DISTRIBUTION OF DEATH BENEFITS AND NOMINATION FORMS

Section 37C of the Pension Funds Act, that deals with the distribution of death benefits, was intended to serve a social function. It was enacted to protect the needs of a deceased member's dependents, to the extent that the clear wishes of the deceased may be over-ridden. The section specifically restricts freedom of testation in order that no dependents are left without support. The Fund is expressly not bound by an individual's last will and testament, nor is it bound by a nomination form (nomination forms provide guidance to the Trustees as to who the members' dependents are, but only if they are correctly completed). This principle indirectly lessens the burden on the State to provide for these persons and promotes social protection and must be implemented by Pension Fund Boards.

The issue of the distribution of death benefits has always been contentious and the members have often raised questions regarding how death benefits are distributed, what the role of the nomination form is and the processes followed at the annual road shows. These questions have been addressed but the Board of Trustees feel that they should be addressed more regularly, especially as the Fund continues to experience difficulties in the finalization of death claims. It is the Trustees' belief that by explaining the process of distributing death benefits we will be able to finalize claims in reasonable turnaround times.

On the death of a member the participating employers (Telecom, Nampost and NPTH) should submit the necessary forms and documents to the Fund. The decision as to how to allocate a member's death benefit to his/her dependants and beneficiaries is at the discretion of the Board of Trustees. The Board is guided by the relevant legal texts such as the Fund rules and the Pension Funds Act in this process.

The Fund Rules will specify the actual death benefit owing.

If a member dies, their dependants/ nominated beneficiaries will receive a death benefit, which consist of:

- A benefit payable from the Fund, which will be their Fund credit (that is their contributions, the employer contribution and any investment growth) plus
- A multiple of a member's annual basic salary. This part of the death benefit is provided by an insurance company. The Fund enters into a contract with a life insurer which sets out the premium the Fund is to pay, the conditions under which the life insurer will pay out, the amount payable and any exclusions that may apply.

The Pension Fund Act defines dependants

The Pension Funds Act defines those people who qualify as dependants of the deceased as the following persons.

A. **A Legal dependant is a person in respect of whom the member is legally liable for maintenance**.

- This includes spouses and minor children. For a spouse of the deceased proof of legal dependence on the deceased member could include a marriage certificate and includes marriage certificates issued by a traditional authority as customary marriages are also recognised in the Pension Funds Act.
- Your child/children, either natural or adopted and includes children born out of wedlock and posthumous (children born after the member passed on) children as well. Proof of legal dependence on the deceased member can include full birth certificates and adoption documents.

B. Factual dependent is a person in respect of whom the member is not legally liable for maintenance but who was upon the death of the member in fact financially dependent on the member

- Proof of financial dependence usually requires more investigation as to how much the individual relied on the deceased member for financial support and the effect of the removal of such support would have on them. This could include your parents or siblings

Nominees

You may also nominate other person/s who are not dependents as such, for consideration to receive all or a portion of the death benefit payable should you pass away. Nominees therefore are those people who are not defined as dependents but whom you wish to receive some of the death benefit. Again, this is an important guide to the Trustees, who always have to apply their minds to allocate the benefit fairly. If the member has no dependents, the Trustees must first settle the difference between the debts and assets in your estate, if your estate is insolvent and after 12 months they may pay the death benefit to your nominees, this could include extended family and friends for example. A nominee therefore is only automatically entitled to a share of the benefit if no dependents have been identified in the period of 12 months after the death of the member and if the deceased's estate is solvent.

Nomination Forms

This is an expression of wishes form that each member needs to complete when they join the Fund in order to assist the Fund in finding their dependents/beneficiaries in the event of their death. It is essential for the members to keep the Fund updated of changes in dependent's/beneficiaries, that is to update forms for instance should you marry or divorce, should you have or adopt a child, should any of your dependents/beneficiaries/nominees die, should anyone come to rely on you for financial support and when your wishes change in any way.

The completion of nomination forms has therefore become compulsory for all members of the Fund. Those members who did not complete the forms therefore are urged and encouraged to complete the forms.

The correctly completed form can make a huge difference in the lives of your loved one, they would be able to pay for their houses, send your children to schools and universities and maintain the lifestyle they were used to.

After the Board of Trustees has determined the pool of potential beneficiaries, the Trustees of the Fund must determine the allocation of the benefit among them. The Board has recently purchase a tool to assist in the distribution of death benefits; it is a scientific calculator that assesses all relevant factors in order to determine each beneficiary need for support relative to that of others.

The nomination forms are available from the HR officers of the participating employers or can be downloaded from the Fund website.