leaves office unless resigns or term of office expires as to reasons for termination
 - at any time if something “seriously prejudices financial viability of fund or members”



New Board Provisions (cont)

- S.7C : Trustees
 - must act independently
 - note for sponsor trustees, trade union trustees,
trustees elected by constituency
 - have a dual fiduciary duty
 - to members and beneficiaries for **accrued** benefits
 - to fund to ensure financial soundness and governed
per rules and Act
 - must comply with prescribed requirements



New Board Provisions (cont)

- S.7D (Duties of Board):
 - generally will be prescribed by Registrar (PF 130?)
 - trustees communication obligation
 - to beneficiaries as well as members
 - disclosure requirements will be prescribed by Registrar
 - board can now delegate, but still responsible
(subcommittee function now very important)



New Board Provisions (cont)

S.7F Trustee only liable if

- Wilful misconduct or wilful breach of trust

And either

- Did not act independently or honestly or reasonably, or
- Considering all the circumstances, fair to excuse trustee

PO provisions

- Permitted period of absence to be prescribed
- Fund can appoint deputy PO
- PO can delegate but still responsible



Introduction – Radesh Maharaj

- **Good pension fund governance correlates positively with increased investment returns**

EU research survey conducted by Capelle *et al*, *The Pension Governance Deficit: Still with Us* (2008) found that better governed pension funds out-performed poorly governed ones by 2.4% *per annum*

No empirical research conducted in SA, but reasonable to assume the same would apply

⇒ **Pension funds need to operate with high levels of professionalism and skill to ensure good governance and better returns for members**



Financial Services Laws General Amendment Act 45 of 2013

Objectives of FSLGAA: ensure a sound and well regulated financial services industry and to promote financial market stability by strengthening the financial sector regulatory framework and enhancing the supervisory powers of the regulators, as well as the powers of the Minister of Finance in dealing with potential risks to the financial system.

-**eleven financial sector laws** amended.

-legislative gaps highlighted after the **2008 financial crisis** addressed.

-alignment with Companies Act, 2008 and other legislation.

-makes the Financial Services Board the lead regulator where there is concurrent jurisdiction.



Amendments to the Pension Funds Act, 1956 - Miscellaneous

Definitions – s1(1)

-Distinction between **registrar** and **deputy registrar** of pension funds

-**Actuarial surplus** in funds subject to actuarial valuation:

Surplus = Assets – Liabilities – Contingency reserves, the registrar to prescribe valuation basis

-**Disclosure** – disclosure of information regarding conduct of a fund, administrator, board member, PO, deputy PO, valuator, officer or employee of a fund or administrator and relating to the affairs of the fund which may prejudice the fund or its members



Reporting duties

- **Section 7A(4):** within 21 days of removal submit a written report to registrar with reasons for termination.
- Board member must report to registrar on becoming aware of a matter which may seriously prejudice financial viability of the fund or members
- **Section 13B(10):** Administrator must report to registrar on becoming aware of a matter relating to affairs of a fund which may prejudice fund or its members
- **Section 9B:** protected disclosures



Section 9B – Protected Disclosures

- Registrar must provide a process for submission of disclosures
- By board member, PO, Deputy PO, valuator, officer or employee of a fund or administrator
- Disclosure to registrar constitutes a protected disclosure
- May not suffer occupational or other detriment
- Remedies in section 4 of the Protected Disclosures Act, 2000, courts



Provision of information

- **Section 4(5):** Registrar may request further information i.r.o. a fund's application for registration and to verify information provided. Application lapses after 60 days if fund fails to comply.
- **Section 12(6):** Registrar may request additional information i.r.o. rule amendments. Lapses after 180 days if fund fails to furnish requested information.
- **Section 13B(1B): administrator approval** - Registrar may require additional information or verification thereof. Consider other information from other sources.
- **Section 24:** Registrar may address enquiries to fund, administrator or third party.



Administration of pension funds

Section 13B(1) - pension fund contribution collectors must be approved by the registrar

-Administrators must continuously comply with prescribed conditions

-Registrar to prescribe form of application and fit and proper requirements for administrators.

-13B(6) - If the registrar has reasonable grounds to consider that the interests of the members of a fund or of the public so require, may direct the administrator to -

1. implement remedial measures, or
2. withdraw from administration of the fund, or
3. suspend or withdraw administrator approval.

13B(10) – reporting requirement on the administrator.



Funds in distress

- **Section 16(5):** Registrar may require a fund to investigate and report on its financial condition in any year if of the opinion that investigation will show fund is not in a sound financial condition.
- **Section 18(1):** Registrar may prescribe financial soundness criteria and require a scheme to bring fund back to financial soundness when a statutory return indicates a fund is not in a sound financial condition (delayed implementation: 29 Aug 2014).
- **Section 18A:** business rescue of a fund or administrator.
- **FI Act section 5(10):** Registrar may by agreement appoint curator.
- **FI Act section 5A:** Registrar may by agreement appoint statutory manager.



Section 18A - business rescue provisions

- Chapter 6 of the Companies Act, 2008 applies with the requisite changes
- A pension fund or administrator may resolve to begin business rescue proceedings, so may the registrar

The following acts are subject to the approval of the Registrar:

1. The resolution of a pension fund or administrator to begin business rescue proceedings;
2. the appointment of a business rescue practitioner;
3. the adoption of a business rescue plan; and
4. the exercise of a power by the business rescue practitioner under the Companies Act.



Registrar's powers to intervene in the management of a fund

- **Sections 7D(c) and 32A:** Registrar may prescribe information to be communicated to members and beneficiaries
- **Section 18(1):** Registrar may prescribe criteria for financial soundness
- **Section 25:** Inspections and on-site visits
- **Section 26(1):** Registrar may after considering the interests of members-
 1. declare a specific practice or method of conducting business unacceptable, irregular or undesirable; or
 2. direct that the rules be amended.
- **Section 26(2):** Registrar may appoint board members.



Inspections and on-site visits

The registrar may-

1. conduct on-site visits (chapter 1A of Financial Institutions (Protection of Funds) Act, 2001); or
2. instruct an inspector to conduct an inspection under the Inspection of Financial Institutions Act, 1998.

After an on-site visit or inspection, the registrar may direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of the PFA.

Registrar may not make an order contemplated in section 6D(2)(b) of the FI Act (compensatory orders).



Amendments to the Financial Services Board Act, 1990

Sections 13 and 20(3A) – delegation of functions from executive officer to deputy executive officer, who may on-delegate to FSB employees.

Section 28 - the provisions of Financial Services Board legislation prevail over any provision of other legislation that conflicts, or is inconsistent, with a provision of Financial Services Board legislation.

The Consumer Protection Act, 2008 does not apply to any function, act, transaction, goods or services subject to FSB legislation.



When I'm 64 ...

When I get older losing my hair,
Many years from now,
Will you still be sending me a valentine
Birthday greetings bottle of wine?

If I'd been out till quarter to three
Would you lock the door,
Will you still need me, will you still feed me,
When I'm sixty-four?

oo oo oo oo oo oo oo oooo
You'll be older too, (ah ah ah ah ah)
And if you say the word,
I could stay with you.

I could be handy mending a fuse
When your lights have gone.
You can knit a sweater by the fireside
Sunday mornings go for a ride.

Doing the garden, digging the weeds,
Who could ask for more?
Will you still need me, will you still feed me,
When I'm sixty-four?

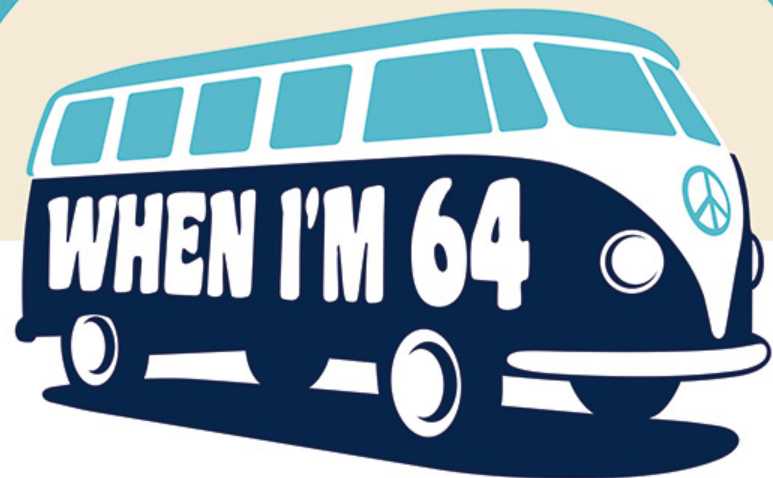
Every summer we can rent a cottage
In the Isle of Wight, if it's not too dear
We shall scrimp and save
Grandchildren on your knee
Vera, Chuck, and Dave

Send me a postcard, drop me a line,
Stating point of view.
Indicate precisely what you mean to say
Yours sincerely, Wasting Away.

Give me your answer, fill in a form
Mine for evermore
Will you still need me, will you still feed me,
When I'm sixty-four?



Thank you



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