

15 September 2009

**LEGAL UPDATE FAW 16/2009: MOMENTUM UNCLAIMED BENEFITS PENSION AND PROVIDENT PRESERVATION FUNDS**

The Momentum Unclaimed Benefits Pension and Provident Preservation Funds were registered by the Financial Services Board and approved by the Commissioner for the South African Revenue Services and are now in a position to start operations.

Registration and approval details of these Funds are as follows:

	<b>Momentum Unclaimed Benefits Pension Preservation Fund</b>	<b>Momentum Unclaimed Benefits Provident Preservation Fund</b>
<b>FSB registration number</b>	12/8/37803	12/8/37804
<b>SARS approval number</b>	18/20/4/42129	18/20/4/42128
<b>Transfer rule</b>	Rule 7.1	
<b>Valuation exemption</b>	Granted on 14 July 2009; valid until 30 June 2011	

Until otherwise advised, transfers into these Funds will not be done via section 14, but the Recognition of Transfer-process will be followed instead. All moneys will be invested in the Trustee Choice Portfolio, which currently is the Momentum Secure Bonus portfolio (MSB).

The following fee structure applies to the Funds:

Administration fee	First R500,000 of member assets: 0.25% of assets (plus VAT) (per member) per annum Balance of assets: 0
Fund expenses	0.25% of assets per member per annum, with a maximum of R900
Asset management fees	MSB: 1.25% of assets per annum

Paragraphs 1, 3, 4 and 6 of the Second Schedule to the Income Tax Act have been amended as follows from 1 March 2009 with regards to unclaimed benefits:

- Paragraph 1: includes an amount transferred to an unclaimed benefits fund that was subject to GN35 tax in "E" of Formula B.
- Paragraph 3: where any lump sum benefit is paid to a pension preservation fund or a provident preservation fund as an unclaimed benefit, no lump sum shall be deemed to accrue. This provides for tax-free transfers into unclaimed benefits funds.
- Paragraph 4: a withdrawal benefit shall, subject to paragraph 3, be deemed to accrue on the earlier of –
  - the date on which the member elects to have the benefit paid to them;
  - the date on which the benefit is transferred to another fund; or
  - the date of their death.
- Paragraph 6: GN35 tax previously paid will qualify as a deduction.

The effect of these provisions is that although GN35 tax is payable on benefits that accrued to members where the exit event occurred prior to 1 March 2009, benefits accruing after 1 March 2009 will not be subject to GN35 tax.

The most relevant provisions of the Rules of the Funds are as follows:

## 1. DEFINITIONS

<b>DEFINED TERM</b>	<b>DEFINITION</b>	
<b>ASSET MANAGEMENT FEES</b>	Any fee charged by any individual / portfolio management company appointed by the Trustees to manage the assets of the Fund	
<b>BENEFICIARY</b>	PREVIOUS FUND MEMBER, his dependants or nominated beneficiaries entitled to benefits from PREVIOUS FUND	
<b>DISINVEST</b>	<p>Notification to investment manager to initiate disinvestment of MEMBER'S benefit from market. When investment manager confirms finalisation of disinvestment process, the benefit will be deposited into Momentum's bank account.</p> <p>Disinvestment is to be done within 10 working days, except when circumstances beyond Momentum's control results in unforeseen delays; then it shall be effected as soon as reasonably possible.</p>	
<b>FINANCIAL YEAR</b>	Each 12 month period ending on 30 June.	
<b>FUND BENEFIT</b>	<p>Amount transferred from PREVIOUS FUND</p> <p>less</p> <p>MEMBER'S pro rata share of MANAGEMENT FEES</p> <p>less</p> <p>tracing costs</p> <p>less</p> <p>MEMBER'S pro rata share of ASSET MANAGEMENT FEES</p> <p>plus</p> <p>investment return.</p>	
<b>MANAGEMENT FEES</b>	<p>Admin fee</p> <p>Bank charges</p> <p>Valuation costs</p> <p>Audit costs</p> <p>Asset management fees</p> <p>Fidelity Guarantee cover</p> <p>Independent Trustee &amp; Principal Officer remuneration</p> <p>FSB levies &amp; fees</p> <p>Commission or advisory fees</p> <p>Such other costs as the Trustees may determine.</p>	
<b>MEMBER</b>	PREVIOUS FUND MEMBER, his dependants or nominated beneficiaries, in respect of whom an UNCLAIMED BENEFIT has been transferred to the Fund.	
<b>PREVIOUS FUND</b>	Pension	Approved pension fund or pension preservation fund.
	Provident	Approved provident fund or provident preservation fund.
<b>PREVIOUS FUND MEMBER</b>	Member of PREVIOUS FUND to whom benefits became payable under the PREVIOUS FUND.	

<b>UNCLAIMED BENEFIT</b>	<p>Pension Funds Act definition</p> <p>(a) a benefit, other than a benefit referred to in paragraphs (b), (c) and (d), not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it, in terms of the rules of the fund, became legally due &amp; payable;</p> <p>(b) a benefit payable as a pension / annuity, which has not been paid by a fund to a member, former member or beneficiary within 24 months of –</p> <p>i) the expiry of the guarantee period for pension payments provided for in the rules of the fund; or</p> <p>ii) the date on which any pension / annuity legally due &amp; payable in terms of the rules of the fund became unpaid;</p> <p>(c) surplus benefit payable to former member that cannot be traced - not paid within 24 months after surplus approval;</p> <p>(d) any benefit that remained unclaimed / unpaid to a member, former member or beneficiary when a fund applies for cancellation or registration or where the liquidator is satisfied that benefits remain unclaimed / unpaid, excluding –</p> <p>(aa) section 14 transfer, where annuity is purchased iro pensioner or otherwise in terms of the Act;</p> <p>(bb) death benefit payable to a beneficiary iro s37C not paid within 24 months from date of death of member.</p>
<b>WITHDRAWAL NOTIFICATION</b>	<p>Withdrawal benefit – submission of a duly signed withdrawal form in specific format.</p> <p>Retirement benefit – submission of a duly signed retirement form in specific format.</p> <p>Death benefit – notification of death.</p>

## 2. INFORMATION TO BE PROVIDED TO FUND

<b>REGARDING</b>	<b>INFORMATION REQUIRED</b>
<b>PREVIOUS FUND</b>	<ul style="list-style-type: none"> <li>• Name of fund</li> <li>• Contact details of person responsible for transfer.</li> </ul>
<b>BENEFICIARY</b>	<ul style="list-style-type: none"> <li>• Name</li> <li>• Id number</li> <li>• Date of birth</li> <li>• Latest contact details &amp; address.</li> </ul>
<b>Participating employer iro member of PREVIOUS FUND</b>	<ul style="list-style-type: none"> <li>• Name</li> <li>• Latest contact details &amp; address.</li> </ul>
<b>PREVIOUS FUND MEMBER</b>	<ul style="list-style-type: none"> <li>• Employer reference number / employee number</li> <li>• Normal Retirement Age in terms of the PREVIOUS FUND'S rules.</li> </ul>

<b>Benefit from PREVIOUS FUND</b>	<ul style="list-style-type: none"> <li>• Type of benefit (death, withdrawal, retrenchment, retirement)</li> <li>• Date benefit became claimable / payable</li> <li>• Value of benefit on date of accrual</li> <li>• Current value of benefit being transferred</li> <li>• Reconciliation of benefit on accrual and current benefit</li> <li>• Where unclaimed benefits tax has been paid by the PREVIOUS FUND in respect of the benefit: the details thereof and the IRP5.</li> </ul>
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### 3. BENEFITS

TYPE	BENEFIT												
<b>General</b>	Benefit will become payable if - <ul style="list-style-type: none"> <li>• Claim is accepted by Trustees as valid, or</li> <li>• Member is traced.</li> </ul>												
<b>Withdrawal</b>	Member who is not obliged to retire will be entitled to take his FUND BENEFIT as a lump sum withdrawal benefit. He may elect - <ul style="list-style-type: none"> <li>• cash;</li> <li>• transfer to               <table border="1" style="margin-left: 20px;"> <tr> <td>Pension</td> <td>Approved pension fund, pension preservation fund or RA</td> </tr> <tr> <td>Provident</td> <td>Approved pension fund, provident fund, provident preservation fund or RA;</td> </tr> </table> </li> <li>• portion in cash, transfer balance to               <table border="1" style="margin-left: 20px;"> <tr> <td>Pension</td> <td>Approved pension fund or RA;</td> </tr> <tr> <td>Provident</td> <td>Approved pension fund, provident fund or RA;</td> </tr> </table> </li> <li>• transfer               <table border="1" style="margin-left: 20px;"> <tr> <td>Pension</td> <td>portion to approved RA and balance to approved pension preservation fund;</td> </tr> <tr> <td>Provident</td> <td>portion to approved RA and balance to approved provident preservation fund.</td> </tr> </table> </li> </ul>	Pension	Approved pension fund, pension preservation fund or RA	Provident	Approved pension fund, provident fund, provident preservation fund or RA;	Pension	Approved pension fund or RA;	Provident	Approved pension fund, provident fund or RA;	Pension	portion to approved RA and balance to approved pension preservation fund;	Provident	portion to approved RA and balance to approved provident preservation fund.
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Provident	portion to approved RA and balance to approved provident preservation fund.												
<b>Retirement</b>	<ul style="list-style-type: none"> <li>• Where UNCLAIMED BENEFIT transferred from PREVIOUS FUND = resignation benefit + MEMBER has already reached the age of 55: MEMBER may elect to use FUND BENEFIT to purchase annuity in his name from an insurer.</li> <li>• Where UNCLAIMED BENEFIT transferred from PREVIOUS FUND = retirement benefit: FUND BENEFIT will be used to purchase annuity in MEMBER'S name from an insurer.</li> <li>• May prior to retirement elect to commute so much as is permitted by SARS for a lump sum.</li> <li>• Fund has no liability after purchase of annuity.</li> </ul>												
<b>Death</b>	FUND BENEFIT paid to estate.												

All enquiries pertaining to the Momentum Unclaimed Benefits Pension and Provident Preservation Funds can be addressed to Kareen Venter at [Kareen.Venter@momentum.co.za](mailto:Kareen.Venter@momentum.co.za).

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