



Unclaimed Benefits

Deirdre Phillips

14 May 2020

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Unclaimed Benefits

A discussion about the problem and solutions



Overview

- Recap on “unclaimed benefits”
- Global problem
- COFI and unclaimed benefits
- Potential solutions
- Feedback from the FSCA

Unclaimed benefits

- Section 1 of the PFA defines “unclaimed benefit” and includes:
 - benefit (as defined in PFA) “not paid to a member, former member or beneficiary within 24 months of the date on which it in terms of the rules of the fund, became legally due and payable”
 - a death benefits payable in terms of section 37C not paid within 24 months from the date on which the fund became aware of the death of the member or a longer period as may be reasonably justified by the board
 - pension or annuity not paid to a member, former member or beneficiary within 24 months
 - A benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation under section 27 or where the liquidator is satisfied that the benefits remain unclaimed or unpaid

Historic problem

- Reasons behind unclaimed benefits:
 - Migrant workers
 - Poor or lack of record keeping by funds, administrators, employers and members
 - Paper based to electronic systems – records not kept or accurately captured
 - Lack of regulation on unclaimed benefits
 - Members not coming forward to claim and members choosing not to claim because of tax affairs not being in order
 - Inadequate or no tracing
 - Not the only reasons, there are several others

Unclaimed benefits not unique to South Africa

- We are not unique, there are unclaimed benefit problems across the World
- Legal issues concerning the treatment of unclaimed benefits have grown prominence, in particular in relation to tracing beneficiaries and what must be done with the benefits if a beneficiary cannot be traced
- International Organisation of Pension Funds (IOPS) surveyed private pension schemes of 32 IOPS member jurisdictions on unclaimed benefits (countries included: South Africa, Tanzania, Australia, China, Canada etc.)
- IOPS released its paper “Supervision of lost accounts and unclaimed pension benefits” (Dec 2016)
- *“Proper management and minimising the amount of lost accounts and unclaimed pension benefits are fundamental if supervisors are to build trust in the pension system”*
- *“Consumer protection in pension systems is becoming a vital supervisory area in many jurisdictions”*

Unclaimed benefits not unique to South Africa

- IOPS posed certain questions for the members to answer. Questions included:
 - What is the size of this problem? Is this issue supervised and, if so, in what way?
 - What processes are in place to identify accounts as being lost or benefits as unclaimed?
 - Is there any obligation for pension managers to report on this issue to the supervisor?
 - How are beneficiaries informed about unclaimed assets?
 - What processes, if any, are in place to reunite assets with beneficial owners?
 - What is the legal character of such assets (e.g. do they remain vested in members)?
 - If beneficial owners cannot be identified, what eventually happens to the benefits?
- Some of the findings:
 - issues varies from jurisdiction to jurisdiction
 - some regulators are actively engaged in dealing with unclaimed benefits, others are not (may be due to the various laws, the different structures and so on)

A few countries explored - Canada

- 10 jurisdictions with pension legislation in force (9 provinces and the federal jurisdiction)
- Terminology used is “unlocated members” or “unlocated participants”
- Reasons behind unlocated member / participants
 - Significant periods between employment termination and becoming eligible to receive a pension
 - Increased career mobility
 - Changes in labour migration patterns
 - Administrative errors, poor record keeping, lost or damaged records
 - Burden on administrators to validate contact information rather than on the participant to notify if there is a change

A few countries explored - Canada

GAPS

- Some of the gaps include - **no standard approach** across jurisdictions:
 - to address the issue
 - for administrators to ensure member information is up-to-data
 - for searching for missing participants
 - Fragmented
 - Unclaimed benefit regime in some jurisdictions
- **British Columbia:**
 - administrator **may** transfer unclaimed benefits to an unclaimed property society
 - the amount transferred must not be less than \$1000 and must be unclaimed for more than five years
- **Alberta:**
 - Administrator **must** transfer unclaimed benefits in relation to terminated plans (minimum of \$250)
 - Administrator **may** transfer unclaimed benefits in relation to active plans

A few countries explored - Canada

- **Québec:**
 - Obligation to transfer unclaimed property to the Revenue Québec (RevQ)
 - where no claim or transaction has been made and no instructions have been given within applicable period
 - transferred after three years lapsed the date the member died, date when the plan was wound up, latest date on when member was entitled to benefit (age 71)
 - RevQ will try to search for members
- **Federal:**
 - The Canadian government has proposed changes to the federal regime to allow benefits in federal regulated **terminated** plans to be paid to the Bank of Canada. Nothing proposed yet on unclaimed benefit for active plans.

A few countries explored - Canada

- **CAPSA published CAPSA Guideline No. 9 – Searching for Un-locatable Members of a Pension Plan:**
 - outline best practices and options to search for un-locatable members
 - outlines the roles and responsibilities for record management
 - recommends the development and implementation of a records management and retention policy
 - states that it is the administrator's responsibility to conduct a search for un-locatable members – however, the guidelines is not law.

A few countries explored - Australia

- Refers to “lost members” – where member is uncontactable or not an active member in the plan
- A member is **excluded** from being “characterized” as a lost member where:
 - the member is an inactive member who has indicated by a positive act that they wish to continue to be a member of the provider, or
 - the member has contacted the super provider at any time after he / she joined and indicated that the member wished to continue being a member of the provider, or
 - the member is a member of a self-managed superannuation fund
- **Reason behind unlocated members similar to SA and include**
 - Due to mandatory pensions and labour mobility many employees have multiple pension accounts
 - Limited member engagement
 - Generally pension benefits are preserved until retirement

A few countries explored - Australia

- **Role of the regulatory authority in resolving problem**
 - **Voluntarily** transfer of benefits of a lost member to the ATO (tax authority) in certain circumstances, which include:
 - Unclaimed for members age 65 year of age or older, benefits to non-member spouses and deceased members
 - insoluble member accounts
 - Inactive low balance accounts
 - **Compulsory** transfer of benefits to ATO in certain circumstances, which include:
 - The member is 65 years of age, and has not contributed for two years and the fund has been unable to contact the member for five years
 - Member deceased and fund cannot trace the “rightful owner” / beneficiary to whom benefit must be paid
 - Benefit is less than \$6000
- ATO has a “lost member register’ and protocol to provide guidance to superannuation funds in meeting their obligations under the “Superannuation (Unclaimed Money Lost Members) Act.

A few countries explored - Belgium

- In 2006 the legislature established a database on occupational / secondary pillar pension plans (referred to as “**DB2P**”) and a legal body **SIGEDIS** (not-for profit)
- The legislation seeks to ensure accurate, correct, transparent and understandable communication to members. Strong focus on transparency of and confidence in supplementary pensions, communication to members and accessibility of information by members
- SIGEDIS mandated to regulate second pillar pension plans and to receive information from pension plans, insurers and employers
- The database became operational **2011**
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- Pension plans / insurer / employer required to register on the database.
- SIGEDIS collects (via database) variety of information from pension plans, insurers, employers and members.

A few countries explored - Belgium

- **Database serves a variety of functions:**
 - **Assists the regulators** to supervise compliance with pension legislation
 - **Accessible by members** to understand their rights and to obtain information relating to their pensions
 - **Gathers information** from various sources (employer / administrator / insurer / member / pension plan)
 - **Provides information** to members / employers etc.
- **Databases used:**
 - gather information about **accumulated pension rights** and to provide individualise information
 - verify compliance with provisions of pension law
 - provides accurate statistics on second pillar pensions
 - provides policymakers with clear and reliable statistics and in time will assist the regulator in the supervision of pension plans

A few countries explored - Belgium

- **Databased used:**
 - receive **declarations** by pension plans / insurer regarding contributions paid by the employer, fees payable by the members, value of benefits, information on events (exit, death, retirement)
 - **Note:** if pension plan / insurer does not receive the required information from employers in time, then the pension plan / insurer will not be able to make the declarations they are required to make. **A tax penalty is imposed on employer (contributions will not be tax deductible)**
 - members can verify whether the information held about them is correct and see if there are any “sleeping benefits”
 - Sigedis provides pension plans / insurers with recent information on in-service members and deferred pensioners
 - Pension plans / insurers Informed when a member transfers, retires or exists the fund
 - When a pension plan does not pay a member with six months after it was legally required to do so, then Sigedis dispatches a letter to the member advising him / her of his benefit and provides the contact details of the pension plan / employer

What do we have?

- FSCA database – did significantly well
- Depending on rules of fund, keep unclaimed benefits in the fund or transfer out to an unclaimed benefit fund
- Obligations on:
 - Fund
 - Member
 - Employer
 - Administrator
- Legislation on unclaimed benefits – does the Guardian's Fund count?
- Codes on unclaimed benefits?
- Prescription of benefits?

COFI and unclaimed benefits

- Chapter 7 of COFI: sets out principles relating to post-sale barriers and post-sale obligations
- Post-sale obligations: Section 34 provides that *“amounts owing to or unclaimed benefits of a financial customer **must be treated as amounts being held in trust by the financial institution on behalf of the financial customer, and must be handled by the financial institution in accordance with the requirements of this Act and other applicable law**”*
- Impact on unclaimed benefits?
- “trusts”
- transfers permitted?
- Which other applicable law? Guardian's Fund?

COFI and unclaimed benefits

- Consequential amendments to PFA
 - Amend definition of “unclaimed benefit” and “unclaimed benefit fund”
 - Introduces definition of “Central Unclaimed Retirement Benefit Fund” (CURBF) and CURBF
 - What is CURBF and how will it work?
 - Amend s28 of the PFA relating to liquidations and including provisions on when a liquidator must transfer unclaimed benefits to an unclaimed benefits fund. What about the Guardian’s fund and the CURBF?
 - Amending s37A by including a new sub-section (5) *“unclaimed benefits may not be reduced or utilized for any other purpose by a fund”*
 - What does this mean & implications on funds & members

Potential solutions / issues to be addressed

- Learn from other countries (SARS, Labour Department, interaction between departments and spheres)
- More effort: simply sending a letter to the last known address is not sufficient & does not discharge the fund's obligations
- Imposing of penalties subject to certain conditions if assets are still held for unclaimed benefit members?
- Imposing obligations on employers, members and administrators?
- Need for legislation / code of conduct on:
 - Tracing obligations & how to trace
 - What to do if after tracing, the member cannot be reached – to whom must the benefit be paid?
Guardian's Fund, Central Unclaimed Benefit Fund, other unclaimed benefit funds
 - Clear duties on communication to members and record keeping by employer, fund and administrator

THANK YOU

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