

THE DUTY TO EFFECT AN APPROPRIATE MODE OF PAYMENT TO MINOR PENSION BENEFICIARIES UNDER SCRUTINY IN DEATH CLAIMS

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Abstract

This note focuses on the payment into a trust arrangement in favour of a minor beneficiary as contemplated in terms of section 37C (2) of the *Pension Funds Act* 24 of 1956. The aim is to examine the criteria under which the boards of management of pension funds may deprive a guardian the right to administer benefits on behalf of minor beneficiaries. This examination is conducted within the context of the approach adopted by the Pension Funds Adjudicator in four specific determinations decided prior, but relevant, to the amendments to the *Pension Funds Act*, where the board in each case unlawfully deprived a guardian of the right to administer death benefits in favour of a minor beneficiary. Therefore, the note will discuss four specific determinations and thereafter comment about the criteria to be used by practitioners. The note argues that these determinations should be welcomed because of their progressive interpretation of the Pension Funds Act and for setting an important precedent for pension fund practitioners and boards. In each case, the Pension Funds Adjudicator found a violation of section 37C. The note also criticises the remedy granted in two of the determinations, namely *Moralo v Holcim South African Provident Fund*, and *Mafe v Barloworld (SA) Retirement Fund Respondent*, and argues that the Pension Funds Adjudicator's ruling on these matters was arbitrary and capricious because it disregarded its own precedent in *Lebepe v Premier Foods Provident Fund & Others*. We therefore submit that the Pension Funds Adjudicator should have ordered the boards in *Moralo v*

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Holcim South African Provident Fund, and Mafe v Barloworld (SA) Retirement Fund Respondent to pay all of the benefits directly to the complainants and guardians in those determinations.

Key words: Minor beneficiaries; Pension Funds Act; Determinations; Pension Funds Adjudicator; Payment; Beneficiary fund; Guardian; Dependant; Trustee; Death benefits