**FORMATIVE ASSESSMENT - MEMO**

**Learning Unit 1: Trustees of Retirement Funds**

1. Identify the elements that must be addressed by the rules of a Pension Fund. **(4)**

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| 1. Eligibility; 2. Benefits; 3. Contributions; 4. decision-making procedures; 5. Trustees; and 6. governance |

1. Explain the duties of Trustees in terms of Section 7D of the Pension Funds Act. **(5)**

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| 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. |

1. Explain the purpose of an Agenda give an indication of how matters are placed on the Agenda. **(10)**

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| In order to fulfil these requirements, Trustees utilise meetings. Board of Trustees’ meetings are an integral part of the running of any retirement fund. 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 meetings. 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 al 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.  The Chairperson of the Board, in conjunction with the Principal Officer, will decide on the Agenda and other members of the Board may add Agenda items. Agenda items that always appear on the Agenda are called standing items.  Many funds have a year Planner that lists matters that are to be attended to. |

1. After checking the minutes of a previous meeting, you notice that there is an error in respect of a particular item. Describe the process that you will follow in order to address that inaccuracy. **(5)**

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| * Draft minutes are normally circulated by the Principal Officer just after a meeting for consideration and approval at the next meeting. Trustees must make ensure that they check the minutes of each meeting to ensure that it correctly reflects decisions made and deliberations held at meetings. * Trustees must check the final draft minutes as compiled by the Principal Officer (and immediately ‘flag’ any errors of significance) * Trustees should communicate with the Principal Officer or Benefit Consultant (the Secretariat) if the minutes were not rectified. |

1. Obtain the rules attached to your manual and explain with the following:
   1. Eligibility for membership,
   2. benefits,
   3. contributions,
   4. decision-making procedures,
   5. Trustee powers and
   6. general governance of the fund. **(10)**

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| Answers will vary but the Assessor must check if the Learner managed to scrutinise the rules in an endeavour to answer the above questions. |

1. Identify and explain any five terms that are used in retirement fund rules. **(5)**

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| Answers will vary but answers should contain any of the following: quorum requirements, eligibility for membership, benefits, contributions, decision-making procedures, Trustee powers, general governance of the fund, what happens if there are meeting deadlocks, benefits at early, normal or late retirement, appointment of Trustees and the Chairperson, etc. |

1. Describe the process that must be used when fund rules are being amended. **(10)**

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| 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 into a sound financial condition.   In any other cases 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.    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. 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)**

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| * Experience * Licencing * Registration with professional bodies * Previous projects completed * Some questions will be specific to the rules and policies of the fund (Accept these as well) * Compare the performance by the provider against benchmarks in the rules and policies of the fund * Fees * References |

1. 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 fund-related documents they should consult in making that decision? **(3)**

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| Advice must be based on Regulation 28 as well as reference to a particular fund’s Investment Policy Statement. The limits as per Regulation 28 are:   * Equity (excluding listed property) 75% * Offshore assets as prescribed by the SARB\* * Listed property 25% * Commodities 10% * Hedge funds 10% * Bank debt 75% * Government debt 100% * Cash 100% |

1. Explain the purpose of keeping minutes of meetings with reference to legal requirements in terms of record-keeping. **(4)**

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| * Legislation requires it * Confirms decisions by the fund * Reference points * Compliance * Any other valid point |

1. Describe three sources of income and three sources of expenditure for any retirement fund. **(6)**

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| **Income** | **Expenditure** |
| * Employer Contributions * Investments income * Employee contributions * Life policies benefits | * Payments of benefits * Trustee fees * Group life covers premiums * Annuities * Expert services, e.g. Actuaries, Administrators, Principal Officer, etc |

1. 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)**

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| Reference must be made to:   * Inspection of composition of funds * Investment approach (active vs. passive investment) * Returns generated * Benchmarks in the Investment Policy Statement * SLA with the Investment Manager/s * Regulation 28 |

1. Obtain a contract of 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)**

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| Answers will vary and Assessor must use own discretion. However, answers should include duties, fees, periods of review, ad hoc services/duties, how disputes are to be addressed, etc. |

1. Name 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)**

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| * New members * Enrolment * Contributions outstanding * Annually for updates on benefits * Prior to retirement * Just after retirement * Members wanting to adjust their benefits * Beneficiary nominations * AGMs * Trustee appointments including changes thereto * Mergers and acquisitions * Creation of rules and any amendments thereto * Regulatory updates * Any other valid situation where there may be need for communication * It is always advisable for Trustees to communicate with members. In light of the recent pandemic where face-to-face engagements were not recommended, most communication was in a written format, for example, Newsletters, Circulars, etc. |

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

1. Barbara was advised to include how her pension benefits will be distributed in the event of her death so as to avoid conflicts amongst her family members when she dies. In her Will she stipulates that the following people and organisations must share in any of the fund benefits attributed to her death. 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. Grandchildren
7. Adopted son
8. Grandmother

Determine the eligibility of each person listed as a beneficiary in her Nomination Form when she passes away. **(14)**

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| 1. Her two distant cousins that she was very close to | Highly unlikely since they are distant relatives, unless there is proof of actual financial dependence and financial support provided. |
| 1. An animal hospice where she was a volunteer | Unlike life insurance benefits, benefits under a pensions fund are for dependants as defined in the Act. A hospice does not qualify as a dependant. |
| 1. Her Church in which she was raised | Unlike life insurance benefits, benefits under a pensions fund are for dependents as defined in the Act. A Church does not qualify as a dependant. |
| 1. Long-time boyfriend who lives on his own | Dependence is difficult to prove since the two were not living together, unless there is proof of actual financial dependence and financial support provided Long-time relationships not recognized as marriages. |
| 1. Grandchildren | Only to the extent that they can prove dependence on Barbara. |
| 1. Adopted son | Yes, he will qualify as a dependant. |
| 1. Grandmother | Yes, if she was dependent on Barbara |

1. Study the rules of a fund provided in the annexure and interpret the benefits payable and potential beneficiaries.  **(10)**

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| **Benefits** | **Potential Beneficiaries** |
| Death | Widows, widowers, children and other dependants |
| Spouse pension | Widows and widowers |
| Children’s pension | Children and other dependants |
| Early retirement | Members, sick members |
| Retrenchment benefits | Members upon retrenchment |
| Disability | Members who get permanently disabled |
| Funeral | Members, spouses, widows, widowers, children and other dependents |
| Life cover | Members, spouses, widows, widowers, children and other dependents |

1. You have been supplied with a set of terms and conditions for 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)**

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| **Typical Exclusions**  **Exclusions under PHI**   1. 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. 2. War, riot, civil commotion and military insurrection 3. If there are any 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. 4. Pregnancy: cover will only be available after pregnancy. 5. HIV and AIDS except for accidental infection.   **Exclusions Under Group Life Insurance**  The following are the exclusions under group life cover:   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. |

1. Under what circumstances will a Nomination Form be binding on the Trustees of a pension fund? **(2)**

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| * To the extent that the nominated persons are the persons contemplated under Section 37 C of the PFA. * If the estate of the member is solvent. * Dependants not identified but there are persons listed by the member. * If estate of the member is not solvent, only when the estate’s obligations have been established. * Only after 12 months has elapsed after the passing away of a member and no dependants have been identified. |

1. Explain the concept of a dependant in terms of financial and legal dependence. **(2)**

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| **Legal dependence**   * Spouses * Life Partners/Co-Habitees * Children * Adopted children * Children out-of-wedlock |
| **Financial Dependence**   * Proof is needed to show that the potential beneficiary was financially dependent and actually financially supported by the member as per section 37C (children, spouse, etc…) of the Pension Funds Act. * Proof of receipt of money. * Proof of shared expenses. |

1. Identify the type of information that will be required in identifying persons that qualify as dependants under a pension fund. **(4)**

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| The dependants, Financial Adviser or Executor must complete a ‘Death claims form for retirement funds’ and the applicable ‘annexures.’  The Trustees must identify and find all dependants of the member at the time of his/her death. This is done by following the information provided on the ‘Death claims form for retirement funds’, and ‘annexures’ and by doing further research and investigation.  The Trustees must make enquiries into the personal and financial circumstances of each dependant and nominee. This is done by gathering information and supporting documents from the various stakeholders related to the death claim. In some instances, certain information and/or documents may lead to further enquiries. |

1. Name the potential persons that are interviewed to identify undisclosed potential dependants. **(3)**

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| * Employers * Neighbours * Family members * Spouses * Children * Friends * Colleagues * Etc… |

1. State the evidence necessary to prove dependency with examples. **(3)**

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| * The financial position of the person. * Other sources of income and financial support available to the person. * Age of the person and relationship to the deceased person. * The person’s future income or their ability to earn. * Nature, frequency and extent of financial support. * How the person was related to the member. * The value of the death benefit that is available to allocate. * The written wishes of the member, e.g. his/her Nomination Form (although it is just a guideline). * Employment prospects. |

1. State the questions that you would ask to establish the level of dependency at the date of death of a member, current and future financial needs and financial sophistication. **(4)**

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| * The financial position of the person. * Other sources of income and financial support available to the person. * Age of the person and relationship to the deceased member. * The person’s future income or their ability to earn. * How much money the person needs. * How the person was related to the member. * The value of the death benefit that is available to allocate. * The written wishes of the member. * Employment prospects. |

**Learning Unit 3: Group Retirement Products**

1. Differentiate between the tax treatment of benefits under a pension fund and under a provident fund. **(10)**

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| Learners must clearly illustrate that the tax treatment between the two funds are fully aligned and that as from 1 March 2021, only a maximum of one third of the benefits of a Provident Fund may be commuted. The only exception is members who are 55 years or older and who remains with the same Provident Fund.  Tax table is below:   |  |  | | --- | --- | | 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 | |

1. You are given the following scenarios and you are required to calculate the tax implications of each scenario.

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| 1. Themba has reached 65 and is retiring with benefits worth R2 500 000 | = 130 500 + 36% of taxable income above 1 050 000  = R130 500 + (36% of R2 500 000 – R1 050 000)  **= R652 500** |
| 1. Linda is retrenched at the age of 44 and is entitled to R2 000 000 from her pension fund | = R130 500 + 36% of taxable income above 1 050 000  = R130 500 + (36% of R2 000 000 – R1 050 000)  **= R472 500** |
| 1. Johanna receives a settlement in her divorce agreement worth R1 500 000 from her husband’s pension fund | = R130 500 + 36% of taxable income above 1 050 000  = R130 500 + (36% of R1 500 000 – R1 050 000)  **= R292 500** |
| 1. Elizabeth resigns at 35 to go and start a new business. Her benefits are worth R750 000 | = R114 300 + 27% of taxable income above 660 000  = 114 300 + (27% of R750 000 – R660 000)  **= R138 600** |
| 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. | = R36 000 + 27% of taxable income above 700 000  = R36 000 + (27% of (R1 000 000 – R700 000)  = R36 000 + R81 000  **= R117 000** |

1. Explain why you would recommend a provident fund and not a pension fund to anyone **(5)**

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| Both types of funds enjoy the same tax treatment and are subject to mandatory annuitisation, i.e. at least two thirds of the benefits must be utilised to purchase a Compulsory Annuity. The only exception is members who are 55 years or older and who remains with the same Provident Fund. |

1. Under what circumstances would it be ideal to use an Umbrella Fund rather than a Stand-Alone Fund? **(5)**

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| Owing to the lack of critical mass and economies of scale, 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.  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. |

1. Differentiate between insured and self-insured risk benefits. **(2)**

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| Insured: The fund has taken out a separate policy or policies to provide for risk benefits.  Uninsured benefit: The fund is responsible for that benefit and has not taken out an insurance policy for that benefit. |

1. Provide a brief description of the benefits that are normally covered under group risk covers. **(6)**

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| * Group life * Group funeral * Group disability * Group dread disease * Group PHI |

**Learning Unit 4: 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)**

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| Answers will vary and Assessor discretion will be needed. |

1. Identify an insurer of your choice and identify and describe three group risk products that that they market. **(9)**

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| Answers will vary and Assessor discretion will be needed. |

1. Compare group risk products marketed by two different insurance organisations with reference to the features of the product. **(8)**

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| Answers will vary and Assessor discretion will be needed. |

1. Describe the concept of free cover limit with reference to why group products have a free cover limit. **(4)**

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| It is a benefit that is granted to all members with no individual underwriting.  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. |

1. Draft the criterion on which you as an Underwriter for group risk benefits would base your premiums on? **(6)**

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| **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 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. |

1. Provide three reasons why group schemes are reviewed at regular intervals with reference to the changing nature of the group. **(3)**

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| * Review benefits. * Review premiums. * Review claims ratio. * Align with changing laws, for example, wearing of masks in public or confined areas, social distancing, etc. * Align with changing environment, for example, lockdown restrictions attributed to the Covid-19 pandemic. |

1. Compare any two channels used for the distribution of group products. **(4)**

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| 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 enjoy the face-to-face element, 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 may be the marketer of group life cover. They are the face of the organization and will present different benefits provided by the different products of the various insurers. |

1. Name three pieces of legislation that regulates the products marketed as group products and indicate the main focus of applicable legislation. **(6)**

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| 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 fit and proper requirements for Financial Services Providers as well as their representatives. |

Accept any other legislation as long as the Learner can show the link between the legislation and group risk products.

1. Discuss the taxation of benefits and premiums applicable to group insurance for approved and fund-owned policies **(6)**

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| In the event of death, the two main benefits that are available are the pension fund death benefits payable in accordance with 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. |

1. Illustrate with examples three options that can be exercised in the preservation of benefits after resigning from a pension fund before the stipulated retirement age. **(9)**

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| The following guidelines exist for Preservation Funds and these are listed below:   * As from 1 March 2021, members may transfer their benefits from a Pension or Provident Fund to either a Pension Preservation or a Provident Preservation Fund tax-free. * Transfer may 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 permitted. * Only lump sums from members who have withdrawn from their employer’s funds may 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. * Members may choose to which Preservation Fund their benefits are to be transferred.Alternatively, benefits may be transferred to a Retirement Annuity Fund of their choice. |

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

1. Identify the impact of marriage legislation on retirement funds. **(4)**

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| Answers will vary; Assessor must use own discretion. Learners are to illustrate that a marriage regime is decisive, for example, a non-member spouse married in community of property may receive 50% of a member spouse’s pension interest in the event of divorce, etc. |

1. Research three determinations by the Pension Funds Adjudicator and assess their impact on the governance and administration of funds. **(12)**

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| Answers will vary; Assessor must use own discretion. Answers are to illustrate the following: Decisions of the PFA have the effect of a High Court and is valid on the parties inter se; the Office of the PFA is a free and expeditious process that does not require Attorneys/Advocates, etc. |

1. Explain using examples the different marriage regimes in South Africa and discuss the impact of each marriage regime on retirement benefits. **(16)**

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| **Types of Marriages**  A number of marriage regimes exist in South Africa. To get better insight, 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.  **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.  **Accrual System**  Every marriage out of community of property in terms of an ante-nuptial 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 an ante-nuptial 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.  **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/she acquired by virtue of his/her 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/her 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.  **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 jewelry, 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.   **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 spouses must ensure that their customary marriages are registered. Polygamy is permissible under a Customary Marriage but not under Civil Marriages. Notable is that these marriages concluded after the Act was passed are treated as marriages in community of property.  **“Common Law” Marriage**  Many people who opt to live together rather than get married don’t fully understand the financial consequences of doing so. While cohabitation isn’t a recognised legal relationship in South African law, there are pieces of legislation that recognise the rights of cohabiting couples. Let’s have a closer look at the financial consequences of married couples as opposed to those who choose to live together.  Medical aid  In terms of the Medical Schemes Act 131 of 1998, a member’s spouse or life partner qualifies as a dependant on their medical aid, and this, therefore, includes cohabiting couples. If you are the principal member, you are able to add your partner as an adult dependant to your medical aid and gap cover. If you die, your registered partner will continue to be covered provided the premiums are paid. As such, it is important to ensure that you share financial responsibility and that your partner can continue paying the bills if you are no longer around.  Income tax  Couples who cohabit fall within the definition of ‘spouse’ as set out in the Income Tax Act, with this piece of legislation including a ‘same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent’. Married couples and cohabiting couples, therefore, enjoy the same status from a taxpaying perspective. In the absence of any proof to the contrary, the definition provides that cohabitants are deemed to be in a union without community of property. This extends to donations tax which is not payable on donations made between cohabiting couples.  Estate Duty  In terms of the Estate Duty Act, the first dying spouse can leave assets to the surviving spouse without incurring Estate Duty. On the death of the second-dying spouse, she can make use of any unused portion of the estate duty abatement in the first dying spouse’s estate to offset any estate duty that her estate may attract. Although Estate Duty is levied at 20% on the first R30 million and at a rate of 25% above R30 million, the act provides that the first R3.5 million of your net estate is exempt. If the full estate is left to the surviving spouse, this exempt amount is rolled over to the surviving spouse, leaving her with an exempt amount of R7 million. However, this exemption only applies to partners who fall within the definition of ‘spouse’ which includes people who are in a marriage or customary union and same-gender or heterosexual unions that the Commissioner of SARS recognises as permanent. If you are in a long-term relationship and are unsure whether your fall within the definition of ‘spouse’, it is recommended that you implement a cohabitation agreement, or prepare signed affidavits by both parties that can provide permanence.  Transfer Duty  If you bequeath fixed property to your partner, bear in mind that she will be exempt from paying transfer duty in the event of your passing. This is because our law exempts heirs and beneficiaries from paying transfer duty on property inherited from a deceased estate – regardless of the nature of their relationship. Bear in mind, however, that your deceased estate will be liable to cover the conveyancing costs in respect of the property transfer.  Life insurance  As in the case of married couples, cohabiting couples are free to nominate each other as beneficiaries on their life policies. However, where a married person might nominate ‘spouse’ as the beneficiary, it is important that cohabiting partners specifically name each other as beneficiaries and refrain from using terms such as ‘partner’ or ‘common-law spouse’ in order to avoid confusion.  Retirement fund  As in the case of married couples, you are entitled to nominate your life partner as a beneficiary on your retirement fund. However, bear in mind that the distribution of your retirement fund benefits is done at the discretion of the fund Trustees who will make a determination as to whether your nominated partner qualifies as ‘dependant’ in terms of the fund rules. When making a determination, the trustees will give consideration to anyone who was financially dependent on you in any way at the time of your death, keeping in mind that this could include aged parents, an ex-spouse, or children from a previous relationship.  Pension Interest  If you and your partner live together, bear in mind that you will have no claim to his pension interest in the event that your relationship comes to an end. The right of a non-member spouse to claim a share of the member spouse’s pension interest is strictly governed by the Divorce Act, Pension Funds Act and Income Tax Act and is limited to couples who are legally married under an act of parliament. If a couple is living together as ‘husband and wife’ but are not married, there is effectively no marriage capable of dissolution and there can be no transfer of pension interest benefit.  Maintenance of children  Section 21 of the Children’s Act 2005 grants full parental responsibilities and rights to the parents of minor children, regardless of whether you are married or not. In terms of our law, both parents are responsible for the maintenance of their children regardless of their living arrangement. This means that if you and your partner live together and have children together, you have the same responsibility as a married person to care and contribute to the financial maintenance of your child.  Spousal support  In terms of our law, living together confers no legal status on the relationship. This means that you and your life partner have no legal duties towards each other and, therefore, no duty of support. The absence of a legal duty to support each other means that, if your relationship comes to an end, you will have no legal claim for maintenance from your partner even if you were financially dependent on them during the course of your relationship. On the other hand, spouses who are legally married can rely on the provisions of Section 7 of the Divorce Act 1979 when claiming for maintenance following divorce. Similarly, when a spouse dies, the surviving spouse can make a claim against the deceased’s estate in terms of the Maintenance of Surviving Spouses of 1990. Couples living together can agree to the payment of maintenance in terms of their cohabitation agreement.  Bank accounts  Many banks now make it possible for cohabiting couples to operate joint bank accounts. However, bear in mind that for credit score purposes, you will be ‘co-scored’ on your joint bank account. This means that if your partner overspends or fails to manage the account responsibility, their behaviour could affect your credit rating.  Death  In terms of the Intestate Succession Act 1987, a surviving spouse is a beneficiary and stands to inherit from the deceased spouse’s estate if they die without a will. On the other hand, cohabiting couples enjoy no right of inheritance in terms of intestate succession, and this can leave them financially exposed should one of them pass away without a valid will. This can cause further complications where one of the partners dies intestate while still legally married to an estranged wife. If your partner dies without a will or leaves a will in which you are not named, you will need to engage in costly litigation to challenge the status quo.  **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.  **Muslim Marriage**  Muslim marriages are not yet legally recognised. Parliament is still considering the Muslim Marriages Bill. Past decisions by the Constitutional Court held there is precedent set by the Courts that Muslim spouses may claim maintenance and other proprietary relief. In Daniels v Campbell No and Others, the Court held that parties to a Muslim Marriage were deemed spouses and are to be treated as such in the event of inheritance or claiming from a deceased estate. |

1. Explain the concepts of a divorce and that of pension interest and their application to retirement funds. **(6)**

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| A concept of pension interest is provided for in the Divorce Act. A non-member spouse mayl 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 |   Pension interest will vary according to the type of marriage that applies at the time of a divorce. |

1. Explain the process to be followed on receipt of a Court order and give an indication of the implications of non-compliance. **(6)**

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| **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 -    (aa)    the pension fund or pension funds named in or identifiable from the decree;    (bb)   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-    (aa)    inform the pension fund of how the amount referred to in subparagraph (i) must be dealt with; and    (bb)   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    (cc)    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).  [Subs. (4) added by s. 16 of Act 22/2008]    (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.  [Subs. (5) added by s. 16 of Act 22/2008]    (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. |

1. Explain the concept of pension interest and also describe the taxation of the pension interest in the event of a divorce. **(10)**

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| |  |  |  |  | | --- | --- | --- | --- | | 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. |   Taxation of pension interest will be based on an application of the normal lump sum retirement tax tables at the time of the divorce. |

1. Explain the concept of maintenance with examples. **(4)**

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| MAINTENANCE PAYMENTS Section 15 of the Maintenance Act 99 of 1998 partially codifies the common law and provides that ‘a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child’s parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue’.  There are circumstances under which the duty to maintain the child may be discharged through payments from retirement benefits and in particular, payment of future child maintenance. In South Africa (SA), pension law is regulated by various statutes, none of which directly provides for the payment of future child maintenance from retirement benefits. As such, the Courts had to be innovative and use rules of interpretation to ensure that retirement fund members are forced to fulfil their child maintenance obligations through their retirement benefits.  Generally, section 37A(1) of the Pension Funds Act 24 of 1956 prohibits the reduction, hypothecation, cession, transfer and attachment of retirement benefits, unless such is specifically permitted by the Pension Fund Act, Income Tax Act 58 of 1962 and the Maintenance Act. Retirement funds are empowered by s 37D of the Pension Funds Act to ‘(d) 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 –  (iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act’.  In terms of s 26 of the Maintenance Act, when a maintenance order has been granted and the person against whom it has been granted failed to make payment in accordance with the order, such an order is enforceable by execution against the defaulter’s property. If a specific amount was ordered, that amount attracts interest. In particular, s 26(4) of the Maintenance Act specifically provides that ‘any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under any warrant of execution or any order issued … in order to satisfy a maintenance order’.  Section 26(4) of the Maintenance Act appears to be making provision for the attachment on the basis of the maintenance that is currently due and to a larger extent the amount of maintenance that is outstanding and not necessarily that which is payable in future. It makes provision for payment of arrear child maintenance on behalf of the child from the retirement fund member’s retirement benefits (see Naleen Jeram ‘A warning to all maintenance court officials’ (2014 (Sept) DR 43)). However, before the Court can order that the other parent’s retirement benefits should be attached, it must be satisfied that the party against whom such an order is made, has no other means of paying child maintenance. Claiming maintenance from the maintenance defaulting member’s retirement fund benefit should be a measure of last resort. This will obviously be the case where a maintenance order has been granted and the person against whom it has been granted has defaulted in their payments and there have been no other means other than the retirement benefits to satisfy the maintenance order.  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 retirement fund point of view, there are two types of maintenance claims, namely arrear maintenance and future maintenance claims.  ***Arrear maintenance***  This type of claim refers to a situation where a person has obtained a Court order in respect of maintenance. Hereafter, if the Pension Fund member fails to comply with the order and is in arrears with the maintenance payments, the maintenance creditor can request the fund to deduct the arrear amounts from the pension benefit payable upon the termination of the employment contract.  ***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 payments are taxed in the hands of the member at the member’s marginal tax rate. |

1. What are the factors that must be considered by a fund in determining the validity of a maintenance order?**(5)**

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| 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.  ***Arrear maintenance***  This type of claim refers to a situation where a person has obtained a Court order in respect of maintenance. Hereafter, if the pension fund member fails to comply with the order and is in arrears with the maintenance payments, the maintenance creditor can request the fund to deduct the arrear amounts from the pension benefit payable upon the termination of the employment contract.  ***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 the South African Revenue Services. Maintenance payments are taxed in the hands of the member at the member’s marginal tax rate. |

1. 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)**

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| **Attachment of debt** In terms of section 30 of the Maintenance Act, if the respondent is owed money or is due to receive money in the future – for example, if he/she has retired and has a pension due to him/her, an attachment of debt order can be granted, which will order the party owing the money to pay that money to the complainant instead.  The complainant must prepare the necessary forms which must be lodged with the Clerk of the Maintenance Court who will then get the order granted by the Magistrate on duty on that day. It is advisable to get the assistance of an Attorney when applying for an order for the attachment of a debt.  **Future Maintenance** Future maintenance is not specifically dealt with in the Maintenance Act, but section 26 (4) of the Act allows for pensions, gratuities and annuities to be attached to satisfy a maintenance order. This section is usually relied on when the respondent is about to stop working (either because of retirement, resignation or dismissal) and the complainant wants to attach part of the respondent’s pension benefits for future maintenance. In most cases regarding future maintenance, the respondent has a pension from which future maintenance is claimed.  The complainant must be sure that the respondent is about to stop working and that there is an existing maintenance order. It is advisable for the complainant to approach a legal practitioner who will prepare the necessary Court papers. The complainant would need to know where the respondent is employed and if the respondent is contributing to a pension or provident fund.  Once the order is granted, the Pension Fund will be notified and ordered to pay to the Guardian’s Fund the amount mentioned in the order. The complainant will not receive the full amount in a lump sum, instead it will go to the Guardian’s Fund which will continue paying the complainant the amount of maintenance that he/she was receiving from the respondent, usually until the minor child reaches the age of majority (18) or becomes independent. |

1. Explain the treatment of arrear maintenance contributions when a member retires. **(5)**

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| ***Arrear maintenance***  This type of claim refers to a situation where a person has obtained a Court order in respect of maintenance. Thereafter, if the pension fund member fails to comply with the order and is in arrears with the maintenance payments, the maintenance creditor can request the fund to deduct the arrear amounts from the pension benefit payable upon the termination of the employment contract. |

**Learning Unit 6: Investment Strategy for Group Retirement Fund**

1. Using diagrams, explain the concepts of market-related and smoothed investments, pooled and segregated funds. **(9)**

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| **Market Related**  A market-related fund’s returns is based exactly on how the fund performed and there is not cushioning from a reserve fund. Rather the investor’s returns move up and down in tandem with 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 with short-term fluctuations.  **Smoothed Investments (Diagram)**  Smoothing refers to a method of stabilising the returns on investments where the highs and the downs in investments are levelled out. Not all profits in periods 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 smoothed funds 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 funds utilise diversification significantly. This limits the exposure to losses in one investment. Typical funds 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 income tax on interest income. |

1. Explain the functioning of the following:
   1. Market-related
   2. Absolute return
   3. Structured products
   4. Smoothed bonus products
   5. Multi-manager products (**10)**

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| **Market-Related** A market-related fund’s returns is based exactly on how the fund performed and there is not cushioning from a reserve fund. Instead, the investor’s returns move up and down in tandem with market movements. **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. **Smoothed Investments**  Smoothing refers to a method of stabilising the returns on investments where the highs and the downs in investments are levelled out. Not all profits in periods 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. **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. **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 the fact that no one Investment Manager is able to persistently outperform all asset classes persistently. |

1. Explain the impact of member level investment choice with reference to the kinds of investment options, governance of investment options, value of benefits paid, costs and associated risk. **(5)**

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| Answers will vary but Learners must illustrate MIC attracts an additional cost; there is a responsibility on members to decide on an allocation; member age and risk profiles are relevant, etc. Decisions are influenced by:ts:   * Lifestyle * Age * Needs * Culture * Religion * Norms * Activism (an environmentalist might shun investments in companies known for damaging the environment)   NOTE: Candidates must show clearly the individual preferences based on norms and values. |

1. Explain need for an Investment Policy Statement (IPS) with reference to the responsibility of the Trustees and the interests of other role-players. **(5)**

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| * A concrete statement of investment goals * A method for determining and expressing the Pension Fund’s Board of Trustees’ investment philosophy and risk tolerance to both staff and third parties * A clear demonstration of “due diligence” * A foundation for internal controls * Guidance to staff and third parties, to ensure both proper execution of the investment strategy as well as compliance with the law * Risk management tool. |

1. 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)**

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| The following factors must be considered in determining the appropriate investment strategy:   1. Current events 2. Age bands 3. Members close to retirement, for example, five years to normal retirement age, etc 4. Staff turnover 5. Pensionable Salary 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 or defined contribution structure) 10. Current financial status of the fund 11. Liquidity and cashflow requirements 12. Maturity of the fund 13. Profiles of beneficiaries. |

1. 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)**

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| Assessor discretion to be applied |

1. Explain the concept of prescribed assets and your view on its adoption in South Africa. **(5)**

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| In general, prescribed assets means that a certain percentage of the assets of retirement funds (and possibly other institutional holders of assets) must be allocated to certain government-approved instruments. Governments through their different regulators may set limits on the proportions of investments that life insurers, short-term insurers or pension funds may 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.  This is not a new concept in South Africa. In 1956 the Pension Funds Act was promulgated and it introduced prescribed assets. Back then, the prescribed assets in question were government bonds. Over the next two decades, the level of prescription rose to a peak in 1977. It then began to fall until it was scrapped in 1989. During most of this 30-year period, funds were required to invest more than half their assets in SA government and parastatal bonds.  Prescribed asset regulations place limitations on:   * Asset classes * Solvency margins * Minimum percentage of investments in certain asset classes * The maximum percentage of investments in certain asset classes   In South Africa, Regulation 28 is the closest regulation that demonstrates this concept. This concept is explained below. |

1. Describe the asset allocation requirements as per Regulation 28. **(10)**

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| Regulation 28 stipulates the maximum percentages that retirement funds may invest in different asset classes. The main logic for this constraint is to protect the funds of the members invested in retirement 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 may become a burden to the State and in turn to the taxpayers who may be taxed more to provide for the elderly whose retirement fund benefits would have been lost.  The limits are shown in the table below:  Regulation 28 Limitations  Pension funds are therefore not able to exceed the limits stated above within their portfolios. |

1. Imagine that the members in your class are members of a pension fund. Identify the appropriate asset classes that their retirement fund benefits may be invested in. **(5)**

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| Answers will vary. Assessor to use their own discretion. Learners should illustrate that age and period to retirement is paramount. For example, equities have a longer time horizon and are more suitable for younger members who want more growth; cash and bonds are more conservative assets with a greater emphasis on preservation and are more attractive to imminent retirees or pensioners, etc. |

1. Design an evaluation criterion for an Asset Manager for a pension fund. **(5)**

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| **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 and puts the employer at risk.  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. Trustees should steer away from assets that preset too much risk and/or volatility  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. |

1. Design a criterion for evaluating the performance of an Asset Manager. **(5)**

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| Philosophy   * + Is the Investment Manager's investment philosophy compatible with the views of the Trustees?   People   * + Does the Investment Manager have a stable team of well-qualified people to assist him?   Portfolio   * + Does the Investment Manager offer suitably adaptable investment portfolios?   Performance   * + Does the Investment Manager have the sort of track record that inspires confidence in his/her ability to perform during both good and bad times?   Strategies   * + Are the Trustees comfortable with the strategies adopted by the Investment Manager?   Infrastructure   * + Does the Investment Manager possess the necessary infrastructure for research and analysis of the investment markets, economic climate, and so on?   Risk   * + What is the profile of the Investment Manager as measured by past performance? |

1. Why is it important to regularly monitore and review the investment strategy? **(5)**

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| **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 and exposes the employer.  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. |

**Learning Unit 7: Pension Funds Act, Actuarial Valuation and Governance of retirement funds**

1. Explain the purposes of valuing a retirement fund with reference to current legislation and the requirements of professional bodies. **(6)**

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| **The Purpose of the Actuarial Valuation**   * The purposes differ based on whether a fund is a defined contribution or a defined benefit fund. The purpose in respect 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 buy-outs; * 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 take-overs. |

1. 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. **(20)**

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| A valuation exemption means that the fund does not have to appoint a valuator or submit a valuation report on the financial condition of the fund to the Registrar every 3 years. The exemption is subject to certain conditions and the fund must comply with all those conditions for the entire period of the exemption.  An application for a valuation exemption must contain the following documents:  - A signed statement by the Board applying for the exemption. In this statement, the Board must confirm that the fund is properly administered in terms of its rules and that the fund does not operate any contingency accounts. The Board must undertake to inform the Registrar, if in their opinion, the fund no longer qualifies for the exemption.  - A certification by a Valuator stating the start date of the exemption and confirming that the fund complies with the conditions as set out in the Board Notice (The Registrar of Pension Funds issued Board Notice 59 of 2014).  - If the fund is already valuation exempt and is applying for a renewal of the exemption, any Valuator may complete and sign the certificate.  - If the fund previously had to submit valuation reports and is applying for an exemption for the first time, then only the fund’s Valuator may complete and sign the certification.  Conditions for valuation exemption  • At the effective date of the exemption, the fair value of assets must equal or exceed the liabilities of the fund.  • All existing pension payments and any future pension payments must be fully secured by one or more annuity policies purchased from one or more registered long term insurers.  • The amount used to secure a Living Annuity for members upon retirement must be limited to the amount available per member in the fund at the date of the member’s retirement and at any point thereafter. This means that at any given time a member will only be entitled to his share of the fund.  • All members of the fund, other than pensioners must belong to a defined contribution category of the fund.  • Where any benefit payable to a member exceeds the value of the member’s individual account, the excess must be fully insured with one or more registered insurers.  • Where the fund has a contingency reserve account in terms of the rules of the fund, the rules must provide that such an account can never have a negative balance. This condition does not apply to a Processing Error Reserve Account.  • The fund must have complied with the provisions of section 15B of the Act. If the fund had to submit a surplus apportionment scheme to the Registrar, then that scheme must have been approved or a nil scheme must have been noted before the exemption can be granted.  • Unless the fund was valuation exempt before its surplus apportionment date, the statutory actuarial valuation as at its surplus apportionment date must be accepted by the Registrar.  In Board Notice No. 77 of 2014, the Registrar exempted certain funds from the requirement of having their financial statements audited annually as it was considered too costly for such smaller funds to be audited.  The Registrar, intended to withdraw this exemption for all financial years commencing after 1 January 2019. All funds will then be required to have their annual financial statements audited for financial years commencing after 1 January 2019.  This intended withdrawal of the audit exemption may lead to an increase in the costs of  administering smaller funds. Smaller funds, therefore, should consider the viability of  continuing as self-standing funds or alternatively consider transferring to an umbrella fund that will be suitable to meet the needs and requirements of the fund, employer and its members, and by ensuring that such Umbrella Fund offers good value. |

1. Identify and interrogate sources of data used in the valuation of a retirement fund for consistency and integrity checks against the valuation. **(10)**

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| 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 rules. Variations from 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 the current and the previous valuation date. Of interest should be the progression of the fund from the previous 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 members, deferred pensioners, surviving spouse pensioners, etc) 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;   + pensionable salary at different dates between the current and the previous valuation,   + membership categories   + dates of joining or leaving the fund and details of any benefits paid; * information concerning members and pensioners in a form suitable for electronic processing; * details of any annuities paid or purchased externally. |

1. Analyse and evaluate possible actuarial assumptions made in the valuation of a defined benefit pension fund. **(8)**

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| **The Assumptions**  Following the outcomes of the investigation of the fund’s performance, the Actuary will also use his/her own experience and judgement on setting the assumptions for a current valuation.  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 where the members are active and/or 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, etc.   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 pensionable salaries based on inflation and performance increments; * rate of increase in pension payments; * rate of increase in pension benefits for deferred pensioners; * rate of increase in State pension benefits; * rate of increase in dividends/rental income from assets; and * 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 retirement; * rates of salary increases due to promotion, which comes about independently of   inflation;   * family statistics, such as proportion of members who are 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. |

1. Interpret the effects of changes in any four actuarial assumptions on the financial results of a fund. **(8)**

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| Answers will vary. Assessor to use their own discretion. However, assumptions in question 4 must be the basis of whatever answer is provided. |

1. An actuarial valuation 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)**

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| **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 FSCA may, save as provided for 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 FSCA.  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, it 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 a new scheme, as will enable him/her 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 in accordance with its approval. The Registrar may, if he/she 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 FSCA 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 to, a report must, within the time and in the format stipulated by the Registrar, be furnished to the Registrar and the Board. |

1. Discuss the possible sources of a surplus in a pension fund. **(4)**

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| * Past benefits not paid * Higher contributions * Higher investment returns * Members paid only their contributions plus interest before changes in legislation * Lower than expected fund-related expenses |

1. Describe three situations where a fund may be allowed to utilises surpluses accumulated in the fund **(6)**

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| **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 the 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 the 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 |

1. 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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| **Socio-Economic Factors Affecting Pension and Pension Valuations**  **Effect of longevity on solvency**  The longer people live, the longer pension funds need to continue with pension 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 consequent growth in benefits.  **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 has a defined benefit arrangement, 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 pensionable 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 fund. 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. |