

Death Benefits – PLA conference

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Agenda

- Who must make the decision?
- When does s37C apply?
- Delictual liability of employer
- Disqualification of dependant
- Insured / risk portion of benefit
- Nomination of artificial persons



Agenda (continued)

- Review of discretion and application of PAJA
- Recovery of monies
- Child's pension
- Future dependants
- Customary spouses
- Mode of payment



Who must make a decision

- *Kaplan* (HC and SCA) – delegation by director
- Amendments to the Pension Funds Act



When does section 37C apply?

- *Rampedi* (PFA) – withdrawal vs death
- See also *Mokgohlwa, Mogupudi, Letho, Sekoere, and Bussakhwe* (PFA)
- *Sachs* (PFA) – retirement vs death
- Question to be asked?
- Information Circular No. 2 of 2010 (FSB)
- Draft Financial Services Laws General Amendment Bill
- Wording rejected in final Act



Delictual liability of employer

- Insurance / risk benefit
- *Matekane* (PFA) – fault on part of employer
- See also *Sekiti*, *Makamela*, and *Ntshingana* (PFA)



Can a beneficiary be disqualified from receiving a benefit?

- *Makhanya* (HC) – GEPF – Murder
- *Danielz* (HC) – life policy – Assault leading to death
- Role of public policy – *Boni mores* of society
- How will it be treated in a private fund context?



Insured / risk portion of benefit

- *Lerena* (PFA) – medical test results not submitted
- *Bukashe* (PFA) – died before completing tests
- *Chicktay* (PFA) – no response to letters
- *Provan* (PFA) – failed to inform member of tests
- General principles emerging from cases



Nomination of artificial persons

- Estate
- *Martin* (PFA) – nomination rejected
- Estate only benefits under 3 default circumstances
- Other artificial persons



Review of discretion

- *Sharp* (UK Appeal Court)
- Common law test and Constitution
- *Computer Investors* (HC) – nature of discretion
- *Jordaan* (PFA) – weight accorded to factors
- *Durban Rent Board* (HC)
- *MEC for Environmental Affairs* (SCA)
- *Van Schalkwyk* (PFA) – nil awards
- *Berge* (HC) – not necessary to agree with decision



Application of Promotion of Administrative Justice Act (PAJA))

- *Titi* (HC) – s37C distribution
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- *Kalimashe* (HC) – s37C distribution
- *Gerson* – (HC) – spouse's pension
- *Pennington* (HC) – decision by medical aid scheme
- Is there really a difference?



Dispute resolution – recovery of monies

- Unhappy beneficiaries
- *Mokoena* (PFA) – withholding benefit where legal uncertainty
- *Mudzanani* (PFA) – distributing part of benefit



Child's pension

- Meaning of child
- *Aherne* (PFA) – “full-time student”
- *Mthembu* (PFA & HC)



Paragraph (c) dependants – future dependants

- 3 critical dates
- *Wellens* (PFA) – ageing parent
- See also *Wasserman* (PFA) – parent
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- *Van Zyl* (PFA) – fiancé
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- Difficult section to apply



African customary spouses

- Requirements under specific tradition
- *Ngwenyama* (SCA and CC) – polygynous marriage – consent required?
- Development of jurisprudence



Mode of payment

- Current options
- *Ramenyelo* (PFA) – deprive guardian / caregiver
- *Davis* (PFA) – intention of guardian
- *Maleshane* (PFA) – use monies for other purposes



Thank you



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