

14 June 2019

**TO: PRINCIPAL OFFICERS OF ALL REGISTERED PENSION
FUND ORGANIZATIONS**

CIRCULAR: PF/CIR/04/2019

EFFECTIVE DATE: 14 JUNE 2019

**SUBJECT: DISPOSAL OF DEATH BENEFITS OF PENSIONER-
MEMBERS**

1. INTRODUCTION

- 1.1. This Circular is issued by virtue of the Namibia Financial Institutions Supervisory Authority's ("the Authority") functions and powers, and those of its Chief Executive Officer in his capacity as the Registrar of Pension Funds, in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the Act"), read with Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001), and is applicable to all registered pension fund organizations under the Act.
- 1.2. Circular: PF/CIR/03/2019 is hereby and henceforth revoked with immediate effect.
- 1.3. Circular No: PI/PF/01/2004 is hereby withdrawn and substituted by this Circular: PF/CIR/04/2019.

- 1.4. This Circular provides clarity on the position of dependants of members of pension funds, with particular emphasis on the dependants of pensioners who are members of Funds.

2. THE CURRENT PRACTICE

It has come to the attention of the Authority that Funds at the death of a pensioner-member do not make provision for the tracing of dependants as required in terms of section 37C of the Act. In many cases Funds make provision for the accrual of benefits only to spouses and/or eligible children of deceased pensioners, without taking into account any dependant that the member may not have disclosed to the Fund. Moreover, some Funds pay a member's nominee who is not a dependant, as defined in the Act, of the deceased pensioner member to the exclusion or at the expense of the member's dependants.

3. THE LAW

- 4.1. In terms of section 1 of the Act, “*member*” means in relation to-

- (a) *a fund referred to in paragraph (a) of the definition of “pension fund organization”, any member or former member of the association by which such fund has been established;*
- (b) *a fund referred to in paragraph (b) of that definition, a person who belongs or belonged to a class of persons for whose benefit that fund has been established,*

but does not include any such member or former member or person who has received all the benefits which may be due to him from the fund and whose

membership has thereafter been terminated in accordance with the rules of the fund"

4.2. In terms of section 1 of the Act, *““dependant” in relation to a member means*

(a) ...;

(b) a person in respect of whom the member is not legally liable for maintenance, if such person -

(i) was, in the opinion of the person managing the business of the fund, upon the death of the member in fact dependent on the member for maintenance;

(ii) is the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion;”

4.3. Section 37C of the Act lays down the procedures of disposing pension benefits upon death of member.

4. THE AUTHORITY’S POSITION

4.1. Section 37C regulates the disposition of benefits upon the death of a member and places the duty on the Fund to actively seek out dependants for at least twelve months after the death of a member. If a dependant is traced, the Fund shall pay the benefits or such portion thereof to such dependant or nominee in such proportions as the person managing the business of the Fund may deem equitable.

4.2. Whether or not the person managing the business of the Fund must trace dependants, will depend on whether the pensioner have anything left in the Fund to pay to a dependant. If the pensioner’s benefits have been exhausted, the Fund has no responsibility towards the dependants. The Fund’s duty towards the

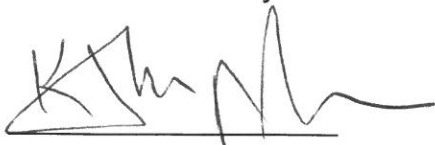
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dependant is therefore limited to the extent of the availability of benefits to the credit of the pensioner.

- 4.3. The rules of a Fund determine the accrual of benefits due to nominees/dependants however the rules are subject to the Act. Accrual to the spouse, children or dependants of the benefits of a deceased member must of necessity be in accordance with the Act.
- 4.4. Therefore, the rules, being subject to the Act, should not vest all benefits due at the death of a member exclusively to the spouse of the deceased member. Such benefits should be handled in line with section 37C of the Act, bearing in mind the interests of all the dependants.
- 4.5. Fund rules that provide for payment of the benefit to pensioners-members' nominee at the exclusion or expense of such member's dependant(s), when such nominee no longer meets the definition of "dependant" at the time of the member's death are inconsistent with section 37C of the Act.
- 4.6. Funds must forthwith comply with their duties under section 37C of the Act. Funds must ensure that their rules are consistent with the Act. Fund rules including approved rules that are inconsistent with the Act are void and of no force or effect.

The Registrar therefore requires full cooperation and support in this process by all Funds and stakeholders at large.

Should you require more clarity on this Circular, kindly contact the Manager of the Pension Funds and Friendly Societies Department at telephone number 061-290 5000.

A handwritten signature in black ink, appearing to read 'K. Matomola', with a horizontal line underneath.

Kenneth S. Matomola
Registrar of Pensions Funds