



ELECTRICAL CONTRACTING INDUSTRY PENSION AND PROVIDENT FUNDS

MEMBERS` NEWSLETTER

Introduction

This newsletter contains IMPORTANT information about your Fund.

The objective of the newsletter is to keep members informed about their Retirement Fund and to promote a better understanding of how the Fund works. Members are invited to provide feedback to the Trustees, in respect of issues that members would like to be addressed and aspects on which members would like clarity. This newsletter will discuss the taxation of the withdrawal benefits, distribution of death benefits as well as the Rule amendments.

TAXATION OF LUMP SUM WITHDRAWAL BENEFITS

Withdrawal Benefits

With effect from 1 March 2009, the Revenue Laws Amendment Act, 2008, introduced a new method for the taxation of lump sum withdrawal benefits. From 1 March 2009 lump sum withdrawal benefits will be taxed according to a prescribed withdrawal benefit tax table. This tax table is shown below:

Taxable income from lump sum withdrawal benefits	Rates of taxes
R0 – R22 500	0%
R22 501 – R600 000	18% of the amount above R22 500
R600 001 – R900 000	R103 950 plus 27% of the amount above R600 000
R900 001 and above	R184 950 plus 36% of the amount above R900 000

All lump sum benefits received from a retirement fund by any individual over their life time will be taxed on a cumulative basis. The significant impact of this is that when a member eventually retires, the total value of the lump sum benefits previously received by the member tax-free will now be taken into account when calculating the tax-free amount payable on the member's retirement.

It is important to note that not only withdrawals that result in lump sum benefits; the payment of divorce proceeds, the deduction of a housing loan and the transfer from a pension to a provident fund may also result in lump sum benefits and these payments could have the same effect as the payment of a lump sum withdrawal when leaving the fund.

Members are encouraged to rather preserve any withdrawal benefits, using a preservation fund, a retirement annuity fund or another approved fund which will not attract tax leaving the full tax-free amount of R300 000 available on retirement.

Please note that you should consult with a registered financial planner for advice when contemplating any changes which affect your retirement planning if you have any doubts as to the effect of your decisions.

Distribution of death benefits: Provisions of the Pension Funds Act

Every member has to consider the possibility of dying while in service of his/her Employer. The Pension Funds Act, 24 of 1956 makes provision on how Trustees must distribute the deceased member's benefits in their fund. This section of the newsletter aims to inform you of how the distribution of death benefits in your Fund takes place.

The Pension Funds Act currently provides in Section 37C, that upon a member's death his death benefits be distributed at the discretion of the Trustees.

The Act sets out guidelines as to who the benefit should be paid to.

Dependants

The benefit should firstly be paid to the dependants of the deceased member. The Act defines a dependant as:

- The spouse of a member (this includes life partners, common law spouses and same sex partners as well as spouses of polygamous marriages and civil unions),
- Children of the member (including children that died before the member did and who had left dependants), illegitimate children, adopted children, step-children and unborn children;
- A person who is legally dependant on the member for maintenance e.g. a former spouse to whom the court has ordered the member to pay maintenance to;
- A person who is factually dependent on the member for maintenance e.g. the member pays R600 per month to his aunt to help her pay her medical expenses or the member buys his gardener's monthly groceries;
- A person who would have become legally liable for the maintenance if the member had not died e.g. the fiancée of the member.

Persons who are not dependants

The Pension Funds Act also allows for persons who are not dependants to receive the member's death benefit. If the member had left no dependants, the Trustees will make payment to nominated beneficiaries e.g. if a member nominated his/her friends. If the member did not complete a nomination of beneficiary form and the Trustees can not find any dependants the Trustees will pay the monies into the deceased **member's estate**. If the member has no estate, the money will be paid to a Beneficiary Fund nominated by the Trustees.

Manner of payment

The Pension Funds Act prescribes the manner in which payments of death benefits must be made:

- Benefits payable as a cash lump sum to major dependants and beneficiaries – unless dependant or beneficiary is not legally capable of handling own financial affairs or requests payment to a Trust or Annuity.
- Benefits payable to minor dependants must be made in cash to the guardian or can be paid into a Beneficiary Fund.

Guardians and care givers

The Pension Funds Adjudicator have ruled that where a member has minor dependants and a guardian had been appointed to care for the minor children, payment must be made to the guardian of the minor children.

The Trustees are not allowed to make payments into a beneficiary fund or a trust unless the guardian consented to the manner of payment.

"Guardian" is defined as a parent or other person who has guardianship of a child.

A parent or guardian of a child has the parental responsibility to take care of the child and must, *inter alia*, administer and safeguard the child's property and property interest.

The Children's Act

Certain provisions of the Children's Act ("the Act") came into operation on 1 July 2007.

The Children's Act, aims to promote the protection, development and well-being of children. The Act has quite far-reaching implications regarding the protection of children and could have an impact on the way boards of trustees allocate death benefits, especially to a minor child.

Care-giver and child-headed household

The Children's Act introduces a new notion of care-giver.

"Care-giver" is defined as any person other than a parent or guardian, who factually cares for a child.

Foster parents, the person at the head of a shelter, and the child at the head of a child-headed household are *inter alia* included in the definition.

In terms of the Children's Act, a care-giver must, whilst the child is in that person's care, safeguard the child's health, well-being and development.

The Children's Act further changed the age of majority from 21 to age 18.

Guardians and Care Givers

Where the guardian of a child who is in receipt of a pension from a pension fund, is not factually taking care of such child, the pension may be paid to the care-giver of the child to enable such care-giver to provide for the child's day-to-day needs.

However, as the care-giver is not legally appointed in the same formal manner as a guardian, the identification of a care-giver could be difficult. In this regard, the trustees need to establish a process regarding the procedure to be followed in order to identify the caregiver.

Child-headed Households

The provisions in the Children's Act in respect of child-headed households imply that, although the rules of a pension fund award a children's pension to a specific child and it thus does not belong to the whole household, the children's pension in respect of a child in a child-headed household needs to be paid to an organ of state or a non-governmental organization determined by the provisional head of social development, to be administered for the benefit of the child.

The Children's Act prescribes that a child at the head of the household is not able to receive other social security grants and therefore it was also probably not the legislature's intention to enable such child

to receive pension benefits on behalf of other children in the household.

How to assist the Trustees

The Trustees are responsible for the distribution of death benefits payable from the pension and provident funds.

The Trustees must investigate the personal circumstances of a member upon the death of the member to ensure that the death benefits are distributed in terms of the provisions of the Pension funds Act.

The Trustees will investigate the member's circumstances by:

- Interviewing the family and employer of the member;
- Noting the contents of the nomination of beneficiary forms
- Noting the contents of the will of the member (should a will be available)

The Trustees are not bound to the provisions of the nomination of beneficiary form or the will of the member but this will assist Trustees in the benefit distribution process.

Members should keep their nomination of beneficiary forms up to date and provide Council or their employer (for onward transmission to Council) with an updated form every time the personal circumstances of the member change e.g. where a member marries/divorces, where a child is born etc.

Rule Amendments

During the year, Trustees of the Fund amended the Rule of the Funds. Among the proposed amendments to the Rules, the following will be of importance to members since the amendment has got a material effect to the way the benefit payment would be done should a member withdraw from the Fund:

Trustees agreed that members who has withdrawn from the Funds and the dormant members (members who did not contribute for a continuous period of six months) should indicate their intention to withdraw their Funds or make a claim or transfer within a period of six months after being dormant will be declared deferred members. Please note that deferred members will only be able to claim their benefit after reaching the age of 55 years. It is, therefore, important that members

understand this Rule and submit a claim or indicate their intention to submit a claim within the prescribed period of six months as explained above to avoid being declared dormant when in fact a member wants to withdraw or transfer his/her benefit. During the period when one is a

deferred member, annual benefit statements will be issued and the deferred members` share of Fund will earn Fund until it becomes due when one reaches 55 years of age. The benefit will not be accessible prior to reaching age of 55 years.

A handwritten signature in black ink, appearing to read 'Tim J P Kruger', with a stylized flourish at the end.

**The Principal Officer
Tim J P Kruger**