

**SUMMARY SUBMISSIONS IN RESPECT OF THE DISCUSSION PAPER ON RETIREMENT FUND REFORM
(AS PUBLISHED BY THE NATIONAL TREASURY) – SUBMITTED BY NBC HOLDINGS (PROPRIETARY)
LIMITED (“NBC”) FOR AND ON BEHALF OF TRUSTEES OF CLIENT RETIREMENT FUNDS
ADMINISTERED BY NBC**

INTRODUCTION

NBC conducted two workshops for trustees representing client retirement funds in Johannesburg (17 March 2005) and Port Elizabeth (23 March 2005). The contents of the Discussion Paper on Retirement fund Reform as published by the National Treasury (“the Paper”) were traversed, discussed and work shopped in some detail with a view to affording trustees an opportunity to collectively develop a submission paper to the National Treasury regarding the contents of the Paper and recommendations contained therein.

Workshops were attended by a mix of both member elected and employer appointed trustees of registered enterprise based retirement funds (typically one participating employer) and industry retirement funds (multiple participating employers).

This document sets out a summary of the consensus views of trustees attending the workshops.

1. Access and Compulsion.

- ◆ Membership of a retirement fund should be compulsory for all economically active individuals employed in the formal sector including contract workers, seasonal workers, casual workers and those employed via labour brokers.
- ◆ Minimum contribution levels need to be legislated to supplement existing compelling mechanisms such as bargaining council agreements and sectoral determinations, possibly by making use of enabling legislation that falls under the department of Labour.

2. National Savings Fund

- ◆ The proposed National Savings Funds is a desirable vehicle that should be established to cater primarily for the informal sector and the underemployed.
- ◆ Concerns were raised regarding:
 - Administration and the implied cost thereof and practical issues such as access to benefit payments, updated benefits statements and the like.
 - Transparency around issues such as investment returns and fees.
 - Contribution structures and the tax treatment of these in the hands of employers such as in the domestic and farming sectors.
 - Compulsion of membership for employees in the domestic and farming sectors.
 - Accessibility to information generally.
 - Management and member representation on the management structure of such a fund.

3. Form of Benefit

- ◆ Whilst various arguments can be raised both in favour and against the payment of retirement benefits as a lump sum or a lifelong annuity, it was generally agreed that funds should allow members the option of selecting their preferred method of payment.
- ◆ To this extent, it is widely acknowledged that the vast majority of members of retirement funds have little knowledge of the financial services industry and investment options available upon withdrawal or retirement, recommended that a duty be placed on trustees of retirement funds to make access to training and advice on financial planning available to members.

4. Investments

- ◆ Promulgation of the Draft Regulation 28 is long overdue.

- ◆ Prescribed (compulsory) investments legislation is necessary in the context of South Africa’s socio-economic challenges. Every registered retirement fund should be compelled to invest a minimum % of fund assets and cash flow into prescribed investments that will facilitate sustainable economic growth, job creation, people development and competitiveness. Although consensus could not be reached on what the minimum prescribed % should be, a range of between 10% and 30% of fund assets was considered reasonable.
- ◆ Government should issue an Infrastructure Development Bond as the instrument through which prescribed investment legislation could be implemented. Coupons attaching to the bond should be competitive as well as RFT-exempt. The efficient implementation and management of such a bond would be more than offset by the savings to retirement funds (or put differently, the annual leakage to the retirement fund system) of asset management fees currently charged by the asset management industry on such assets.
- ◆ Individual member choice should be regulated by the legislator given the high risk to members occasioned by member ignorance pertaining to investments. This is of particular importance given that defined contribution funds pass investment risk to members. Member choice tends to encourage individual members to lose sight of the long-term nature of a retirement fund from an investment return perspective i.e. the importance of consistent returns that beat inflation. There is no need to encourage a “boom or bust” approach to investment of retirement savings. Greater emphasis must be placed on compelling trustees to properly educate their members when proposing individual member choice investments.

5. Taxation

- ◆ RFT should be retained (but reduced), provided RFT receipts are transferred to the mooted National Savings Fund as a means to fund this vehicle.

- ◆ The rules of taxation applicable to Pension and Provident Fund contributions should be aligned and equalized. All contributions should be tax-deductible with benefit payments (subject to the existing tax exempt status of a % of lump sum payments) being taxed on exit and or payment as an income.
- ◆ It is noted that the Paper is silent on the taxation of voluntary retirement savings. In principle voluntary contributions should be encouraged if the state is serious about minimizing dependency on state sponsored pensions into the future.

6. Benefit Structures and Preservation

- ◆ The “package option” is the preferred option. Present barriers and confusion occasioned by current interpretation of legislation is undesirable in the extreme and must be removed to allow retirement funds to provide a comprehensive range of complementary member benefits such as death, disability and funeral benefits to be paid from the fund.
- ◆ Accounting principles need to be stream lined to remove the increased administrative cost of dealing with these benefits separately.
- ◆ Preservation as a principle should be encouraged by legislation. Trustees were sceptical of successful enforcement in South Africa given the high unemployment rate and job losses. Preservation in reality can only be legislated if there is a comprehensive and effective “social catch net” in place that provides unemployment benefits or, better still, jobs. In the absence of the aforementioned, preservation is a pipe dream.

7. Unclaimed Benefits

- ◆ Unclaimed benefits should remain in the fund in which the unclaimed benefit arose. Trustees should have a statutory duty imposed on them to trace former members and/or their beneficiaries. The trustees of all funds must report annually on unclaimed benefits and the steps taken to pay such benefits to the regulatory authorities. This is the most efficient and cost effective means of ensuring

unclaimed benefits do not accrue unabated in a central fund far removed from the reality of members on the ground.

- ◆ The cost of tracing former members and/or their beneficiaries should be deducted from the quantum of the unclaimed benefit in question i.e. tracing costs should not be cross-subsidised by active members.
- ◆ Unclaimed benefits should only be transferred to or paid to a National Unclaimed Benefits Fund when a fund is liquidated.

8. Loans and Guarantees

- ◆ Trustees concurred with the view that only indirect loans should be allowed by legislation.
- ◆ Loans should however be extended beyond housing to include loans for education of dependants and/or medical attention for life threatening conditions facing dependants. The principle of self-help to educate dependants should be encouraged and not outlawed. Such an approach recognises the impact of past practice (discrimination in education) and the need to build a competitive, skilled and informed society. To compel members employed in the formal sector to seek financial assistance for these necessities from micro lenders and/or loan sharks at usury interest rates rather than affording them the opportunity of leveraging their contractual savings at prime linked rates of interest is absurd in the extreme. For many members, their contractual retirement savings represent the only security they possess.
- ◆ To avoid abuse, loan proceeds should be paid to suppliers (educational institutions and/or clinics/hospitals) directly. It is important to make loans subject to compulsory credit life Insurance to ensure preservation of a member’s fund credit in cases of death or disability.
- ◆ No other deductions should be allowed from retirement fund benefits other than for guarantees provided by the fund on the instruction of the member and income tax.

Third party creditors should pursue payment of debts in the normal course and not be allowed access to a member’s retirement savings.

9. Payment of Benefits on Death

- ◆ Members should be compelled to update beneficiary nomination forms annually. It is suggested that funds be allowed to withhold information such as benefit statements and/or benefit information until such time as a member has completed and submitted an updated beneficiary nomination form to the fund’s administrators.
- ◆ In the absence of “compelling reasons” a member’s beneficiary nomination form should stand and be acted on by trustees. This will accommodate the diversity of religious and cultural belief and practice inherent in our society.

10. Trustee Representation

- ◆ Members should elect a minimum of 75% of the trustees of any registered Retirement fund. Ownership and risk passes to the fund once contributions are made. While employer trustees have an indirect interest in the fund performing to its potential, risk rests with the membership in a defined contribution fund. Decision-making and governance should be delegated to a predominance of member elected trustees who are also members of the fund in question. This will also focus trustees on governance and performance as opposed to treating fund trustee meetings as an extension of the collective bargaining arena.
- ◆ All trustee decisions should, as a matter of law, be consensus decisions. Fewer trustees will reduce costs such as those occasioned by travel and accommodation of (too many) employer appointed trustees.
- ◆ Principal Officers and Trustees may be remunerated by the fund only and not by service providers and/or other third parties, including employers. Principal Officers employed by service providers should be outlawed as it creates an inherent conflict of interest to the potential detriment of the fund and its members.

- ◆ Basic Conditions of Employment legislation should be aligned with the objectives of Pensions legislation in that trustees should, as a matter of law, be granted sufficient time off to perform their duties as trustees. The absence of such compulsion poses practical difficulties for member trustees in particular to effectively carry out their duties as trustees.

11. Trustee Training

- ◆ Greater emphasis needs to be placed on trustee training with a possibility of a formal trustee training accreditation process to be implemented.

12. Multiple Funds

- ◆ Employer contributions to all retirement funds in which an employer participates should, as a percentage of pensionable salary, be equal. Legislation is the most effective and practical means of removing discrimination where this remains in practice.
- ◆ Legislation should encourage participating employers to consolidate the number of funds in a single enterprise. This will promote workplace harmony and negative effect of (racially based) stereotypes that are beginning to emerge around issues such as the impact of HIV-aids on the cost of risk benefits. Ironically, this dynamic, if left unattended may deepen the racial divide in the workplace by encouraging “fund shopping” by employees on the basis of such stereotypes.
- ◆ Multiple funds increase administration costs.
- ◆ An exception may be contributing to an industry fund compelled by subordinate legislation such as a bargaining council agreement or a sectoral determination. An exemption process can be provided for.

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