Section 37C

of the Pension Funds Act

Disposition of pension benefits upon death of a member



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Section 37C

in a nutshell

Retirement fund benefits fall outside of the assets of a decease estate (S37C(1)).

Trustees of a retirement fund are responsible for the decision to distribute a Member's retirement fund Death Benefit in line with Section 37C.

Role players and Regulations

PFA & Tribunal Employer FSCA Employee/ Member Principal Board of Officer Trustees Individual / Member Retirement Directives & fund case law Pension **Funds Act** Investment Managers Rules of Administrator the Fund Other service providers



Trustees have a fiduciary duty to locate and identify (financial) **Dependents** and **Nominees** of a deceased Member within twelve months from date of death and to pay such Dependents or Nominees as **may be deemed equitable**.



And Mominees'. 'Designated in writing to the Fund by the Member'

Section 37C ...

Trustees decide **Who** will receive the Death Benefit, in **What** proportions, and **How** it will be paid.

Trustees need to apply their minds when dealing with the decision to distribute a Death Benefit: equitably among the Beneficiaries



What is the 'Death Benefit'

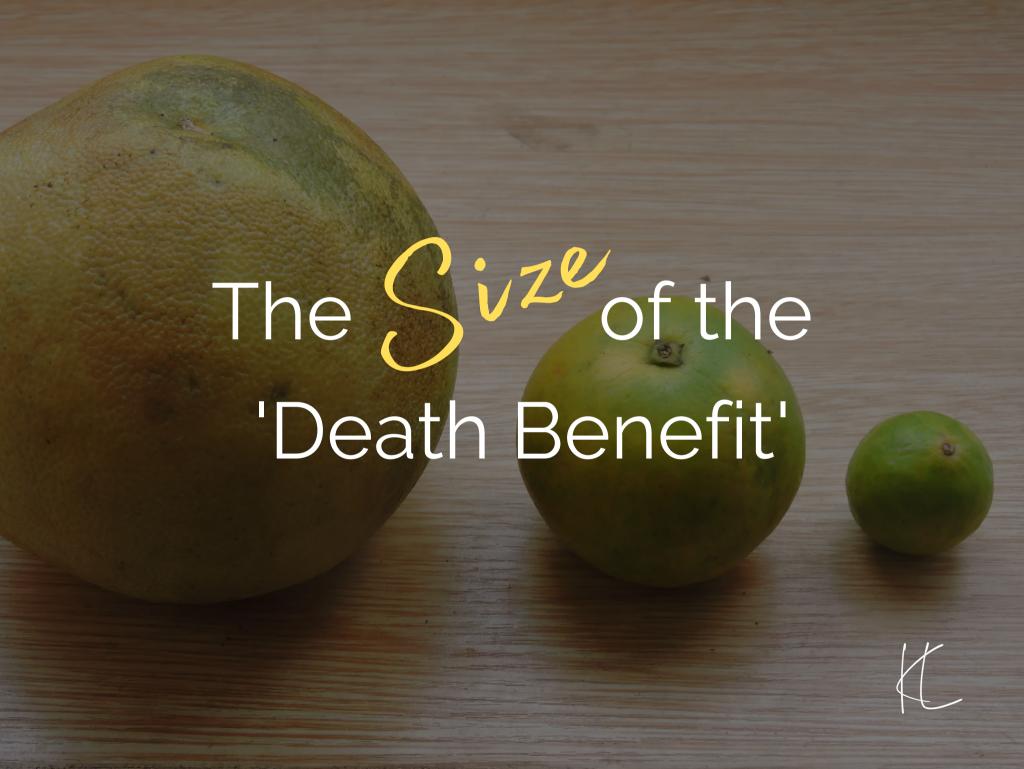
available for distribution

Occupational funds
(Pension / Provident)

Preservation funds

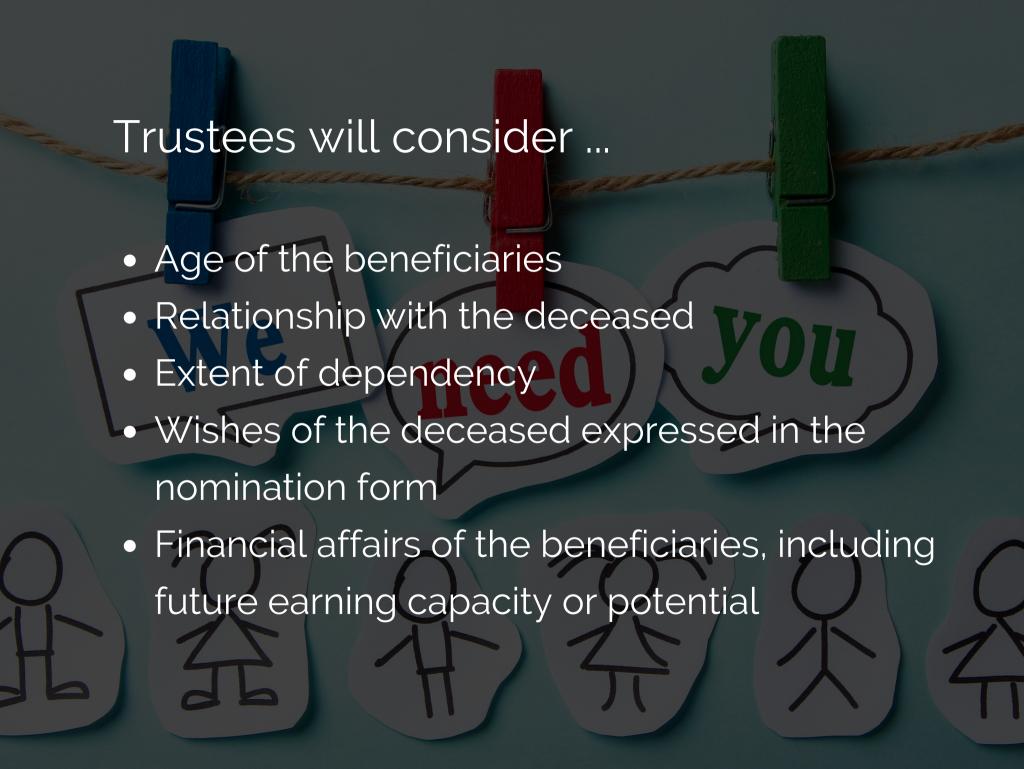
Retirement Annuities

Benefits are defined in terms of the Rules of the Fund



How do Trustees decide 'Who' to pay the Death Benefit to?

How do Trustees decide 'How much' to allocate to each Beneficiary?...



How do Trustees decide 'How' to pay the Death Benefit?...

A Beneficiary Nomination form

is an expression of a wish





Pension Funds Act

- Approved Funds included under this Act:
 - Pension funds
 - Provident funds
 - Preservation pension funds
 - Preservation provident funds
 - Retirement annuities
 - Beneficiary funds
- COFI Bill will change name to Retirement Funds Act
- Retirement funds not included under this Act:
 - Government Employees Pension Fund (GEPF)
 - Transnet retirement funds



Definitions in the Pension Funds Act

- 'Beneficiary' Nominee of a Member or a Dependent entitled to a benefit
- 'Dependent', in relation to a Member, means -
 - a person i.r.o. whom the Member is legally liable for maintenance
 - a person i.r.o. whom the Member is not legally liable for maintenance, if such person :
 - was in fact Dependent on the Member for maintenance
 - is the Spouse of the Member
 - is a Child of the Member, including posthumous Child, adopted or Child born out of wedlock
 - a person who would have become legally liable for maintenance had the Member not died
- 'Nominee' anyone other than a 'Dependent'

Section 37C - the WHO

Any benefit payable shall be dealt with in the following manner within 12 months from date of death:

- 1(a) Dependents traced paid to such Dependents as may be deemed equitable
- 1(b) No Dependents traced but a Member has designated in writing to the Fund a Nominee/s only such portion of the benefit shall be paid to such Nominee, but only once the debts in the Estate have been settled.
- 1(bA) Dependents and Nominee/s designated in writing to the Fund
 paid to such Dependent or Nominee as deemed equitable by the Trustees
- 1(c) No Dependents and no Nominees designated in writing, paid to the Deceased Estate, Guardian's Fund or Unclaimed Benefit Fund.

Section 37C - the HOW

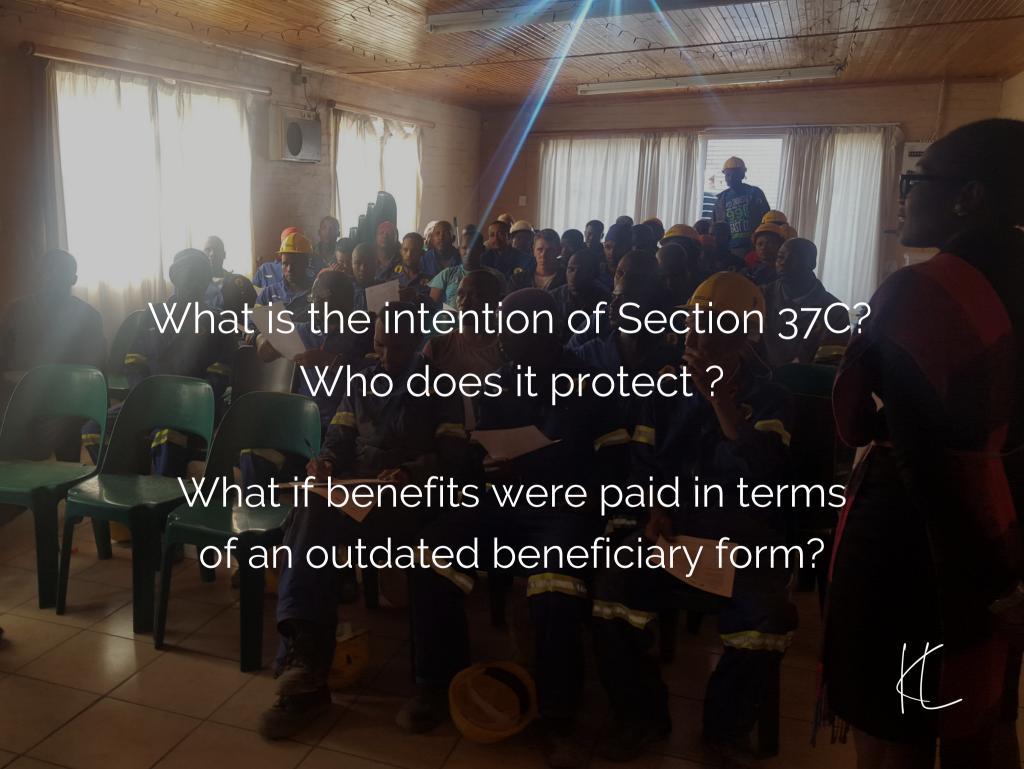
- Paid directly to major Beneficiary >18 years
- To a Beneficiary Fund for a consenting major Beneficiary
- Minor Beneficiary:
 - Direct to the Guardian S37C(2)(a)(ii)
 - Into a Beneficiary Fund S37C(2)(a)(iii)
- S37C(2)(a)(i) A Trustee contemplated in the Trust Property Control Act, nominated by:
 - the Member
 - a major Dependent or Nominee
 - a person recognised by law appointed by a court



Section 37C - the WHEN

- In practice, the <u>full</u> Death Benefit is paid to Beneficiaries in the manner as decided by the Trustees, however
 S37C(3) and (4) does allow:
 - Benefits to be paid in more than one payment
 - And in such amounts considered appropriate and in the best interests of such Dependent or Nominee
 - Major Beneficiaries need to consent to being paid in interim payments





Case Study 1 - Simple scenario





Death Benefit for distribution =

R489,000









Case Study 2 - More Dependents





Case Study 4 - Only Nominees

Beneficiary nomination form

50% to John



Death Benefit for distribution =

R2,500,000

Case Study 6 -No Dependents, No Nominees

Deceased Estate

Death Benefit for distribution =

R2,500,000

Section 37C - in Closing

- Many varying Member circumstances
- Many possible outcomes for distribution decision
- No exact Science Trustees apply their minds and must be able to prove that they have done so when distributing the Death Benefit
- Considering Financial Dependents, is KEY
- Numerous Pension Fund Adjudicator cases
- Only when there are no Dependents or Nominees, can the Death Benefit be payable to the Estate



Thank You



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