

### **37A. Pension benefits not reducible, transferable or executable**

- (1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act No. 58 of 1962), and the Maintenance Act, 1998, 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, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of [section 65](#) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine.

[Subs. (1) amended by s. 40 of Act 99/80 and s. 45 of Act 99/98]

- (2)
- (a) If in terms of the rules of a fund the residue of a full benefit, after deduction of any debt due by the person entitled to the benefit, represents the benefit due to that person, such reduction shall for the purposes of subsection (1) be construed as a reduction of the benefit.
  - (b) The set-off of any debt against a benefit shall for the purposes of subsection (1) be construed as a reduction of the benefit.
- (3) The provisions of subsection (1) shall not apply with reference to anything done towards reducing or obtaining settlement of a debt -
- (a) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976 (Act 101/76), applies, arose before the commencement of that Act;
  - (b) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976, does not apply, arose before the commencement of the Financial Institutions Amendment Act, 1977;
  - (c) which a fund may reduce or settle under [section 37D](#), to the extent to which a fund may reduce or settle such debt; or
  - (d) which is owed to a fund by a member in respect of arrear contributions, but excluding amounts which are in arrear due to the failure of the employer

concerned to pay the member's contributions to the fund after deduction thereof from the member's remuneration.

[Para. (d) added by s. 37 of Act 104/93 and substituted by s. 4 of Act 22/96]

[S. 37A inserted by s. 24 of Act 101/76 and substituted by s. 12 of Act 94/77]

### **37D. Fund may make certain deductions from pension benefits**

(1) A registered fund may -

(a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962), and any amount due to the fund in respect of-

(i) a loan granted to a member in terms of [section 19\(5\)](#); or

(ii) any amount for which the fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to the member in terms of [section 19\(5\)](#), from-

(aa) the amount of the benefit to which the member or a beneficiary becomes entitled in terms of the rules of the fund;

(bb) in the case of a transfer of the member to another fund, the amount of the benefit which the fund is so entitled to transfer, if the board of the transferor fund is satisfied that it is not otherwise reasonably possible to negotiate the repayment or to transfer the loan or the guarantee; or

(cc) in the case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of membership on the date of default, if such a deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayment can be made;

[Para. (a) substituted by s. 4 of Act 65/2001]

(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of -

(i)

(aa) a loan granted by the employer to the member for any purpose referred to in [section 19\(5\)\(a\)](#); or

(bb) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member for any purpose referred to in [section 19\(5\)\(a\)](#),

to an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act; or

(ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which -

(aa) the member has in writing admitted liability to the employer; or

(bb) judgment has been obtained against the member in any court, including a magistrate's court,

from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned;

(c) deduct any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of -

(i) such member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the [Medical Schemes Act, 1998](#) (Act No. 131 of 1998);

[Subpara. (i) substituted by s. 28 of Act 11/2007]

(ii) any insurance premium payable by such member or beneficiary to a long-term insurer registered in terms of the [Long-term Insurance Act, 1998](#) (Act No. 52 of 1998);

[Subpara. (ii) substituted by s. 28 of Act 11/2007]

(iii) any purpose approved by the registrar, on the conditions determined by him, upon a request in writing from the fund,

from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme, insurer or person concerned, as the case may be.

[Para (c) substituted by s. 14 of Act 80/78]

(d) deduct from a member's benefit or minimum individual reserve, as the case may be-

(i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under [section 7\(8\)\(a\)](#) of the Divorce Act, 1979 (Act No. 70 of 1979);

(iA) any amount payable in terms of a maintenance order as defined in [section 1](#) of the Maintenance Act, 1998 (Act No. 99 of 1998); and

(ii) employees' tax required to be deducted or withheld in terms of the [Fourth Schedule](#) to the Income Tax Act, 1962 (Act No. 58 of 1962), as a result of the deduction referred to in subparagraph (i) or (iA);

[Para. (d) added by s. 28 of Act 11/2007 and substituted by s. 4 of Act 35/2007, s. 16 of Act 22/2008 and s. 3 of Act 60/2008 w.e.f. 1 November 2008]

(e) .....

[Para. (e) added by s. 28 of Act 11/2007, amended by s. 4 of Act 35/2007 and deleted by s. 16 of Act 22/2008]

- (2) For the purposes of paragraph (a)(ii)(bb) and (cc) of subsection (1), the amounts so deducted shall be deemed to be a benefit to which the member becomes entitled on termination of his or her membership of the fund for reasons other than as a result of retirement or death arising at the date of the transfer or the default.

[Subs. (2) added by s. 4 of Act 65/2001]

(3)

- (a) Any amount that may be deducted in terms of subsection (1)(d) may only be deducted after the amount of pension interest available has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where such a loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not: Provided that the aggregate of all amounts deducted in terms of this subsection may not exceed the member's pension interest available at any given time.

- (b) In the event that more than one of the court orders referred to in subsection (1)(d) provides for the deduction of amounts from a member's benefit or minimum individual reserve, as the case may be, at the same time, the court orders must be dealt with in accordance with the following hierarchy-

(i) any maintenance order referred to in subsection (1)(d)(iA);

[Subpara. (i) substituted by s. 3 of Act 60/2008 w.e.f. 1 November 2008]

(ii) any decrees of divorce or for the dissolution of a customary marriage.

[Subs. (3) added by s. 16 of Act 22/2008]

(4)

- (a) For purposes of [section 7\(8\)\(a\)](#) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or

decree for the dissolution of a customary marriage is granted, and, on the written submission of the court order by the non-member spouse-

- (i) must be deducted by -
    - (aa) the pension fund or pension funds named in or identifiable from the decree;
    - (bb) the pension fund or pension funds to which the pension fund referred to in item (aa) transferred the pension interest referred to in the decree;
  - (ii) must be deducted on the date on which an election is made or, if no election is made within the period referred to in paragraph (b)(i), the date on which that period expires; and
  - (iii) must reduce the member's accrued benefits or minimum individual reserve at the date of the decree.
- (b)
- (i) The pension fund must, within 45 days of the submission of the court order by the non-member spouse, request the non-member spouse to elect if the amount to be deducted must be paid directly to him or her, or if it must be transferred to a pension fund on his or her behalf.
  - (ii) The non-member spouse must within 120 days of being requested to make an election-
    - (aa) inform the pension fund of how the amount referred to in subparagraph (i) must be dealt with; and
    - (bb) if he or she elects that the amount must be paid to him or her directly, provide the pension fund with the details of how that payment must be effected; or
    - (cc) if he or she elects that the amount must be transferred to a pension fund on his or her behalf, provide the pension fund with the details of that pension fund.
  - (iii) The pension fund must pay or transfer the amount within 60 days of being informed of how the amount must be dealt with in accordance with the non-member spouse's election.
  - (iv) In the event that the non-member spouse fails to make an election or identify the pension fund to which the amount should be transferred within the period referred to in subparagraph (ii), the pension fund must

pay the amount directly to the non-member spouse within 30 days of the expiry of that period.

- (v) Despite subparagraph (iv), in the event that the pension fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the pension fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the pension fund until such time as details of how that payment must be effected is made available to the pension fund by the member, the non-member spouse or any other person.

(c) A non-member spouse-

- (i) is not a member or beneficiary in relation to the pension fund; and
- (ii) is entitled to the accrual of fund return on the amount referred to in paragraph (a) at fund return from the expiry of the period referred to in paragraph (b)(ii) until payment or transfer thereof, but not to any other interest or growth.

(d) Any portion of the pension interest assigned to the non-member spouse in terms of a decree of divorce or decree for the dissolution of a customary marriage granted prior to 13 September 2007 are for purposes of any law other than the Income Tax Act, 1962, including, but not limited to, [section 7\(8\)\(a\)](#) of the Divorce Act, 1979, deemed to have accrued to the member on 13 September 2007 and must be paid or transferred in accordance with paragraphs (a) and (b).

[Subs. (4) added by s. 16 of Act 22/2008]

(5) Despite paragraph (b) of the definition of “pension interest” in [section 1](#)(1) of the Divorce Act, 1979, the total amount of annual simple interest payable in terms of the definition may not exceed the fund return on the pension interest assigned to the non-member spouse in terms of a decree granted in terms of [section 7\(8\)\(a\)](#) of the Divorce Act, 1979.

[Subs. (5) added by s. 16 of Act 22/2008]

(6) Despite paragraph (b) of the definition of “pension interest” in [section 1](#)(1) of the Divorce Act, 1979, the portion of the pension interest of a member of a pension preservation fund or provident preservation fund (as defined in the Income Tax Act, 1962), that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated on the date on which the decree was granted.

[Subs. (6) added by s. 16 of Act 22/2008]

[S. 37D inserted by s. 14 of Act 94/77]

19 (5)

- (a) A registered fund may, if its rules so permit and subject to the regulations, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member-
  - (i) to redeem a loan granted to the member against security of, either a pledge by the member concerned to the fund of the benefit contemplated in paragraph (c)(ii), or immovable property which either belongs to the member or his or her spouse or the member and his or her spouse and on which a residence has been or will be erected which is occupied or, as the case may be, will be occupied by the member or a dependant of the member;
  - (ii) to acquire immovable property on which a residence has been or will be erected, or to erect a residence on immovable property in respect of which, either the member or his or her spouse, or the member and his or her spouse, has or have obtained ownership or the right to ownership through a right of occupation, for occupation by the member or a dependant of the member; or
  - (iii) to make additions or alterations to or to maintain or repair a residence of which ownership or the right to ownership was obtained through a right of occupation by either the member or his or her spouse or the member and his or her spouse and which is occupied or will be occupied by the member or a dependant of the member,

if the right of occupation of the immovable property or residence is secured by virtue of the operation of any custom or law, other than an agreement of lease or similar temporary measure, entitling such member, or his or her dependants, to the right of occupation of such immovable property or residence or any specified portion thereof.