



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

May 30, 2005

To: All Pension Funds Board of Trustees & Principal Officers
All Pension Funds Administrators & Consultants

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In this Practice Note the Registrar clarifies the process of purchasing living annuities from life insurers when a pension fund wants to outsource pensioners

INTRODUCTION

The Registrar is concerned about the prevalence of pension funds outsourcing pensioners' liabilities to life insurance companies, due to reasons such as alleged financial strains or administrative burdens that pensioners' payment administration purportedly poses to the pension funds.

In some instances, if not provided for in the pension fund rules, pension funds apply to the Registrar for amendment of their Rules to enable the fund to effect the transfer of pensioners' assets and liabilities in one of the following ways:

Scenario 1: Purchasing of pensioner annuities from a life insurance company in the name of the pension fund – in which case the pension fund owns the insurance policy and the pensioner remain a member of the pension fund and therefore the pensioner remains entitled to the benefits set out in the rules of that fund.

Scenario 2: Purchasing of pensioner annuities from a life insurance company in the name of the pensioner – in which case the pensioner's assets and liabilities are transferred from the pension fund to the life insurance company, which effectively terminates the pensioner's membership to the fund. This is normally done for all pensioner members of the pension fund concerned, in the form of a bulk transfer to the life insurer.

REGISTRAR'S POSITION WITH REGARD TO PURCHASING LIVING ANNUITIES WHEN OUTSOURCING PENSIONERS FROM A PENSION FUND

1. In the case of Scenario 1 - the Registrar supports pension funds purchasing annuities from life insurance companies in the name of the fund whereby the membership of pensioners is not affected thereby. It is understood that under this scenario the pensioners' liabilities still remain with the fund, in other words, pensioners remain

full fund members with full entitlements, including those benefits their beneficiaries, nominees and/or dependents are entitled to in the event of death.

2. In the case of Scenario 2 – the Registrar would be acting outside the scope of his/her powers under the Pension Fund Act, No. 24 of 1956 should (s)he authorize rule amendment applications, seeking to transfer pensioners' assets and liabilities from the pension funds and effectively terminate pensioners' membership to the fund. Such transfers would be contrary to Section 37A and section 14 of the Pension Funds Act.
3. The Registrar would only approve section 14 applications under exceptional cases, where the pension fund has submitted documentary proof that such transfer and consequent termination of pensioners' membership proposed by the Board of Trustees shall not detrimentally affect the pensioner, his or her nominee, beneficiary and/or dependant.
4. A proposed section 14 transfer scheme should include evidence that shows that the pensioner would receive better (or at least similar pension benefit) than the benefit the pensioner is entitled to as member of the pension fund. All documentary evidence of the proposed scheme/annuity negotiated by the pension fund with the life insurance company must therefore be lodged with the application to the Registrar for scrutiny.
5. The Registrar shall further consider how such proposed transfer and membership termination would affect the pensioners' beneficiaries, nominees and/or dependents before considering granting such possible approval.
6. Notwithstanding the fact that the Board of Trustees are required to manage the business of the pension fund, the Registrar's stance against the outsourcing of pensioners' interests, which culminates into termination of fund membership is further reinforced by the fact that pensioners, who are as a rule elderly citizens have vested rights in their respective pension funds.
7. Boards of Trustees are reminded that they have fiduciary responsibilities towards all members of their respective funds. Should it be determined that Trustees acted in breach of their fiduciary duties, the Registrar shall not hesitate to take the necessary action against Trustees, including pension fund administrators and advisers to safeguard the interest of pension fund members.

Yours truly,

Marcelina Lopez
Deputy Registrar (GM): Provident Institutions
FOR THE REGISTRAR: PENSION FUNDS