

## Legal update

No. 5 of 2013 • 6 December 2013

### Termination of employer participation in the FundsAtWork Umbrella Funds

If an employer decides to end its participation in the FundsAtWork Umbrella Pension or Provident Fund without transferring to another fund, the employer must give the Fund one calendar month's notice.

The notice must:

- be in writing, on the employer's letterhead;
- dated and signed by the advisory body or authorised persons of that employer;
- confirm the termination date, allowing for the one calendar month notice period, and
- confirm that the employer wants to terminate participation in the Fund without transferring to another fund.

On receipt of the notice, Momentum will arrange for termination of the scheme. The process to be followed is set out in section 28 of the Pension Funds Act: Voluntary dissolution of fund.

The full termination process usually takes about twelve months to complete. However, the Registrar can in certain instances grant exemption from the full process.

#### **Application for exemption from the full termination process**

##### Conditions for submitting an application for exemption

An application for exemption from the full termination process can be made if:

- the average benefit per member is less than R50 000; or
- the fund or the relevant participating employer withdrawing does not have more than 50 members; or
- the fund or the relevant participating employer has assets less than R50 million; and
- the surplus apportionment scheme or nil return has been approved or noted by the Registrar.

##### Arrear contributions

Exemption from the full termination process will not be granted if contributions are not up to date unless all members confirm that they are aware of and have no objections to the contributions being in arrears and the benefits due being reduced accordingly.

If the above requirements have been met, an application for exemption from the full termination process can be made. The Registrar usually takes about **one month** to approve this application. There are **no additional costs or fees** involved.

##### **Conditions for use**

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### Process for application for exemption

It involves the following steps:

- Application forms must be completed and submitted to the Registrar.
- Once exemption has been obtained, notification will be sent to the employer and members.
- Requests for benefit payment instructions will be made.
- Once payment instructions have been received, benefits will be paid either directly to members or transferred to other funds as requested by members.
- After all benefits have been paid and there are no more assets in respect of the employer remaining in the Fund, the scheme will be deregistered.

### **The full termination process**

The full termination process has to be followed for schemes that do not qualify for exemption. It is a **lengthy exercise incurring many costs and fees**. It takes approximately **twelve months** to complete and involves the following:

- Finalising all outstanding matters, including surpluses, legal matters and ensuring that all contributions are up to date.
- Appointment of a liquidator.
- Approval of the liquidator appointment by the Registrar.
- Submission of the preliminary liquidation accounts to the Registrar.
- Submission of any further reports requested by the Registrar.
- The preliminary liquidation account must lie open for inspection for 30 days.
- Notices have to be published in the Government Gazette and local newspapers.
- If no objections are raised, the Registrar will direct the Liquidator to complete the liquidation process.
- If objections are raised, the Registrar may give further directions after considering the objections.
- The parties may approach a court if they feel aggrieved by the Registrar's decision.
- If the Registrar is satisfied that his directions have not been varied or set aside by a court, he will direct the Liquidator to complete the liquidation.
- Final accounts have to be lodged with the Registrar.
- After all benefits have been paid, and there are no more assets in respect of the employer remaining in the Fund, the scheme will be deregistered.

The period between notice of termination by the participating employer and payment of benefits to members will vary depending on whether the full termination process has to be followed or exemption from the full process can be obtained.

### **Carlo Subban**

Legal Specialist: Products

Momentum Employee Benefits: FundsAtWork