

DIFFICULT Q & A

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DIFFICULT QUESTION

- What is the situation where a member withdraws or retires from service, and dies before an election or instruction is made as to how the fund benefit is to be paid and can the rules of a fund be amended to take this situation into account?

ANSWER – DEPENDS ON THE DATE WHEN THE BENEFIT ACCRUES

- Definition of “member” in the Pension Funds Act – excludes any “*member or former member or person who has received all the benefits which may be due to him from the fund and whose membership has thereafter been terminated in accordance with the rules of the fund*”

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IF DIE WHILE STILL A “MEMBER”

- ❑ Section 37C of the Pension Funds Act governs any benefit payable by the fund upon the death of a member
- ❑ (other than a benefit payable as a pension to one or more dependants in terms of the rules of a registered fund, which must be dealt with in terms of those rules – Pension Funds Amendment Bill, 2007)

IF DIE WHILE A “MEMBER” cont.

- Promotes the protection of the most vulnerable in our economy, the elderly, the disabled and the dependants of deceased members by requiring trustees to investigate the relative financial security of the deceased’s dependants and to allocate insolvency-immunised benefits on an equitable basis

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IF NO LONGER A “MEMBER” AND BENEFIT ALREADY ACCRUED

- ❑ WITHDRAWAL BENEFIT (member exits fund on resignation, dismissal or retrenchment) – accrues on effective date of event giving rise to withdrawal
- ❑ Withdrawal benefit is asset in estate and will form part of deceased estate - withdrawal benefit is debt owing to deceased estate (distributed in accordance with law of succession)

IF NO LONGER A “MEMBER” AND BENEFIT ALREADY ACCRUED cont.

- ❑ PROVIDENT FUND LUMP SUM ON RETIREMENT – as before, accrues on effective date of retirement
- ❑ Lump sum retirement benefit will fall into deceased estate to be dealt with in terms of law of succession
- ❑ Vesting of inheritance takes place upon the death of the deceased

IF MEMBER HASN'T MADE ELECTION BEFORE DEATH

- ❑ PROVIDENT FUND RETIREMENT BENEFIT IS ANNUITY – member must elect to commute
- ❑ RETIREMENT FROM PENSION FUND – member may be entitled to:
 - ❑ pension from fund;
 - ❑ commute 1/3 and take as lump sum; or
 - ❑ purchase annuity

MEMBER'S RIGHT TO BENEFITS CEASES ON DEATH

- ❑ In terms of the law of succession, certain rights and liabilities of the deceased cease at his death and consequently do not form part of the deceased estate
- ❑ e.g. rights and duties under an option which was only open to the deceased personally

MEMBER'S RIGHT TO BENEFITS CEASES ON DEATH

- ❑ Du Toit v Miller, Terblanche and Zietsman
1974 (4) SA 31 (C)
- ❑ extend argument to apply to benefits available only to members of retirement fund before benefits accrue, or options available to members but not exercised by members before death?
- ❑ Deceased remained “member”?

PRACTICAL SOLUTION

- ❑ Rules prescribe how and what benefit will be paid in circumstances where member dies after date of his retirement but before making election or exercising option in terms of the rules
- ❑ May be benefit to be distributed in accordance with section 37C



THE END

Thank you

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