

30 September 2015

TO: Principal Officers of all registered Pension Funds
Boards of Trustees of all registered Pension Funds

CC: Chairperson of RFIN

DIRECTIVE: PI/PF/DIR/07/2015

EFFECTIVE DATE: 30 September 2015

SUBJECT: PROHIBITION AGAINST THE REVERSION OF UNCLAIMED MONIES/
BENEFITS TO THE FUND

1 Introduction

- 1.1 This Directive is issued by virtue of NAMFISA's functions and powers and those of its CEO in his capacity as the Registrar of Pension Funds in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001) ("the NAMFISA Act") and is applicable to all pension fund organizations registered under the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the PF Act").
- 1.2 The purposes of this Directive are to prohibit the practice by some registered funds in terms of which unclaimed monies which are not claimed within a specified period revert to the fund and to direct the treatment of such monies.
- 1.3 This directive does not apply in instances where section 37C of the PF Act applies.

2 The current practice

The Registrar has observed that some funds provide in their rules that if a beneficiary does not claim monies payable to him/her within 3 years of the date of such monies becoming payable, other than in the case of death benefits, such monies shall revert to the fund, provided that the beneficiary may claim such monies from the fund at any time in the future

and the trustees shall authorize such payment to the beneficiary. In addition to this, some funds are of the view that if a member does not claim his or her benefit within a period of 3 years, the unclaimed benefit shall revert to the fund for the benefit of the remaining members and there shall be no further claim against the fund.

3 The law

3.1 Section 37A of the PF Act provides as follows:

“37A Pension benefits not reducible transferable or executable

(1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act 58 of 1962), and the Maintenance Act, 1963 (Act 23 of 1963), no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated [...].”

3.2 Section 93(1) of the Administration of Estates Act, Act no. 66 of 1965, (“Administration of Estates Act”) provides that:

“Every person carrying on business in Namibia shall in the month of January in each year prepare in the prescribed form and publish in the Gazette a detailed statement in respect of all amounts of the amount prescribed or more which were held by him or her or by any agent on his or her behalf in Namibia on the thirty-first day of December of the immediately preceding year and which were not his or her property or subject to any valid lien, but at the time of the preparation of the said statement have remained unclaimed for a period of five years or more by the rightful owners.”

- 3.3 in terms of section 93(2) of the Administration of Estates Act, any person who has prepared the said statement for publication, may deduct from the said amounts the cost of publication apportioned as far as possible among the owners.
- 3.4 In terms of section 93(3) of the Administration of Estates Act, after the expiration of 3 months from the date of publication of the said statement, such person shall forthwith transmit a statement and affidavit in the prescribed form to the Master and deposit in the guardian's fund to the credit of the rightful owners all such amounts still remaining unclaimed by the rightful owners [...].
- 3.5 The general fiduciary duties of trustees are primarily contained in the common law. The main common law fiduciary duties of trustees are the duty to act with due care and diligence and the duty to act in good faith and in the best interest of the fund and its members.
- 4 Conclusion**
- 4.1 The abovementioned fiduciary duties require trustees to make a concerted effort to ensure that persons entitled to benefits in terms of the rules of the fund receive their benefits. Thus, trustees of registered funds may be required in some instances to trace persons who have failed to, within a certain period, claim pension fund benefits to which they are entitled to.
- 4.2 Unclaimed monies or benefits which remain unclaimed for any period may not revert to the fund, such monies must be deposited in the guardian's fund, to the credit of the beneficiaries, after the expiration of a period of 5 years from the day on which such monies or benefits became payable.
- 4.3 Unclaimed monies and benefits may however be deposited in the guardian's fund at any time before the expiration of the 5 year period aforementioned, provided that same is provided for in the rules of the fund.



5 The Directive

- 5.1 The Boards of Trustees of all registered funds are hereby directed, in the execution of their fiduciary duties, to take all reasonable steps and to do all things necessary to ensure that persons entitled to benefits in terms of the rules of the fund receive their benefits within a reasonable time. This may include the publication (in the media, employer and administrator website) of the names of members and beneficiaries on a wholesale scale for purposes of tracing members or beneficiaries.
- 5.2 The Boards of Trustees of all registered funds are further prohibited from causing unclaimed monies or unclaimed benefits to revert to the fund if the said monies or benefits remain unclaimed for any period after the said monies or benefits became payable. The Board of Trustees of registered funds whose rules provide that unclaimed monies/benefits will revert to the fund are thus requested to remove this provision from the rules of the fund via a rule amendment. The said rules should instead provide for the depositing of the unclaimed monies/benefits into the guardian's fund in accordance with the provisions of the Administration of Estates Act.
- 5.3 The Boards of Trustees of all registered funds are further directed to ensure that the procedures laid down in section 93 of the Administration of Estates Act are followed for purposes of depositing any monies or benefits which have remained unclaimed for a period of 5 years or more into the guardian's fund.

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

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



Kenneth S. Matomola
Acting CEO
Registrar of Pension Funds