**105026: Occupational Certificate:**

**Financial Advisor**

**Module 4**

**Employee Benefits and Retirement Funds Advice**

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**NQF Level 5**

**80 credits**

**LEARNER GUIDE**

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## 1. HOW TO USE THIS GUIDE

This guide belongs to you. It is designed to serve as a guide for the duration of your training programme and as a resource that you may consult after completion of the course. It contains readings, activities, and application aids that will assist you in developing the knowledge and skills stipulated in the specific outcomes and assessment criteria. Follow along in the guide as the Facilitator takes you through the material, and feel free to make notes and diagrams that will help you to clarify or retain information. Jot down things that work well or ideas that come from the group. Also, note any points you would like to explore further. Participate actively in the skill practice activities, as they will give you an opportunity to gain insights from other people’s experiences and to practice the skills. Do not forget to share your own experiences so that others can learn from you too.

## Description: C:\Users\Chamusi\Desktop\BDU\Assessment Criteria.png2. ICONS



Outcomes









## 3. HOW YOU WILL LEARN

The programme methodology includes Facilitator presentations, readings, individual activities, group discussions, and skill application exercises.

## 4. OVERVIEW OF THE MODULE

Insurers are in the business to make a profit. Their ability to make a profit depends on a number of factors namely, the stage of the underwriting cycle, the performance of investment markets, how well they manage their operating costs, the level of expertise they use in determining the acceptability of risk, among others. This module zooms in on the process of determining whether a risk is acceptable or not to an insurer. It is important to note that underwriter is the second stage in the insurance transaction process after sales and marketing. The role of the Underwriter should be assumed in view of its impact on the other functions such as marketing, finance, claims and human resources. There is a strong dependency between all the departments within an insurance company. The failure of one might cascade to all the departments. Success in one department also has the power to flow through to other departments.

Sound decisions in underwriting are a function of the amount of information that is available on the risk to be covered. The Underwriter’s skill and experience also enable the Underwriter to make sound decisions. The need for information therefore makes it mandatory for Underwriters to be able to conduct different forms of research, either formally or informally.

In this module we will look at the different rating factors, discuss different research methodologies and look at different insurance products and competitors in the industry. After completing this module, you will be able to understand and apply different rating factors for different benefits and use research effectively and efficiently to gain knowledge on competitors and different insurance offerings.

# LEARNING UNIT 1: TRUSTEES OF RETIREMENT FUNDS

## 1.0 Introduction

Retirement funds are regulated under the Pension Funds Act of 1956. The Act stipulates the requirements for the rules of a fund. Rules of a fund are the ones that direct all the functions within the fund together with defining different benefit categories. It must be noted that rules of a fund are not mere ‘nice -to-haves’ but are binding on the fund, the members, shareholders and officers, and on any person, who claims under the rules or whose claim is derived from a person claiming from the fund. This means that even dependants under the fund will also have to abide by the fund’s rules.

###### 1.1 Requirements for Rules

1.1.1 Rules

The rules of a fund which applies for registration must be in the prescribed format and form and shall comply with the prescribed requirements. Any amendment to the rules of a fund shall comply with the prescribed format, form and requirements.

1.1.2 Amendment of rules

Registered retirement funds are allowed to amend their fund rules as prescribed in their rules. Amendments may relate to alteration, rescission or addition of the rules. While amendments are permissible, the amendments must not result or purport to affect any right of a creditor of the fund, other than as a member or shareholder thereof. Changes to the rules are invalid unless the Commissioner of the FSCA has approved them. The request for approval must be sent to the Commissioner within 60 days form the resolution to amend the rules.

Where an alteration, rescission or addition may affect the financial condition of the fund, the Principal Officer shall also transmit to the Commissioner:

1. A certificate by the Valuator or, if no valuator has been employed,
2. a statement by the fund (if no Valuator has been appointed
3. arrangements will be made to bring the fund in a sound financial condition.

In any other case where the Commissioner is satisfied that an amendment of the rules will not affect the fund financially and that the amendment is consistent with the Pension Funds Act, then the Commissioner will approve and register the changes to the rules.

Consolidation of rules is also permitted and if the Commissioner is satisfied that the consolidation does not amount to an alteration of rules or introducing new rules, s/he will approve the consolidation. A consolidation is required where a fund has had more than ten approved rule amendments.

Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person, who claims under the rules or whose claim is derived from a person so claiming.

###### 1.2 Matters Addressed by Pension Fund Rules

1. Eligibility,
2. benefits,
3. contributions,
4. decision-making procedures,
5. Trustees,
6. benefits,
7. meetings,
8. round robin resolutions,
9. fund Committees,
10. governance, etc.

###### 1.3 Board of Trustees

1.3.1 The requirements for a Board of Trustees are as follows:

* Every fund shall have a Board consisting of at least four board members, at least 50% of whom the members of the fund shall have the right to elect.
* The composition of the Board shall at all times comply with the requirements of the rules of the fund and any vacancy on such board shall be filled within such period as prescribed, failing which the FSCA may appoint section 26 Trustees. The constitution of a Board, the election procedure of the members mentioned in that subsection, the appointment and terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting, the breaking of deadlocks and the powers of the Board shall be set out in the rules of the fund. However, that if a Board consists of four members or less, all the members shall constitute a quorum at a meeting.
* Board members must within six months of their appointment meet the prescribed skills and training and must maintain these skills and training requirements throughout their tenure.
* Boards of Trustees are required to inform the Commissioner of the departure of board members who leave for reasons not related to the ending of their term
* If the board becomes aware of material circumstances which may seriously prejudice the financial viability of the fund or its members, it must notify the registrar in writing.

1.3.2 Exemptions

The Commissioner may allow exemptions:

1. If it is impractical and expensive to have a board of at least four members. A board of less than four members will be allowed provided that the members will elect at least 50% of the board members.
2. The requirement that the members of the fund have the right to elect members of the board, if the fund is:

* for the benefit of employees of different employers (umbrella funds)
* a retirement annuity fund;
* a beneficiary fund; or
* a pension preservation fund or a provident preservation fund
* Exemptions may be withdrawn if the fund no longer meets the conditions of the exemption.

**1.3.3 Object of board**

The object of a board shall be to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund.

In pursuing its object, the board shall:

* Take all reasonable steps to ensure that the interests of members in terms of the rules of the fund and the provisions of this Act are protected at all times,
* Act with due care, diligence and good faith;
* Avoid conflicts of interest;
* Act with impartiality in respect of all members and beneficiaries;
* Act independently;
* Have a fiduciary duty to members and beneficiaries in respect of:
  + Accrued benefits or
  + Any amount accrued to provide a benefit,
  + Financially soundness and is
  + Responsibly managing and governing the fund in accordance with the rules
* Comply with any other prescribed requirements.

1.3.4 Duties of board

 The duties of a board are to:

* Ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board;
* Ensure that proper control systems are employed by or on behalf of the board;
* Ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed;
* Take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;
* Obtain expert advice on matters where board members may lack sufficient expertise;
* Ensure that the rules and the operation and administration of the fund comply with this act, The Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 Of 2001), and all other applicable laws;
* Comply with any other prescribed requirements.

In spite of these duties resting with the board, the board may, in writing and in accordance with a system of delegation set out in the rules, delegate any of its functions under the pension funds act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine. The board will still not be divested or relieved of any function delegated and may withdraw the delegation at any time.

**1.3.5 Liability of board member**

In any proceedings against a board member in terms of this Act, other than for wilful misconduct or wilful breach of trust, the court may relieve the board member from any liability, either wholly or partly, on terms that the court considers just, if it appears to the court that:

* the board member has acted independently, honestly and reasonably; or
* having regard to all the circumstances of the case, including those connected with the appointment of the board member, it would be fair to excuse the board member.

### 1.4 TRUSTEE MEETINGS

###### 1.4.0 Introduction

Section 7D of the PFA requires trustees to make sure that the following is done:

1. ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board;
2. ensure that proper control systems are employed by or on behalf of the board;
3. ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund;
4. take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;
5. obtain expert advice on matters where board members may lack sufficient expertise;
6. ensure that the rules and the operation and administration of the fund. (Jackson, 2019).

In order to fulfil these requirements, trustees utilise meetings. Board of Trustees’ meeting are an integral part of the running of any pension scheme. These meetings have regular schedules which may be quarterly. As such these meetings need to be pre-arranged way ahead of their actual dates. This allows trustees to fit in the meetings in their schedules. Trustees may be full time employees elsewhere and need to plan properly for such meeting. In addition, the pre-arrangement of meetings allows for time to prepare for the meetings including doing relevant research where necessary. The ideal situation is that all trustees must attend all meetings unless there are circumstances beyond their control that hinder them from attending.

Trustees should ensure that meetings are quorate, i.e. that there are a sufficient number of trustees at the meeting to enable decisions to be made in line with the rules of the fund and within the legislative requirements.

**1.4.1 Agenda**

The Chair of the board will decide on the agenda and other members of the board can add agenda items. Agenda items that always appear on the agenda are called standing items.

A typical agenda for a trustees’ meeting would contain the items below:

Table 1: Agenda for Trustees Meeting

|  |  |
| --- | --- |
| Item | Brief Description |
| Apologies for absence | * For members who cannot attend the meeting |
| Conflicts of interest | * To note any members who may have a personal interest in certain matters on the agenda. The whole idea is to ensure that trustees are not unbiased in their decisions. |
| Minutes of previous meeting | * For adoption of the proceedings of the previous meeting and checking for accuracy and correcting any mistakes. |
| Matters arising from minutes | * Action items and follow up items form previous meetings. |
| Management information | |
| Employer covenant review | * Under defined benefit schemes, the financial obligations of the employer need to be reviewed regularly to avoid the risk of failure by the fund to pay the promised benefits |
| Investment monitoring | * Tracking the investment performance against the investment strategy as well as any market changes. |
| Scheme administration | * Have contributions been paid in line with the contribution schedule? * Have contributions been paid in line with the contribution schedule? * Have any disclosure deadlines been breached? * Has the administrator met their target delivery timescales? * Have any formal complaints been received? * Has there been any change to the basic scheme information? |
| Communications | |
| Scheme risks | |
| Scheme costs and charges | |
| Trustee training | |
| Legal updates | |
| Any other business | |

1.4.2 Documents for trustees’ Meetings

During meetings, the trustees must refer, as appropriate, to the following documents:

* the trust deed and rules
* the trustee powers and responsibilities
* previous minutes
* other relevant documents including policy documents
* any procedures (e.g. the internal dispute resolution procedure)

1.4.3 Minutes

Draft minutes are normally circulated just after a meeting and are approved at the next meeting. Trustees must make sure that they check the minutes of each meeting to ensure that they reflect correctly the decisions made and proceedings of the minutes.

They are important documents recording what occurred at the meeting and will be valuable if questions are ever asked about the thoroughness of the trustees’ consideration of a matter, or what was decided and why.

1.4.4 Record Keeping

Trustees must keep written records of meetings which are shown in the figure below:

Figure 1: Trustee Meetings Record Keeping

In between meetings, trustees should:

* check draft minutes (and ‘flag’ immediately if they identify errors of significance)
* participate in any discussions and decisions between meetings as requested
* suggest agenda items for the next/future meetings
* keep up to date with financial matters (e.g. reading the business pages in the press)
* attend to their learning needs

1.4.5 Trustee Decision Making

Trustees must make prudent decisions in relation to the fund and in particular must give express effect to the provisions of the rules. Trustees will also need to be conscious of areas where decisions to be taken are at the discretion of the Trustees solely, or require input from another party, such as the employer. In making decisions, trustees should be guided by the following:

* Provisions in the fund rules
* Member views
* Employer views
* Pension funds laws
* Other financial services laws
* Expert advice e.g. on legal matters or investment management matters

Whilst trustees should be self-sufficient in their decision-making, the views of employers and employees should not be overlooked in the decision-making process. Ultimate decisions should be ones that further the interests of the fund.

In reaching a consensus, trustees usually based the decision on a majority vote basis. The voting process is a collective process. However, each trustee makes a decision taking into consideration the views of other trustees.

1.4.6 Trustees and Fund Investments

Every fund’s goal should be to generate a return that provides optimal benefits to the members. This goal is elevated under the defined contribution system where individual members carry the risk of investment losses or poor investment performance. At all times trustees must check whether the investments of the fund ware generating a return that that mirrors the size of the liabilities of the fund. This will ensure that the fund is able to meet its obligations as they arise. It is permissible for trustees to appoint an investment but the ultimate responsibility regarding the performance of the fund’s investment lies with the trustees still. Thus, trustees should be able to make decisions to invest, disinvest and reinvest whenever necessary so that the fund’s investments are not exposed to poor performance.

Regarding trustees, I have learnt the following:

|  |
| --- |
|  |

Learning Unit 1 Formative Assessment: Trustees of Retirement Funds

1. Identify the elements that must be addressed by rules of a pension fund. **(4)**
2. Explain the duties of trustees in terms of Section 7D of the Pension Funds Act. **(5)**
3. Explain the purpose of an agenda give an indication of how matters are placed on the agenda. **(10)**
4. After checking the minutes of a previous meeting, you notice that there is an error on a particular element. Describe the process that you will follow in order to address that inaccuracy? **(5)**
5. Obtain the rules attached to your manual and explain with the following:
   1. eligibility,
   2. benefits,
   3. contributions,
   4. decision making procedures,
   5. Trustee powers and
   6. general governance of the fund. **(10)**
6. Identify and explain any five terms that are used in pension fund rules. **(5)**
7. Describe the process that must be used when fund rules are being amended.
8. State the questions that you would ask about a service provider to obtain clarity and determine compliance with associated policies, rules and legislative documents. **(5)**
9. Trustees of a fund are faced with a decision to invest funds in a hedge fund as well as unlisted shares. What will be your advice to them in terms of which documents in a fund that they should consult in making that decision. **(3)**
10. Explain the purpose of keeping minutes of meetings with reference to legal requirements in terms of record keeping. **(4)**
11. Describe three sources of income and three sources of expenditure for any retirement fund. **(6)**
12. How would you ascertain whether investments comply with the investment mandate of a specific retirement fund (use the Investment Policy Statement in your manual) **(4)**
13. Obtain a contract for a service provider to a pension fund and indicate what the service provider is expected to deliver and how performance will be assessed against the service level agreement. **(8)**
14. Named and indicate situations where Trustees are required to communicate with members and indicate whether the Trustees are required to inform or consult members on specific issues. **(5)**

# LEARNING UNIT 2: DISTRIBUTION OF PENSION BENEFITS

###### 2.0 Introduction

Unlike other wealth that individuals own, pension wealth distribution is regulated by the PFA. There are specific guidelines on how to treat benefits under different circumstances that can occur when a member dies, is disabled, divorces or has maintenance obligations. In addition, there are circumstances when the fund may be allowed to make certain deduction and other circumstances when the fund is prohibited from making those deductions. In the following paragraphs, the treatment of pension benefits under the aforementioned circumstances are explored.

###### 2.1 Pension benefits not reducible, transferable or executable

To the extent permitted by this Act, the Income Tax Act, 1962 (Act No. 58 of 1962), and the Maintenance Act, 1998,

No benefit provided for in the rules of a registered fund or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor’s financial. Also, in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof. Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine.

If in terms of the rules of a fund the residue of a full benefit, after deduction of any debt due by the person entitled to the benefit, represents the benefit due to that person, such reduction shall be construed as a reduction of the benefit.

Deductions for funds owed to a fund by a member in respect of arrear contributions, but excluding amounts which are in arrear due to the failure of the employer concerned to pay the member’s contributions to the fund after deduction thereof from the member’s remuneration are also deductible.

Despite the provisions of this section, a fund may direct that a member’s or beneficiary’s benefit may be paid to a third party if that member or beneficiary provides sufficient proof that he or she is not able to open a bank account.

**Disposition of pension benefits upon insolvency**

Pension benefits including annuities payable cannot be deemed to form part of the assets in an insolvent estate of a person entitled to these benefits and may not in any way be attached or appropriated by the trustee in his insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency.

**Disposition of pension benefits upon death of member**

Despite anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, be treated according to the PFA . Such benefits do not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

* If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the fund, to one of such dependants or in proportions to some of or all such dependants.
* If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee.

This payment is on the condition that the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee.

* If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that, in respect of a designation made on or after the said date, this requirement shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than one such dependant or nominee, in proportions to any or all of those dependants and nominees.
* If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court, it will be paid into the Guardian’s Fund or unclaimed benefit fund

A payment by a registered fund for the benefit of a dependent or nominee shall be deemed to be a payment to such dependent or nominee, if payment is made to:

a trustee contemplated in the Trust Property Control Act, 1988, nominated by-

1. the member;
2. a major dependant or nominee, subject to subparagraph (cc); or
3. a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor dependant or nominee, or a major dependant or nominee not able to manage his or her affairs or meet his or her daily care needs;
4. a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a dependant or nominee; or
5. a beneficiary fund.

No payments may be made in terms of this section on or after 1 January 2009 to a beneficiary fund which is not registered under this Act.

Any benefit payable to a minor dependant or minor nominee, may be paid in more than one payment in such amounts as the board may from time to time consider appropriate and in the best interests of such dependant or nominee: Provided that interest at a reasonable rate, having regard to the fund return earned by the fund, shall be added to the outstanding balance at such times as the board may determine: Provided further that any balance owing to such a dependant or nominee at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in full.

Any benefit payable to a major dependant or major nominee, may be paid in more than one payment if the dependant or nominee has consented thereto in writing: Provided that:

1. the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a written agreement; and
2. the agreement may be cancelled by either party on written notice not exceeding 90 days.
3. if the agreement is cancelled the balance of the benefit shall be paid to the dependant or nominee in full.

The provisions above do not apply to a beneficiary fund, and any remaining assets held for the benefit of a deceased beneficiary in a beneficiary fund must be paid into the estate of such beneficiary or, if no inventory in respect of the beneficiary has been received by the Master of the High Court it will be paid into the Guardian’s Fund or unclaimed benefit fund.

Fund may make certain deductions from pension benefits

A registered fund may:

* deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962), and
* any amount due to the fund in respect of-

1. a loan granted to a member or
2. any amount for which the fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to the member from:

* The amount of the benefit to which the member or a beneficiary becomes entitled in terms of the rules of the fund;
* In the case of a transfer of the member to another fund, the amount of the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or the guarantee; or
* In the case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of membership on the date of default, if such a deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;

The fund can deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of:

1. a loan granted by the employer to the member
2. any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member
3. an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act; or
4. compensation (including any legal costs recoverable from the member in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and provided that:

* the member has in writing admitted liability to the employer; or
* judgment has been obtained against the member in any court, including a magistrate’s court,
* from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund and pay such amount to the employer concerned.

The fund may deduct from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of :

Figure 2: Deductions from Benefits

Deduct from a member’s or deferred pensioner’s benefit, member’s interest or minimum individual reserve, or the capital value of a pensioner’s pension after retirement, as the case may be:

* any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979) or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution;
* any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); and
* deduct from a member’s or deferred pensioner’s benefit, interest or minimum individual reserve, as the case may be, employees’ tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), as a result of a deduction referred to in this subsection.

Any amount that may be deducted in terms of subsection (1)(d) or (6) may only be deducted after the amount of member’s or deferred pensioner’s benefit of minimum individual reserve available has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where such a loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not: Provided that the aggregate of all amounts deducted in terms of this subsection may not exceed the member’s pension interest available at any given time.

In the event that more than one of the court orders referred to above provides for the deduction of amounts from a member’s benefit or minimum individual reserve, as the case may be, at the same time, the court orders must be dealt with in accordance with the following hierarchy:

* Any maintenance order.
* any decrees of divorce or for the dissolution of a customary marriage.

###### 2.2 Deductions due to divorce

For purposes of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or decree for the dissolution of a customary marriage is granted, and, on the written submission of the court order by the non-member spouse must be deducted by:

* the pension fund or pension funds named in or identifiable from the decree;
* the pension fund or pension funds to which the pension fund transferred the pension interest referred to in the decree;
* must be deducted on the date on which an election is made or, if no election is made within the period of 120 days, the date on which that period expires; and
* must reduce the member’s accrued benefits or minimum individual reserve at the date of the decree.

The pension fund must, within 45 days of the submission of the court order by the non-member spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to him or her, or if it must be transferred to a pension fund on his or her behalf.

1. The non-member spouse must within 120 days of being requested to make an election;
2. inform the pension fund of how the amount must be dealt with; and
3. if he or she elects that the amount must be paid to him or her directly, provide the pension fund with the details of how that payment must be effected; or
4. if he or she elects that the amount must be transferred to a pension fund on his or her behalf, provide the pension fund with the details of that pension fund.
5. The pension fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse’s election.
6. the event that the non-member spouse fails to make an election or identify the pension fund to which the amount should be transferred within the period the pension fund must pay the amount directly to the non-member spouse within 30 days of the expiry of that period.

Despite these requirements in the event that the pension fund cannot reasonably determine how the payment to the non-member spouse must be effected, the pension fund must retain the amount and any fund return in the pension fund until such time as details of how that payment must be effected is made available to the pension fund by the member, the non-member spouse or any other person.

The non-member spouse is not a member or beneficiary in relation to the pension fund; and

 is entitled to the accrual of fund return from the date of the deduction until payment or transfer thereof, but not to any other interest or growth.

Any portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage granted prior to 13 September 2007 are for purposes of any law other than the Income Tax Act, 1962, including, but not limited to, section 7(8)(a) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance to the process explained above to the non-member spouse.

The portion of the pension interest of a member or a deferred pensioner of a pension preservation fund or provident preservation fund, that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated, or the member or the deferred pensioner retired on the date on which the decree was granted.

Learning Unit 2 Formative Assessment: Duties of Trustees W.R.T. Death Benefits

1. Barbra was advised to include how her pension benefits will be distributed in the event of his death so as to avoid conflicts amongst his family members when she dies. In her will he stipulates that the following people and organisations must receive the funds. These are;
2. Her two distant cousins that she was very close to
3. An animal hospice where she was a volunteer
4. Her church in which she was raised
5. Long-time boyfriend who lives on his own
6. Grand children
7. Adopted son
8. Grandmother
9. Determine the eligibility of each person listed as a beneficiary under the pension benefits for Barbara if she passes away. **(14)**
10. Study the rules of a fund provided in the annexure and interpret the benefits payable and potential beneficiaries.  **(10)**
11. You have been supplied with a set of terms and conditions for a group life cover. Identify any limitations and exclusions in the policy. A policy contract in terms of which fund benefits are insured is interpreted with reference to exclusions and limitations for a specific fund.  **(10)**
12. Under what circumstances will a nomination form be binding on the trustees of a pension fund? **(2)**
13. Explain the concept of a dependent in terms of financial and legal dependence. **(2)**
14. Identify the type of information that will be required in identifying persons that qualify as dependents under a pension fund? **(4)**
15. Name the potential persons that are interviewed to identify undisclosed potential dependants. **(3)**
16. State the evidence necessary to prove dependency with examples. **(3)**
17. State the questions that you would ask to establish level of dependency at the date of death of a member, current and future financial needs and financial sophistication. **(4)**

# LEARNING UNIT 3: GROUP RETIREMENT PRODUCTS

###### 3.0 Types of Retirement Funds

**Pension Fund**

Under a Pension Fund a maximum of one third of the fund benefit may be taken as a lump sum, in cash upon a member’s retirement. The balance two thirds of the benefit will be paid as a pension for the rest of the pensioner’s life subject to the statutory minimum. Amounts below the set minimum can be taken as a cash lump sum.

**Provident Fund**

Under a Provident Fund, at retirement, the full fund credit may be taken as a lump sum. Members have the option to purchase an annuity from their lump sum if they so wish.

**Preservation Fund**

A Preservation Fund is a pension or provident fund to which a fund member can have his or her withdrawal benefits transferred after exiting their employment. The fund preserves the member’s accrued benefits tax free until the member reaches retirement age. The amount invested will continue to earn interest whilst in this fund. Usually no additional contributions are allowed.

###### 3.1 Pension Funds, Provident Funds and Retirement Annuities

Pension fund in relation to any person, means:

1. a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund under paragraph (*c*) of the definition of “pension fund” in section 1 or a corresponding definition in any previous Income Tax Act; or
2. a public sector fund (other than a fund referred to in paragraph (*b*) of the definition of “provident fund”), the rules of which wholly or mainly provide for annuities on retirement to its members,

If during any such year the person was a member of such fund.

Provident fund, in relation to any person, means:

1. a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section 1 of this Act or the corresponding provisions of any previous Income Tax Act; or
2. a public sector fund, the rules of which provide for benefits in a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities) to its members on retirement,

If during any such year the person was a member of such fund.

Retirement annuity fund means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act: Provided that the Commissioner (of SARS) may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied:

* that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members; and
* that the rules of the fund provide-
* for contributions by the members, including contributions made by way of transfer of members’ interests in approved pension funds, pension preservation funds, provident funds, provident preservation funds or other retirement annuity funds;
* that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the member is deceased;
* that no member shall become entitled to the payment of any annuity or lump sum benefit contemplated in [paragraph 2](https://discover.sabinet.co.za/webx/access/netlaw/58_1962_income_tax_act.htm#schedule2_para2)(1)(a) of the Second Schedule of The Income Tax Act prior to reaching normal retirement age.

 Further, the Commissioner must be satisfied that that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to:

1. an annuity or a lump sum benefit contemplated in terms of the Second Schedule payable on that date;
2. be reinstated as a full member under conditions prescribed in the rules of the fund;
3. the payment of a lump sum benefit contemplated in terms of the Second Schedule where that member’s interest in the fund is less than an amount determined by the Minister by notice in the Gazette; or

Where the payment of a lump sum benefit contemplated in terms of the Second Schedule where that member:

* is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control; or
* departed from the Republic at the expiry of a visa obtained for the purposes of-
  + working as under a visa; or
  + a visit,
* and is not regarded as a resident by the South African Reserve Bank for purposes of exchange control;

The Commissioner of Inland Revenue must further be satisfied that upon the winding up of the fund a member’s withdrawal interest therein must:

* where the member received an annuity from the fund on the date upon which the fund is wound up, be used to purchase an annuity (including a living annuity) from any other fund; or
* in any other case, be paid for the member’s benefit into any other retirement annuity fund;
* for the transfer of any member’s total interest in any approved retirement annuity fund into another approved retirement annuity fund;
* no member’s rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;
* that the Commissioner shall be notified of all amendments of the rules; and
* that the rules of the fund have been complied with;

###### 3.2 Comparison of the Retirement Fund Products

Table 2: Comparison of Pension Funds, Provident Funds and Retirement Annuities

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Fund | Advantages | Disadvantages &  Risk | Affordability | Future needs of members |
| Pension Fund | Benefits are preserved  Annuitization  Portability in the event of resignation | * Annuities my run out   Annuities may provide poor returns | It depends on fund rules and income of members as well as generosity of employers’ contributions. | The extent to which the benefits meet future needs depends on how much has been accumulated, longevity risk as well as changes in the economy. |
| Provident Fund | Time value of money is maintained since benefits are received before inflation erodes more value from the fund.  Portability in the event of resignation | Lump sums are prone to be consumed without annuitization | It depends on fund rules and income of members as well as generosity of employers’ contributions |
| Retirement Annuity | Enhances either provident fund benefits or pension fund benefits   * tax benefits in terms of deductibility of contributions * Benefits qualify for tax free portion of the lump-sums * Benefits are independent of the employment status. | No employer contributions  Restrictions on exit e.g. no exit before age 55, death or disability or departure by foreign nationals from the country | It depends on fund rules and income of members |

###### 3.3 Products According to Benefits and Tax Implications

Table 3: Taxation of Contributions to Pension Funds/Provident Funds/Retirement Annuities

|  |
| --- |
| Pension Fund/Provident Fund/Retirement Annuities |
| * The deduction allowed is the pension, provident and retirement annuity fund contributions added together. * The annual deduction is limited to the lesser of: * 27.5% of the greater of * remuneration (as defined), OR * taxable income (excluding retirement lump sum benefits, withdrawal lump sum benefits and severance benefits in respect of both remuneration and taxable income), or * R350 000. |

###### 3.4 Employer Contributions (Section 11k of the Income Tax Act)

Retirement funding contributions deductible from taxable income:

Taxation on Withdrawal from a Pension Fund

2020 tax year (1 March 2019 - 29 February 2020)

Table 4: Taxation on Withdrawal from a Pension Fund

|  |  |
| --- | --- |
| Taxable income (R) | Rate of tax (R) |
| 0 – 25 000 | 0% |
| 25 001 - 660 000 | 18% of taxable income above 25 000 |
| 660 001 - 990 000 | 114 300 + 27% of taxable income above 660 000 |
| 990 001 and above | 203 400 + 36% of taxable income above 990 000 |

Retirement & Death Benefits or Severance Benefits

2020 tax year (1 March 2019 - 29 February 2020)

Table 5: Retirement & Death Benefits or Severance Benefits

|  |  |
| --- | --- |
| Taxable income (R) | Rate of tax (R) |
| 0 – 500 000 | 0% of taxable income |
| 500 001 - 700 000 | 18% of taxable income above 500 000 |
| 700 001 – 1 050 000 | 36 000 + 27% of taxable income above 700 000 |
| 1 050 001 and above | 130 500 + 36% of taxable income above 1 050 000 |

###### 

###### 3. 5 Funding Methods

Stand Alone Funds

Stand-alone funds simply mean that the fund is designed solely for a specific group of employees of a particular employer. Thus, the benefits, management, costs and investments are all at the fund level. Where there are big numbers of employees, a stand-alone fund makes business sense. However, if the employer has fewer employees, the costs may be too high to justify a stand-alone fund. This type of fund has more flexibility as it can be tailor-made to the needs and circumstances of the particular employer and employees.

**Insured Funds**

An insured fund operates entirely by way of an insurance contract. This contract is an agreement between the insurer and the trustees who act on behalf of the fund and its members. Today most contracts are of a deposit administration nature whereby the revenue account of the fund is held in the insurer’s books. Note that this account is entirely separate from the insurer’s other business.

Should the trustees of the fund, on the advice of the actuary, not transfer certain specific liabilities to the insurer as strict insurance business, they must accept that they retain full responsibility for the specific liabilities. Under these circumstances it can be said that an insured fund and a totally private fund could, in terms of the financial responsibilities, be deemed to be the same.

It must also be noted that, in the case of an insured fund of a deposit administration nature, the insurer probably has no more than a moral obligation to ensure that the particular retirement fund is soundly managed by the trustees. It is only where the insurer provides the administrative as well as the investment services to the fund that the insurer will take an active part in the management of the fund. Be that as it may, the trustees have a fiduciary responsibility towards the fund and its members and are, at all times, ultimately responsible for the management and investment strategy of the fund. For the smaller retirement funds, it is unlikely that the insurer will provide the full scale of flexibility in benefit design to the trustees. This is simply a result of the lack of economies of scale.

This does not detract from the trustees still being fully responsible. Insurers could also assist the smaller funds by providing cost savings that could be achieved by providing more standardised and less comprehensive services as administrator to the fund.

An example would be an abbreviated actuarial report instead of a full and discussed report every three years. This does, assume that the fund is a fully insured fund that has been exempted from providing a statutory valuation to the Registrar. Note that the fund will probably be a defined contribution fund.

**Umbrella Funds**

The increasingly higher cost of administering relatively small funds has resulted in a number of these funds deregistering and moving their members into umbrella funds. While this is certainly treated as a Section 14 transfer it does not necessarily require that the original fund needs to enter into all the administration involved in the voluntary liquidation of a fund in terms of Section 28 (IISA, 2011).

The essence of an umbrella fund is that the employer is the entity that joins the fund. Having joined the fund, the employer is now able to offer its employees all the benefits of membership of a large fund without the high costs involved.

Umbrella funds generally offer a defined contribution structure. The fund is usually registered by an insurer or large brokerage which then markets membership of the fund through its intermediaries.

Regarding group retirement benefits, I have learnt the following:

|  |
| --- |
|  |

###### Learning Unit 3 Formative Assessment: Group Retirement Products

1. Differentiate between the tax treatment of benefits under a pension fund and under a provident fund? **(10)**
2. You are given the following scenarios and you are required to calculate the tax implications of each scenario. **(15)**

|  |
| --- |
| 1. Themba has reached 65 and is retiring with benefits worth R2 500 000 |
| 1. Linda is retrenched at the age of 44 and is entitled to R2 000 000 from her pension fund |
| 1. Johanna receives a settlement in her divorce agreement worth R1 500 000 from her husband’s pension fund |
| 1. Elizabeth resigns at 35 to go and start a new business. Her benefits are worth R750 000 |
| 1. Mandla lost his sight in a car accident and is declared permanently disabled and is now exiting a pension fund with benefits worth R1 000 000. |

1. Explain why you would recommend a provident fund and not a pension fund to anyone? **(5)**
2. Under what circumstances would it be ideal to use an umbrella fund rather than a stand-alone fund? **(5)**
3. Differentiate between insured and self-insured risk benefits. **(2)**
4. Provide a brief description of the benefits that are normally covered under group risk covers. **(6)**

# LEARNING UNIT 4: GROUP RISK BENEFIT OPTIONS

###### 4.1 GROUP LIFE INSURANCE

Insurance is extended to employees as part of their benefits. It can also be to members of a club or members to whom credit has been extended.

Types of Cover

1. Group life cover
2. Group funeral cover
3. Group capital disability
4. Group permanent health
5. Group dread disease

Each cover is explained briefly below:

**Group Life Cover**

It pays upon death of the insured. The benefit can be a multiple of the salary, fixed amount, or a balance on a mortgage bond or an amount equal to a certain pension. The benefit can be approved or not approved for tax deductibility of the contributions. When death occurs, the benefit will be paid to the spouse or to the estate. At retirement, the benefit can be used to buy a pension or can be taken as a lump sum depending on the rules of the fund. Fewer exceptions apply especially for war and riot.

|  |
| --- |
| Free Cover = 0.5 x Number of members x Average sum insured  Where number of members is limited to the square root of the number of members with a limit of 12 and the average sum insured limited to R150 000. This assists in capping the benefits and reducing the gap between covers.     * The free cover limit must not exceed +/- 115% of the highest cover. * Minimum number of members is 20. If there are less than 20 members in a group, then the free cover limit cannot be granted. * Restrict the free cover limit despite the number of employees.   + 0 to 20: R0   + 20 to 50: R200 000   + 51 to 100: R350 000 etc. * If the group comprises more substandard lives, then the free cover limit will need to be reduced. * If the gap in benefits between groups is too huge, then the free cover limit also needs to be reduced. * Where there are huge variations in benefits, the underwriter must exercise caution. * When setting the free cover limit, remember to consider all past claims and all previous insurances. * An at-work-certificate for the past 30 days will be required for all eligible members. Membership for those who do not qualify can be deferred until the time that that they qualify. Alternatively, medical checks can be conducted to confirm their health status. |

**Group Funeral Cover**

Normally limited to an at work certificate for all qualifying members. Dependents’ cover will be subjected to a waiting period in order to manage anti-selection. Benefits normally capped up to a certain amount like R10 000.

**Group Capital Disability**

See the table on Ancillary benefits for a description of different forms of disability benefits. Group schemes follow the same descriptions of benefits. The difference being that there will be no individual underwriting of members under group schemes. Note that temporal/partial disability cover kicks in after a waiting period that ranges from three to six months with the percentages varying with different body parts lost. It could be loss of eyesight, legs or hands. To determine the level of disability, insurers utilize expert medical practitioners. Moral hazard is a challenge here as claims tend to be exaggerated. Therefore, an independent medical doctor should be preferred to a member’s own doctor. Where the circumstances make it difficult to finalize the level of disability, due to either a dispute or a condition that is likely to deteriorate or even improve, the insurers reserve the right to out the benefits in instalments. Where payments are made in instalments, the benefits can be discontinued when the insured member recovers or level of disability is found to be less than the initial assessment.

|  |
| --- |
| Underwriting and free cover limits follows those under the group life benefits.  Emphasis will be on risks related to occupations for certain industries or other activities. Past claims should be taken into consideration bearing in mind that there are certain industries that are unscrupulous for huge and frequent claims. If the benefits extend to previous members then stricter underwriting will be needed. These benefits are subject to tapering. Tapering means that the benefits will reduce in the last five years of cover until a certain age where they will become zero and members will not be eligible to benefits. Depending on the industry/occupation, then the tapering can kick in earlier or later. In high-risk industries, then an earlier age like 55 years can be used. For less risky occupations like office employees, 60 or 65 years could be used. |

**Permanent Health Insurance**

It is a form of temporal disability cover and is subject to a waiting period that ranges from one to twelve months. The pay-out is limited to 75% of the salary of the member. Note that this combines all the temporal disability policies that the member has. In the absence of the aggregation of all covers, this limitation would lose meaning. This limitation seeks to motivate the employee to go back to work. If a 100% pay-out is made members may find it more beneficial to stay at home and therefore ‘delay’ their recovery. Cover is normally limited to 24 months but can be extended if the insured member pursues another job.

|  |
| --- |
| Benefits could be weekly or monthly and the free cover limit determined as follows:  Free cover limit = 0.4 x Number of employees (limited to 10) x Average sum insured (Limited to 15% above the highest cover)   * Watch out for substandard lives and well as poor claims experiences * A minimum of 20 members is required as well. * Where 100% benefits are requested, there will be higher moral hazard in the event of a claim. * Termination should be limited to actual age at exit or retirement age. * Agree at inception on the formula for determining the benefits if some members get salaries that fluctuate e.g. salesman paid on commission. If this is not done, then disputes will arise at the claims stage and it might lead to dissatisfied consumers and unpleasant negative publicity. |

Exclusions under PHI

* Extra risks for a specific group; it might be because of the nature of their work that increases their risk; the insurers may seek to limit their exposure by excluding such extra risks.
* War, riot, civil commotion and military insurrection
* Pre-existing conditions that have been suffered within the past six months from inception for these conditions, there will be no cover within the first twelve months of cover.
* Pregnancy: cover will only be available after pregnancy.
* HIV and AIDS except for accidental infection.

**Dread Disease Cover**

Like other covers under group schemes, it pays either a fixed sum, multiples of the salary or an amount equal to the outstanding mortgage or other debt. Payment is upon diagnosis of the life-threatening disease. Diseases covered include cancer, heart attacks, strokes and coronary bypass. Once again, if the group is exposed to extra risk due to the nature of their work or circumstances, the insurer can exclude diseases linked to the extra risk. If those diseases linked to the extra risks are not excluded, the cover will be an open cheque since those will be claims waiting to happen.

|  |
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|  |

**Compulsory Membership**

Since the basis of group cover is the spreading of risks, the inclusion of all eligible members will assist in achieving that goal. Membership may depend of age, income, or type of job. Voluntary membership results in low risk members opting not to obtain the cover and the high-risk members who are more likely to suffer losses opting in. Thus, the scheme will suffer anti-selection. Instead of compulsory membership, a stipulated percentage of the members for example, 70% or 80% may be required to join the fund when the fund begins. Alternatively, a fund may have voluntary membership at inception but for all new members joining the organization, membership must be compulsory. The provisions under the find vary according to the definition of membership and the claims history.

###### 4.2 Exclusions Under Group Life Insurance

The following are the exclusions under the group life covers:

1. A deliberate unlawful act committed by the person that includes but is not limited to committing or attempting to commit the crime of murder, assault, housebreaking, theft, robbery, kidnapping or the person committing a crime involving a sexual act or a crime of a similar nature to any of the aforesaid crimes;
2. Suicide or attempted suicide under any circumstances;
3. Intentional self-inflicted injury, self-inflicted injury while the person is mentally disordered or deliberate failure to obtain the best medical assistance reasonably available;
4. Taking of medicaments by the person, except in accordance with medical prescription;
5. The driving of a mechanically driven vehicle by the person while the alcohol content of his/her blood is more than the legal limit;
6. Cliff diving;
7. Free diving at depths greater than 25 meters;
8. Scuba diving at depths greater than 40 meters;
9. Unaccompanied scuba diving;
10. Cave diving, commercial diving or the exploration of underwater wrecks for financial gain;
11. Expedition style mountaineering;
12. Solo climbing mountaineering;
13. Expedition caving;
14. Hazardous aviation activities with a fixed-wing aeroplane, including student pilots and acrobatic flights;
15. Microlight, helicopter or gyrocopter flying;
16. Recurrent hang-gliding, paragliding, sky-diving, parachuting or sky-surfing;
17. Base jumping;
18. Motorized racing, speed contests or acrobatic flights;
19. Drag powerboat racing, competitive jet-skiing or competitive water skiing; or
20. Professional boxing, professional kick-boxing, professional wrestling, martial arts or combat sports.

###### 4.3 Structure of the Group Life Cover

Minimum Service

While a waiting period is always imposed before an employee can join a retirement fund, life cover should be provided immediately. The cost associated with this cover is minimal and will not result in the fund incurring huge cost if members exit in their early months of joining the fund. Under retirement benefits, the cost of early exits can be enormous and therefore there is need to impose waiting periods in rider to eliminate the higher costs associated with early exits from the fund.

**Age**

There are maximum ages at which new members can join a retirement fund. This age may also be the same maximum age at which a fund may allow for group life covers. The older the members, the higher the risk and therefore late joiners may be more expensive to cover. It must also be noted that the amount of life cover needed decreases with age as member financial obligations become less with age. In spite of this, researchers have diverging views on whether the financial obligations will indeed reduce with age.

**Employee category**

Death benefits can be structured according to categories of employees namely:

* Executives vs non-executives
* Members with dependents vs those without dependents

Death benefits can be enhanced by including accidental death cover so that over and above the life cover a member will receive an accidental death befit if they die out of an accident. Whether the accidents that will be covered is all-encompassing r those limited to the workplace will be a matter of negotiation and affordability.

In deciding how much life cover to offer to members in a certain scheme, the salary is the main factor. Benefits are based on a multiple of this amount. That said, the components that make up a salary such as bonuses, allowances, housing subsidies and others must be taken into account and agreed on so that there are no disputes in the even pf a claim. Members may also be allowed to increase their life cover at an additional cost that they will carry on their own.

Salary

Salary mainly determines a person’s standard of living and everything else is therefore related. There is little doubt that it should play a key role in deciding how much the death benefit should be.

Having said this, we need to ensure that our understanding of what is meant by pensionable salary is very clear. It is not enough to tell a person that his death benefit linked to the retirement fund is the equivalent of (for example) 2 times his annual salary.

In modern negotiations regarding remuneration packages the pensionable salary actually received by the individual could end up being a small portion of the overall package. The rules of the fund applicable to the death benefit therefore need to define what the pensionable salary considered for the multiplication factor really is. Elements that could substantially increase the value of the death benefit, if included as part of pensionable salary, include:

* + any “thirteenth” cheque;
  + travel allowances;
  + housing subsidies.

###### 4.4 Examples of Group Life/Risk Cover Marketed in South Africa

|  |  |
| --- | --- |
| Group Cover | Description |
| Life | Pays a sum insured in the event of a member dying. |
| Lump Sum Disability | Pays a sum insured in the event of a member being disabled. The pay-out depends on the percentage of disability calculated based on the 100% benefit. |
| Funeral | Covers funeral expenses for member, spouse and children |
| Income disability | It is for occupational disability where a member is unable to pursue their normal or alternative employment due to a disability. |
| Temporary disability income | pays a monthly income to an employee who becomes continuously and totally disabled, until the earlier of the end of the fixed payment period or when the employee recovers, dies, reaches the benefit cessation date or receives retirement benefits from the insured’s pension or provident fund. |
| Spouse lump sum disability | Occupational of functional impairment of spouses. |
| Managed income disability | It pays a monthly income to an employee who is functionally impaired, until the employee recovers, dies, reaches the benefit cessation date or receives retirement benefits. |
| Critical illness | Pays upon diagnosis of critical diseases that threaten the lives of members such as cancer, HIV and AIDS, Heart Attacks, stroke, etc. |
| Accident | Pays upon accidental death or disability. |

###### 4.5 How Group Insurance Products Are Marketed

Various distribution channels exist for group life insurance. These are depicted in figure below;

Each channel is explored below:

Online distribution of life insurance products has become the order of the day. The channel involves the use of online platforms for marketing, selling, transacting and processing of claims. While this channel may not address the required contact under pensions and provident funds processes, it is a significant tool that leads to the face to face. Through online platforms, customers are able to compare products by different insurers albeit at a general level.

By their nature, retirement funds such as provident funds as well as pension funds are suitable for business to business marketing since the target client is normally another business or a trade union. The approach targets decision makers in terms or retirement finds. Products are therefore directed at these decision makers who will consider what is suitable for their employees.

A benefit consultant can be the marketer of group life cover. They are the face of the organization and will present different benefits provided by different products by the insurers.

###### 4.6 Tenders and Quotes

In securing group life covers, boards of trustees utilise tenders in order to get the best cover.

The Elements that must be considered in the quotations include:

Table 6: Group Risk Tender Factors

|  |  |
| --- | --- |
| Underwriter | Reputation, experience and capacity are important |
| No. of members | Supplied by the trustees but is an important factor when dealing with group benefits. The larger the numbers the more generous should the benefits be since there is more premium and higher cross-subsidisation among the members. |
| Total annual salaries | This is the basis for the premium. Notable here is the need to clearly define what constitutes salaries. A decision must be made to ensure that the definition of salaries is clear to both parties. Whether profit shares, subsidies, allowances and bonuses will constitute salaries or not. |
| Gross premium per month | The price that the insurer will charge. However, this needs to be analysed in light of the benefits and other restrictions on the policies. |
| Free cover limit | It is normally based on the number of employees and the higher the limit, the more expensive the cover. In spite of that, higher limits may be justifiable based on the salaries as well as numbers of employees. |
| Premium as % of payroll |  |
| Commission and administration costs | The amount is the clear indicator of the cost that the fund will carry. Careful comparison will be necessary. |

In addition, the board must decide on which covers are provided under the scheme rules.

###### 4.7 Legislation of Group Life Insurance

Table 7: Group Life Covers Legislation

|  |  |
| --- | --- |
| Legislation | Main Focus |
| Long Term Insurance Act | Provides key definitions namely; **“fund”** means-   1. a friendly society as defined in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/25_1956_friendly_societies_act.htm#section1) of the Friendly Societies Act, 1956 (Act No. 25 of 1956); 2. a pension fund organization as defined in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section1) of the Pension Funds Act, 1956 (Act No. 24 of 1956); 3. a medical scheme as defined in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/131_1998_medical_schemes_act.htm#section1) of the Medical Schemes Act; and 4. any other person, arrangement or business prescribed by the Authority;     **“fund policy”** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract;  In the main its purpose is to provide for a legal framework for the regulation of conduct of business supervision of long-term insurers in the Republic, that is consistent, to the extent practicable, with international standards for insurance regulation and supervision; for the control of certain activities of long-term insurers and intermediaries; and for matters connected therewith. |
| Income Tax Act | Deals with the taxation of benefits as well as tax deductibility of contributions for retirement. |
| Financial Intelligence Centre Act | It counters money laundering and terrorist financing by imposing duties on accountable institutions and persons working in these accountable institutions. |
| Financial Advisory and Intermediary Services Act | It regulates the provision of financial services namely advice and/or intermediary services. To achieve this, it sets to fit and proper requirements for Financial Services Providers as we as their representatives. |

###### 4.8 Group Termination Benefit Options

Withdrawal Reasons and Impact of Each

Withdrawal from a pension fund ca occur due to various reasons. These reasons are namely;

1. Death, disability
2. Retrenchment
3. Retrenchment
4. Withdrawal

Each one of these is considered in turn.

4.8.1 Death Benefits

As stipulated in the Income Tax Act, a pension fund is defined as a fund that will allow its members to take one third or their benefits in a lump sum and the rest (two thirds) will be converted into compulsory annuities. However, this is subject to a condition that if the benefits not exceed a stipulated amount, then the members will be allowed to their full lump sum. Currently this amount is R247 500. Depending on the type of pension fund it is, the benefits will be calculated appropriately. A pension fund can be a defined benefit or defined contribution. With defined contribution, the benefits will be based on the formula below:

Where:

N= the number of years of pensionable service at retirement;

Z= the final average salary; and  
R= the accrual rate, commonly of the order of 2%.

Under defined contribution, the benefits are calculated as follows:

The defined contribution approach is simpler and straight forward. However, despite the manner in which benefits are calculated, then the benefit amount is now known, then the treatment of the benefits will be the same.

Provident funds on the other hand allow members to take out their full benefits in one lump sum. Note that there is legislation that is not yet applicable that seeks to remove this feature from provident funds. Despite the looming change in legislation, where a person receives benefits under a provident fund, they can receive their full benefits in a lumpsum. However, the tax implications will be more under provident funds. The tax table for retirement or death benefits is provided below.

4.8.2 Retirement & Death Benefits or Severance Benefits

2020 tax year (1 March 2019 - 29 February 2020)

Table 8: Tax on Retirement & Death Benefits or Severance Benefits

|  |  |
| --- | --- |
| Taxable income (R) | Rate of tax (R) |
| 0 – 500 000 | 0% of taxable income |
| 500 001 - 700 000 | 18% of taxable income above 500 000 |
| 700 001 – 1 050 000 | 36 000 + 27% of taxable income above 700 000 |
| 1 050 001 and above | 130 500 + 36% of taxable income above 1 050 000 |

Let us consider two person who retire from two funds, one is a pension and the other is a provident fund. Assuming that they received the same benefit of R3 000 000.00. In the table below we show how the benefits will be treated form a tax point of view.

Table 9: Tax Application Examples

|  |  |  |
| --- | --- | --- |
|  | Pension Fund | Provident Fund |
|  | Full benefit: R3 000 000.00 | Full benefit: R3 000 000.00 |
| Lump sum Commutation | 1/3 of R3 000 000.00 = R1 000 000.00 | R3 000 000.00 |
| Taxation of the lump sum | First R500 000.000 is tax free  Balance is taxed at R36 000 + (27% of R1 000 000 – R700 000) = R117 000. | First R500 000.000 is tax free  R130 500 + (36% (R3 000 000 – R1 050 000) = R832 500 |

The reality at retirement is that the member needs to make an informed decision on how much they want to commute. If a member does not opt to take a one third lump sum, then they risk losing the tax incentives of lump sums that that they can take out without tax.

4.8.3 Early Retirement

The rules of a fund as well as the employment contracts entered between the employer and the employee will stipulate what will constitute early retirement. It could be before 60 or before 65 or any other age depending on the fund rules.

Regardless of the differences in the retirement ages across funds, early retirement occurs when a member exits before they reach the retirement age of the fund. in some instances, this happens voluntarily when members find new jobs or they simply resign. However, in some instances it arises as a result of factors that are not initiated by the member. Such factors could be retrenchment, sickness or disability. In these instances, the member’s benefits will be treated differently. Whereas there are penalties for pure resignation, there are no penalties for involuntary early retirement. While benefits under voluntary benefits will be restricted, there are no inbuild mechanisms that automatically lower benefits in the event of retrenchments or redundancy for example. It must also be born in mind that early exit from a fund means that the member will not enjoy future growth in the fund.

Where benefits move to a preservation fund, then the tax treatment of these benefits will be different. Not tax will apply if benefits are preserved.

One can argue that the treatment of early retirement benefits is unfair for employees but it must be noted that early exits defy the assumptions that were considered when the fund valuations were taking place. In aa defined benefit, early exits will have significant implications on the financial soundness of the fund. But, with defined contribution, the impact will be minimal since the benefits are based on the length of service. Reduction factors are used to penalise early retirement under defined benefits and these could be in the range of 3% to 6% for each year between early retirement and the normal retirement age.

**Example:** Assume the following information is given:

Table 10: Early Retirement Under Defined Benefits

|  |  |
| --- | --- |
| Normal retirement age | 60 |
| Actual retirement age | 50 |
| Years of service | 20 |
| Accrual rate | 2% |
| Penalty rate | 3% |
| Final salary per month | R10 000.00 |
| Benefits based on years of service | 20 × 2% × R10 000 = R4 000.00 |
| Penalty | 10 × 3% × R4 000 = R1200.00 |
| Benefit adjusted after penalty | R4 000 – R1 200 = **R2 800** |

On the flipside, there can be members who may retire later than the normal retirement age. This happens in instances where members voluntarily decide to stay longer due to personal reasons d or it might be that the employer still needs them, it goes without saying the longer one stays, the higher the chances that they will grow their benefits more in the long run. under defined contribution there is an inherent risk of benefits fluctuating depending of the investment performance. With defined benefits, the “insurance” provided by the employer does not expose the members’ benefits. Rules of a pension fund must address matters related to late retirement in as much as they also address early retirement.

**Pension Increases**

When a pension fund is paying annuity/pension to the retiree, pension increases are utilised to maintain the purchasing power of money for retirees. The decision on this increase depends on the level of inflation as well as the investment growth opportunities in the fund. From time to time the board of management for a fund will consider these increases. Some of the options are given below:

* a fixed percentage annual increase of, for example 5%;
* a fixed percentage of the inflation rate, for example 70% of the annual consumer price index on the anniversary of the date of retirement;
* a fixed percentage below the average investment return, for example 5%. This means that if the annual average investment return is 14% the pensioner will receive an increase of 9%.

4.8.4 Death and Disability Cover

Where a fund includes death benefits under a group benefit scheme, these will add to their benefit in the event that they die however for tax purposes, these will be included in the calculation of lumpsum taxes. Refer to the group risk benefits section for more details on these benefits.

###### 4.9 ANNUITIES

The pension that a retiree will receive on an ongoing basis is called an annuity. As alluded to earlier on, an annuity is compulsory under a pension fund and is voluntary under a provident fund. Note also that where a member of a pension fund decides to use the one third lump sum to purchase an annuity, that will also constitute a voluntary annuity. Persons who inherit lump sums can also purchase annuities and these will fall under the category of voluntary annuities. Whereas a pension fund or provident funds an accumulation instrument, an annuity is a decumulation tool. It provides for income during retirement. If the annuity is compulsory under a pension fund or bought from a life insurer, then it must be a life annuity that pays until death.

Factors that insurers consider when they price annuities are:

* age of the annuitant;
* health of the annuitant;
* type of annuity;
* Escalation required; and
* gender of the annuitant.

If an annuity is voluntary, there is no need for the annuity to be permanent. Also, under certain conditions, the capital repayment portion of the annuity will be tax exempt.

Section 10(A) of the Income Tax Act deals specifically with the exemption of the capital elements of voluntary purchased annuities. However, the exemption will only apply while the annuity is payable to the purchaser, his spouse, or surviving spouse. In order to establish the exempt capital element of an annuity in any tax year of assessment a formula is provided. Where the value of the annuity is constant for the term of the contract, and where the term to expiry is known, a simple formula can be used:

Where:

Y = the value of the capital element of the annuity to be determined for the current year of assessment

A = the value of the initial lump sum cash consideration paid by the purchaser to the insurer for the purchase of the annuity

N= the number of years during which payments will be received by the purchaser or his spouse (or surviving spouse).

Where the insurer and purchaser have agreed on an escalating annuity it will be necessary to use the formula which is set out here:

Where:

Y = the value of the capital element of the annuity to be determined for the current year of assessment

A = the value of the initial lump sum cash consideration paid by the purchaser to the insurer for the purchase of the annuity

B = the total value of all the annuity amounts that are to be paid by the insurer to the purchaser or his spouse (or surviving spouse) during the term of the annuity contract.

C =  represents the value of the annuity payable by the insurer to the purchaser or his spouse (or surviving spouse) during the current year of assessment.

4.9.1 Types of Annuities

Immediate Single Life Annuities

These annuities are based on the life of the annuitant and pay after one month of the deposit of the lump-sum to purchase the annuity. It ceases when the annuitant dies. It is, therefore, a higher return annuity.

**a) Guaranteed Annuities**

This annuity removes the risk that the invested capital will be lost in the event of death. A guaranteed annuity provides a guaranteed annuity for a specified period and thereafter until the death of the annuitant. It can promise a return of a portion of the capital invested in the event of the death of the annuitant. A decreasing term life cover can be purchased to pay a certain sum insured in the event of death.

**b) Deferred Annuities**

The lumpsum money is invested with a life insurer but the start of the payment of the annuity is delayed until a certain age or date. Where death occurs before the start date of the annuity pay-out, then there will be a return of the purchase money.

**c) Reversionary Annuities**

Reversionary annuities provide for the payment of an annuity for life if the annuitant is living at the time of the death of another life insured. It is suitable for a breadwinner making provision for his surviving spouse in the event of his death

**d) With Profit Annuities**

IISA (2011) defines this annuity is structured based on a conventional with-profit investment strategy where the annuity is linked to a portfolio that is managed actively. The investment returns from the active management are then allocated as vesting and non-vesting bonuses Vested bonuses will accrue to annuitants as income and the non-vesting bonuses are used for smoothing the returns over the years.

**e) Temporary Annuities**

These annuities provide for the payment of an annuity for a given number of years if the annuitant survives that period but, if he dies during the given number of years, the annuity ceases at his death.

**f) Escalating Annuities**

This annuity increases over the years based on an agreed rate. This might mean that the initial benefits are not as high as in a situation where there are no increases.

**g) Equity Linked Annuities**

The performance of the fund is linked to equities normally a unit trust. This feature allows the annuity to grow and counter the effects of inflation. Also, this annuity allows for the continuance of the annuity until the capital is exhausted. The death of the first annuitant does not cause the annuity pay-out to cease. Successive generations could still access this annuity as long as the capital is not exhausted.

**h) Joint Life Annuities**

Ordinary contracts of this type provide for an annuity during the lives of the annuitants, payment ceasing at the first death.

**i) Joint Life and Survivor Annuities**

A stipulated annuity is paid when the annuitant and his/her spouse are alive and will reduce when one dies. It secures an income for the surviving spouse.

4.10 Death Benefits

The benefits payable in the event of death by a member are calculate according to the years of service or contribution based on the type of pension in question. The tax treatment of these benefits is the same as that of benefits under normal retirement. There are no penalties for death from a death point of view. However, the benefits are limited to the number of years of service or years of contribution. The distribution of the benefits is based on the guidelines in the PFA under Section 37. Refer to the distribution of benefits section.

The benefits that will be discussed under this section are namely;

1. Death benefits
2. Group life cover
3. Funeral cover
4. Spouse’s and children’s pension
5. Death after retirement

In the paragraphs below we expand on each one of these.

**Death benefits**

In the event of death, the two main benefits that are available are the pension fund death benefits as per the rules of the fund and any group life cover that the fund may have purchased. The group life cover can be approved or unapproved. With the approved benefits, they will be treated the same as the pension lump sums for tax purposes. With the unapproved benefits, the benefits will be paid out tax free by the insurer.

Tax Treatment is as follows where the pension befits are paid in the event of death:

Retirement & Death Benefits or Severance Benefits

2020 tax year (1 March 2019 - 29 February 2020)

|  |  |
| --- | --- |
| Taxable income (R) | Rate of tax (R) |
| 0 – 500 000 | 0% of taxable income |
| 500 001 - 700 000 | 18% of taxable income above 500 000 |
| 700 001 – 1 050 000 | 36 000 + 27% of taxable income above 700 000 |
| 1 050 001 and above | 130 500 + 36% of taxable income above 1 050 000 |

Example: Anna passed away at the age of 55 and here pension fund benefits were R2 500 000. Her fund had taken out an approved group life cover on the members and she is entitled to R1 500 000. Her total benefits will be R4 000 000 (R2 500 000 + R1 500 000).

Her tax bracket will be the last band and it will be applied as follows:

|  |  |
| --- | --- |
| Base Amount | R130 500 |
| 35% (R4 000 000 – R1 050 000) | R1 062 000 |
| Total tax | R1 192 500 |

The recipients of the fund are free to handle the money in the manner they see fit. However, where minors are involved, a guardian may be appointed to assist them with management of their funds.

###### 4.11 Funeral Cover

A pension fund over and above the group life cover may have a cover for funeral expenses for members and even their spouses and children. Inclusion of more benefits means that the employers and the employees will contribute more. Where the employer is carrying the whole bill for group covers, addition of funeral cover will also increase the cost to the employer. The importance of funeral cover however lies in that the funds under pensions or group life covers are not immediately available after death. There is a lag time between the death and access to these funds. Thus, a funeral cover is necessary if affordable to both the employer and the employee. Besides acting as a cushion for liquidity purposes, it also ensures that the pension benefits and group life covers are not diverted towards funeral expenses.

###### 4.12 Spouse and Children’s Benefits

Some funds will include a spouse and children’s pension which will be a proportion of the salary of the employee at the time of death. For example, a spouse’s pension might be 50% of the salary of the member at the time of death. Children’s pensions might be 25% or 10%, depending on their age, of the salary of the member when they died. Children’s benefits will stop when the children reach 18 or 21 based on the fund rules. These benefits may also be bought separately form an insurer so as to reduce the financial burden on a pension fund. If these benefits are included in the fund, then the fund will be liable for their payment and that means an increased financial burden on the fund.

**Death after Retirement**

Benefits treatment will vary according to which type of fund the member belonged to. If it was a provident fund, then the fund is not involved since the benefits would have been fully released to the client. under a pension fund where an annuity would have been purchased, then the benefits will be treated according to the type of annuity chose. Refer to the annuities section for more detail. That said, some annuities will keep on paying until the completion of a guaranteed term whilst some will only pay as long as the member still lives. Another benefit that is provided after death is the surviving spouse’s pension which will be a proportion of the benefit that the member was entitled to. It is normally pegged at 50% or any proportion stipulated in the fund rules. This benefit ensures that the surviving has an income until they die.

###### 4.13 Disability Benefits

There are two forms of disability that will be discussed under this sub-section; temporary and permanent disability. Under the PFA, a pension fund is only allowed to offer permanent disability benefits as approved benefits. Thus, a permanent disability benefit can be paid to the member in the event of disability as part of benefits under a pension fund. Disability can be functional or occupational or physical disability. These definitions of disability are elaborated on under the group risk benefits. It suffices to mention that these benefits will be paid out in the form of a lumpsum based on the assessed level of disability. There are instances where the level of disability is doubtful, members may be paid in instalments awaiting the finalization of the level of disability. Permanent disability benefits are received tax-free.

Where temporary benefits are provided under an unapproved risk benefit, the ASISA guidelines on disability claims will be followed. Essentially the guidelines seek to limit the temporary benefits to 75% of the income that was being earned by the member before the temporary disability. The logic is that members should be motivated to recover so that they can earn the full income again. Also, when a person is no longer going to work, there are expenses that they will no longer incur. Temporary benefits will be payable until the earlier of recovery, death or retirement age.

A consideration of the benefits under disability shows that these benefits are a huge relief to both the employer and the employees. Employers have a burden for their employees when they get disabled, but they are only willing to provide an income for a limited period. Employees on the other side have permanent life expenses that they will still need to cater for despite the disability suffered.

###### 4.14 PRESERVATION OF BENEFITS

Members who exit a fund earlier than the normal retirement age have a number of options and these are namely:

* Wait to take their benefits and remain a member of the fund and will only access their benefits later on:
* Transfer their current pension benefits entitlement to the next employer’s pension fund;
* Accumulated benefits can be transferred to a preservation fund (pension or provident) or alternatively transfer to a retirement annuity fund;
* Take the benefits a cash lump sum.

According to IISA (2011) the most contentious aspect related to retirement funds over the years is the matter regarding benefits payable to members who leave a retirement fund for reasons other than retirement, death, retrenchment or disability. Contentious issues are about whether such members should receive any benefits at all. How much interest should be paid on the contributions and what portion of the employer’s contributions should be paid out to these members on their exit. Lastly, taking out benefits as cash is questioned as well.

The response of the labour unions to the 2016 Tax Amendments clearly revealed the power of trade unions regarding the treatment of pension benefits. A paternal approach to pensions by employers and the state will not be tolerated and the success of any moves towards compulsory preservation rests with labour unions. That said, it remains more prudent to preserve funds so as to ensure that when retirement age comes, members have a fall-back position.

Section 14B of the Pension Funds Act provides a formula for the calculation of a member’s individual account for a defined contribution fund. This formula is as follows:

Where:

MC = represents the contributions paid by the member;

EC = represents the contributions paid by the employer in respect of the member;

X = represents such reasonable expenses as the board determines;

IC = represents the amount credited to the member’s individual account upon the commencement of the member’s membership of the fund or upon the conversion of the category of the fund to which the member belongs from a defined benefit category to a defined contribution category of a fund or upon the amalgamation of the member’s fund with any other fund, if any, other than amounts taken into account in terms of OC; and

OC = represents any other amounts lawfully permitted, credited to or debited from the member’s individual account, if any; and

 MC, EC, X, IC and OC are increased or decreased with fund return, provided that the board may elect to smooth the fund return.

The Pension Funds Second Amendment Act of 2001 is commonly known as the Surplus Act as it also addressed the apportionment of the large surpluses that have accumulated in many retirement funds over the years.

In determining the minimum individual reserve of a member of a:  
(a) defined benefit category of a fund, the board shall determine the greater of-

(i) the fair value equivalent of the present value of the member’s accrued deferred pension:

Provided that:

(3) (a)

The board shall establish and implement a policy with regard to increases to be granted to pensioners and deferred pensioners, which policy must-

(i)  aim to award a percentage of the consumer price index, or some other

measure of price inflation which is deemed suitable by the board; and

(ii)  set the frequency with which increases will be considered in line with the policy: Provided that increases should be considered each year, with comparison to the minimum pension increase at least once every three years.

(aa) where there is not a uniform rate of accrual over the full period of membership of the fund, the accrued deferred pension shall be calculated assuming a uniform rate of accrual as if the member had remained in service until normal retirement date as defined in the rules of the fund, but which uniform rate of accrual will not be less than the uniform rate of accrual that is calculated based on the period of service completed up to the date of calculation;

(bb) the fair value equivalent of the present value shall assume rates of increase in the pension before and after retirement, mortality rates and rates of discount as prescribed by the registrar; and

(cc) the term accrued deferred pensions in this section shall include the portion of any lump sum benefit payable at normal retirement date which corresponds to prior service; and

(ii) an amount equal to the value of the member’s contributions, less such expenses as the board deems appropriate to deduct from the contributions, augmented as from the date of payment of a contribution by fund return plus any amount payable in terms of the rules of the fund in excess of the member contributions increased or decreased as from the date that the member joined the fund: Provided that the board may elect to smooth the fund return; and

(b) defined contribution category of a fund, the board shall determine the value of the member’s individual account as determined in terms of subsection (1) plus a share of the investment reserve account, the member surplus account, and such contingency reserve accounts as the board may determine should be included in terms of section 1 5G, in the proportion that the member’s individual account value as at the effective date of the calculation bears to the total of all members’ individual account values as at that date or such other method of apportionment as the board deems reasonable.

(b)  The policy contemplated in paragraph (a) must be communicated to pensioners and deferred pensioners when it is established and whenever it is changed.

(c)  The policy contemplated in paragraph (a) will not be required where-

1. pensioners on or after retirement in terms of the rules of a fund, purchased a policy from a long-term insurer registered in terms of section 7 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);
2. pensioners on whose behalf a fund, on or after retirement in terms of the rules of the fund, purchased a policy of insurance from a long-term insurer registered in terms of section 7 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);
3. pensioners elected to receive a level pension, or a pension with fixed increases, or a pension the amount of which is elected by the pensioner from time to time, paid from the fund in terms of the rules of the fund.

(4) (a)

In determining the minimum pension increase, the board shall increase pensions by a factor, P, where P is equal to the greater of the increase that the board would grant in terms of the pension increase policy established in terms of subsection (3) and-

(i)  the increase in paragraph (b), if the increase in paragraph (b) is less than the increase in paragraph (c); or

(ii)  the increase in paragraph (c), if the increase in paragraph (b) is greater than or equal to the increase in paragraph (C):

Provided that if the application of the increase factor, P. causes a fund to become financially unsound, the board may limit P to such amount as will not cause the fund to be in a financially unsound condition.

(b) The board shall determine the increase that would result from-  
(i) accumulating with fund return the liabilities for pensioners at their dates of retirement in the fund or date of joining the fund if the pensioner retired from another fund and became a member of the fund as a result of an approval granted in terms of section 14 (1) and deferred pensioners at their dates of termination of service, including any contingent liabilities payable, in terms of the rules of a fund, on termination of those pensions or deferred pensions to persons who are still alive at the effective date of the calculation,

adjusted to an equivalent fair value of assets less-  
(aa) pension payments;  
(bb) cash amounts paid on retirement; and  
(cc) those expenses that the board deems reasonable,

plus the liability in respect of any special increases that have been granted to pensioners and deferred pensioners which were funded otherwise than through fund return: Provided that, if the board is unable to grant the full minimum pension increase as at the surplus apportionment date, the board may reduce the amount determined in terms of this subparagraph at that date such that the amount equals the pensioner liability as at the surplus apportionment date after enhancement in terms of section 1 5B (5) (b), if applicable, increased to an equivalent fair value of assets, and the board may accumulate thereafter in terms of this paragraph, using such reduced amount, as if it was the balance determined in terms of this paragraph as at the surplus apportionment date prior to such reduction; and

(ii) dividing the amount calculated in terms of subparagraph (i) by the present value of current pensions and deferred pensions after making allowance for mortality, expenses and future pension increases at the rate determined by the board, adjusted to an equivalent fair value of assets.

(c) The board shall determine the increase required to each pension to provide the pension payable in the month following retirement, nett of the commutation of any portion of the pension for cash or the deferred pension at the date of termination of service, multiplied by the change in the consumer price index from the date of retirement in the case of a pensioner, or the date of termination of service in the case of a deferred pensioner, to the effective date of the calculation of the increase.

(d) Where the board finds it impractical to derive the increases in paragraphs (a), (b) and (c) for each individual pensioner or deferred pensioner, the board may use an approximate method which will preserve the broad principles behind paragraphs (a), (b) and (c).

(5)  For purposes of subsection (4), where the pension has arisen because of the death of a member rather than the member’s retirement, any reference in that subsection to retirement shall be construed as a reference to death.

(6)  In determining the minimum individual reserve of a pensioner or a deferred pensioner, the board shall determine the fair value equivalent of the present value of the pension, or the deferred pension, payable to that member after implementation of any minimum pension increase in terms of subsections (4) and (5), including the present value of any contingent pension payable to the member’s spouse, children and other dependants.

The options available on withdrawal from a fund that were recommended in the legislation of the early 1980's are still currently available and, added to this, is the option to move the withdrawal benefit to a preservation fund.

Whatever option is chosen by members on exit from a fund, the benefits payable are now the same due to legislation requirements. What varies is the tax treatment of the benefits which depends on the options chosen by members.

4.14.1 Preservation Funds

Two main types of preservation funds exist and these are namely; pension preservation and provident preservation funds. Members of existing pension or provident funds can transfer their accumulated benefits as a lump sum under certain circumstances. These funds are then available for the preservation and continued growth of the retirement benefits of members who have withdrawn from their own pension or provident funds on resignation, having been retrenched or having been faced with the closure of the pension or provident fund that they belonged to.

4.14.2 Requirements for Preservation Funds

The following guidelines exist for preservation funds and these are listed below:

* transfer must be from a pension fund to a pension preservation fund or from a provident fund to a provident preservation fund;
* a pension fund to a provident preservation fund is not permitted;
* transfer must happen only on the withdrawal of the member from the relevant pension or provident fund as a result of resignation or retrenchment;
* ongoing contributions to the preservation fund are not possible;
* only lump sums from members who have withdrawn from their employer’s funds ca be accepted;
* backdating the entry date into the preservation fund to a date before the last day at work of the member is not permitted; and
* members can choose whatever preservation fund that they like in spite of whether an employer is a participating employer or not.

Advantages of Preservation Funds

A number of merits exist for joining a preservation fund. These are:

* no tax liability on transfer;
* a once-off tax-free withdrawal of R22 500 from the preservation fund is allowed
* any money due to a non-member spouse in terms of a divorce agreement, as well as the tax thereon, may be paid out without affecting the one withdrawal;
* a deduction by a fund for loans owed by the member to the fund will also be treated as a once-off deduction that is permitted. The balance will be transferable to a preservation fund;
* A member who chooses to split his withdrawal benefit and arranges for a portion to be paid to a retirement annuity fund may do so. Such a payment into a retirement annuity fund will be treated as a once-off withdrawal too; and
* the eventual retirement from the fund is not linked to retirement from a specific employment position.

In the past the person’s years of membership in the fund from which the benefits were transferred, were to be taken into account when determining the tax-free amount of the lump- sum that may be taken from the preservation fund on death or retirement. With the new tax treatment of lump sums applicable from 2007 this is now irrelevant (IISA, 2011).

###### 4.15 Continuation Options

While members can transfer their pension or provident fund benefits, upon resigning or retrenchment members will not be able to transfer are the group life and other ancillary benefits that were linked to the retirement fund of his previous employer. Such life insurance benefits on pay when specified life events happen. Under pension funds, these benefits are provided on a group underwriting basis where the average risk is viewed as very low compared to individual risk. On exit, member can have the option to choose to continue with their benefits under the group life cover. To access this option, a number of requirements must be fulfilled by the member. These requirements are explored in the following paragraph.

4.15.1 Conversion of Group Risk Benefits to Individual risk Benefits

The member will need to approach the insurer and complete a proposal form for the benefits that he wishes to retain and an individual life insurance policy will then be issued to the member. Conditions for such a conversion are that:

* the member must apply for the conversion within 30 days of his termination of membership from the fund;
* benefits on the individual life insurance policy may not be greater than those enjoyed under the retirement benefit scheme. If the member wishes to apply for greater levels of benefits the insurer will require the completion of a full non-medical application form and will reserve the right to request additional medical information.
* When the risk if the individual is above the risk that the underwriters are willing to assume, the insurer is permitted to reject the risk;
* if the member is leaving the fund as a result of his retirement the option may be limited to a conversion of only the group life insurance or, if the age of the member exceeds a certain level (usually 65), the conversion option will have been cancelled completely;
* the life insured will not have to provide any proof that he is still in good health when the new policy is taken; and
* an HIV test may be required and if a member turns out to be HIV positive, the life insurance cover under the risk benefits may be refused.

4.15.2 Minimum Values

The findings by the Pension Fund Adjudicator concerning fund charges, especially on discontinuance of contributions, particularly under retirement annuities, has led to an increased focus on this aspect of fund treatment.

Section 14 of the Pension Fund Act spells out minimum benefits on amalgamation and transfer, while section 14A specifies that the benefit payable to a member who ceases to be a member of the fund before retirement in circumstances other than the liquidation of the fund cannot be less than the minimum individual reserve. Section 14B spells out the calculation of the minimum individual reserve, while circular BN 37 indicates the basis of assumptions to be used for this.

The regulations to the Long-Term Insurance Act of 1998 address the issue of discontinuance charges for fund member policies in clause 5.3.

A fund member policy is defined as a policy -

1. (a)  of which a fund is or was the policyholder; and
2. (b)  which is or was entered into by the fund for the purpose of funding exclusively the fund’s liability to a particular member (or to the surviving spouse, children, dependents or nominees of the member) in terms of the rules of the fund.
3. Where a causal event occurred in respect of a fund member policy on or after 1 January 2001, but before the effective date, and the insurer on account of that causal event deducted causal event charges which in total exceed the maximum prescribed in sub-regulation (2), the insurer must:
   1. (a)  if the policy has not come to an end before the effective date, within 6 months after the effective date credit the policy with the amount by which the total causal event charges deducted exceed the prescribed maximum (“the excess amount”) plus interest on the excess amount calculated in accordance with regulation 5.5; or
   2. (b)  if the policy has come to an end before the effective date, and if the amount by which the total causal event charges deducted exceed the prescribed maximum (“the excess amount”) is R150 or more, upon the written request of the member, or in the case of a deceased member upon the written request of the dependants or nominees of the member, which request in every case must be received by the insurer within three years after the effective date, within 6 months after having received the written request pay the excess amount plus interest on the excess amount calculated in accordance with regulation 5.6, less any tax that must be deducted, to the member or to the dependants or nominees of a deceased member.
4. The maximum deductible charges for purposes of sub-regulation (1) are:
   1. (a)  where the causal event is one contemplated in paragraph (*a*), (*c*), (*f*) or (*g*) of the definition causal event, 35% of the investment value immediately before the causal event;
   2. (b)  where the causal event is one contemplated in paragraph (*b*) of the definition causal event, a percentage of the investment value immediately before the causal event equal to 35% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;
   3. (c)  where the causal event is one contemplated in paragraph (*d*) or (*e*) of the definition causal event, 35% of the amount by which the investment value immediately before the causal event has been reduced.
5. Where a causal event occurs in respect of a fund member policy on or after the effective date, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in sub-regulation (4).
6. The maximum deductible charges for purposes of sub-regulation (3) are:

* where the causal event is one contemplated in paragraph (*a*), (*c*), (*f*) or (*g*) of the definition causal event, 30% of the investment value immediately before the causal event;
* where the causal event is one contemplated in paragraph (i) of the definition causal event, a percentage of the investment value immediately before the causal event equal to 30% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) where the causal event is one contemplated in paragraph (*d*) or (*e*) of the definition causal event, 30% of the amount by which the investment value immediately before the causal event has been reduced.

Regarding group risk benefits, I have learnt the following:

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Learning Unit 4 Formative Assessment: Group Insured Benefits

1. Identify the types of group risk products sold in the market and the corresponding needs that they provide for? Also identify the target group for each product. **(12)**
2. Identify an insurer of your choice and identify and describe three group risk products that that they market. **(9)**
3. Compare group risk products marketed by two different insurance organisations with reference to the features of the product. **(8)**
4. Describe the concept of free cover limit with reference to why group products have a free cover limit. **(4)**
5. Draft a criteria on which as an underwriter for group risk benefits you would base your premiums on? **(6)**
6. Provide three reasons why group schemes are reviewed at regular intervals with reference to the changing nature of the group. **(3)**
7. Compare any two channels used for the distribution of group products. **(4)**
8. Name three pieces of legislation that regulates the products marketed as group products indicate the main focus of the legislation. **(6)**
9. Discuss the taxation of benefits and premiums applicable to group insurance for approved and fund owned policies **(6)**
10. Illustrate with examples three options that can be exercised in preservation of benefits after resigning from a pension fund before the stipulated retirement age? **(9)**

# LEARNING UNIT 5: MARRIAGE, DIVORCE AND MAINTENANCE – WHAT THE LAW SAYS

###### 5.0 Types of Marriages

A number of marriage regimes exits in South Africa. To get a better in sight, the Marriages Act, The Civil Unions Act, The Matrimonial Property Act and The Constitution provide the array of recognized marriages. These are considered in the following paragraphs.

###### 5.1 Marriage Out of Community of Property

Under this marriage, the spouses do not have a joint estate. The assets and liabilities prior to the marriage will be excluded from the marriage. These marriages can be with or without the accrual system.

###### 5.2 Accrual System

Every marriage out of community of property in terms of an antenuptial contract by which community of property and community of profit and loss are excluded, which is entered into after the commencement of this Act, is subject to the accrual system except if that system is expressly excluded by the antenuptial contract.

At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he is deceased, acquires a claim against the other spouse or his estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

###### 5.3 Accrual of Estate

The accrual of the estate of a spouse is the amount by which the net value of his estate at the dissolution of his marriage exceeds the net value of his estate at the commencement of that marriage. In the determination of the accrual of the estate of a spouse:

* any amount which accrued to that estate by way of damages, other than damages for patrimonial loss, is left out of account;
* an asset which has been excluded from the accrual system in terms of the antenuptial contract of the spouses, as well as any other asset which he acquired by virtue of his possession or former possession of the first-mentioned asset, is not taken into account as part of that estate at the commencement or the dissolution of his marriage;
* the net value of that estate at the commencement of his marriage is calculated with due allowance for any difference which may exist in the value of money at the commencement and dissolution of his marriage, and for that purpose the weighted average of the consumer price index as published from time to time in the Gazette serves as prima facie proof of any change in the value of money.

The accrual of the estate of a deceased spouse is determined before effect is given to any testamentary disposition, donation mortis causa or succession out of that estate in terms of the law of intestate succession.

Other Requirements for Accrual System

The following rules apply as well to the accrual system:

* Inheritances, legacies and donations excluded from accrual unless the testator or donor stipulates otherwise, or the parties agreed otherwise in their antenuptial agreement.
* In the determination of the accrual of the estate of a spouse a donation between spouses, other than a donation mortis causa, is not taken into account either as part of the estate of the donor or as part of the estate of the receiver of the donation.
* Within six months, the parties must provide proof of commencement value of estate. The proof must be certified by a notary.
* The net value of the estate of a spouse at the commencement of his marriage is deemed to be nil if:
  1. the liabilities of that spouse exceed his assets at such commencement;
  2. that value was not declared in his antenuptial contract or in a statement and the contrary is not proved.
* Spouses have an obligation to furnish particulars of value of estate within a reasonable time when requested by their partner or executor of the estate.
* A partner who feels that they may be prejudiced in a split of the estate, may approach a court to make an order on the division of accrual
* The right to share in the accrual of the estate of a spouse is a patrimonial benefit which may on divorce be declared forfeit, either wholly or in part.
* A court may on the application of a person against whom an accrual claim lies, order that satisfaction of the claim be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.

###### 5.4 Marriages in Community of Property

Equal powers of spouses married in community

A wife in a marriage in community of property has the same powers with regard to the disposal of the assets of the joint estate, the contracting of debts which lie against the joint estate, and the management of the joint estate as those which a husband in such a marriage had immediately before the commencement of the Matrimonial Property Act.

**Powers of spouses**

A spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse. Such a spouse shall not without the written consent of the other spouse among other things:

* alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;
* enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;
* alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or any similar assets, or any investment;
* alienate or pledge any jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments;
* withdraw money held in the name of the other spouse in any account in a banking institution, a building society or the Post Office Savings Bank of the Republic of South Africa;
* enter, as a consumer, into a credit agreement to which the provisions of the National Credit Act, 2005 apply, as ‘consumer’ and ‘credit agreement’ are respectively defined in that Act;
* bind himself as surety.

###### 5.5 Customary Marriage

These marriages are based on the traditional customs and culture of South Africa’s indigenous people. Such marriages were recognized in the Recognition of Customary Marriages act of 2000. The validity of the marriage does not depend on registration but souses must ensure that their customary marriages are registered. According to Momentum (2019), Polygamy is permissible under customary marriage but t not under civil marriages. Notable is that these marriages after the Act was passed are treated as marriages in community f property.

###### 5.6 “Common Law” Marriage

While, Momentum (2019) provides clear clarity on the non-existence of Common Law Marriages in South Africa, it was also shown that the parties may be treated as a partnership if they can prove that a domestic arrangement exited. Assets and liabilities will be held jointly. “There is no common law marriage in South African law and the duration that a couple live together does not turn into a default marriage”, (Momentum, 2019).

###### 5.7 Civil Unions

**“Civil union”** means the voluntary union of two persons who are both 18 years of age or older, which is solemnized and registered by way of either a marriage or a civil partnership, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others. The Civil Union Act (CUA), effective from 30 November 2006, provides for the recognition of civil unions between certain classes of persons, such as same-sex partners.

The CUA places civil unions in the same legally recognised category as civil marriages in terms of the Marriage Act and provides that any reference to marriage in any other law, including the common law, is also a reference to a civil union.

###### 5.8 Legal consequences of civil union

The legal consequences of a marriage contemplated in the [Marriage Act](https://0-discover-sabinet-co-za.oasis.unisa.ac.za/webx/access/netlaw/25_1961_marriage_act.htm)apply, with such changes as may be required by the context, to a civil union. With the exception of the [Marriage Act](https://0-discover-sabinet-co-za.oasis.unisa.ac.za/webx/access/netlaw/25_1961_marriage_act.htm) and the [Customary Marriages Act](https://0-discover-sabinet-co-za.oasis.unisa.ac.za/webx/access/netlaw/120_1998_recognition_of_customary_marriages_act.htm), any reference to:

* marriage in any other law, including the common law, includes, with such changes as may be required by the context, a civil union; and
* husband, wife or spouse in any other law, including the common law, includes a civil union partner.

This provision has the following consequences:

* Both the Divorce Act and the Matrimonial Property Act apply to civil unions;
* Parties to a civil union may institute divorce proceedings against each other in terms of the Divorce Act; and
* The same patrimonial consequences applicable to civil marriages in terms of the common law, the Divorce Act and the Matrimonial Property Act apply to civil unions.

###### 5.9 Muslim Marriage

Muslim marriages are not yet legally recognised. Parliament is still considering the Muslim Marriages Bill. Decisions by the Constitutional Court is that in the past there is precedence set by the courts that Muslim spouses can rely on to claim maintenance and other proprietary relief. In Daniels v Campbell No and Others held that parties to a Muslim Marriage we deemed spouses and were supposed to be treated so in the event of inheritance or claiming from a deceased estate.

###### 5.10 Marriages that are not recognized

The following marriages by South African Citizens are not recognized:

1. Hindu,
2. Tamil,
3. Chinese and
4. Other foreign marriages



In the event of death benefits distribution, then these marriages will form the basis for identifying the spouse of the member.

###### 5.11 Implications of marriages on Pension Funds

5.11. 1 Death Benefits

In the event of a member passing away, the Pension Funds Act requires the trustees of the fund to make the pay-outs to spouses and/or dependants. A spouse being defined as a: person who is the:

1. permanent life partner or
2. spouse or
3. civil union partner

of a member in accordance with the Marriage Act, the Recognition of Customary Marriages Act, the Civil Union Act, or the tenets of a religion.

A dependant includes:

* a person in respect of whom the member is legally liable for maintenance;
* a person in respect of whom the member is not legally liable for maintenance, if such person was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;

1. is the spouse of the member;
2. is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock;
3. a person in respect of whom the member would have become legally liable for maintenance, had the member not died.

* Fiancées and common law practices are considered based on the extent to which they can prove their dependency.

5.11.2 Divorce

A concept of pension interest is provided for in the Divorce Act. A non-member spouse will be entitled to a pension interest if a divorce occurs.

Table 11: Pension Interest in the event of divorce

|  |  |
| --- | --- |
| Type of Retirement Fund | Definition of Pension Interest |
| Pension or Provident Fund | Is an amount equal to the withdrawal benefit which would have become payable in terms of the rules of the fund if the member had resigned on the date of the divorce. |
| Retirement Annuity Fund | Is equal to the sum of all the contributions, plus simple interest at the prescribed rate of interest applicable on the date of divorce. The pension funds act limits the annual simple interest payable to the fund return on the pension interest assigned to the non-member spouse. |

Table12 illustrates the treatment of the pension benefits in the event of a divorce.

Table 12: Pension Interest Under Different Marriages

|  |  |  |  |
| --- | --- | --- | --- |
| Muslim Marriages | Marriages in community of property | Marriages out of community of property: Accrual System | Marriages out of community of property: No Accrual System |
| Spouse can get a share of the pension if there is a court order to that effect. | Pension interest becomes due on the date of divorce. Notable here is the fact that the pension interest exists by the mere type of marriage and not by a court order. However, the PFA requires that there must be a court order for the deductions for divorce to be permissible. The divorce order must state the following:   1. the order must specifically provide for the non-member spouse's entitlement to a "pension interest" as defined in the Divorce Act; 2. the relevant fund which has to deduct the "pension interest" must be named or identifiable; 3. the order must set out a percentage (%) of the member's "pension interest" or a specific amount; and 4. the fund must be expressly ordered to endorse its records and make payment of the "pension interest". | Only the accruals on the pension benefits will be shared by the divorcing parties. In spite of this, a court may make an order where one party will forfeit a portion or all their benefits under a pension fund. The reason for such an order might be due to misconduct by the other partner. | Before 1984 black marriages were deemed to be out of community of property with each party being entitled to their own pension. That said, a court may on application by one party order a transfer of benefits.  Post 1 November 1984, each party keeps their pension and the other party is not entitled to these benefits. |

5.11. 2 Marriages out of community of property with the accrual system

A redistribution of assets will be done according to a prescribed formula. This means that the spouse whose accrual during the marriage was smaller, is entitled to half of the difference of the accruals between the spouse's estates. A spouse's pension benefits will therefore be taken into account when the accrual is calculated.

Each spouse will be entitled to 50% of the joint estate, which joint estate includes the parties' pension interests as well. The only exception would be if the Court made an order in terms of Section 9 of the Divorce Act that one-party forfeits in favour of the other, either wholly or partially, their patrimonial benefits due to severe misconduct during the divorce.

5.11.3 Marriages out of community of property without the accrual system

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| --- |
| 1. Before 1 November 1984: Each spouse will keep their own estate. Neither spouse will have a claim against the other. However, section 7(3) of the Divorce Act provides that a Court may on application by one of the parties, order that a part of one-spouse's assets be transferred to the other spouse. The spouse's assets which are to be transferred to the other, may then also include their pension benefits. The parties can also agree to a sharing of their pension interests in a settlement agreement. 2. Before 2 December 1988: Black marriages that were entered into under section 22(6) of the Black Administration Act before that section was repealed are deemed to be marriages out of community of property without accrual. For these marriages, each spouse will keep their own estate. Neither spouse will have a claim against the other. However, section 7(3) of the Divorce Act provides that a Court may on application by one of the parties, order that a part of one-spouse's assets be transferred to the other spouse. The spouse's assets which are to be transferred to the other, may then also include their pension benefits. The parties can also agree to a sharing of their pension interests in a settlement agreement. 3. After 1 November 1984: Each spouse will keep their own estate. Neither spouse will have a claim against the other. |

**Distribution of Death Benefits and Maintenance**

See Section on distribution of benefits for details on how death benefits will be distributed and requirements for deductions for maintenance.

Process and timeframes to be followed in the event of divorce

(a)     For purposes of [section 7](https://discover.sabinet.co.za/webx/access/netlaw/70_1979_divorce_act.htm#section7)(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or decree for the dissolution of a customary marriage is granted, and, on the written submission of the court order by the non-member spouse-

(i)      must be deducted by -

* the pension fund or pension funds named in or identifiable from the decree;
* the pension fund or pension funds to which the pension fund referred to in item (aa) transferred the pension interest referred to in the decree;

(ii)     must be deducted on the date on which an election is made or, if no election is made within the period referred to in paragraph (b)(ii), the date on which that period expires; and

(iii)    must reduce the member’s accrued benefits or minimum individual reserve at the date of the decree.

(b)

(i)      The pension fund must, within 45 days of the submission of the court order by the non-member spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to him or her, or if it must be transferred to a pension fund on his or her behalf.

(ii)     The non-member spouse must within 120 days of being requested to make an election-

* inform the pension fund of how the amount referred to in subparagraph (i) must be dealt with; and
* if he or she elects that the amount must be paid to him or her directly, provide the pension fund with the details of how that payment must be effected; or
* if he or she elects that the amount must be transferred to a pension fund on his or her behalf, provide the pension fund with the details of that pension fund.

(iii)    The pension fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse’s election.

(iv)    In the event that the non-member spouse fails to make an election or identify the pension fund to which the amount should be transferred within the period referred to in subparagraph (ii), the pension fund must pay the amount directly to the non-member spouse within 30 days of the expiry of that period.

(v)     Despite subparagraph (iv), in the event that the pension fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the pension fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the pension fund until such time as details of how that payment must be effected is made available to the pension fund by the member, the non-member spouse or any other person.

(c)     A non-member spouse-

(i)      is not a member or beneficiary in relation to the pension fund; and

(ii)     is entitled to the accrual of fund return from the date of the deduction contemplated in paragraph (a)(ii) until payment or transfer thereof, but not to any other interest or growth.

(d)     Any portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage granted prior to 13 September 2007 are for purposes of any law other than the Income Tax Act, 1962, including, but not limited to, [section 7](https://discover.sabinet.co.za/webx/access/netlaw/70_1979_divorce_act.htm#section7)(8)(a) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).

(5)     Despite paragraph (b) of the definition of “pension interest” in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/70_1979_divorce_act.htm#section1)(1) of the Divorce Act, 1979, the total amount of annual simple interest payable in terms of the definition may not exceed the fund return on the pension interest assigned to the non-member spouse in terms of a decree granted in terms of [section 7](https://discover.sabinet.co.za/webx/access/netlaw/70_1979_divorce_act.htm#section7)(8)(a) of the Divorce Act, 1979.

(6)     Despite paragraph (b) of the definition of “pension interest” in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/70_1979_divorce_act.htm#section1)(1) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest of a member or a deferred pensioner of a pension preservation fund or provident preservation fund, that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated, or the member or the deferred pensioner retired on the date on which the decree was granted.

###### 5.12 MAINTENANCE PAYMENTS

Children of parents who do not honour maintenance payments can claim for arrears and future maintenance payments from their parents’ pension or provident monies. This is a departure from the past where dependants could only claim for arrears maintenance payments from a defaulting parent’s pension. It means pension and provident funds can now freeze the pension pay-outs of members to pay for monthly payments to their children.

But before this can be done, there must be a court order instructing the fund to do this. It needs to be done before a benefit accrues to a member. If a lump sum has already been paid without the claim being lodged, the child loses out. From a pension fund point of view, there are two types of maintenance claims, being arrear maintenance and future maintenance.

**a) Arrear maintenance**

This type of claim refers to a situation where a person has obtained a court order in respect of maintenance. Hereafter, the pension fund member fails to comply with the order and is in arrears with the maintenance payments. In such an instance, the maintenance creditor can request the fund to deduct the arrear amounts from the pension benefit payable upon the termination of the employment contract.

**b) Future maintenance**

This claim also applies in respect of a maintenance court order where the member is not necessarily in arrears, but there is a possibility that he may not pay in terms of the order in the future.

Before 2003, it was generally accepted that a fund could not deduct from a benefit to settle a future maintenance claim. However, the Durban High Court, in a landmark ruling, and after having regard to the Constitution and in particular the rights of women and children held that justice may require that a member be deprived of a benefit where he has acted in bad faith to deprive a child of future maintenance monies.

In 2004, the Cape High Court also accepted that future maintenance claims could be deducted from pension benefits. The court was of the view that even though the pension fund member in this case had not acted in bad faith, his conduct did not create the impression that he was willing to abide by the maintenance order. Therefore, the court on a balance of probabilities took the view that the member would not pay and ordered the fund to withhold the benefit to secure the future maintenance of the child.

These two rulings have created an avenue to secure future maintenance needs. Therefore, maintenance beneficiaries must be aware of the requirements outlined by the courts and where they suspect that a pension fund member may default on payment. They can approach the fund and request a withholding of the benefit to secure the claim.

The administrator must apply for a directive when any maintenance payment is made and the tax must be deducted and paid to South African Revenue Services. Maintenance payment is taxed in the hands of the member at the member’s marginal tax rate.



Regarding marriage types, divorce and maintenance, I have learnt the following:

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Learning Unit 5 Formative Assessment: Marriage, Divorce and Maintenance – What the Law Says

1. Identify the marriage legislation impacts retirement funds. **(4)**
2. Research three determinations by the Pension Funds Adjudicator and assess their impact on the governance and administration of funds. **(12)**
3. Explain using examples the different marriage regimes in South Africa and discuss the impact of each marriage regime on retirement benefit. **(16)**
4. Explain the concepts of a divorce and that of pension interest and their application to retirement funds. **(6)**
5. Explain the process to be followed on receipt of a court order and give an indication of the implications of non-compliance. **(6)**
6. Explain the concept of a pension interest and also describe the taxation of the pension interest in the event of a divorce. **(10)**
7. Explain the concept of maintenance with examples. **(4)**
8. What are the factors that must be considered by a fund in determining the validity of a maintenance order? **(5)**
9. Describe the process to be followed on receipt of a maintenance court and provide an indication is given of the implications of non-compliance. **(6)**
10. Explain the treatment of arrear maintenance contributions when a member retires. **(5)**

# LEARNING UNIT 6: INVESTMENTS AND INVESTMENT STRATEGY FOR GROUP RETIREMENT FUNDS

###### 6.0 INVESTMENT STRATEGY

The Need for an Investment Strategy

An investment strategy seeks to achieve the following:

* Provide an investment philosophy to the fund managers and beneficiaries
* State the objectives and overall risk philosophy of the fund
* Define the selection criteria for fund managers, their remuneration and replacement in light of the fund’s objectives
* Communicate the investment strategy for evaluation purposes
* Identify the role players in the investment process as well as the expectations for each one of them.

Factors That Affect Investment Strategy

Every board of trustees for each pension fund has a fiduciary duty to ensure that the investments of the find are carried out with due care, skill and diligence and in good faith. Pension and provident funds must ensure that the investments are in the best interests of the clients and that the maximum benefit is realized by the members. In addition, the investment strategy must be aimed at meeting the obligations of the fund when they fall due.

The considerations depend on whether the fund is a defined benefit fund or a defined contribution fund. In the table below the considerations are differentiated.

|  |  |
| --- | --- |
| Defined Benefit | Defined Contribution |
| Any planned increases in line with cost of living | Need of members |
| Whether the formula for benefits includes increases in salaries | Reasonable benefit expectations |
| Fund obligations to categories of members and former members based on age and time to retirement | Mix of members and the related growth and risk tolerance factors |
| Possibility of changes in employment patterns affecting patterns in retirement | Variations in risk tolerance by members within the same age group |
| Ancillary benefits in the event of retirement or partial retirement | Ability of members to choose investment options |
| Any planned changes within the fund | Default portfolios |

A clear understanding of the profile of the members is also critical before the actual investment strategy is determined. Members’ needs will vary according to the time that they have to retirement. Young and new member are not so concerned about risk and liquidity but for members approaching retirement, low risk and liquidity become more critical.

The following factors must be considered in determining the appropriate investment strategy:

1. Current events;
2. Age bands;
3. Members with five years to retirement;
4. Staff turnover;
5. Income ranges;
6. Level of risk tolerance by the board;
7. Volatility in contributions;
8. Current and future liabilities of the fund;
9. Type of fund in question (i.e. whether it is a defined benefit, defined contribution, provident fund or pension fund)
10. Current financial status of the fund;
11. Liquidity and cashflow requirements;
12. Maturity of the fund; and
13. Profiles of beneficiaries.

Consequences If Information Is Not Gathered

If the relevant information not gathered in formulating an investment strategy, the following may result:

* Less optimal strategy
* Failure to meet obligations by the fund
* Regulatory non-compliance
* Funds becoming insolvent
* Loss of benefits by members and their beneficiaries and that may result in poor living standards post-retirement.

**ISSUES TO BE ADDRESSED IN AN INVESTMENT STRATEGY**

The matters in the diagram below must be addressed by an investment strategy for a retirement fund.

Figure 6: Investment Strategy Issues

Investment in terms of current Legislation

**The Concept of Prescribed Assets**

Governments through their different regulators may set limits on the proportions of investments that life insurers, short-term insurers or pension funds can hold. This is normally done in a quest to ensure that the fiduciary duty of these institutions is not compromised leading to investors and insureds suffering financial losses. Prescribed assets regulations can place limitations on:

* The assets
* Solvency margins
* Minimum percentage of investments in certain assets
* The maximum percentage of investments in certain assets
* Restrictions on the inclusion of certain assets in the valuation of the assets of the business
* Number of funds that a company can invest in

In South Africa, Regulation 28 is the closest regulation that demonstrates this concept. This concept is explained below.

**Regulation 28**

Regulation 28 stipulates the maximum percentages that pension funds can invest in different assets. The main logic for this constraint is to protect the funds of the employees invested in pension funds. In the absence of such regulation, the funds may take a higher risk which could result in funds losing money and eventually members losing out on their benefits. If that happens those members will become a burden to the state and in turn to the taxpayers who will be taxed more to provide for the elderly whose pension benefits would have been lost.

The limits are shown in the table below:

Figure 7: Regulation 28 Limitations

Pension funds are therefore not able to exceed the limits stated above within their portfolios.

**NOTE:** In South Africa, there are no prescribed assets regulations in life and short-term insurance except for Regulation 28 explained above which only applies to pension funds.

INVESTMENT PARAMETER GUIDELINES

Default Investment Portfolio(s)

The board of a fund with a defined contribution category, to which members belong as a condition of employment, must include in its investment policy statement the provision of one or more default investment portfolios. The board must ensure and be able to demonstrate to the Registrar on request, that the following holds regarding the default portfolios.

* Default investment portfolio(s) are appropriate for the members who will be automatically enrolled.
* The design of the default investment portfolio, including its objective, underlying asset allocation, fees, and the expected risks and returns to which it exposes members whose retirement savings in that fund are or will be invested in the default investment portfolio is appropriate to that category of members
* The composition of assets and performance of the default investment portfolio(s), and fund returns are communicated to members on a frequency and format which may be prescribed;
* The fees in respect of the default investment portfolio(s) or the assets held in respect of the default investment portfolio(s) are reasonable and competitive, taking account of the size, asset allocation and other characteristics of the fund;
* All charges, whether borne directly or indirectly by the fund, implicit or explicit, are disclosed regularly to boards and the relevant information is appropriately disclosed to members, in a clear and understandable language, and in formats which may be prescribed
* It considers both passive and active investment strategies as part of the default investment portfolio;
* No fees or charges deducted from or amounts credited to members’ retirement savings or retirement funding contributions or otherwise paid to members by any service provider in respect of the default investment portfolio may depend on the length of time that an individual has been a member of the fund, the number of contributions made by the member or any similar measure;
* Where member investment choice is provided in the rules, members may, at least once every twelve (12) months, instruct the fund to transfer their retirement savings from the default investment portfolio into any other investment portfolios offered in terms of the investment policy statement, in respect of which transfer the fund may deduct reasonable administration costs; and
* The reviews the default investment portfolio(s) regularly to ensure that it continues to comply with this regulation;

**Default preservation and portability**

When members are enrolled in a pension or provident fund as a condition of employment, the rules of that fund must provide for members who leave the service of a participating employer before retirement to become paid-up members.

* When members leave the service of a participating employer before retirement, such members-
* must be made paid-up members of the fund until the fund is instructed by the member, in writing, to pay-out or transfer the benefits due to the member in terms of the rules, and
* must be presented with a paid-up membership certificate within two (2) calendar months of the fund becoming aware that the member has left the services of the participating employer.
* Investment charges in respect of the portion of retirement savings that is invested in the default investment portfolio may not differ based on whether members are paid-up members or are still in the service of the participating employer.
* The administration fees for paid-up members must be fair, reasonable and commensurate with the cost of providing the administration service to members still in the service of the participating employer.
* No initial once-off charge may be levied on the retirement savings of a member as a direct consequence of that member becoming a paid-up member.
* The rules of funds to which a member belongs as a condition of employment must make provision to accept any amount or amounts transferred, to the fund from another fund for the benefit of a member or members, provided that such transfers comprise a defined contribution benefit component, and such funds must-
* within four (4) months of a member joining the fund, request, in a manner which may be prescribed, a list of all paid-up membership certificates in respect of any retirement savings of that member;
* request, for each, paid-up membership certificate, in a manner which may be prescribed, whether members wish to allow the retirement savings held in respect of each paid-up membership certificate to be transferred into the new fund; and
* if a member elects to transfer their retirement savings, arrange on behalf of that member, in respect of each paid-up membership certificate, the transfer of all such retirement savings into the fund, without levying a charge on such amounts in respect of the transfer.

The fund rules must concerning paid-up members, specify that:

* no new contributions to the fund may be permitted in respect of this class of member;
* no deductions may be made from the retirement savings of paid-up members in respect of risk benefits;
* upon the member becoming paid-up, a defined benefit amount, must be converted to a defined contribution component and have it preserved as such;
* eligibility for death benefits, retirement, and early retirement for paid-up members is as per fund rules; and
* Members are given access to retirement benefits counselling before any such withdrawal benefit as determined in the fund rules is paid to them or any transfer is made to another fund.

**Annuity Strategy**

The boards of all pension, pension preservation and retirement annuity funds must establish an annuity strategy. Where the rules of a provident or provident preservation fund enable a member to elect an annuity, the board must establish an annuity strategy. Boards must ensure, and be able to demonstrate to the Registrar on request, that:

* The proposed annuity or annuities as per the annuity strategy are appropriate and suitable for the specific classes of members who will be enrolled into them
* The objective, asset class composition, and performance of the annuity are communicated to members
* Annuities have reasonable and competitive fees
* All fees and their impact on members' benefits are disclosed

Members are given access to retirement benefits counselling

* The annuity strategy is reviewed annually

**Living Annuities**

In addition to traditional annuities, living annuities may be paid directly from the fund or through a fund owned policy or sourced from an external provider as part of the annuity strategy; provided that in each case, the investment choice is limited to four (4) investment portfolios, which portfolios are compliant with [regulation 28](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_1.htm#reg28) and [37](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_1.htm#reg37) and drawdown levels are compliant with a prescribed standard. Where the living annuity is paid from the fund or through a fund owned policy, funds must monitor the sustainability of income drawn by retirees in these living annuities and make such members aware if their drawdown rates are deemed not to be sustainable.

**In-Fund Annuities other than Living Annuities**

An annuity payable by the fund in terms of the rules of the fund may be chosen as part of the annuity strategy.

**Out of Fund Annuities, other than Living Annuities**

Annuities provided by a long-term insurer may be provided as part of the annuity strategy subject to such conditions that the Registrar may prescribe.

**Exemptions: Default Regulations**

The Registrar may on written application by a fund or in general, exempt a fund, or categories, types or kinds of funds, from all or any of the provisions of all the default regulations above, subject to conditions that the Registrar may impose.

**Monitoring and review of Investment Strategies**

The Trustees should monitor the performance of their appointed investment manager or of their fund where they are managing the assets performance themselves. Even if members’ contributions and benefit levels are defined, and the employer has consistently met the contribution rates recommended by the actuary, overall investment return is still relevant to the members of a Defined Benefit fund. There can be little doubt that good investment performance enhances the security of pension promises, while bad performance weakens that security.

Under a Defined Contribution fund, members’ benefits will be directly determined by the returns earned on the contributions paid.

It is, therefore, vitally important that Trustees know that their fund is maximizing its investment return within the objectives set. The normal measure of the investment performance of a fund is the benchmark set by the Board of Trustees. A comparison with other Retirement Funds of a broadly similar nature can also be done and this is usually done through participation in a performance measurement service.

Trustees should, with the help of their advisers, seek relevant comparisons of the performance of the manager relative to that of other managers operating similar funds.

Following the appointment of an investment manager the Trustees should meet with the manager as required, but at least twice a year. The manager’s performance should be monitored on an on-going basis having regard to the objectives set. Such monitoring should include not only the actual investment return achieved by the manager, but also the investment strategy which was pursued on behalf of the fund. The Trustees should ask the manager to explain any aspect of the fund investments which they do not understand.

How do you measure investment performance?

Traditionally investment surveys concentrated on nominal returns, i.e. actual returns achieved by participants. There is, however, increasing recognition that it is just as important to measure the risk or volatility inherent in achieving the returns.

Investment return is in itself, quite meaningless. One needs to judge an investment return, given the level of risk taken to achieve that return.

How do you measure risk?

The measure commonly used for risk is the standard deviation of the monthly returns. This measures the extent to which the returns over a number of years vary.

A high standard deviation reflects high volatility or risk and conversely a low standard deviation would reflect low risk.

There are other measures of risk and reward, like return per unit of risk. This unitizes the risk and attaches a return to it. In this case the higher the return per unit of risk, the better.

These are commonly used measures. Of course, there are many sophisticated mathematical and statistical measures of the various components, but suffice to say that risk and return have a strong correlation and that the one needs to be viewed in terms of the other.

Appointing an investment expert / manager

Where the fund employs the services of an investment manager to manage the investment of fund assets, it would be a breach of fiduciary duty for the Board of Trustees to appoint a company / person without satisfying itself that such company / person is properly qualified.

The selection of the investment manager is one of the most critical decisions that the Trustee have to make as it will determine if the fund will meet its objectives in the long-term.

The process to identifying suitable investment managers’ starts with a simple statistical analysis wherein a survey is conducted on the different managers depending with the portfolio the fund wants to consider. The process does not only aim at identifying the historical best investment managers (ex. traditional rating) but also competent investment managers in different market conditions to ensure that the fund can survive the different economic cycles.

The Trustees should, when selecting or appointing an investment manager, consider the following critical factors:

Figure 8: Selection criteria for an investment manager

All these factors should be considered carefully when choosing an investment manager, and similar considerations apply when the Trustees appoint any other experts such as auditors and valuators.

While above-average past performance is not necessarily indicative of continuing good returns, there is little doubt that consistently good medium-term performance does give some indication of the investment manager's ability. However, returns should not be judged in isolation; all the various pertinent factors, circumstances, risk exposure, and so on, should be taken into account.

When assessing the appropriateness of fund investments and the investment manager's performance, the Trustees should seek independent advice in order to be able to evaluate such matters objectively. Independent surveys could also assist in this regard.

The Trustees cannot simply sit back and leave the investment of the fund's assets to the Asset Manager alone but must actively acquaint themselves with the investment manager's actions and monitor them to ensure that reasonable care and attention is being exercised. Trustees must take an active interest in the investment of the fund's assets.

**Investment management agreement**

An Investment Management Agreement formalizes the relationship between Trustees and their investment manager and clearly complies with the general requirement of prudence. An Investment Management Agreement also regulates the liability of the investment manager to the fund and therefore any exemption clause contained in the agreement should be considered by the Trustees with particular care.

**Investment Manager Termination**

The decision to terminate an investment manager’s appointment should not be taken lightly. Trustees should avoid judging performance on a short-term basis. However, Trustees also need to be prudent to avoid remaining with a manager who is no longer delivering value. The appointment should be reviewed or terminated if in the opinion of the Trustees:

* + - The investment manager does not meet the agreed investment objective within the agreed time frame.
    - Poor investment performance over extended periods compared to peers.
    - There is a significant change in the team managing the assets such as the departure of key investment decision makers on the portfolio or overall management.
    - There is a significant change in the shareholders of the company.
    - There is a change in the manager’s investment philosophy or process and such change is no longer compatible with the views of the Board.
    - There is a significant change in the business operations, affecting the manager’s financial viability
    - There is regulatory non-compliance.
    - The conditions of the mandate agreement are not adhered to.
    - The Fund’s investment strategy changes.

Any decision to change investment managers should, however, be quite categorical and take all relevant factors into account. The time period under consideration must be significant not short term only.

The reason for stressing this is that performance measurement over short time horizons and the results thereof are often of little value or relevance to the determination of the performance of, and the achievement of the aims of a long-term retirement fund. Short-term analysis of the investment manager's performance may even be detrimental to the long-term interest of the fund if it prejudices the implementation of an appropriate long-term strategy.

**Socially** **Responsible Investing**

Socially responsible investing (SRI), also known as sustainable, socially conscious, "green" or ethical investing, is any [investment](https://en.wikipedia.org/wiki/Investment) [strategy](https://en.wikipedia.org/wiki/Strategy) which seeks to consider both [financial return](https://en.wikipedia.org/wiki/Financial_return) and [social good](https://en.wikipedia.org/wiki/Social_good).

In general, socially responsible investors encourage [corporate](https://en.wikipedia.org/wiki/Corporation) practices that promote [environmental stewardship](https://en.wikipedia.org/wiki/Environmentalism), [consumer protection](https://en.wikipedia.org/wiki/Consumer_protection), [human rights](https://en.wikipedia.org/wiki/Human_rights), and [diversity](https://en.wikipedia.org/wiki/Diversity_(business)). Some avoid businesses involved in [alcohol](https://en.wikipedia.org/wiki/Alcohol), [tobacco](https://en.wikipedia.org/wiki/Tobacco), [fast food](https://en.wikipedia.org/wiki/Fast_food), [gambling](https://en.wikipedia.org/wiki/Gambling), [pornography](https://en.wikipedia.org/wiki/Pornography), [weapons](https://en.wikipedia.org/wiki/Weapon), undemocratic governments, and/or the [military](https://en.wikipedia.org/wiki/Military_industry) equipment suppliers in war zones.

The above concerns are sometimes summarized under the heading of [ESG](https://en.wikipedia.org/wiki/Environmental,_social_and_corporate_governance) issues: environment, [social justice](https://en.wikipedia.org/wiki/Social_justice), and corporate governance.

Table 13: Socially Responsible Investing

|  |  |
| --- | --- |
| Environmental: | This includes the topics of Sustainability, Ecosystems, Climate Change and Fossil Fuels vs Renewable Energy. |
| Social: | Socio-economic impact, Diversity, Human Rights, Consumer Protection, Animal and human welfare can be categorized here. |

"Socially responsible investing" is one of several related concepts and approaches that influence and, in some cases govern, how asset managers invest portfolios and Trustees must ensure that asset managers are abide with these principles.

The term "socially responsible investing" sometimes refers to practices that seek to avoid harm by screening companies included in an investment portfolio. However, the term is also used more broadly to include more proactive practices such as [impact investing](https://en.wikipedia.org/wiki/Impact_investing), [shareholder advocacy](https://en.wikipedia.org/w/index.php?title=Shareholder_advocacy&action=edit&redlink=1) and [community investing](https://en.wikipedia.org/w/index.php?title=Community_investing&action=edit&redlink=1).

The Code for Responsible Investing in South Africa (CRISA)

The Code for Responsible Investing in South Africa (CRISA) gives guidance on how the institutional investor (Retirement Fund) should execute investment analysis and investment activities and exercise rights so as to promote sound governance.

There are five key principles:

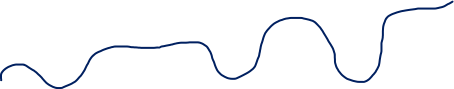
|  |  |
| --- | --- |
| Principle 1 – An institutional investor should incorporate sustainability considerations, including ESG, into its investment analysis and investment activities as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries. | The Code requires institutional investors to develop policies on how they incorporate sustainability considerations, including ESG, into investment analysis and activities. Institutional investors should ensure that this policy is implemented and establish processes to monitor compliance with the policy. |
| Principle 2 – An institutional investor should demonstrate its acceptance of ownership responsibilities in its investment arrangements and investment activities. | The second principle requires institutional investors to demonstrate a responsible approach to shareholding by, among others, implementing a policy detailing mechanism of intervention and engagement with companies when concerns have been identified, as well as the means of escalation if concerns raised cannot be resolved. The Code requires such a policy to also detail the approach to voting at shareholder meetings, including the criteria to be used in reaching voting decisions and public disclosure of full voting records. Controls should also be introduced by the institutional investor to prevent insider trading as defined by the Security Services Act. |
| Principle 3 – Where appropriate, institutional investors should consider a collaborative approach to promote acceptance and implementation of the principles of CRISA and other codes and standards applicable to institutional investors. | Institutional investors are encouraged to work with other shareholders, service providers, regulators, investee companies and ultimate beneficiaries to promote CRISA and sound governance. |
| Principle 4 – An institutional investor should recognize the circumstances and relationships that hold a potential for conflicts of interest and should pro-actively manage these when they occur. | Institutional investors are encouraged develop a policy on prevention and management of conflicts of interests and establish processes to monitor compliance with this policy. |
| Principle 5 – Institutional investors should be transparent about the content of their policies, how the policies are implemented and how CRISA is applied to enable stakeholders to make informed assessments. | The Code requires institutional investors to fully and publicly disclose to stakeholders at least once a year to what extent the Code has been applied.  If an institutional investor has not fully applied one of the Principles of the Code, the reasons should be disclosed. Disclosure as well as policies should be made public.  Institutional investor and their service providers should also, before agreeing to a proxy or other instruction to keep voting records confidential, carefully consider the reasons put forward to justify confidentiality. |

###### 6.2 TYPES OF INVESTMENTS AND INVESTMENT PORTFOLIOS IN PENSION FUNDS

**Market Related**

A market related fund’s returns is based exactly on how the fund performed and there is not cautioning from a reserve fund. Rather the investor’s returns move up and down as the market movements. In the diagram below the movements in a pseudo fund are provided.

Figure 3: Market Related Investments



Returns

**Time**

Due to the non-existence of any guarantees or protection on the downside risk of the investments, this investment is not as costly as the guaranteed fund where the insurer or investment manager will charge the investor for the guarantee. The main drawback of these funds is the fluctuations in returns. However, with some instruments especially in shares, in the long run, the tendency of the returns is generally upward albeit the short-term fluctuations.

**Smoothed Investments (Diagram)**

Smoothing refers to a method of stabilising the returns on investments where the highs and the down in investments are levelled out. Not all profits in period s of higher returns are distributed to investors. Rather, a proportion is allocated to members and the balance is put in a reserve that will be utilised to boost returns in periods of lower or negative returns. This concept is illustrated in the diagram below:



Figure 4: Smoothed Investments

Costs of Smoothed Funds

There is a debate on whether the smoothed funds benefit provide the right balance between the costs involved and the cushioning provided by the smoothing. Fin 24 (2010) stated the following as the costs associated with smoothed funds:

* Investment manager fees
* Guarantees fees for the smoothed returns

In addition, they expand by showing that returns in smoothed funds are stable and that these funds normally invest in moderate risk funds. While the funds will provide good returns when there is a meltdown in an economy, the upward potential is constrained in seasons of higher returns since investment managers will always have to set aside a portion of the high returns as a reserve for fund lower returns in the future.

**Pooled Investments**

The concept of pooled investments is based on the grouping of individual’s funds into one investment fund. An example is a unit trust, instead of investing individual funds, the units are purchased for the group and the investments are proportionated according to the investment amounts contributed by each investment. No individual fund is created so if losses occur to the fund, the whole fund makes losses as well. If there are positive investment returns on the pooled fund, then the investors are entitled to a rateable proportion of that growth. Such fund utilise diversification significantly. This limits the exposure to losses in one investment. Typical finds could be based on equities (shares), property, industrials, money markets or offshore investments among others. Depending on the type of fund, the investment returns may be subject to different types of taxes such as capital gains and interest income tax.

**Segregated Investments**

Instead of investing with a group as under the pooled funds, each investor (pension fund) place their funds with a professional investment manager who will be responsible for the day to day management of the fund as per the mandate provided by the fund.

**Absolute Return**

It is a measure of the performance of an investment over a period of time. This measures the performance of an investment based on time and not relative to investment instruments or against a benchmark index. Consider an investor that BUYS A shar for R100 in a listed company. If the share price grows to R150 by year end and the investor receives a R10 dividend, then the absolute return in a function of the growth in the share price as well as the dividend received. The absolute return is thus made up of two elements; capital gains as well income gains. These are illustrated in the figure below based on the investor given earlier on.

Figure 5: Absolute Returns

**Structured Products**

A structured product is defined as a pre-packaged securitised investment product with full or partial capital protection which is listed on a stock exchange like a normal share and has a daily market value. Think of it as investing on the stock market with little or no risk. Who wouldn’t want that?

Structured products have soared in popularity over the last decade. Where it used to be the exclusive domain of wealthy investors and large institutions, it is now freely available to ordinary investors due to rapid technological advancements.

Most investment products are designed save for the long-term to meet goals like having enough money to retire. The longer you have to invest, the more time you have to recover from downward markets. But what about short to medium term investment needs such as;

* Children going to University in five years’ time.
* Good growth in the markets in the past but think that the market is overheated and want to protect their gains, but still want to be exposed to potential market growth in case the market recovers (as all markets eventually do)
* Already retired but need to be exposed to the market for additional capital growth to fund living longer in an increasing inflation environment, but don’t want to risk current capital.

Structured products have the unique ability to react quickly to capture market opportunities over the short to medium term. To mitigate risk and volatility over the short term, most structured products offer full or partial capital protection provided the investor remains invested over the full term.

Most structured products are easy to understand and simplistically work like this;

A bank issues a securitised note which tracks one or more local and global market indices where the bank feels it can benefit from certain anticipated market conditions over a fixed term, usually five years.

The bank raises the capital required for the investment from investors and in exchange, offers investors certain benefits, the most important one being full or partial protection of the original capital invested.

The structure promises to pay the investor “x” if the investment achieves “y” at the maturity date. If “y” is not achieved, the investor receives their original capital back intact. In most cases the “y” amount represents the growth of the asset on a one for one basis.

For example; If the return on the note is positive, say 7%, the investor will earn double the return, 15%. The bank usually caps this return, and anything earned in excess of the 15% belongs to the bank for their efforts. If the notes return is negative, and the investor opted for full protection, the investor receives their capital back.

Some structured notes offer less capital protection in return for higher returns, however, if the notes return is negative, the investor participates one for one on the downside.

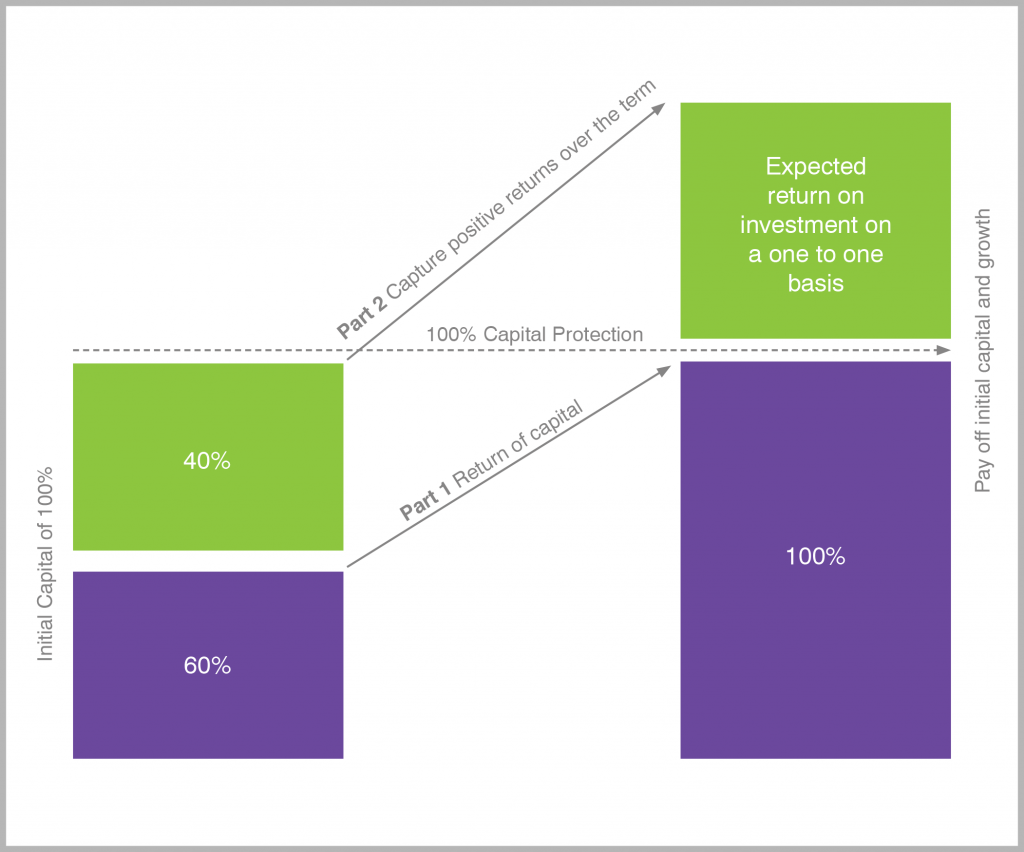
The structure works in two parts

Part 1 (Return of initial capital)

A portion of your investment is used to purchase an investment that will guarantee your initial capital back at maturity no matter what the markets do.

Part 2 (Investment growth)

The remaining portion of your investment is exposed to underlying indices to capture positive market returns over the term of the investment.



 Assumptions (For illustrative purposes only)

* 60% of the initial investment amount after fees and costs is used to return your capital at maturity (Part 1)
* 40 % of the investment amount after fees and costs is used to purchase the underlying index to provide the investment return, but is based on the full 100% invested after fees and costs (Part 2)The note can also be “wrapped” in a five year term endowment policy offered by a life assurer for financial planning reasons such as ensuring the intended investment strategy is fulfilled for the benefit of the nominated beneficiaries even though the initial investor dies before the maturity date.

Benefits of Structured Products

* Easy to acquire
* Access ordinarily “hard to get” assets from some of the world’s leading economic zones.
* Capital protection
* Confidently invest in irrational markets by reducing risk and short-term market volatility by fully or partially protecting the initial capital amount over the full term of the investment product.
* Diversification
* Instant exposure to a variety of well-known and highly regulated local and global markets
* Peace of mind
* Most structured products are governed by the Financial Markets Act (FMA), the Financial Services Board (FSB) and where an endowment policy is used to wrap the note for estate planning purposes, the Long-Term Insurance Act (LTIA) ensuring that members are protected against unjust treatment.
* Daily liquidity
* Unlike owning a single share and having to search for a willing buyer if you wish to sell your structured product, it can be immediately liquidated at fair value on any day the stock exchange is open.
* Tax efficient

Most structured notes are designed to take advantage of the various tax concessions enjoyed by the issuers which are then passed on to the investors. An example is where a structured product is wrapped in an endowment policy a fixed rate of tax is applied to the gains based on the life companies tax rate which is often lower than super tax rates for individuals.

Important things you need to know about Structured Products

**Fees**

Besides the price of the note itself, there are other fees such as transactional charges to acquire the note on the stock exchange, annual administration fees, life company annual fees where an endowment wrapper is used, value added tax, and financial advice fees where applicable. In most cases the fees are contained in the price of the note and paid once off, ensuring that the structure can participate in the market on an unfettered basis without incurring harmful costs during the term.

**Share ownership rights**

Investing in a structured product does not give investors the right to vote at Annual General Meetings (AGMs) of the underlying securities, as you own a portion (unit) in the note and not the underlying securities themselves.

**Price**

The purchase price of the note will always vary slightly from the selling price (aka the net asset value or NAV of the underlying assets). This difference is attributable to the management and administration costs and market forces such as supply and demand.

**Market Risk**

The price of the note is linked to the performance of the underlying assets and may fluctuate in line with the market.

**Counterparty Risk**

Structured Products are provided by banks, so the investor takes on the credit risk of the issuing bank. If the Structured Products is wrapped in an endowment policy, the investor also accepts the capital adequacy risk of the chosen life assurer.

**Capped Growth**

Investors should also be aware that some Structured Products may cap the “upside” growth, meaning that despite having capital protection, if markets run, investors may lose out on some of that run – but, on the other hand, if markets fell, investors would be protected.

**Multi-Manager Products**

Multi-manager funds invest across different asset classes, sectors and geographies by utilising more than one fund manager. The exposure to one investment manager is eliminated in the process and diversification is automatically achieved due to the diversity of the funds that the multiple managers will be invested in. The attraction of multi-manager funds is based on that no one investment manager is able to persistently outperform all asset classes persistently. In spite of that, each fund manager has their strengths in terms of the funds that they specialise in and therefore investing in multi-manager funds assists the investors in harnessing the multiple strengths and specialist skills held by various managers. The need for active management will be removed since the intended benefits of active management are rooted in the multiple funds.

Each manager in a multimanager does not operate without checking how their fund contributes to the overall performance of the multimanager fund. Each manager seeks to achieve the optimal results that will assist the fund in achieving the most optimal results for the multi-managed fund.

Advantages of multimanager funds

* Reputable and highly skilled managers are utilised after a proper due diligence process on them. Poorly preforming investment managers are excluded.
* Greater diversification even for investors with limited funds

Disadvantages of multimanager funds

* Major drawback lies in the higher costs since each fund manager charges a separate fee and therefore the fund carries higher costs than if it had utilised a single manager.
* Diversification is desirable but it can also limit the upward potential. If not all the funds are doing very well, the diversification only works to limit the potential returns of the fund.
* Conflict of interest by fund managers. Fund managers are eligible to benefits based on the performance of the fund and thus may engage in more than necessary active management within their funds and that will result in the fund incurring more costs. In addition, the funds may incur higher capital gains tax due to short term strategies aimed at taking advantage of the short-term price movements.
* Lack of liquidity as the funds impose restrictions on withdrawals.



Regarding types of investments and investment portfolios, I have learnt the following:

|  |
| --- |
|  |

Learning Unit 6 Formative Assessment: Investment Strategy for Group Retirement Fund

1. Using diagrams, explain the concepts of market related and smooth investments, pooled and segregated funds. **(9)**
2. Explain the functioning of the following:
   1. Market related,
   2. Absolute return
   3. Structured products
   4. Smoothed bonus products and
   5. Multi-manager products **(10)**
3. Explain the impact of member level investment choice with reference to the kinds of investment options, governance of investment options, value of benefit paid, costs and associated risk. **(5)**
4. Explain need for an investment policy statement with reference to the responsibility of the Trustees and the interests of other players. **(5)**
5. Provide a description of additional information that affects an investment strategy and give an indication of the consequences if trustees neglect to gather the necessary information. **(8)**
6. Discuss your view on the influence of industry norms and values on the investment strategies of a group retirement fund with reference to industry specific goals. **(6)**
7. Discuss the influence of individual members norms and values on the investment strategies of a group retirement fund with reference to individual goals. **(6)**
8. Explain the concept of prescribe assets and your view on their adoption in South Africa. **(5)**
9. Describe the asset allocation requirements as per Regulation 28. **(10)**
10. Imagine that the members in your class are member of a pension fund. Identify the appropriate asset classes appropriate for a specific retirement fund to the investment mandate (use the mandate in the annexures). **(5)**
11. Design an evaluation criterion for an asset manager for a pension fund. **(5)**
12. Design a criterion for evaluating the performance of an asset manager. **(5)**
13. Why is it important to regularly monitor and review the investment strategy? **(5)**

# LEARNING UNIT 7: THE PENSION FUNDS ACT (PFA), EVALUATION AND GOVERNANCE

**PURPOSE OF THE ACT**

To provide for the registration, incorporation, regulation and dissolution of pension funds and for matters incidental thereto.

**Objectives of Act**

The objective of the PFA is to provide for the registration, incorporation, regulation and dissolution of pension funds and for matters incidental thereto.

**Registration of pension funds**

The PFA requires that every pension fund must, prior to commencing any pension fund business, apply to the registrar for registration under the Act and be provisionally or finally registered under the Act. Like most applications to the FSCA, an application for registration shall be accompanied by the particulars and the prescribed fees.

The Commissioner must, if the fund has complied with the prescribed requirements and the registrar is satisfied that the registration of the fund is desirable in the public interest, register the fund provisionally and forward to the applicant a certificate of provisional registration, which provisional registration takes effect on the date determined by the fund or, if no such date has been determined by the fund, on the date of registration by the registrar. If after considering any such application the registrar is satisfied that the fund complies with the conditions prescribed, he shall register such fund and send to the applicant a certificate of registration as well as a copy of the rules of the fund bearing an endorsement of the date of registration.

If the registrar deems it necessary, the registrar may:

1. request a pension fund to furnish additional information in respect of an application; or
2. require a pension fund to verify the information provided in its application

If a pension fund fails to furnish or verify the information within 60 days from the date of the request, its application lapses.

The provisional registration of a fund shall be valid for a period of five years, but may in the discretion of the registrar and subject to such conditions and limitations as he may consider desirable, be renewed from time to time for periods not exceeding twelve months at a time and not exceeding five years in the aggregate. Whenever a fund which is provisionally registered under this section has complied with all the requirements, the registrar shall register the fund and transmit to it a certificate of registration as well as a copy of its rules with the date of registration duly endorsed thereon, and thereupon the fund shall cease to be provisionally registered.

Registration of pension funds to which State contributes financially

the Minister may, after consultation with the Registrar of Pension Funds, by regulation provide for a management board for a pension fund to which the State contributes financially. If a management board has been established for a pension fund, such pension fund may apply for registration, provided the consent of the Minister is obtained first.

When a state pension scheme applies for registration, the provisions of the Act shall apply to the pension fund concerned, in so far as they can be applied, and as if the pension fund were a pension fund as defined in the PFA.

The State President may by proclamation in the *Gazette* make such regulations as he may deem necessary or expedient to give effect to the provisions for registration of state pension funds, including regulations whereby

1. any provision of this Act or any other law is repealed or amended
2. the carrying on of the business of a pension fund

**Effect of registration of pension fund referred to in section 4A**

On the registration of a pension fund, it shall become a juristic person. The registration of a pension fund shall not affect the assets, rights, liabilities, obligations and membership of such pension fund.

Transfer to pension fund referred to in section 4A of its assets held by another

If any person holds any assets on behalf of a pension fund or has on behalf of any such pension fund invested any assets in any stock, debentures, securities or financial instruments, he shall, on production to him of the certificate of provisional registration or the certificate of registration in respect of such pension fund:

1. Transfer those assets into the name of such pension fund;
2. Take such steps as may be necessary to ensure that on such stock, debentures, securities or financial instruments issued in his name and in any relevant register such endorsements are made as may be necessary to show that the ownership in such stock, debentures, securities or financial instruments vests in such pension fund; and
3. If requested thereto by such pension fund, transfer to such fund the stock, debentures, securities or financial instruments vested in it.

No registration fee or costs shall be payable in respect of any transfer or endorsement referred to above.

**Effect of registration of pension fund**

Upon the registration under the PFA a fund in its name becomes a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules. Further all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything contained in any law or in the memorandum, articles of association, constitution or rules of anybody corporate or unincorporated having control of the business of the fund, be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;

The assets, rights, liabilities and obligations of the fund (including any assets held by any person in trust for the fund), as existing immediately prior to its registration, shall vest in and devolve upon the registered fund without any formal transfer or cession. The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset or right which vests in or devolves upon a registered fund shall, upon production to him by the fund of its certificate of registration or of provisional registration, as the case may be, and of the deed or other document aforesaid, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of such vesting or devolution.

All moneys and assets belonging to a pension fund shall be kept by that fund and every fund shall maintain books of account and other records necessary for the purpose of such fund. Such money and assets may, subject to such conditions as may be prescribed, also be kept in the name of the pension fund by one or more of the following institutions or persons, namely:

1. an authorised user as defined in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/19_2012_financial_markets_act.htm#section1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);
2. a long-term insurer registered in terms of the [Long-term Insurance Act, 1998](https://discover.sabinet.co.za/webx/access/netlaw/52_1998_long_term_insurance_act.htm) (Act No. 52 of 1998);
3. a manager of a domestic or foreign collective investment scheme registered under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
4. a bank registered under the [Banks Act, 1990](https://discover.sabinet.co.za/webx/access/netlaw/94_1990_banks_act.htm) (Act No. 94 of 1990);
5. a nominee company; or
6. a person or investment vehicle approved by the registrar subject to such conditions as the registrar may determine.

 A nominee company is defined as a company which:

* has as its principal object to act as representative of any person;
* is precluded by its Memorandum of Incorporation from incurring any liabilities other than those to persons on whose behalf it holds property;
* has entered into an irrevocable agreement with another person in terms of which such other person has undertaken to pay all expenses of and incidental to its formation, activities, management and liquidation;
* has been approved by the registrar, subject to such conditions as the registrar may impose; and
* is incorporated under the Companies Act.

 Notwithstanding the aforementioned provisions, the registrar may permit money and assets to be kept in the name of a nominee company on behalf of the pension fund.

Allocation of assets and liabilities between pension fund organization and other associated business

Within twelve months after the registration under this Act of a pension fund the business whereof is or has been carried on by any undertaking as part of or in conjunction with any other business in which that undertaking is or has been engaged, the person having control of the business of that undertaking shall submit to the registrar proposals as to the apportionment of the assets, rights, liabilities and obligations of that undertaking between the fund and such other business.

If the proposals are not received within the period specified in that subsection the registrar shall prepare proposals for the apportionment of the assets, rights, liabilities and obligations of that undertaking between the fund and such other business in such a manner as he may with due regard to all the circumstances consider equitable. The registrar may for the purpose of preparing any proposals, require any person having control of the undertaking in question, to lodge with him, within such period as he may specify, any information relating to the business or any part of the business which is or has been carried on by that undertaking, including the business of such pension fund, together with such reports by a valuator or (at the discretion of the registrar) by the auditor of that undertaking, as the registrar may direct.

As soon as practicable after having received any proposals or after having prepared any proposals, the registrar shall transmit a copy thereof to the principal officer of the fund and publish at the expense of the fund on the official web site and in a newspaper circulating in the district in which the head office of the undertaking is situated, a notice:

* indicating that such apportionment is contemplated;
* stating the place or places where copies of the proposals in question will be available for inspection by interested persons for a period of thirty days from a date specified in the notice; and
* calling upon interested persons to submit to the registrar whatever representations they may deem necessary within the said period of thirty days.

Upon the expiration of the period, the registrar shall proceed to consider any written representations lodged with him in pursuance of the relevant notice and any oral representations which any person who lodged such written representations or the person having control of the business of the undertaking may desire to submit to him, and shall thereafter approve of the proposals in question as drafted or with such modifications as he may deem necessary. The decision made by the registrar shall be binding upon all persons affected thereby.

Exemption Relating the Board of Trustees

The registrar may on written application of a fund and subject to such conditions as may be determined by the registrar:

* authorise a fund to have a board consisting of less than four board members if such number is impractical or unreasonably expensive: Provided that the members of the fund shall have the right to elect at least 50 percent of the board members;
* exempt a fund from the requirement that the members of the fund have the right to elect members of the board, if the fund-
* has been established for the benefit of employees of different employers referred to in the definition of “pension fund” and “provident fund” as defined in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/58_1962_income_tax_act.htm#section1) of the Income Tax Act, 1962 (Act No. 58 of 1962);
* is a retirement annuity fund;
* is a beneficiary fund; or
* is a pension preservation fund or a provident preservation fund as defined in [section 1](https://discover.sabinet.co.za/webx/access/netlaw/58_1962_income_tax_act.htm#section1) of the Income Tax Act, 1962.

However, the registrar may withdraw an exemption granted under if a fund no longer qualifies for such exemption.

###### 7.2 Pension Funds Audits

**An Audit-Exempt Fund**

**“audit-exempt fund”** means a fund which has been exempted by the registrar in terms of [section 2](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section2)(5)(a) from being required to be subject to audit;

**A Non-Exempt Fund**

A non-exempt fund is required to appoint an auditor

**A Valuation Exempt Fund**

Valuation exempt, in relation to a fund, means a fund which has been exempted by the registrar. A valuator on the other hand means an actuary who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of the PFA.

**Appointment of a Valuator**

Every registered fund which in terms of [section 16](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section16) is required to have its financial condition investigated and reported upon by a valuator, shall appoint a valuator.

The provisions of [section 8](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section8), excluding the provisions of subsections (1) and (2), apply with the necessary changes to the appointment of a valuator under this section.

The valuator of a registered fund must be a natural person who is resident in the Republic, and if the valuator resigns the appointment or is unable for any reason to discharge any duty imposed upon a valuator by any provision of this Act, the fund shall appoint another person to be its valuator within such period as prescribed.

**THE VALUATION PROCESS**

The intention with an evaluation is to check whether a fund will be able to honour its commitments regarding its liabilities. When a fund is set up, it creates obligations on itself to pay certain amounts as guided by the rules to the fund, to its member. In addition, a fund evaluation may not just seek to establish whether there are adequate funds for the assumed liabilities, it may also be intended that the fund may want to gauge whether projected future contributions and growth will be adequate to meet the liabilities of the fund in the future. Thus, to achieve this the fund must check and establish the following:

* the current value of the assets of the fund;
* current value of future liabilities;
* the solvency; and
* the future funding rates.
* The PFA provides clear guidelines on the frequency and other requirements regarding valuation of the funds. Such guidelines include the requirement for triennial detailed valuations of pensions funds. In spite of the three-year valuation requirements, funds may do more regular valuations for purposes of tracking the financial soundness of the fund. Other reasons for valuations are listed below:
* Regular test of the solvency of the fund in order to take the necessary action if need be.
* Actuaries need to keep themselves up to date with the way in which the scheme operates. By the nature of their work they need to provide professional guidance to the fund regarding benefits structure as well as contribution rates. This is only possible if the actuary is aware of the solvency status of the fund.
* Establishing the pace of funding in context of the solvency of the fund. Contribution rates will be derived from the outcomes of the valuation.
* Rules of the fund may stipulate that a valuation must be done at a certain frequency.
* Determining the ability or rate of increases for increases of pensions to retirees. A valuation assists in determining how much increases in pension to retirees can be afforded by the fund.
* Establishing the level of benefits in the event of a merger between wo companies. in this case the intention might be two-fold. The employers may be checking the security of their employees’ benefits. Also, the employers may be establishing the size of liabilities that they may be assuming if the merger proceeds. Benefits may need to be re-aligned and that may only be possible based on an objective
* Where a fund is being wound up, there is requirement for valuation to determine the size of benefits that are payable to members of the fund.
* For purposes of drawing a comparison between the financial soundness of two pension funds that are in the process of merging a valuation will establish the variations in the solvency of the funds in question.
* Establishing the feasibility and implication of adjustment (enhancement of fund benefits). a fund that is considering altering the benefits of its members can only do so if a valuation is done. The valuation in this case will inform the employer and members of the potential and actual implications of a benefit adjustment.

## The Purpose of the Valuation

The purposes differ based on whether a fund is a defined contribution or a defined contribution. The purpose of each fund is examined below:

Defined Benefit Funds

A valuation will be needed to:

* comply with legislation;
* check solvency levels;
* better understand the trends and issues affecting the fund;
* check the current funding level;
* track the release of any surplus in any of the surplus accounts;
* inform benefit decisions in cases of company merges or buyouts;
* decide on the appropriateness and effectiveness of the investment strategy;
* inform a process of adjustment of fund benefits; and
* to keep a track on the equitable share of members for withdrawal purposes.

Defined Contribution Funds

An actuarial valuation of a defined contribution fund is often a high-level audit of the administration of the fund, although one needs to carefully consider allocations to any reserve accounts. The purpose is to:

* comply with legislation;
* confirm the allocation of growth to individual member’s accounts;
* allocate any excess funds from time to time;
* advise on possible changes to benefit levels;
* comment on the appropriateness of the investment strategy;
* allocate monies to reserve accounts; and
* advise on major issues in the event of company mergers or takeovers.

The Assumptions That Are Made

The rules of a fund define the benefits and therefore define the obligations of the fund and the resultant costs. Rules alone are not sufficient for establishing the financial soundness of a fund. Other factors need to be included. These are mentioned under the assumption section that follows.

Investigation of past experience

Before proceeding with a valuation, there us need to check how the fund has performed based on previous valuations. This will assist in finding out how the fund has behaved differently from the previous assumption. This investigation into the experience of the fund is necessary for the following reasons.

* it highlights major deviations and this can be compared with known events, for example, if withdrawals appear normal following a huge retrenchment program. Actual experience is investigated with the knowledge of existing information;
* it provides useful insights in the setting of assumptions, especially the demographic assumptions;
* it highlights existence of possibilities of major sources of surplus or strain might result;
* the calculated figure for actual investment performance is an indicator of the success, or otherwise, of the investment manager.

The Assumptions

Following the outcomes of the investigation of the fund performance, the actuary will also use his/her own experience and judgement on setting the assumptions for a current valuation. The principles listed below are the guideline for.

The general principles which apply to the setting of assumptions are as follows:

* events which do not affect the financial position of the fund should be ignored, for example, retirement with an actuarially equivalent pension which has a neutral effect;
* in the case of economic assumptions, the absolute level of these assumptions is less significant than their inter-relationship. For instance, assumptions of 6% interest and 4% salary escalations would yield a very similar result to assumptions of 15% interest and 13% salary escalations;
* most economic assumptions would be set by reference to the economy as a whole, rather than the individual experience of the fund. For example, if a fund achieves a particularly good investment performance over an inter-valuation period, this should not be held to imply that it will continue to achieve superior performance results in the future;
* demographic assumptions may relate to the individual experience of the fund, provided that the fund is large enough for its own experience to be taken into account. As an extreme case, if 1 member of a 10-member fund died in a year it would not be reasonable to assume that 10% of the membership will die in service every year. For larger funds the individual experience may, however, highlight features of the industry wherein the members are active, employer policy and/or fund membership which might reasonably be taken into account;
* minor assumptions or problems which have very little effect on a fund but which would add greatly to the complexity of the valuation, if taken into account, would probably be ignored. An example might be the differing future family statistics dependent on current age, current marital status of the members. (IISA, 2011).

Assumptions fall into two main categories namely; economic and demographic assumptions.

Economic Assumptions

Economic assumptions include:

* interest rate for discounting future cash flows
* rate of inflation in the future
* rate of increase in salaries based on inflation and performance increments
* rate of increase in pensions in payment
* rate of increase in pension benefits for deferred pensioners
* rate of increase in state pension benefits
* rate of increase in dividends/rental income from asset
* the rate of investment return which the fund will earn on its assets in the future;

Demographic Assumptions

Demographic assumptions include the following:

* rates of mortality, in respect of active members, pensioners, spouses and other dependants;
* rates of withdrawal, which could be sub-divided into rates in respect of different types of withdrawals;
* rates of early retirement, including ill health early retirement;
* rates of salary increase due to promotion, which comes about independently of

inflation;

* family statistics, such as proportions married, spouses’ ages, numbers and ages of children;
* rates of disability prior to retirement, regardless of whether the benefit is insured or not;
* rates of death after retirement, especially if there are no guarantees with pension

benefits; and

* the rate at which new entrants join the fund.

Other assumptions will also need to be made about the benefits to be provided on a complete scheme discontinuance. 

Even if the same assumptions are utilised in a valuation, if different values are attached to each fund based on its unique features and experience, different outcomes will be achieved.

Assembly and maintenance of data

A valuation by an actuary needs the following information about member of the fund.

* membership changes;
* new entrants;
* number of deaths;
* pensioners; and
* withdrawals.

In order that an investigation and actuarial valuation of a pension scheme can be carried out, certain data is required. This data is imperative for an effective valuation and includes the following:

* latest copy of the trust deed and rules. The trust defines how the fund function in all respects and therefore forms a critical base when a valuation is being considered. Variations form previous valuations must be incorporated in the current fund rules;
* the accounts of the fund incorporating revenue statements, as well as lists of assets held at this and the previous valuation date. Of interest should be the progression of the fund from the previous year or valuation. Tracking this movement can be very informative and useful in formulating relevant figures;
* the previous valuation report;
* details of all persons who fell into one or more categories of membership, such as active, deferred pensioner, surviving spouse pensioner, at any time since the previous valuation.
* The data on active members and movements must include:
  + membership number;
  + date of birth;
  + gender;
  + the dates of birth and gender of family members;
  + salary at different dates between this and the previous valuation,
  + membership categories
  + dates of joining or leaving the fund, details of any benefits paid;
* information concerning members and pensioners in a form suitable for processing by a computer;
* details of any annuities paid or purchased externally.

Socio-Economic factors affecting pension and pension valuations

1. Effect of longevity on solvency

The longer people are living, the longer pension funds need to continue with pay-outs. On the flipside, it might mean that members are retiring later than the normal retirement age. This leads to more accumulation of contributions and growth in benefits.

1. Future contribution rates

Both contribution rates by employers and employees will directly impact the rate at which benefits will be accumulated in a fund. Increasingly, there has been pressure on members to increase their contribution levels in order to meet a certain level of benefits that is adequate to replace their income in retirement. Tax incentives in that direction if taken advantage of will result in higher benefits as well as higher reasonable benefit expectations by members.

1. Effect of HIV/AIDS on solvency

There will be more exits than anticipated and that may put the risk of insolvency at a higher level. Where a fund is defined benefit, it might result in higher employer contributions which may not be sustainable.

Effects of changes in labour market on solvency

Unionization and cost to company as well as contract-based employment practice will also influence fund solvency. Increased unionization and labour unions power results in higher benefits being awarded by employers and also increases in salaries which naturally escalates the pension fund benefit. Thus, this leads to more liabilities and higher contribution rates. When employees are working on a contract basis, they normally do not form part of the eligible members to join a pension fun. Also, if employees are on a cost-to-company package, the employee’s liability in terms of contributions to a pension fund is constant. Thus, chances of a fund not meeting its obligations are slim since the liabilities of the fund will be regulated/limited by the cost-to-company.

STEPS IN THE VALUATION PROCESS

They are a number of steps that are needed in the valuation process for the outcomes of the valuation process to be accurate. These steps are provided un the figure below.

###### 7.2 GOVERNANCE OF PENSION FUNDS

## 7.2.0 Requirements of Trustees

Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least 50% of whom the members of the fund shall have the right to elect. The composition of the board shall at all times comply with the requirements of the rules of the fund and any vacancy on such board shall be filled within such period as prescribed. Further, the constitution of a board, the election procedure of the members mentioned in that subsection, the appointment and terms of office of the members, the procedures at meetings, the voting rights of members, the quorum for a meeting, the breaking of deadlocks and the powers of the board shall be set out in the rules of the fund. This is on condition that if a board consists of four members or less, all the members shall constitute a quorum at a meeting.

A board member appointed or elected in accordance with the requirements in the above paragraph, must attain such levels of skills and training as may be prescribed by the registrar by notice in the Gazette, within six months from the date of the board member’s appointment.

It is not enough to acquire skills and training; board members must retain the prescribed levels of skills and training throughout their term of appointment.

A board member must within 21 days of removal as board member for reasons other than the expiration of that board member’s term of appointment or voluntary resignation, submit a written report to the registrar detailing the board member’s perceived reasons for the termination. On becoming aware of any material matter relating to the affairs of the pension fund which, in the opinion of the board member, may seriously prejudice the financial viability of the fund or its members, the board member must inform the registrar thereof in writing.

7.2.1 Duties and responsibilities of Board

The duties of a board shall be to:

1. ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passed by the board;
2. ensure that proper control systems are employed by or on behalf of the board;
3. ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed;
4. take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;
5. obtain expert advice on matters where board members may lack sufficient expertise;
6. ensure that the rules and the operation and administration of the fund comply with this Act, the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and all other applicable laws;
7. comply with any other prescribed requirements.

The board may, in writing and in accordance with a system of delegation set out in the rules, delegate any of its functions under this Act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine. Where a board elects to delegates any functions, the board is not divested or relieved of that function delegated and may withdraw the delegation at any time.

7.2.2 Liability of Board Member

In any proceedings against a board member in terms of the PFA, other than for wilful misconduct or wilful breach of trust, the court may relieve the board member from any liability, either wholly or partly, on terms that the court considers just. Such a relief will be granted if it appears to the court that the board member had acted independently, honestly and reasonably. After having regard to all the circumstances of the case, including those connected with the appointment of the board member, if it would be fair to excuse the board member then the board member may be exempted of liability.

7.2.3 Role of Principal Officer

It is mandatory that every registered fund shall have a principal executive officer. The principal officer of a registered fund shall be an individual who is resident in the Republic, and if the principal officer is absent from the Republic or unable for any reason to discharge any duty imposed upon the principal officer by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person to be its principal officer within such period as may be prescribed by the registrar, after the commencement of a continuing absence or inability to discharge any duty by the principal officer.  A registered fund may appoint a deputy principal officer. The principal officer may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer’s functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the principal officer must determine. If the principal officer delegates any function to the deputy principal officer, the principal officer is not divested or relieved of that delegated function and the principal officer may withdraw the delegation at any time.

In instances where a fund has appointed a deputy principal officer, the deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act, until the fund formally in the manner directed in its rules appoints a new principal officer.

Every fund must within 30 days after the registration of a fund or within 30 days after the appointment of a principal officer give the registrar written notice of the appointment by furnishing the registrar with the prescribed information in respect of the appointee.

Despite anything to the contrary in any law or in any agreement, the appointment by a fund of a principal officer is subject to the condition that the appointment may be terminated under if the registrar is of the view that the principal is no longer fit and proper and the fund must make any appointment subject to this condition.

The registrar, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), may, if the registrar reasonably believes that a principal officer is not, or is no longer, a fit and proper person to hold that office, or if it is not in the public interest that the principal officer holds or continues to hold such office, object to the appointment of a principal officer, stating the grounds for the objection, and provide such to the chairperson of the board and to the appointee. When the registrar objects to an appointment for the aforementioned reasons, the board must terminate the appointment within 30 days of the registrar informing the board of the finalisation of the processes and procedures provided for in the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

The registrar may for purposes of assessing if a principal officer is not, or is no longer, a fit and proper person, have regard to:

1. the competence and soundness of judgment of the person for the fulfilment of the responsibilities of the particular office and type of fund;
2. the diligence with which the person concerned is likely to fulfil those responsibilities;
3. previous conduct and activities of the person in business or financial matters; and
4. any evidence that the person was involved in any of the following reasons in the figure below:

A principal officer of a fund must within 21 days of his or her appointment being terminated, other than where the registrar removes them due to failure to meet fit and proper requirements, submit a written report to the registrar detailing the principal officer’s perceived reasons for the termination.  On becoming aware of any matter relating to the affairs of the pension fund which, in the opinion of the principal officer, may prejudice the fund or its members, must inform the registrar of that matter in writing.

7.2.4 Role of Registrar

The registrar is the regulator of pension, retirement annuity and provident funds. They are responsible for registration, approval of rules, reporting, valuations, inspections, winding up and dissolution of funds.

7.2.5 Roles and duties of Administrator

**Restrictions on administration of pension funds**

No person shall administer on behalf of a pension fund the receipt of contributions or the disposition of benefits provided for in the rules of the fund, unless such person has been approved by the registrar and continuously complies with such conditions as may be prescribed. Any application for approval of an administrator shall:

* be made in the prescribed manner;
* be accompanied by the prescribed fee; and
* contain such information as may be prescribed by the registrar in order to satisfy the registrar that the applicant complies with the requirements for a fit and proper administrator prescribed by notice in the *Gazette*, including information in respect of:

1. personal character qualities of honesty and integrity;
2. the competence and operational ability of the applicant to fulfil the responsibilities imposed by this Act;
3. the applicant’s financial soundness; and
4. any other requirements that may be prescribed.

The registrar may -

* require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and
* take into consideration any other information regarding the applicant, derived from any source, including any other regulatory or supervisory authority, if such information is disclosed to the applicant and the applicant is given reasonable opportunity to respond.

Approval may be limited to the performance of specified functions.

If the registrar deems it desirable in the public interest the registrar may on such conditions, to such extent and in such manner as it is deemed fit, exempt any person or category of persons from certain provisions, and may at any time revoke or amend any such exemption in a similar manner.

An administrator contemplated must:

1. endeavour to avoid conflict between the interests of the administrator and the duties owed to the fund, and any conflict of interest or potential conflict of interest must be disclosed by the administrator to the board setting out full particulars of how such conflict will be managed;
2. administer the fund in a responsible manner;
3. keep proper records;
4. employ adequately trained staff and ensure that they are properly supervised;
5. have well-defined compliance procedures;
6. maintain the prescribed financial resources to meet its commitments and to manage the risks to which the fund is exposed;
7. furnish the registrar with such information as requested by the registrar where such request is reasonable, the purpose for the request is disclosed and reasonable notice is given to the administrator in order to meet the request;
8. within a reasonable time provide a fund with information pertaining to the fund that the administrator has in its possession or under its control as requested by the fund in an electronic format capable of manipulation by the fund or in any other format if the information pertaining to the fund is not available in electronic format.

If the registrar has reasonable grounds to consider that the interests of the members of a fund or of the public so require, the registrar may -

* direct the administrator to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs that has come to the knowledge of the registrar: Provided that the registrar may not may an order contemplated in [section 6D](https://discover.sabinet.co.za/webx/access/netlaw/28_2001_financial_institutions_protection_of_funds_act.htm#section6D)(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);
* direct -
* the administrator to withdraw from the administration of the fund, whereupon the board of the fund must in accordance with the registrar’s directions, but subject to this Act and the rules of the fund, arrange for the administration of the fund to be taken over by another administrator or person;
* that the costs of the other administrator or person be defrayed from the financial resources maintained; or

Suspend or withdraw the approval granted to the administrator on such conditions and for such period as the registrar deems fit, provided that where an administrator’s approval is suspended, the registrar may permit the administrator to continue to provide services to the funds under its administration subsequent to the date of the suspension, but it may not enter into an agreement to provide any new or additional services to any fund while the suspension is in force.

All records, documentation and information relating to the administration of a fund, its members and former members that are held by an administrator or is under an administrator’s control, is the property of the fund, including information that the administrator, in the course and scope of its work as administrator or former administrator of the fund, created or came to possess or control.

An administrator may not destroy or otherwise dispose of any information above without the consent of the fund; and must maintain that information in an orderly format. Before taking any action to suspend or withdraw the approval of an administrator, the registrar must inform the administrator and the board of the fund of the proposed action and grounds therefor, and afford them a reasonable opportunity to be heard. After hearing the response of the administrator or fund, the registrar will decide to suspend or not to suspend. Where a decision to suspend or withdraw the approval of the administrator is made, the registrar may through appropriate media make known the suspension or withdrawal of an approval if it is in the public interest.

When an administrator becomes aware of any material matter relating to the affairs of a fund, which in the opinion of the administrator may prejudice the fund or its members, the administrator must inform the registrar of that matter in writing without undue delay.

7.2.6 Role of Pensions Funds Adjudicator

**Ombud scheme**

The Ombud scheme in relation to complaints regulated in terms of this Chapter is declared to be a statutory Ombud scheme for the purposes of the Financial Sector Regulation Act.

**Submission and consideration of complaints**

Notwithstanding the rules of any fund, a complainant may lodge a written complaint with a fund for consideration by the board of the fund. A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof. If the complainant is not satisfied with the reply form the fund, or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator. Subject to the three-year prescription period requirements, the Adjudicator may on good cause shown by any affected party extend a period specified above before or after expiry of that period; or condone non-compliance with any time limit specified.

**Establishment of Office of Pension Funds Adjudicator**

This office is established in terms of the PFA. It is an office known as the Office of the Pension Funds Adjudicator. The functions of the Office shall be performed by the Pension Funds Adjudicator.

**Appointment of Adjudicator**

The Minister shall, appoint:

* A person to the office of Adjudicator;
* One or more persons to the office of Deputy Adjudicator; and
* When deemed necessary, an Acting Adjudicator.

No person shall be appointed as Adjudicator, Deputy Adjudicator or Acting Adjudicator unless he or she is qualified to be admitted to practice as an advocate under the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or as an attorney under the Attorneys Act 1979 (Act No. 53 of 1979), and:

* For an uninterrupted period of at least 10 years practised as an advocate or an attorney; or
* For an uninterrupted period of at least 10 years was involved in the tuition of law and also practised as an advocate or attorney for such period as renders him or her suitable for appointment as adjudicator, deputy adjudicator or acting adjudicator; or
* Possesses such other experience as renders him or her suitable for appointment as adjudicator, deputy adjudicator or acting adjudicator.

The Adjudicator and Deputy Adjudicator shall be appointed by the Minister for a period of no more than three years and may be reappointed on expiry of his or her term of office. The Adjudicator and Deputy Adjudicator may at any time resign as Adjudicator or Deputy Adjudicator by tendering his or her resignation in writing to the Minister: Provided that the resignation shall be addressed to the Minister at least three calendar months prior to the date on which the Adjudicator or Deputy Adjudicator wishes to vacate his or her office, unless the Minister allows a shorter period. The Minister may remove the Adjudicator or Deputy Adjudicator from office on the grounds of misbehaviour, incapacity or incompetence, after consultation with the Financial Services Board,

In the event of the resignation, removal or expiry of the term of office of the Adjudicator, the Minister may appoint an Acting Adjudicator to act as Adjudicator until a competent person is appointed.   An Acting Adjudicator has all the powers and must perform all the duties of the Adjudicator.

**Objectives of Adjudicator**

The main object of the Adjudicator shall be to dispose of complaints lodged in terms of section 30A (3) of this Act, and complaints for which the Adjudicator is designated in terms of section 211 of the Financial Sector Regulation Act**.** In disposing of complaints, the Adjudicator must do the following:

**Disposal of complaints**

In order to achieve his or her main object, the Adjudicator:

* shall investigate any complaint and may make the order which any court of law may make;
* may, if it is expedient and prior to investigating a complaint, require any complainant first to approach an organization established for the purpose of resolving disputes in the pension funds industry or part thereof, and approved by the registrar.

Any complaint dealt by the adjudicator shall be recorded by the Adjudicator and shall, for purposes of prescription period requirements, be deemed to be a receipt of a complaint.

If the complaint is not resolved, the complainant may again lodge the complaint with the Adjudicator, who shall deal with the matter according to the requirements of the PFA.

**Opportunity to comment**

When the Adjudicator intends to conduct an investigation into a complaint, he or she shall afford the fund or person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.

Parties to complaint

The parties to a complaint shall be

1. the complainant;
2. the fund or person against whom the complaint is directed;
3. any person who has applied to the Adjudicator to be made a party and who has a sufficient interest in the matter to be made a party to the complaint;
4. any other person whom the Adjudicator believes has a sufficient interest in the matter to be made a party to the complaint.

**Jurisdiction and prescription**

The Adjudicator shall, subject to [prescription](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section30I) periods, investigate a complaint notwithstanding that the complaint relates to a matter which arose prior to the commencement of the Pension Funds Amendment Act, 1995. S/he shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in any civil court in respect of a matter which would constitute the subject matter of the investigation. Receipt of a complaint by the Adjudicator shall interrupt any running of prescription in terms of the [Prescription Act, 1969](https://discover.sabinet.co.za/webx/access/netlaw/68_1969_prescription_act.htm) (Act No. 68 of 1969), or the rules of the fund in question. The Adjudicator shall not have jurisdiction over complaints in connection with a scheme for the apportionment of which relate to the decisions taken by the board or any stakeholder in the fund or any specialist tribunal convened.

**Time limit for lodging of complaints**

The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing. The provisions of the Prescription Act, 1969 (Act No. 68 of 1969), relating to a debt apply in respect of the calculation of the three-year period referred herein.

**Procedure for conducting investigation**

The Adjudicator may follow any procedure which he or she considers appropriate in conducting an investigation, including procedures in an inquisitorial manner.   Notwithstanding section 22 of the Financial Services Board Act, 1990 (Act 97/90), the Adjudicator may obtain copies of any document or correspondence contained in the files of the registrar.

(3)     [Sections 1](https://discover.sabinet.co.za/webx/access/netlaw/8_1947_commissions_act.htm#section1), [2](https://discover.sabinet.co.za/webx/access/netlaw/8_1947_commissions_act.htm#section2), [3](https://discover.sabinet.co.za/webx/access/netlaw/8_1947_commissions_act.htm#section3), [4](https://discover.sabinet.co.za/webx/access/netlaw/8_1947_commissions_act.htm#section4) and [6](https://discover.sabinet.co.za/webx/access/netlaw/8_1947_commissions_act.htm#section6) of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* to the Adjudicator. No party shall be entitled to legal representation at proceedings before the Adjudicator.

**Record of proceedings**

The Adjudicator shall keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of the proceedings relating to the adjudication of a complaint and the evidence given. Any member of the public may obtain a readable copy of the record on payment of a fee determined by the Adjudicator. The registrar may, for purposes of the performance of his or her functions in terms of this or any other Act, rely on a copy of the record without the need of any further proof. After the Adjudicator has completed an investigation, he or she shall send a statement containing his or her determination and the reasons therefor, signed by him or her, to all parties concerned as well as to the clerk or registrar of the court which would have had jurisdiction had the matter been heard by a court.

 Where a determination consists of an obligation to pay an amount of money, the debt shall bear interest as from the date and at the rate determined by the Adjudicator.

**Enforceability of determination**

Any determination of the Adjudicator shall be deemed to be a civil judgment of any court of law had the matter in question been heard by such court, and shall be so noted by the clerk or the registrar of the court, as the case may be. A writ or warrant of execution may be issued by the clerk or the registrar of the court in question and executed by the sheriff of such court after expiration of a period of six weeks after the date of the determination, on condition that no application contemplated in section 30P (High Court appeal by an aggrieved party) has been lodged.

**Access to court**

Any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint.  The division of the High Court handling an appeal may consider the merits of the complaint made to the Adjudicator and on which the Adjudicator’s determination was based, and may make any order it deems fit. This, shall not affect the court’s power to decide that sufficient evidence has been cited as evidence on which a decision can be arrived at, and to order that no further evidence shall be adduced.

**Consequences of non-compliance**

Offences and penalties

Any person who -

* insults the Adjudicator;
* anticipates a determination of the Adjudicator in any manner calculated to influence the determination;
* wilfully interrupts any proceedings conducted by the Adjudicator or misbehaves himself or herself in any manner in the place where the proceedings are being held;
* in connection with a complaint does anything which, if done before a court of law, would have constituted contempt of court,

shall be guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

**PFA Penalties**

Any person who:

* contravenes or fails to comply with [section 4,](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section4) [10](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section10), [13A](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section13A), [13B](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section13B) or [31](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section31);
* induces or attempts to induce any person to become a member of, or to contribute to, a fund not registered under this Act; or
* in any application in terms of this Act deliberately makes a misleading, false or deceptive statement or conceals any material fact,

is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000.00 or such other amount prescribed by the registrar for every day during which the failure continues.

Before imposing a penalty, the registrar must in writing:

* Inform the administrator, pension fund or third party of his or her intention to impose a penalty;
* Specify the particulars of the alleged non-compliance;
* Provide reasons for the penalty intended to be imposed;
* Specify the amount of the penalty intended to be imposed;
* Invite interested persons to make representations within a period specified by the registrar.

If the registrar after consideration of representations made decides to impose an administrative penalty, he or she must by written notice inform the administrator, pension fund or third party that it may, within 30 days after the date of the notice, pay the penalty or lodge an appeal in accordance with section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990). If an administrator, pension fund or third party fails to pay an administrative penalty the registrar may by way of civil action in a competent court recover such administrative penalty.

**Use of pension fund circular by FSCA**

The Commissioner of the FSCA, publishes circulars from time to time in which they provide clarity, guidance or cancel some previous circulars. It must be born in mind that the circulars are not mere suggestions but are supposed to be followed by the affected persons.

For a complete list of the circulars for pension funds, visit the FSCA website.

###### 7.3 FINANCIAL OPERATIONS

7.3.1 Transfer of a member to Preservation Fund

Before the existence of preservation funds, a person who wished to withdraw before retirement from a pension or provident fund or who was a member of a terminating fund had the following options:

* to remain a paid-up member of the employer’s fund, if so, permitted by the rules, or a paid-up member of a dormant fund;
* to take the withdrawal benefit in cash; or
* to transfer the benefit directly to a retirement annuity fund with no tax consequences. This option precluded any access to the retirement funds before the age of 55.

The general response of the insurance industry to the shortcomings of the aforementioned options was the introduction of pension and provident preservation funds. These are pension and provident funds, to which members of existing pension or provident funds can transfer their accumulated benefits under certain circumstances. They are not for new members who are seeking to build retirement benefits.

The definitions of Pension Preservation Fund and Provident Preservation Fund were introduced into the Income Tax Act in 2008. These funds are then available for the preservation and continued growth of the retirement benefits of employees who have withdrawn from their own pension or provident funds as a result of having resigned from their employment, having been retrenched or having been faced with the actual winding up of the pension or provident fund that they may have belonged to.

A person may transfer from a pension fund to a pension preservation fund or from a provident fund to a provident preservation fund. No provision exists, however, for a direct tax-free transfer from a pension fund to a provident preservation fund.

In the past, the employer with whom the employee is terminating employment had to become a participating employer in respect of the preservation fund in order for the employee to be eligible to transfer his benefits to the preservation fund. This rule was relaxed in 2008 to allow members full choice of preservation fund.

In essence the advantages that are enjoyed by a person who transfers from a pension or provident fund to an equivalent preservation fund are as follows:

* no tax liability on transfer;
* one withdrawal from the preservation fund is allowed, either partially or total, prior to retirement age. A member transferring his benefits from a pension or provident fund to an equivalent preservation fund must, however, understand clearly that the total value of benefits due must be transferred. The only deductions that may be made from the lump sum to be transferred are for any obligations due in terms of Section 37D of the Pension Funds Act. Once these deductions have been made the balance of the lump sum may be paid into the preservation fund. However, the deduction will be considered the once-off lump sum withdrawal and no further withdrawal will be permitted. In all other case the full benefit must be transferred. If this is not done the preservation fund is not permitted to accept the transfer;
* any money due to a non-member spouse in terms of a divorce agreement, as well as the tax thereon, may be paid out without affecting the one withdrawal;
* where a member owes a debt to the fund that he is leaving, such as a housing loan, and the loan is redeemed, with only the balance of his withdrawal benefit being transferred to the preservation fund, this redemption will also be deemed to be the one withdrawal from the preservation fund. A member who chooses to split his withdrawal benefit and arranges for a portion to be paid to a retirement annuity fund may do so. However, this too will be considered his one withdrawal;
* the eventual retirement from the fund is not linked to retirement from a specific employment position.

In the past, the person’s years of membership in the fund from which the benefits have been transferred would have been taken into account when determining the tax-free amount of the lump-sum that may be taken from the preservation fun on death or retirement. With the simplification of the Second Schedule in 2007, a member who has attained the age of 55 years may become entitled to a retirement benefit from a preservation fund even though he may not have reached retirement age with a current employer.

7.3.2 Liquidation of Retirement

7.3.2.1 Enquiries by Registrar, applications to court, cancellation or suspension of registration and dissolution of funds.

**Enquiries**

The registrar may address enquiries to any registered fund, approved administrator or third party in relation to any matter connected with the business or transactions of a fund or approved administrator, and it shall be the duty of the fund, approved administrator or third party to reply in writing thereto within a period of 30 days as from the date upon which the registrar addressed the enquiry to it or within such further period as the registrar may allow.

**Registrar may intervene in management of fund**

Without limiting what a directive of a financial sector regulator may include, the Authority may, through a directive, direct that the rules of a fund, including rules relating to the appointment, powers, remuneration (if any) and removal of the board, be amended if the fund-

(a)     is not in a sound financial condition or does not comply with the provisions of this Act or the regulations affecting the financial soundness of the fund;

(b)     has failed to act in accordance with the provisions of [financial](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section18) soundness; or

(c)     is not being managed in accordance with this Act or the rules of the fund.

Where a fund has no properly constituted board and has failed to constitute a board after 90 days written notice by the registrar, or where a fund cannot constitute a board properly or where a board fails to comply with any requirements prescribed by the registrar, the registrar may, notwithstanding the rules of the fund, at the cost of the fund:

* appoint so many persons as may be appropriate to the board of the fund or appoint so many persons as may be necessary to make up the full complement or quorum of the board; and
* assign to such board such specific duties as the registrar deems expedient.

A board constituted as above holds office until the registrar is satisfied that the fund has constituted a valid board in terms the PFA and the registrar has relieved the former board in writing of its duties. If the registrar has reason to believe that a board member is not or is no longer fit and proper to hold office, the registrar may, after giving the board member a reasonable opportunity to be heard, direct the board member to vacate office; and replace that board member with another person for the period and subject to the conditions that the registrar may prescribe.

In the circumstances described in above, the fund shall cause the vacancy to be filled in accordance with the provisions of section 7A and the rules of the fund, failing which the registrar may adopt the course where s/he appoints a suitable person.

**Cancellation or suspension of registration**

The registrar shall cancel the registration of a fund on proof to his satisfaction that the fund has ceased to exist; or if the registrar and the fund are agreed that the fund was registered by mistake in circumstances not amounting to fraud. Where a fund was registered by mistake and not by fraud, the registrar may suspend the registration in lieu of cancelling it, if he is satisfied that by so doing the fund will be furnished with an opportunity of rectifying the said mistake to the satisfaction of the registrar, the registrar shall thereupon reinstate the said registration, as from the date of suspension but if the mistake is not rectified within a period specified by the registrar he shall cancel the registration of the fund.

The registrar may apply to the court for the cancellation or suspension of the registration of a fund if the fund has wilfully and after notice from the registrar violated any provision of this Act; or the registrar is of opinion, as a result of an investigation under the PFA, that the registration should be cancelled or suspended. The court may cancel the registration of the fund or suspend such registration for such period as it thinks fit, and may attach to such cancellation or suspension such conditions as it thinks desirable, or may make any other order which in the circumstances it thinks desirable. Unless the court otherwise orders, the costs of the registrar in or in connection with the application shall be paid by the fund and shall be a first charge upon the assets of such fund.

**Voluntary dissolution of fund**

Subject to the provisions of this section, a registered fund may be terminated or dissolved, whether wholly or in part, in the circumstances (if any) specified for that purpose in its rules, and in the manner provided by those rules.   In such an event, the assets of the fund, or, in the case of the partial termination of the fund, those assets of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination (as the case may be), shall, subject to the provisions of this section, be distributed in the manner provided by those rules.

A liquidator shall be appointed in the manner directed by the rules, or, if the rules do not contain directions as to such appointment, by the board, but such appointment shall be subject to the approval of the registrar, and the period of liquidation shall be deemed to commence as from the date of such approval. During such liquidation the provisions of this Act shall continue to apply to such fund as if the liquidator were the board.

The liquidator shall as soon as may be possible, deposit for approval with the registrar the preliminary accounts prescribed, signed and certified as correct by the liquidator and showing the assets and liabilities of the fund asat the commencement of the liquidation as wellas the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members, or, in the case of the partial termination of the fund, the assets and liabilities of the fund attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination.

In discharging the liabilities and contingent liabilities to or in respect of members referred above, full recognition shall be accorded to:

* the rights and reasonable benefit expectations of the persons concerned;
* additional benefits the payment of which by the fund has become an established practice;
* the payment of minimum benefits.

If deemed fit, the registrar may direct the liquidator to furnish a report, drawn up by an independent valuator or other competent person nominated by the registrar on the preliminary accounts. The preliminary accounts and other reports (if any) shall lie open for inspection by interested persons for a period of 30 days at the office of the registrar and at the registered office of the fund, and where the registered office of the fund is not in the district in which the office of the registrar is situate, at the office of the magistrate of the district in which the registered office of the fund is situate.

The registrar shall direct the liquidator to publish a notice, at the cost of such a fund, in the *Gazette* and in a newspaper circulating in the district in which the registered office of the fund is situated and in which is stated the period during which and the places at which the preliminary accounts and report (if any) shall lie open for inspection by interested persons. Such notice shall call upon any interested persons who have any objection to the preliminary accounts and report (if any) to lodge their objections in writing with the registrar within the period stated in the notice, which period shall not be shorter than 14 days, calculated as from the last day on which those documents lie open for inspection.

If, in the case of a particular fund or a particular participating employer whose withdrawal from the fund has caused its partial termination, the registrar is satisfied on reasonable grounds that there exist special circumstances which justify exemption from the provisions regarding publication of the winding up of a fund, the registrar, having due regard to the rights of interested persons, may exempt the fund from all or any of the provisions of those subsections if deemed expedient in the circumstances. Such an exemption shall be subject to the conditions determined from time to time by the registrar by notice in the *Gazette*.

If no objections are lodged with the registrar, the registrar shall direct the liquidator to complete the liquidation. If objections are lodged with the registrar, the registrar may, after considering the said objections, direct the liquidator to amend the preliminary accounts or give such other directions relating to the liquidation as he thinks fit, provided such directions are not inconsistent with the rules of the fund or this section, and any such direction shall be binding upon the liquidator.

The liquidator shall, within fourteen days of the receipt by him of any direction of the registrar, post a copy thereof to every member, shareholder and creditor of the fund, and the liquidator or any person aggrieved by any such direction of the registrar may apply by motion to the court within twenty-eight days after such direction has been communicated to the liquidator, for an order to set aside the registrar’s decision, and the court may confirm the said decision or make such order as it thinks fit.

If the registrar is satisfied that his directions, in so far as they have not been varied or set aside by the court, have been given effect to, he shall direct the liquidator to complete the liquidation. Within 30 days after completion of the liquidation, the liquidator shall lodge with the registrar the final accounts prescribed signed and certified as correct by the liquidator and showing:

* the assets and liabilities of the fund, as at the commencement of the liquidation, or, in the case of the partial termination of the fund, those assets and liabilities of the fund which, at the commencement of the liquidation, are attributable to the members connected to the participating employer whose withdrawal from the fund has caused its partial termination; and
* the manner in which the assets have been realized and the liabilities (including any liabilities and contingent liabilities to or in respect of members) have been discharged.

Notwithstanding any provision to the contrary in this section, the registrar, on good cause shown, may authorise the liquidator, subject to any conditions that the registrar may impose and prior to the submission of the final accounts and report (if any):

* to make payment of any amounts to the members and beneficiaries of a fund; or
* where the liquidator is satisfied that benefits are and will remain unclaimed benefits, to transfer such benefits to an unclaimed benefit fund.

The provisions of the Companies Act shall apply with the necessary changes to the dissolution of a fund in terms of this section, in so far as the said provisions relate to a voluntary winding-up in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provisions of this Act. All claims against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit. The registrar, if satisfied that the liquidator’s accounts in respect of the fund are correct and that the liquidation has been completed, shall cancel the registration of the fund, in the case where the fund is wholly terminated, whereupon the fund shall be dissolved. Alternatively, in the case of the partial dissolution of the fund, only confirm the completion of the partial liquidation of the fund.

The registrar may prescribe the circumstances under which a fund may be exempted from the provisions of this section and must prescribe the requirements to be complied with for such exemption to be granted.



The provisions of this section do not apply to a beneficiary fund. The registrar may prescribe matters that must be provided for in the rules of a beneficiary fund regarding voluntary dissolution and the transfer of remaining assets on voluntary dissolution.

**Remuneration of liquidator**

The registrar shall prescribe the services for which remuneration shall be payable to the liquidator of a fund which is terminated or dissolved voluntarily, whether wholly or in part, and prescribe the tariff of remuneration in respect of those services. Notwithstanding the previously mentioned requirement, the registrar may reduce or increase the liquidator’s remuneration if satisfied on reasonable grounds that there is good reason for doing so, and the registrar may disallow the liquidator’s remuneration because of any failure or delay to carry out the liquidator’s duties or to carry them out properly and effectively.

**Winding-up by the court**

If the registrar is of the opinion that a fund is in such an unsound financial condition that any scheme as contemplated by [section eighteen](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section18) would be ineffective, impracticable or unsatisfactory, he may apply to the court for an order that the whole or any part of the business of the fund be wound up.

Any creditor of a registered fund who is unable to obtain payment of his claim after recourse to the ordinary process of law may apply to the court for an order that the whole or any part of the business of the fund be wound up: Provided that a creditor shall not make application except by leave of the court, and the court shall not grant such leave unless the creditor has given security to an amount specified by the court for the payment of the costs of the application and of any opposition thereto, and has established prima facie the desirability of the order for which he wishes to apply.

The court may make an order as per above requirement subject to the provisions contained in the following subsections:

* The provisions of the Companies Act shall apply with the necessary changes to a winding-up under this section, in so far as the said provisions refer to a winding-up by the court in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provision of this Act or with any directions issued by the court under this section.
* The court may direct that the aforementioned provisions of the Companies Act may, for the purposes of the winding-up be suitably modified in any particular case if, having regard to the circumstances of the fund concerned, it would be impracticable or unnecessarily onerous to comply with the said provisions in every particular case, and that in spite of such modification, the interests of the creditors of the fund will be sufficiently safeguarded.
* In the winding-up of the whole or any part of the business of a fund, the value of the interests of the members or of the various groups of members of the fund, and the value of any benefits due by the fund to persons other than members, shall be ascertained in such manner as the court may direct.
* In giving any order or direction under this section the court shall have regard to any recommendation which may have been made by the fund’s valuator, if any, and accord full recognition to the rights and reasonable benefit expectations of the persons concerned and to additional benefits the payment of which by the fund has become an established practice.
* Without prejudice to the powers of the Master who has jurisdiction in respect of any winding-up, the liquidator appointed in terms of subsection (4) shall give the registrar such information as the latter may require from time to time and shall, whenever he intends to apply to the court for instructions, report accordingly to the registrar who shall be entitled to be heard personally or by a representative at any such application, and may himself make an application to the court with reference to the winding-up.
* If, where the court has ordered that the whole business of the fund be wound up, the registrar is satisfied that the winding-up of such a fund has been completed, he shall cancel the registration of the fund and thereupon the fund shall be deemed to be dissolved.

**Winding-up of unregistered pension fund**

If a person carries on the business of a pension fund which is not registered under this Act, the registrar may apply to the court for the sequestration or liquidation of that person and the unregistered fund, whether or not the person or fund is solvent, in accordance with-

(a)     the Insolvency Act, 1936 (Act No. 24 of 1936);

(b)     the Companies Act;

(c)     the Close Corporations Act, 1984 (Act No. 68 of 1984); or

(d)     the law under which that person is incorporated.

In deciding an application contemplated above, the court may take into account whether the sequestration or liquidation of the person or fund concerned is reasonably necessary:

* in order to protect the interests of the members concerned; and
* for the integrity and stability of the financial sector;
* may make an order concerning the manner in which claims may be proved by the members;
* shall appoint as trustee or liquidator a person nominated, and with the powers proposed, by the registrar.

**Special provisions relating to liquidation of funds**

In applying the provisions of the Companies Act:

(a)     the members of a fund shall be treated as deferred creditors, and their claims against the fund in their capacity as members shall not be settled until the debts of ordinary creditors have been paid.

(2)     If a fund has a share capital, the liability of a shareholder in the case of liquidation under the aforementioned sections shall either be limited to the amount (if any) unpaid on any share held by him, or shall be unlimited, according as is provided by the rules of the fund.

(3)     If a registered fund which has not been exempted from actuarial valuation and is liquidated after the date from which minimum individual reserves are payable on cessation of membership, and the fair value of the assets of the fund, less any current liabilities, is less than the sum of the minimum individual reserves payable in respect of the existing members and former members who may participate in the distribution of the assets (with appropriate adjustment for benefits previously paid in the case of former members) and the cost of annuity policies which will provide equivalent pensions for the existing pensioners and deferred pensioners, the shortfall shall represent a debt payable by the employer to the fund: Provided that, where more than one employer participates in the fund, the shortfall shall be distributed amongst such employers in a manner deemed reasonable by the liquidator.

Preparation for audit and submission thereof

Periodic Evaluations (Examples)

Investigations by a valuator

A registered fund shall, once at least in every three years, cause its financial condition to be investigated and reported upon by a valuator, and shall deposit a copy of such a report with the registrar, and shall send a copy of such report or a summary thereof, prepared by the valuator in a form prescribed and signed by the valuator, to every employer participating in the fund.

Such investigation shall be made in respect of the position as at the expiration of a financial year, and such report shall be deposited with the registrar within twelve months from the close of that year. In the case of a fund which is registered on the Commencement date of section 16 of the Financial Institutions Amendment Act, 1984, and which, before that date, has caused its financial condition to be investigated, the first investigation after the said date shall be made in respect of the position as at the expiration of the fifth financial year which is completed after the financial year-end in respect of which the previous investigation was made or as at the expiration of such earlier financial year as the fund may select.

In the case of a fund which is registered on the Commencement date of section 16 of the Financial Institutions Amendment Act, 1984, but which has not, before that date, caused its financial position to be investigated, the first investigation shall be made in respect of the position as at the expiration of the third financial year which is completed after that date or as at the expiration of the fifth financial year which is completed after the registration of the fund, whichever date is the earlier, or as at the expiration of such previous financial year as the fund may select.

In the case of a fund other than a fund mentioned above, the first investigation shall be made in respect of the position as at the expiration of the third financial year which is completed after the date of registration or as at the expiration of such previous financial year as the fund may select.

Notwithstanding anything contained in the preceding subsections, the registrar may, after not less than one month’s notice in writing to any registered fund, require that fund to cause such an investigation to be made in respect of the position as at the expiration of any financial year, if the registrar is of the opinion that an investigation would show that the fund is not in a sound financial condition: Provided that in the case of a fund which is carrying out the terms of a scheme approved by the registrar in terms of section eighteen, the registrar shall not act in accordance with the preceding provisions, unless he is of the opinion that an investigation would show that such scheme is unlikely to accomplish the objects of that section.

If the rules of a fund provide that the benefits which may become payable to a category of members are subject to the discretion of the management of the fund, the registrar shall, on the request of the fund, on good cause shown by any officer of the fund or on the initiative of the registrar, determine what amount or scale of benefits is to be taken into consideration for the purpose of the valuation, and such determination by the registrar shall be binding upon the fund.

The fund shall bear any expenses incurred by the registrar in respect of a matter contemplated above.

Whenever a registered fund deposits with the registrar a copy of a report made by a valuator in terms of this section, it shall also deposit with the registrar a certificate by the board and by the principal officer that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the report was correct and complete in every material respect and, where applicable, that a copy of the report or a summary thereof was sent to every employer participating in the fund.

The provisions of [section 15](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15)(3) in connection with a document relating to the financial position or the revenue or expenditure of a fund referred to therein, shall apply with the necessary changes in respect of a copy of a report deposited with the registrar and which in the opinion of the registrar:

* other than in respect of a report on the valuation of a fund as at its surplus apportionment date, does not correctly reflect its financial condition; or
* in respect of a report on the valuation of a fund as at its surplus apportionment date, does not correctly reflect its financial condition or does not fairly take into consideration the interests of one or more of the stakeholders that may be entitled to participate in a scheme in terms of [section 15B](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15B)(1) based on the result of such report.

**Fund not in a sound financial condition**

If any return under this Act indicates that a registered fund is not in a sound financial condition as determined in accordance with prudential standards, the Authority may, save as provided in [section 29](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section29), direct the fund to submit a scheme setting out the arrangements which have been made, or which it intends to make, to bring the fund into a financially sound condition within such period, and subject to such conditions, as determined by the Authority.

When any return under the PFA indicates a deficiency in a registered fund, the fund shall, within three months from the date of such return, submit a scheme to the registrar setting out the arrangements which have been made or which it is intended to make to eliminate the deficiency, together with a report thereon by a valuator.

If a registrar finds that a scheme submitted in terms of subsection (1) or (1A) is not inconsistent with the provisions of the PFA and is satisfied that the arrangements set out therein should suffice to restore the fund to a financially sound position, he shall approve the scheme. However, if the registrar is not satisfied with the proposed scheme, s/he shall request the fund to make such amendments to the scheme, or to submit such new scheme, as will enable him to be so satisfied, and the fund shall comply with the request within a period prescribed by the registrar, not being less than 30 days from the date of the request, and shall at the same time furnish to the registrar a report on such amendments or such new scheme by the valuator or auditor.

After the approval of the recovery scheme, the fund shall carry out the terms of any scheme as per approval. The registrar may, if he is satisfied that none of the objects of the PFA would be prejudiced, allow the fund to amend such scheme from time to time. If any return deposited with the registrar during the currency of such scheme in terms of the PFA shows, in the opinion of the registrar, that the scheme is unlikely to accomplish the objective restoring the financial soundness of the fund, s/he may withdraw his approval of the scheme, and the fund concerned shall, within three months thereafter, prepare a further scheme, to which the provisions of this section shall apply. In addition, if any such return shows, in the opinion of the registrar, that the financial condition of the fund is no longer unsound, s/he shall communicate with the principal officer of the fund to that effect and on receipt of such communication the obligations of the fund in respect of that scheme shall terminate immediately.

The Authority may at any time, if it is necessary in the interests of the members of a fund, direct that an investigation in terms of [section 16](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section16) or an audit or both an audit and such investigation be conducted into the financial position of a fund generally or with reference to any financial aspect of the fund. The costs pertaining to the audit or investigation contemplated in paragraph (a) shall constitute a first charge on the assets of the fund unless otherwise determined by the registrar.  Following the audit or investigation herein referred a report must, within the time and in the format stipulated by the registrar, be furnished to the registrar and the board.

**Surplus Apportionment**

**Accounts**

Subject to any exemptions, every registered fund shall, within six months as from the expiration of every financial year, furnish to the registrar such statements in regard to its revenue, expenditure and financial position as may be prescribed, duly audited and reported on by the auditor of the fund. Every registered fund shall, when furnishing to the registrar the fund accounts, also furnish to the registrar:

1. a copy of any special report by the auditor relating to any of the activities of the fund during the financial year to which such documents relate;
2. a copy of any annual report that the fund may have issued to its members or shareholders in respect of the said financial year; and
3. a copy of any other statement that the fund may have presented to its members or shareholders in respect of any of its activities during such financial year.

If the registrar is of the opinion that any accounts furnished by a registered fund does not correctly reflect the revenue and expenditure or the financial position (as the case may be) of the fund, he may reject the said document. If documents are rejected, s/he shall notify the fund concerned of the reasons for such rejection and the fund shall be deemed not to have furnished the said document to the registrar. In cases where a fund has been exempted as from the submission of accounts, the registrar may authorise such fund to furnish to him or her, instead of the accounts referred herein, the information prescribed.

**Rights to use of actuarial surplus**

All actuarial surplus in the fund belongs to the fund. Once actuarial surplus is apportioned to either the member surplus account, or the employer surplus account in terms of [sections 15B](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15B) and [15C](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15C), or directly for the benefit of members and former members subject to the uses specified in [section 15D](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15D)(1), members, former members and the employer acquire rights to such actuarial surplus as provided for in this section. After the commencement date, the only portion of the assets of the fund that may be utilised by, or for the benefit of, the employer is any credit balance in the employer surplus account: Provided that the employer may continue a contribution holiday, which the employer was already taking immediately prior to the commencement date, only if the value of any contribution holiday taken by the employer during any period between the commencement date and the surplus apportionment date, as increased or decreased with fund return, over the corresponding period is added to the actuarial surplus to be apportioned at the surplus apportionment date in terms of [section 15B](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15B)(5).Further, any credit balance in the member surplus account must be used for the benefit of members as provided for in [section 15D](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15D).

**Apportionment of existing surplus**

The board of every fund that commenced prior to 7 March 2002 shall submit to the registrar a scheme for the proposed apportionment of any actuarial surplus (in this section referred to as the scheme) plus the details regarding any surplus utilised improperly by the employer as at the effective date of the statutory actuarial valuation of the fund coincident with, or next following, the commencement date. The board shall submit the scheme not later than 18 months after the effective date on that:

1. if the board elects to apportion actuarial surplus at a date earlier than the effective date of the next statutory actuarial valuation, it may do so if the statutory valuation date is advanced to such earlier date and the registrar is satisfied as to the reasons therefore;
2. if the fund is liquidated at a date prior to the effective date of the next statutory actuarial valuation, the effective date of the liquidation shall be the surplus apportionment date;
3. if a category of members of the fund is converted from defined benefit to defined contribution and the effective date of the conversion is earlier than the next statutory actuarial valuation date, the effective date of the conversion shall be the surplus apportionment date and a statutory actuarial valuation is required as at such date; or
4. if the registration of a fund is cancelled and the effective date of cancellation is earlier than the next statutory actuarial valuation date, the effective date of the cancellation shall be the surplus apportionment date.

A scheme shall comply with such conditions as may be prescribed; and may involve:

1. the improvement of benefits to existing members;
2. increases to benefits or transfer values in respect of former members;
3. the crediting of an amount to the member surplus account;
4. the crediting of an amount to the employer surplus account; or
5. any two or more of the matters listed above from (i) to (iv).

The board shall appoint a person to represent the interests of former members in the development of the scheme and such person shall assist the board in identifying former members; communicating proposals to former members and to the funds to which former members transferred; conveying proposals from former members, and the funds to which they transferred, to the board; and collating any objections to the scheme from former members and the funds to which they transferred. This person shall be required to report, in writing to the board, on the adequacy of the steps taken by the board to include former members in terms of deciding the apportionment of actuarial surpluses. Where it was necessary for the board to apply its discretion with regard to the inclusion of former members and the apportionment of actuarial surplus to such former members, whether or not the exercise of such discretion was reasonable taking into account the demands of equity within the bounds of practicality and the circumstances of the particular fund. Such a report must accompany the scheme when it is submitted to the registrar.

The board shall determine who may participate in the apportionment of actuarial surplus, and shall include in such apportionment existing members and any former members who left the fund in the period from 1 January 1980 to the surplus apportionment date: Provided that -

(a)     the board may exclude from participation former members in respect of whom the board satisfies the registrar that insufficient records are available to enable the additional benefits that may be due to such former members to be calculated, after the board has taken reasonable steps to obtain such records from the administrator, to construct such records from the records of the employer, any fund to which former members transferred or a trade union or staff association active in the workplace during this period.

If attempts to obtain former member details do not yield sufficient information, to obtain such records from the potential claimants themselves following an advertisement:

* on a national basis and in the area where the former members used to work; or
* on a more limited basis as approved by the registrar if representations by the fund satisfy the registrar that limited advertisement will be adequate, inviting the former members to come forward with evidence to substantiate their claim, after which advertisement the board should wait at least six months but no longer than nine months before excluding any former members because of a lack of sufficient information to enable the calculations to be performed. Rather than excluding former members whose individual benefits cannot be determined, the board may set aside a portion of the actuarial surplus in a contingency reserve account explicitly established to satisfy claims of former members.

The board shall apportion the actuarial surplus between the various classes of stakeholders whom the board has determined shall participate in the apportionment, following which such portion as is due to the employer shall be credited to the employer surplus account: Provided that the actuarial surplus to be apportioned shall be increased by the amount of actuarial surplus utilised improperly by the employer prior to the surplus apportionment date as determined. Former members shall have the benefits previously paid to them, or the amounts previously transferred on their behalf, increased to the minimum benefit determined as at the date when they left the fund, with such increase adjusted to the surplus apportionment date with fund return over the corresponding period, and pensioners and deferred pensioners shall have their pensions increased to the minimum pension as determined in terms of section 14B(4), as a prior charge on the actuarial surplus to be apportioned. Provided further that, where the actuarial surplus to be apportioned is insufficient to permit such increases after being increased in, the amounts shall be proportioned downwards until the total to be paid to former members, pensioners and deferred pensioners equals the actuarial surplus to be apportioned.

After deducting the cost of the increases to former members, pensioners and deferred pensioners the balance of the actuarial surplus shall be equitably split between existing members, former members and the employer in such proportions as the board shall determine after taking account of the financial history of the fund. This will be on condition that the registrar may prescribe certain methods which, if used, shall be deemed to be equitable. If the amount apportioned to the employer is less than the actuarial surplus utilised improperly by the employer, the shortfall between the surplus apportionment to the employer and the amount of the surplus that they have abused shall represent a debt owed by the employer to the fund and the employer must submit a scheme conforming with the prescribed requirements and repay that debt within a maximum period approved by the registrar.

The board shall determine how, in the case of existing members and former members, the allocated portion of actuarial surplus shall be applied for their benefit, including the crediting of any portion to the members’ surplus accounts or to the members’ individual accounts, as the case may be: Provided further that the board may allocate a portion of the actuarial surplus to be used for former members to a contingency reserve account which will be used to satisfy the claims of former members:

1. who have been identified but who cannot be traced, or;
2. who did not substantiate their claim during the nine-month period following the advertisement but who do so after the end of this period, and;
3. the surplus due to any stakeholder as a result of a surplus apportionment scheme approved by the registrar, shall be increased or decreased with fund return from the date determined until the date the surplus is awarded, paid or allocated.

**Apportionment of future surplus**

The rules may determine any apportionment of actuarial surplus arising in the fund after the surplus apportionment date between the member surplus account, the employer surplus account or directly for the benefit of members and former members subject to the uses specified in [section 15D](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15D) (see next sub-section)(1).

If the rules are silent on the apportionment of actuarial surplus arising after the surplus apportionment date, any apportionment between the member surplus account, the employer surplus account or directly for the benefit of members and former members, subject to the uses specified below shall be determined by the board taking into account the interests of all the stakeholders in the fund: Provided that, notwithstanding anything to the contrary in the rules, neither the employer nor the members may veto/dismiss such apportionment.

**Utilisation of surplus for benefit of members**

Despite anything to the contrary in the rules of a fund but subject to subsection (2), any credit balance in the member surplus account may only be used by the board to:

1. improve benefits for members;
2. where reasonable and equitable, improve the benefits paid to, or the amounts transferred in respect of, former members who exited the fund subsequent to the surplus apportionment date;
3. reduce current contributions due from members; or
4. meet, in full or in part, expenses which would otherwise reduce the proportion of the members’ contributions that are invested for retirement:

Provided that the employer appointed members of the board shall not have a vote in any deliberation over the use of any credit balance in the member surplus account unless the proposal before the board will increase the contribution rate payable by the employer. The credit balance after the apportionment of actuarial surplus as at the surplus apportionment date must be used as specified in the scheme submitted to the Commissioner if the scheme makes provision for the use of such credit balance.

**Utilisation of surplus for benefit of employer**

Notwithstanding anything to the contrary in the rules, a participating employer may require the board to use actuarial surplus allocated to the employer surplus for use by that employer for any of the following purposes, namely:

1. funding a contribution holiday;
2. payment of pensions, or an increase in pensions in course of payment, so as to compensate members for the loss of any subsidy from the employer of their medical costs after retirement;
3. meeting, in full or in part, expenses which the employer is obliged to pay in terms of the rules of the fund;
4. improving the benefits payable to all members, or a category of members as defined in the rules, as determined by the employer;
5. transferring part, or all, of the employer surplus account in terms of subsection (2) to the employer surplus account in another fund where the employer is a participating employer;
6. on liquidation of the fund, payment in cash to the employer;
7. in order to avoid retrenchment of a significant proportion of the workforce, payment in cash to the employer;
8. transferring part, or all, of the employer surplus account to the member surplus account in the same fund; or
9. repaying part, or all, of surplus utilised improperly by the employer

Provided that the members of the board who have been elected by members of the fund shall not have a vote in any deliberation over the use of any credit balance in the employer surplus account. The registrar may approve the transfer of all, or a portion of, the employer surplus account from the fund to the employer surplus account in another fund, if the following conditions are satisfied, namely that:

* the employer who has control of the employer surplus account in terms of the rules of the fund has similar control of the employer surplus account in the transferee fund;
* employees of the employer are members or former members of the fund to which the transfer is made;
* the employer applies to the registrar for approval of the transfer, giving such details and supporting reports as the registrar may require; and
* the registrar is satisfied that such transfer is necessary in order to achieve an equitable distribution of the surplus between the funds.

**Existing employer reserve accounts**

On or after the commencement date, the board may apply to the registrar to transfer all or some of the credit balance in an existing reserve account as defined in the rules to the employer surplus account. The registrar may approve such transfer if the registrar is satisfied that:

1. the allocation of actuarial surplus to such account was negotiated between the stakeholders in a manner consistent with the principles in the PFA, and
2. the allocation of actuarial surplus to the existing reserve account was reasonable and equitable.

Any remaining portion of the credit balance in an existing reserve account shall be treated as actuarial surplus to be distributed in terms of section 15B of the PFA.

**Right to share in surplus accounts on exit**

Notwithstanding anything to the contrary in the rules, members who cease to be members of the fund should receive, as part of their transfer values or benefit payments, a share of any credit balances in the member surplus account, the investment reserve account and such contingency reserve accounts as the board deems appropriate, in the ratio that the liability of the fund in respect of the past service of the members leaving the fund bears to the liability of the fund towards all its members in respect of past service at that date: Provided that the board may use a reasonable alternative if there are sound administrative reasons why such a calculation cannot be performed.

Notwithstanding anything to the contrary in the rules, existing members and former members may not participate in the employer surplus account when they transfer out of a fund or when they become entitled to a benefit, unless the relevant employer so directs.

**Use of contents of any surplus accounts to fund deficits**

If a fund has credit balances in the member surplus account or the employer surplus account and the fund is found to have a deficit following an actuarial valuation, including a valuation carried out for the purpose of distributing assets on liquidation of the fund, such credit balances shall be reduced in the same proportion by the amount of the deficit: Provided that no credit balance may be reduced by more than the amount to which the account was in credit. Where the deficit exceeds the credit balances in the member surplus account and the employer surplus account, these credit balances shall be applied in full to reduce the deficit and shall be reduced to zero.

**Application of surplus accounts on liquidation of fund**

On liquidation of a fund, any credit balances in any reserve accounts, the member surplus account and the employer surplus account shall be applied in the following order of priority:

1. All credit balances in such accounts may be drawn upon to secure the rights and reasonable benefit expectations of the members participating in the distribution: Provided that the credit balances in any such accounts shall be reduced by the same proportion.
2. Any remaining credit balances in the member surplus account, any contingency reserve accounts and any surplus which has not been allocated to the member and employer surplus accounts, shall be used for the benefit of the members and former members of the fund, in such manner as the liquidator, acting on the advice of the valuator, shall determine.

Any remaining balance in the employer surplus account shall be paid to the employer unless the employer was liquidated prior to the   commencement of the liquidation of the fund, in which case it shall be used in the following order of priority, namely:

* to meet contributions deducted from members’ earnings and not paid to the fund;
* to meet contributions due from the employer but not paid to the fund; and
* to be distributed amongst the members at the date of liquidation and such former members as are eligible in terms of the rules to participate in the distribution.

**Use of employer surplus to prevent job losses**

A fund may apply to the registrar for permission to pay any credit balance in an employer surplus account to an employer where negotiations in terms  of the Labour Relations Act, 1995 (Act No. 66 of 1995), have confirmed the need to retrench employees if additional capital is not obtained: Provided that an independent auditor may be required by the fund to certify such need. The application must be made to the registrar in the prescribed manner. The registrar may only grant an application, and issue a certificate to the applicant to the effect that the requested payment may take place, if the registrar is satisfied that:

1. members have had full disclosure of the current financial position of the fund and the proposed distribution to the employer, and the need of the employer for additional capital in order to maintain employment, together with the report of the independent auditor, if any, and any information that members may require to exercise their rights under the Labour Relations Act, 1995 (Act No. 66 of 1995);
2. members have had a reasonable opportunity to consider the proposal;
3. at least 75 per cent of the members currently in employment have approved the proposal, in writing; and
4. negotiations in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), have confirmed the need to retrench more than 10 per cent of the membership of the fund at the previous financial year end if the payment is not made.

###### 7.4 CONTRIBUTIONS, PAYMENTS AND DEDUCTIONS

Payment of contributions and certain benefits to pension funds

Notwithstanding any provision in the rules of a registered fund to the contrary, the employer of any member of such a fund shall pay the following to the fund in full, namely: any contribution which, in terms of the rules of the fund, is to be deducted from the member’s remuneration; and any contribution for which the employer is liable in terms of those rules. The minimum information to be furnished to the fund by every employer with regard to payments of contributions made by the employer, shall be as prescribed. If that information does not accompany the payment of a contribution, the information shall be transmitted to the fund concerned not later than 15 days after the end of the month in respect of which the payment was made.

Any contribution to a fund in terms of its rules, whether it be a contribution, a contribution for the payment of which a member of the fund is responsible personally, or a contribution to be paid on a member’s behalf:

1. shall be transmitted directly into the fund’s account with a bank finally registered as such under the Banks Act, 1990 (Act No. 94 of 1990), not later than seven days after the end of the month for which such a contribution is payable; or
2. shall be forwarded directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month; or
3. in the case of a fund contemplated in [section 15](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section15)(4) that has been exempted from the provisions of [sections 5](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section5)(2) and [9](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section9) because, in operating as a fund, its assets consist exclusively of one or more policies of insurance with an insurer carrying on long-term insurance business as contemplated in the Insurance Act, 1943, shall be forwarded to the insurer concerned in such manner as to have the insurer receive the contribution not later than seven days after the end of that month.

Any contribution forwarded to and received by a fund in the circumstances contemplated in paragraph (a)(ii), shall be deposited in the fund’s bank account on the first business day following the day of receipt. An amendment of the rules of a fund relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions shall not affect any liability to pay any contribution which became payable at any time before the date of the resolution whereby the amendment was effected, irrespective of the date on which the amendment may take effect.

When a person who, for any reason except a reason contemplated in [section 14](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section14), [28](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section28) or [29](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section29), has ceased to be a member of a fund (in this subsection called the first fund), is in terms of the rules of another fund admitted as a member of the other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person had become entitled in terms of the rules of the first fund, the first fund shall, within 60 days of the date of such person’s written request to it, or, if applicable, within any longer period determined by the registrar on application by the first fund, transfer that benefit or right to the other fund in full. The transfer shall be subject to deductions in terms of [section 37D](https://discover.sabinet.co.za/webx/access/netlaw/24_1956_pension_funds_act.htm#section37D) and to the rules of the first fund.

For the purpose of monitoring and ensuring compliance with this section, the principal officer of the fund or any authorized person shall, at the times and in the manner and format prescribed, submit reports to the categories of persons, to be specified in that notice, who have an interest in such compliance.  An ‘authorized person’ means any person who has been authorized by the relevant board to perform the function contemplated and of whom the registrar has been advised in writing.

Interest at a rate as prescribed shall be payable from the first day following the expiration of the period in respect of which such amounts were payable on:

* the amount of any contribution not transmitted into a fund’s bank account before the expiration of the period prescribed;
* the amount of any contribution not received by a fund before the expiration of the period prescribed; or
* in the circumstances prescribed by the insurer concerned before the expiration of the period prescribed therefor by that subsection;
* the value of any benefit, or right to any benefit, not transferred by the first fund to the other fund before the expiration of the period prescribed.

The following persons shall be personally liable for compliance with this section and for the payment of any contributions referred to above:

1. if an employer is a company, every director who is regularly involved in the management of the company’s overall financial affairs;
2. if an employer is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), every member who controls or is regularly involved in the management of the close corporation’s overall financial affairs; and
3. in respect of any other employer of any legal status or description that has not already been referred to in paragraphs (a) and (b), every person in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer’s overall financial affairs.

A fund to which the provisions above apply, must request the employer in writing to notify it of the identity of any such person so personally liable. In the event that an employer fails to comply with the requirements of this provision, all the directors (in respect of a company), all the members regularly involved in the management of the closed corporation (in respect of a closed corporation), or all the persons comprising the governing body of the employer, as the case may be, shall be personally liable.

A board of a fund must report any non-compliance with the provisions of this section, in accordance with such conditions and in the format as may be prescribed.

7.4.1 Differences in Taxation

|  |
| --- |
| Pension Fund/Provident Fund/Retirement Annuities |
| * The deduction allowed is the pension, provident and retirement annuity fund contributions added together. * The annual deduction is limited to the lesser of: * 27.5% of the greater of * remuneration (as defined), OR * taxable income (excluding retirement lump sum benefits, withdrawal lump sum benefits and severance benefits in respect of both remuneration and taxable income), or * R350 000. |

Employer Contributions (Section 11k of the Income Tax Act)

Retirement funding contributions deductible from taxable income:

* Maximum of 10% of the employees approved remuneration in respect of pension and provident funds, as well as medical aid on a cumulative basis;
* In practice, SARS allows a cumulative deduction up to 20%;
* SARS may allow single premiums to be spread over a few years or deducted as a lump sum.

Taxation on withdrawal from a Pension Fund

2020 tax year (1 March 2019 - 29 February 2020)

|  |  |
| --- | --- |
| Taxable income (R) | Rate of tax (R) |
| 0 – 25 000 | 0% |
| 25 001 - 660 000 | 18% of taxable income above 25 000 |
| 660 001 - 990 000 | 114 300 + 27% of taxable income above 660 000 |
| 990 001 and above | 203 400 + 36% of taxable income above 990 000 |

Retirement & Death Benefits or Severance Benefits

2020 tax year (1 March 2019 - 29 February 2020)

|  |  |
| --- | --- |
| Taxable income (R) | Rate of tax (R) |
| 0 – 500 000 | 0% of taxable income |
| 500 001 - 700 000 | 18% of taxable income above 500 000 |
| 700 001 – 1 050 000 | 36 000 + 27% of taxable income above 700 000 |
| 1 050 001 and above | 130 500 + 36% of taxable income above 1 050 000 |



Regarding the PFA, Valuations and Governance of pension funds, I have learnt the following:

|  |
| --- |
|  |

**Learning Unit 7 Formative Assessment: Valuation of retirement funds**

1. Explain the purposes of valuing a retirement fund with reference to current legislation and the requirements of professional bodies. **(6)**
2. What factors determine if a fund can be valuation and audit exempt? Explain the risks associated with an audit exempt status for a retirement fund. **(10)**
3. Identify and interrogate sources of data used in the valuation of a retirement fund for consistency and integrity are against the valuation. **(10)**
4. Analyse and evaluate possible actuarial assumption made in the valuation of a defined benefit pension fund. **(8)**
5. Interpret the effects of changes in the actuarial any four assumptions on the financial results of a fund. **(8)**
6. An actuarial evaluation has identified that there is a gap in the financial soundness of the fund. The fund is not financially sound. Explain possible solutions for restoring the financial soundness of the fund. **(6)**
7. Discuss the possible sources of a surplus in a pension fund. **(4)**
8. Describe three situations where a fund may be allowed to utilise surpluses accumulated in the fund? **(6)**
9. Discuss the effect of the following on contribution rates or solvency of a retirement fund?
   1. Longevity
   2. HIV/AIDS
   3. Changes in the labour market **(6)**

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### Websites

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