

Ref. No. : DPF/GH
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2005-03-23

The Director General
National Treasury
Pretoria

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Dear Sir,

Discussion Paper on Retirement Fund Reform

With reference to the above the following comments are submitted:

1 Annexure 2 Paragraph 1.6.1.1

As indicated in paragraph 1.1 of this Annexure the employer and employee are involved in the establishment of a fund. However, once the fund is established as a separate legal entity, the management board of the fund assumes control of the fund and any changes to the rules of the fund would have to be made in accordance with the fund's rules. Paragraph 1.6.1.1 should be amended so as to clearly reflect this aspect.

2 Annexure 3 Paragraph 1.1.2.3

Although no recommendation is made it is suggested that the minimum amount to be provided for the spouse be set at 50 % of the member's pension. Costs are not necessarily reduced by 50 % on the death of a member.

2 Annexure 3 Paragraph 3.7.3.1

The word modest is open to interpretation and the right to comment hereon is reserved. It is suggest that the maximum amount of any pension that may be commuted to a lump sum be limited to one third.

3 Annexure 3 Paragraph 3.15.1.4. (a)

With a view to providing protection for the fund in the case of a reduction in the value of the member's minimum individual reserve it is suggested that the guarantee be limited to say 90% thereof.

4 Annexure 3 Paragraph 3.15.1.4. (d)

The intention of this paragraph is to protect the eventual retirement fund benefit. This could be circumvented if the member deliberately defaults on interest payments.

5 Annexure 3 Paragraph 3.16.5.3.

In accordance with the principle underlying the "package option", namely that the retirement savings are intended, inter alia, for the protection of the dependants it is suggested that this paragraph be amended to reflect that in the absence of a nomination of beneficiary from the balance of the member's interest must likewise be applied under the direction of the management board and guided by the will.

6 Annexure 3 Paragraph 3.17.3.3.

This paragraph is not understood.

7 Annexure 3 Paragraph 3.17.3.4.

Provision should be made for the determination of interest in the case of a defined benefit fund and that the member's former spouse would not be entitled to any other benefit payable in terms of the fund's rules.

8 Annexure 3 Paragraph 3.18.3.1.

Provision for the percentage to be allocated to the various beneficiaries (dependants and nominees) would be of assistance to the Trustees.

9 Annexure 3 Paragraph 3.19.3.2.

This paragraph should make provision for the benefit to be determined in accordance with the fund's rules.

10 Annexure 4 Paragraph 4.4.

Provision must be included for pensioners to be included with members where relevant so as to ensure that the rights of pensioners are provided for along with members.

11 Annexure 4 Paragraph 5.6.

Special reference to pensioner members is required in these paragraphs where applicable so as to ensure that the rights of pensioners are provided for along with members.

12 Annexure 4 Paragraph 5.6.7.

It is possible that the members of a fund have different employers and that all employees of an employer do not belong to one fund. Furthermore pensioners have no representation in employer/employee bargaining forums. In the circumstances any amendment to a fund's rules should be decided by the Trustees only, who are elected by all stakeholders, and made in accordance with the existing rules of the fund.

13 Annexure 4 Paragraph 5.6.21.1.

This paragraph should provide for an exclusion in the case of a member who has voluntarily transferred to an alternative fund after being given a reasonable period in which to exercise such option and where his/her previous fund has been closed to new membership.

14 Annexure 4 Paragraph 6.5.1.

As indicated in paragraph 6.2 of this Annexure existing defined benefit funds are independent legal entities. These funds which have entered into legally binding contracts with employers are governed, inter alia, by their fund rules. The fund's rules govern the aspects of membership and the manner in which benefits will be accrued. In instances where these funds have been properly managed together with the employer it is considered immoral and inequitable to interfere with the promise given by the fund to members in respect of past and future service. Retrospective legislation is not supported. Furthermore in a recent case in the Witwatersrand High Court the Johannesburg City Council was interdicted from compulsorily transferring members of a defined benefit fund to a defined contribution fund. It should only be possible to apply this paragraph to members who join a defined benefit fund after the implementation of this legislation and where the fund's rules clearly provide for such transfer.

It is a fact that members of a defined benefit fund secure employment with a specific employer because of the promise provided by the relevant fund of a pension benefit which is guaranteed by the employer and protected by law.

Any transfer of this nature would have to be in accordance with the rules of the fund.

No mention is made of existing obligations of such funds to existing pensioners. Existing obligations of employers to existing pensioners/funds must be entrenched and the existing rights of existing pensioners protected.

15 Annexure 4 Paragraph 6.5.3.

The reasoning set out in paragraph 14 of this letter applies more specifically to pensioner members of a defined benefit fund. The majority of pensioner members retired before the introduction of minimum benefits and had little or no say in the introduction of the minimum benefit legislation. The minimum benefit legislation was designed to protect the pensioner's rights to a pension and an equitable increase therein whilst the proposed statute purports to undermine this protection by removing the ultimate sponsor which is seen as an infringement of an individual's property rights.

It is not considered equitable or moral to allow an employer to escape his existing contractual obligation to provide financial support to a defined benefit fund which has a contractual obligation to provide retired members with a promised pension. Paragraph 6.5.3 negates the very essence of a defined benefit fund, which requires the employer to carry the ultimate risk. Existing pensioners have no meaningful way of protecting their existing rights and benefits including the underwriting by the employer and this legislation should be providing for the protection of the existing rights of existing pensioners and not provide an avenue for employers to renege on their contractual obligations.

This proposed statute would undermine existing pensioners' rights to receive an ongoing pension and reasonable increases and could arguably fail to meet a challenge in our courts.

16 Annexure 4 Paragraph 6.6.

As indicated in paragraph 1 of this letter a pension fund is a separate legal entity managed by a management board. The fund is managed in accordance with the fund's rules and any changes to the rules will have to be made in accordance therewith and, unless so stipulated, not by agreement with the employer and employee. Once again the existence and involvement of existing pensioners has been overlooked.

17 General

17.1 Members are referred to frequently in the document. The fact that member includes an existing pensioner requires to be clarified and put beyond doubt by explicit inclusion in this document.

17.2 The rights and benefits of existing pensioners are inadequately dealt with.

Emphasis in the document is on employees/employers, bargaining councils etc with little or no reference to pensioners who are lost sight of most of the time.

Pensioners basically become invisible probably because they have no effective representation, structures or resources. It is most important that the law effectively remedy this situation and provide unambiguous support and protection to pensioners. If this is not done pensioners will simply continue to bear the consequences of processes over which they have no real input or influence.

The protection of the existing rights and benefits of all pensioners requires specific attention and legislative support especially during these times when there is substantial restructuring of pension funds already underway.

17.3 The Regulator must be obliged by law to be proactive when dealing with pension fund issues particularly when faced with possible loss or damage. At present it appears that for legal reasons the Regulator is inclined to act only after the event once there has actually been a transgression or actual loss.

Yours faithfully

Principal Officer