



**The Pension  
Funds  
Adjudicator**



# Establishment of the Office of the Pension Funds Adjudicator (“OPFA”)

- Before 19 April 1996: pension related disputes dealt with by ordinary courts of law
- Need for an alternative dispute resolution (ADR) forum
- Objective: Cost efficient and expedient resolution of complaints

## Establishment cont.

- Chapter VA inserted into the Pension Funds Act, 24 of 1956 w.e.f 19 April 1996
- Deals with the consideration and adjudication of complaints
- Established the OPFA for that purpose (S30B (1))

# The Adjudicator

- Functions of the OPFA performed by the Pension Funds Adjudicator (S30B (2))
- Appointed by the Minister of Finance in consultation with the Financial Services Board (“FSB”) (S30C (1))



# Object or Mandate of the Adjudicator

- Dispose of complaints in a **procedurally fair, economical** and **expeditious** manner (Section 30D)
- Does this by investigating complaints and making orders which a court of law may make



## Funds outside the OPFA's jurisdiction

- Government Employees Pension Fund (GEPF)
- Transnet Pension Fund
- Telkom Pension Fund
- Post Office Pension Fund (NB: We have jurisdiction over the Post Office Retirement Fund as it is registered with FSB as a pension fund organisation)
- Temporary Employees Pension Fund
- Associated Institutions Pension Fund
- Association Institutions Provident Fund

# “Complaint”

“**complaint**” means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging -

- (a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;

i.e. distribution of a death benefit

## Complaint continued

- (b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;

i.e. delay in finalising a section 14 transfer



# Complaint continued

- (c) that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant;

i.e. computation of a withdrawal benefit



# Complaint continued

(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

i.e. Arrear contributions

# Complaints

- Complaints must be “complaints” as defined in section 1 of the Pension Funds Act

**e.g.**

- Failure to pay retirement, death, disability and withdrawal benefits
- Dissatisfaction with benefits paid
- Dissatisfaction with decision/conduct of the fund/employer
- Governance issues, board of management
- Division of pension interest in divorce matters

## OJ matters

- Time-Barred matters i.e. matters lodged more than 3 years after the cause of action
- Insurance business matters
- Complaint against an employer or fund under business rescue
- Complaint against a fund or employer under liquidation
- Section 15B surplus apportionment scheme
- Complaints against trust funds
- Complaint against Bargaining council funds before their registration with the Act.

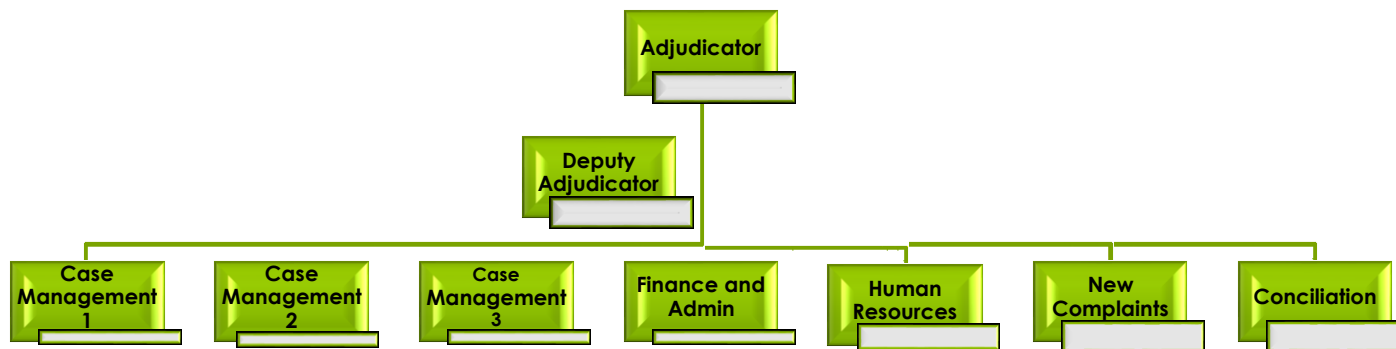
# Investigative procedure overview



# Nature of the OPFA

- Not a court of law
- Administrative Tribunal performing a judicial function
- Complaints forum which is equivalent to a court of law but not bound to formalities and procedures which may delay the adjudication of complaints.
- Inquisitorial in approach
- Public entity in terms Schedule 3 of the Public Finance Management Act, 1 of 1999 (“PFMA”)

# Structure of the OPFA



# The Board

- The OPFA reports to the Board of the FSB
- The Board is defined in section 1 Financial Services Board Act, 97 of 1990
- The Board is the Accounting Authority of the OPFA (Section 30T (1) of the Act)
- The Board must ensure the OPFA complies with the PFMA



# Funding of the Adjudicator

- FSB collects levies from all members of private sector pension funds to fund the OPFA
- The OPFA submits an annual budget to the Board for approval
- Adjudicator also funded by money from any other source, e.g. interest on bank deposits, investment returns on funds invested



# Reporting to the Minister

- The OPFA also reports to the Minister of Finance
- Annually within six months of the end of its financial year, the OPFA must submit a report to the Minister on its activities
- Report must also include audited financial statements



# Contact Details

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# QUESTIONS



**THANK YOU**



## ***Withdrawal Benefits***



# AGENDA

- What is a withdrawal benefit
- When payable
- Calculation
- Taxation
- Options on payment
- Section 14 transfers

# “Withdrawal benefit”

- The benefit a fund becomes liable to pay to a member who leaves service before normal retirement age due to resignation, dismissal or retrenchment
- The benefit is provided for in the Rules
- Depending on the Rules, may be referred to as a “resignation benefit” or “retrenchment benefit”, etc

# When payable

- Dismissal
- Retrenchment or reorganisation for operational reasons
- Resignation

# Calculation

- Calculated in terms of the Rules
- Calculation depends on the structure of the fund
- Fund may be a Defined Benefit Fund (“DB Fund”) or a Defined Contribution fund (“DC Fund”)

# Calculation in DB Funds

- In DB Funds, withdrawal benefits are calculated based on actuarial reserve value and value of employee/employer contributions
- Both benefits may co-exist in a fund
- In such cases, the one that accrues depends on the length of service and nature of termination of employment

# Calculation in DB Funds continued

- In case of early withdrawals (those not employed for long before termination of employment), the Rules will typically provide for payment of contributions and interest
  - If the Rules permit, contributions may be multiplied (e.g. contributions x 1.5)
- In case of longer serving members who withdraw and are not eligible for retirement benefits, the Rules will typically give an option of a withdrawal benefit made up of contributions and interest **(cash)** or actuarial reserve value (“ARV”) **(transfer)**
  - The ARV is the amount (capital discounted to present day value) that the fund deems necessary to hold in asset value on behalf of the member in order to pay him the benefit promised on retirement
  - Determined according to formula of final fund salary x period of service

# Calculation in DB Funds continued

- Occasionally, withdrawing member may have the option of a cash withdrawal benefit equal to the greater of a return of contributions or ARV
- These depend on the provisions of the Rules. The Rules may provide for something similar to the above or something different.

# Calculation in DC Funds

- The Rules of a DC fund will usually provide that a withdrawing member becomes entitled to a withdrawal benefit that is equivalent to his “Fund Credit” or “Share of the Fund” as defined in the Rules
- Most Rules define Fund Credit or Share of the Fund as a sum of the member’s contributions and voluntary additional contributions (AVCs); the employer’s net contributions, transfer values (if any); surplus apportionments (if any); and investment returns



# Taxation

## Taxable Income (R)

0 – 25 000

25 001 - 660 000

660 001 - 990 000

990 001 and above

## Rate of Tax (R)

0% of taxable income

18% of taxable income above 25 000

114 300 + 27% of taxable income above 660 000

203 400 + 36% of taxable income above 990 000

# Options

- Two main options:
  - Cash payment
  - Transfer to a another fund (new employer's fund, preservation fund, etc)
- If member opts for cash payment, withdrawal benefit will be taxed and net benefit will be paid to him
- If he opts for transfer, the transfer can be done without deduction of tax

# Section 14 transfers

- Section 14 provides for regulatory control over amalgamations and transfers of business involving registered funds
- To ensure that transfers of assets are not being run in an irresponsible or reckless manner, which may prejudice members' interests
- No transfer shall take place and be of effect unless the scheme for such proposed transfer has been submitted to the Registrar of Pension Funds

# Section 14 transfers continued

- Registrar must satisfy himself that:
  - the proposed scheme is reasonable and equitable and accords full recognition to the rights and reasonable benefit expectations of the members
  - to any additional benefits in respect of service prior to the date of transfer, the payment of which has become established practice
  - to the payment of minimum benefits referred to in [section 14A](#)
- Once satisfied, the Registrar approves the transfer and issues a certificate in that regard

# Section 14 transfer continued

- Party aggrieved with approval of a section 14 transfer scheme?
  - May approach the FSB Appeal Board for relief

# Contact details

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**THANK YOU**