



Executive Summary

- The Financial Services Laws General Amendment Act includes several amendments to the Pension Funds Act.
- The majority of the amendments have an effective date of 28 February 2014.
- The amendments have an impact on payment of benefits, payment of contributions, trustees' duties, whistle blowing, registration of retirement funds and reporting on the financial soundness of retirement funds.

Financial Services Laws General Amendment Act, 2013

Background

The Financial Services Laws General Amendment Act, 2013 (the Act) was Gazetted on 16 January 2014. **All amendments are effective 28 February 2014 unless otherwise stated.**

Payment of benefits

- A fund will be allowed to pay a benefit into the bank account of a third party, provided that the beneficiary can prove that he/she is unable to open a bank account. Payments into joint accounts will not be allowed.
- Where the beneficiaries cannot be traced within 12 months following the death of a member and there are no nominees and no estate, the benefit can be transferred to an unclaimed benefit fund.
- Where a fund has been unable to pay a death benefit to a beneficiary or nominee for a period of 24 months from date of death for reasons other than those mentioned above, such benefit can be transferred to an unclaimed benefit fund.
- Benefits originating from retirement funds and employer-owned policies (e.g. unapproved group life assurance) can forthwith be paid into a beneficiary fund. Previously benefits from employer-owned policies could only be paid into a beneficiary trust.
- Section 37D of the Pension Funds Act has been amended to allow for a deduction to be made from a deferred benefit or the capital value of a pensioner's pension after retirement. Such deductions would include divorce orders.

Payment of contributions

- Section 13A has been amended to impose personal liability on directors (if the employer is a company) or members (if the employer is a closed corporation) who are regularly involved in the financial affairs of the employer. These individuals are to ensure that monthly contributions are deducted and paid across to the fund within the period prescribed by legislation (the 7th of the following month).
- The employer is to notify the fund in writing of the identity of these person(s) that will be held responsible/liable.
- If the employer fails to identify the above individuals, the directors/members of the employer will be held personally liable.

Board of trustees' composition and new duties imposed on trustees

- The composition of a board of trustees must at all times be in terms of the rules of the fund and vacancies must be filled within a prescribed period, which is still to be announced.
- The registrar may prescribe the level of skills and training a trustee must attain within 6 months of becoming a trustee.
- Trustees' duties:
 - Trustees must act independently, i.e. not attend board meetings wearing a member/ employer/pensioner/union hat, but act solely as a trustee in the best interest of all members of the fund.
 - Trustees have to (in addition to members) inform beneficiaries of their rights and benefits as part of the fund's communication strategy.

- The board can delegate (but not abdicate) functions to subcommittees, as long as the delegation is in writing and in accordance with the rules of the fund.
- The Act provides for the potential exemption of a particular trustee, in the event of proceedings against the board, from joint or several liability if he/she is found to have acted independently and discharged his/her duties in a honest and reasonable manner.

Whistle blowing

- Along with the duties mentioned above, the duty of whistle blowing is extended to trustees, valuers, administrators and deputy principal officers (previously only principal officers and auditors).
- A disclosure by any of the above parties will be seen as a "protected disclosure" and they will enjoy protection in terms of the Protected Disclosures Act.
- The registrar will establish a process for the submission of disclosures.

Registration of a retirement fund (effective 30 May 2014)

Funds have to be provisionally or finally registered before they can commence business as retirement funds.

Financial soundness (effective 29 August 2014)

Section 18 of the Pension Funds Act has been amended, giving powers to the registrar to prescribe criteria for the evaluation of and reporting on the financial soundness of a fund.

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Tel: (021) 943 5300 or 0861 88 88 81

Fax: (021) 917 4600

E-mail: info@verso.co.za

Web: www.verso.co.za

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