



NAMIBIA FINANCIAL
INSTITUTIONS SUPERVISORY AUTHORITY
- Safeguarding the Nation's Wealth! -

To: ALL PENSION FUNDS PRINCIPAL OFFICERS
ALL PENSION FUNDS ADMINISTRATORS & CONSULTANTS

Circular No: PI/PF/01/2004

This practice note serves to clarify the position of dependants of members of retirement funds with particular emphasis on the dependants of pensioners who are members of funds.

1. It has come to the attention of the Registrar of Pension Funds that retirement 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 Pension Funds Act, 1956. (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 dependent that the member may not have provided for in the purchase of the member's annuity at retirement.
2. It is true that the rules determine the accrual of benefits due to nominees/dependants but the rules are subject to the Act. Accrual to the spouse, children or dependant of the benefit of a deceased must of necessity be in accordance with the said Act
3. In terms 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) ...

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;

Whether or not a pensioner is a member of a fund depends on whether the annuity was bought in the name of the fund (in which case the pensioner is still a member) or in his or her own name (in which case the pensioner is not)

4. Furthermore,

"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... 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;

5. Therefore, the rules being subject to the Act should not also provide for the spouse of the deceased member but in line with section 37C should also bear in mind the interests of the dependant. The law provides that any subordinate legislation (in this case the rules of the fund) should not amend or broaden the scope of the principal empowering Act (the Pension Fund)

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

6. 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 benefit has been exhausted, the fund has no responsibility towards the dependants. The fund's duty towards the dependant is therefore limited to the extent of the availability of money to the credit of the pensioner.

7. **NAMFISA will cancel the approval of funds and hold the trustees liable in terms of their fiduciary responsibilities under the Act where it is discovered through inspections or complaints that a member's dependants have been discounted for the purpose of disposing the benefit of a deceased member. Pension Funds must, on or before 31 July 2004 amend their rules to make provision for dependants in line with Section 37C.**

8. Funds must however forthwith comply with their duties under section 37C. Such compliance is not subject to the rule amendment referred to above.

Regards,



Frans van Rensburg
Registrar – Pension Funds