



BUSA RESPONSE ON THE RETIREMENT REFORM DISCUSSION PAPER ISSUED BY THE NATIONAL TREASURY OF THE REPUBLIC OF SOUTH AFRICA (“the Discussion Paper”)

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Executive Summary

The proposed draft paper for comments on the National Treasury's Discussion Paper on Retirement Reform was drafted by a BUSA Task Group on retirement.

Issues covered in the paper include the following:

1. Principles of Retirement Reform – BUSA supports National Treasury objectives.
2. Retirement Funds Landscape – Concerns about leakages and replacement rates shared by BUSA.
3. Access, Compulsion & Preservation – Employers should not be required by law to contribute to retirement savings vehicles.
4. Increasing coverage and containing leakages must be consistent with non-compulsion provisions.
5. Caution in respect of possible employment costs for small business.
6. National Savings Fund (NSF) – Consider incentivisation features. More clarity is sought.
7. Differentiation – Harmonisation of tax treatment is supported subject to certain provisos.
8. Individual Retirement Funds – BUSA supports the concept of non-employment related funds but is averse to the superimposition of further accompanying regulatory provisions.
9. Ancillary Benefits – BUSA supports increasing the range of benefits offered by retirement funds.
10. Where compulsion is absent, BUSA does not support prescribing minima benefit provisions.
11. Benefits, Contribution Rates, Member protection – BUSA gives several responses and cautions against unrealistic expectations among retirement fund members.
12. Housing Loan Guarantees – BUSA supports limitation of benefit pledge to a housing guarantee.
13. Life Crisis Needs – BUSA supports proposals to limit leakage and is aware that this area is one of contention.
14. Divorce, Death Benefits, Services to Pensioners, Disability – various comment is offered by BUSA.
15. Governance & Regulation – BUSA supports measures to reduce overlapping jurisdictions.
16. Trustee Provisions – BUSA's comments on this section are considerable. They include a plea for clarification in respect of exemption procedures. Some emphasis is given to opposing the holding of annual general meetings.

Comments by BUSA on the Retirement Reform Discussion Paper Issued by the National Treasury of the Republic of South Africa (“the Discussion Paper”)

INTRODUCTION

1. BUSA welcomes the opportunity to comment on the Discussion Paper. BUSA regards the Discussion Paper as presenting thoughtful proposals on extending coverage and retirement savings levels within the realities of the South African context.
2. The comments below follow the sequence of the Discussion Paper. Each item of response is prefaced by a short summary of the topic. If no comment is made on an item of the Discussion Paper, this may be construed as agreement with the proposal or recommendation therein.
3. The single most important issue relating to reform of the retirement regime is the tax dispensation. The Minister of Finance in the round table discussion that preceded issue of the Discussion Paper requested that the tax issue be put to one side until the structure of the future regime had been decided on. BUSA recognises that the regulatory framework logically precedes the tax dispensation, and has respected this request. BUSA, however, recognises that tax considerations will be a significant factor in the dispensation eventually decided on. In particular tax issues are inextricable from discussion of

3.1 Contributions (e.g. the harmonisation of pension, provident and retirement annuity funds).

3.2 Benefits (e.g. commutation limits on retirement savings under pension and provident funds and the tax treatment of the greater range of benefits that are proposed to be allowed to be provided by funds).

3.3 Portability from occupational funds to the National Savings Fund.

A process to engage on relevant tax issues needs to be agreed at NEDLAC.

4. Retirement saving is a long-term undertaking. Those currently saving have planned in accordance with the existing regime. Any changes to the regime can have significant implications for savers. In principle, when a change to the retirement savings regime is made, recognition should be given to existing arrangements, advantages and rights. Changes should not have negative retroactive effects. Confidence in the regulatory framework should not be undermined. Savers should not be forced into early retirement to preserve their advantages and rights. This principle was recognised in, for instance, the treatment of the taxation of lump sum benefits from public sector funds when the tax regime for private and public sector funds was harmonised in 1998.

It is strongly urged that this principle be recognised in the transition provisions from the old to the new retirement savings regime and in the consequential tax dispensations.

A concern is that transition provisions, particularly those relating to tax, could introduce increased complexity and cost into the administration of retirement funds and thereby lead to more cost-driven leakage from the system. A way of addressing this would be to make that new regime sufficiently flexible and advantageous to obviate the need to preserve existing rights.

PRINCIPLES OF RETIREMENT REFORM

5. Objectives of Retirement Funding Policy

5.1 Summary:

The broad objectives of the Discussion Paper are quoted in full: Government seeks to:

- 5.11 *Encourage individuals to provide adequately for their own retirement and the needs of their dependants.*
- 5.12 *Encourage employers and employees to provide for retirement funding as part of the remuneration contract.*
- 5.13 *Ensure that retirement funding arrangements are cost-efficient, prudently managed, transparent and fair.*
- 5.14 *Promote the retention of purchasing power of pensions through protection against the effects of inflation, within the resource constraints of the fund.*
- 5.15 *Improve standards of fund governance, including trustee knowledge and conduct, protection of members' interest, accountability, and disclosure of material information to members and contributors.*
- 5.16 *Provide, through social assistance, an assured basic income entitlement to elderly persons without means.*

5.2 Response:

BUSA strongly supports these objectives of retirement funding policy. BUSA particularly notes the importance, in the context of no legal compulsion for retirement provision, of the roles of incentives and employment remuneration contracts in the encouragement of retirement savings.

ANNEXURE 1: THE SOUTH AFRICAN RETIREMENT FUNDS LANDSCAPE

6. Coverage and Leakage

6.1 Summary:

Using the framework proposed by the World Bank, the Discussion Paper identifies three pillars of the South African retirement funding system (annexure 1 section 2.1):

- 6.1.2 Pillar 1, comprising the social old age pension grants.
- 6.1.3 Pillar 2, comprising various occupational retirement funds in the formal sector.

6.1.4 Pillar 3, comprising voluntary retirement savings arrangements.

The relatively high coverage in the formal sector is noted but concerns are expressed about leakage and replacement rates (Annexure 1 Sections 2.2 to 2.5).

6.2 Response:

6.2.1 BUSA welcomes the recognition of the success of the retirement fund industry in providing relatively high coverage in the formal sector, but shares the concerns expressed in the Discussion Paper. The BUSA comments and proposals seek to avoid potentially disruptive effects on the basic structure of the current successful areas while addressing those concerns.

ANNEXURE 2: ACCESS, COMPULSION AND PRESERVATION

7. Compulsion (Annexure 2 Section 1).

7.1 Summary:

The Discussion Paper takes the position that there is no need to make retirement provision a statutory requirement, but recommends a minimum requirement that employers provide payroll facilities and education on retirement savings in respect of employees who are not compelled to belong to an occupational fund.

7.2 Response:

7.2.1. BUSA supports the view that the law should not require employers and employees to contribute towards retirement savings vehicles. The reasons are well set out in sections 1.3 and 1.4 of Annexure 2 to the Discussion Paper.

7.2.2 Where an employer has established or participates in an occupational fund, however, compulsory participation for eligible categories of employee in terms of employment contract or bargaining council agreement should continue to be permitted and supported. The rationale for compulsory participation (by employment contract or bargaining council agreement) of eligible categories of employee in an occupational retirement fund includes:

7.2.1.1 The likelihood that those members who will opt out are the individuals with the lowest propensity to save, and allowing them to opt out completely or to save via the National Savings Fund which allows unlimited access to funds, will reduce the overall number of long-term savers and over all level of their savings.

7.2.1.2 The provision at reasonable cost of risk benefits obtained on a group basis. Risk benefit costs may be forced to increase as a proportion of total contributions by the prospect of employees moving in and out of the fund at will, and many members that opt out may be unable, due to health or other reasons, to secure alternative insured cover individually.

7.2.3 BUSA recommends the review of proposals in the Discussion Paper that are inconsistent with the objective of increasing coverage and decreasing leakage in an environment of legal non-compulsion to provide for retirement; for example, those mentioned in 7.2.5, 7.2.6 and 7.2.7 below.

- 7.2.4 The requirement to provide education on retirement savings and payroll facilities for employers who do not offer an occupational retirement fund will add to employment costs for small employers. In particular, taken together with the non-compulsion for any employee earning below the tax threshold to belong to a fund sponsored by that employer, the implication is that almost every employer will be compelled to provide such education. The regulator should be required to produce educational material to assist small employers. Payroll facility provision should be capable of limitation by an employer to one or two savings institutions. The point of the Discussion Paper is that statute should not inadvertently increase the cost of doing business, and BUSA has concerns that some of the recommendations will in fact do so.
- 7.2.5 Prescription on costs, benefit formulae, contribution allocation or products is inconsistent with a non-compulsory regime (e.g. Annexure 2 section 6).
- 7.2.6 Fees and commissions provide incentives to providers to address the uncovered portion of the market. BUSA sees this as necessary in a non-compulsory environment. Prohibition of such costs may increase the level of cover for those who choose to participate, but reduce the number of individuals within the system and the aggregate level of coverage (e.g. Annexure 3 section 3.12).
- 7.2.7 Proposals to encourage low-income earners to move from occupational funds into a National Savings Fund would also tend to decrease coverage as a result of easy pre-retirement access to savings within the National Savings Fund. (Annexure 2 section 3). This proposal is also seen as disruptive to a portion of the retirement fund industry that is currently running well. It is further believed by BUSA that creative tax treatment of low income individuals within occupational funds would be more beneficial than trying to provide a completely separate optional regime that runs the risk of reducing overall savings.

8. National Savings Fund (Annexure 2 Section 2)

8.1 Summary:

The Discussion Paper proposes a new savings vehicle for low income earners, the National Savings Fund.

Key features of the National Savings Fund benefits would be:

- 8.1.1 Exemption of National Savings Fund benefits from the means test for purposes of social old age pensions.
- 8.1.2 Acceptance of irregular contributions.
- 8.1.3 Low charges.
- 8.1.4 Incentives for preservation.
- 8.1.5 Exemption from retirement funds tax.
- 8.1.6 No bar to pre-retirement access to savings in the National Savings Fund.
- 8.1.7 Encouragement of employees below the tax threshold to move from occupational funds to the National Savings Fund.

8.2 Response:

- 8.2.1 BUSA sees this proposal as a creative response to the problem of access to retirement savings for low income earners. There are many issues of detail to be worked through on this proposal. BUSA would welcome the opportunity to participate in further deliberations on this.
- 8.2.2 BUSA also sees the National Savings Fund concept as closely linked to the access issues to be addressed in terms of the Financial Sector Charter. BUSA suggests therefore that it may be appropriate to drive this issue in terms of that Charter, particularly if the National Savings Fund is to have characteristics closer to a deposit account than a retirement fund.
- 8.2.3 Key to the success of the National Savings Fund as proposed would be appropriate incentivisation and distribution mechanisms. The proposals are not clear on how incentivisation and distribution are to work. There is evidence that low income earners are prepared to pay a high price for immediate cash, for example in the short term small loan market. This suggests that incentives operative only at retirement will not be enough to encourage retention of savings to retirement.
- 8.2.4 The place of the National Savings Fund in the three pillar system is not clear. It would seem to form part of the second pillar, but is also viewed as a top up to the social old age pension, the first pillar.
- 8.2.5 The proposed relationship between the National Savings Fund and occupational funds is also problematic. BUSA urges that there should be no legislated encouragement of “competition” between occupational funds and the National Savings Fund through provisions that encourage migration from the former to the latter. Decisions about such migration should be left to agreement between the stakeholders rather than be pressed by regulation.
- 8.2.6 Pre-retirement access to savings in the National Savings Fund should be limited to be consistent with the aims of preservation and increase to coverage. BUSA is deeply concerned that the proposals could undermine the currently successful second pillar of the retirement savings framework and be a source of significant leakage of low income earners’ savings. It must be noted that low income earners form a substantial proportion of membership in occupational retirement funds.*
- 8.2.7 Tax issues will be significant for the deliberations about the National Savings Fund. Among the issues are:
- 8.2.7.1. The comparison of the tax regime in respect of the occupational fund to that in respect of the National Savings Fund.
- 8.2.7.2. The consequences of transfers of savings from an occupational fund to the National Savings Fund.
- 8.2.7.3. The confining of participation in the National Savings Fund to low income earners (and whether tax is an appropriate determinant of this). In particular, salary changes and tax threshold changes over time will impact on the relative attraction of this National Savings Fund and create long term anomalies.

- 8.2.8 The potential division of non-taxpayers into the National Savings Fund and taxpayers into occupational and individual retirement funds may be useful for determining appropriate tax dispensations, but may not necessarily serve other objectives of a retirement savings policy.
- 8.2.9 BUSA notes that the National Savings Fund will not be a vehicle for cover in respect of death and disability benefits. Those who migrate from other funds could lose such cover.
- 8.2.10 BUSA recognises that introducing restraints on access under the National Savings Fund will introduce administrative complexity. Nonetheless, successful administrative systems should be investigated with this in mind.

9. Differentiation (Annexure 2 Section 3)

9.1. Summary:

- 9.1.1 Tax treatment for retirement funds, in respect of middle and higher income groups, should be harmonised.
- 9.1.2 Unfair discrimination should be prohibited.
- 9.1.3 Restrictions based on salary level or employment grade should be prohibited.
- 9.1.4 Material differences in relative value of benefits payable to members should be prohibited.
- 9.1.5 While pricing of benefits for any group can consider risk factors (age, race, gender), the impact of underwriting differentiation should not be passed on to those with poorer risk profile.
- 9.1.6 Employees below the tax threshold should not be compelled to join occupational or individual retirement funds but should be encouraged to join the National Savings Fund.

9.2. Response:

- 9.2.1 Harmonisation of tax treatment for retirement funds is supported subject to protection of existing rights.
- 9.2.2 Measures inhibiting differentiation in benefits, contributions and risk underwriting should not exceed those provided for in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act. Risk underwriting in accordance with sound actuarial principles should not be prevented by statute in circumstances other than those contemplated in that Act.
- 9.2.3 There is an apparent presumption in the Discussion Paper that all top-hat schemes are unfairly discriminatory. This is questionable. The particular targets in the references to top-hat schemes require elaboration.

9.2.4 BUSA holds that, in principle, it is not appropriate to be over prescriptive about products, services and benefit ranges in an environment where provision per se is voluntary. Flexibility should be allowed to serve the market need, subject to the laws against unfair discrimination, laws promoting proper disclosure and the like.

9.2.5 Where members have the choice of joining or opting out of a fund, it is inappropriate to prevent by law the charges for their benefits to reflect their own risk profile, as this can lead to anti-selective behavior.

10. Individual Retirement Funds (Annexure 2 Section 4)

10.1 . Summary:

A category of individual retirement funds is proposed. They must

10.1.1 Not necessarily require an employer/employee relationship.

10.1.2 Accept regular or irregular contributions.

10.1.3 Be treated for tax purposes like occupational retirement funds.

10.1.4 Offer a range of benefits and contribution rates.

10.1.5 Allow transfer of retirement savings between funds.

10.1.6 Disclose service provider fees.

10.1.7 Not pay commission or service fees to an intermediary.

10.2. Response:

10.2.1 BUSA supports the concept of non-employment related funds in principle.

10.2.2 BUSA does not support the superimposition of another layer of regulation on fees and commissions over and above those provided for in various Acts that regulate commission's payable and disclosures required within the financial services industry, and standards of advice and disclosures prescribed by the Financial Advisory and Intermediary Services Act.

10.2.3 BUSA notes that reasonable fees and commissions are necessary to reward an industry to encourage savings for retirement in the absence of the legal obligation to make such savings.

11. Ancillary Benefits (Annexure 2 Section 6)

11.1 Summary:

The Discussion Paper proposes that:

11.1.1 The range of benefits that a retirement fund can offer should include temporary disability income benefits and post retirement medical aid funding.

11.1.2 A prescribed minimum percentage of total contributions in respect of a member should go to retirement savings.

11.1.3 The retirement savings portion of the contribution should not be capable of reduction by increasing administrative expenses or insurance premiums.

11.2 Response:

11.2.1 BUSA welcomes the proposal to increase the range of benefits and facilities that a retirement fund may offer.

11.2.2 BUSA cannot support prescription of minima regarding retirement savings in an environment that does not compel retirement provision. Reliance should rather be placed on the agreements between stakeholders, the management role of trustees and on the definition of a retirement fund to avoid registration of funds that provide only or mainly disability or death cover. For example, in an environment of rapidly rising insurance premiums as a result of HIV/AIDS related claims, funds and employment contracts could be unmanageable if discretion for changes is not conferred on the stakeholders.

11.2.3 BUSA strongly supports the provision of disability income benefits and funeral cover (for the member, spouse and children only) through a retirement plan, to enable all benefits to be consolidated and provided from a contribution rate agreed by the stakeholders to the retirement plan.

ANNEXURE 3: BENEFITS, CONTRIBUTION RATES AND MEMBER PROTECTION

12. Adequacy of Retirement Benefit (Annexure 3 Section 1)

12.1 Summary:

The Discussion Paper sets out Government's objective for adequate retirement savings in terms of a replacement rate of 75 per cent of earnings in the year before retirement for a low income earner. A possibly lower percentage is allowed for higher income earners.

12.2 Response:

BUSA would merely caution that the use of such a high replacement ratio as a stated target could create unrealistic expectations among retirement fund members.

13. Benefits Available (Annexure 3 Section 3)

13.1 Summary:

The management board of a retirement fund should be required to:

13.1.1 Structure a cost effective benefit package from the available range in the market.

13.1.2 Ensure that the distribution of the contribution over retirement savings, administration costs and insurance premiums is set out in the rules and disclosed to members.

13.1.3 Ensure that death benefits are distributed in accordance with the member's nomination of beneficiary form, unless compelling reasons exist for not following the nomination.

13.2 Response:

13.2.1 Trustees should not be required to stray into the remuneration bargaining arena by structuring benefit packages and allocating contributions between benefit and cost components. This should be left to bargaining in the employment contract/bargaining council sphere.

13.2.2 The package approach should therefore be optional rather than compulsory.

13.2.3 Prescribing that the distribution of costs must be set out in the fund rules will place an administrative overhead and hence cost on all funds to require a rule amendment every time some element of cost changes. This prescription is therefore not supported.

13.2.4 The death benefit proposals are addressed below in paragraph 20.

14. Form of Benefit Payment (Annexure 3 Section 3.7)

14.1 Summary:

14.1.1 Benefits should be taken in the form of an income with only a modest proportion in the form of a lump sum.

14.1.2 Existing provident funds should be given a reasonable period to amend their rules to cater for this new dispensation.

14.2 Response:

The proposal that benefits should be taken as income, with only a modest proportion in the form of a lump sum, is recognised as a worthy principle, but

14.2.1 The protection of existing rights needs attention. See the comments on transition in the Introduction to this paper.

14.2.2 Research is needed as to the effect this would have on entrepreneurial activity. Lump sum benefits appear to be frequently used to establish small businesses.

14.2.3 The implications for labour relations in the context of union-sponsored provident funds needs examination.

14.2.4 The issues of access and form of benefit payment are linked. The principle of promoting income benefits to reduce the potential burden on the State is ignored or compromised in many of the proposals in the Discussion Paper which countenance pre-retirement access to retirement savings in cash. Such access is nonetheless justifiable on socio-economic grounds. To preserve the principle, consideration could be given to the limitation of pre-retirement access to a percentage of savings (e.g. 50%, or the whole if the amount is very small), with the balance accessible only as income on retirement or earlier death.

15. Preservation (Annexure 3 Section 3.12)

15.1 Summary:

The Discussion Paper proposes that:

15.1.1 If an employee changes jobs, the retirement fund benefit must be transferred to another fund of his choice.

15.1.2 The benefit may nevertheless be encashed if it is below a certain amount or pledged to the fund in respect of a housing guarantee in circumstances where the employee defaults on a housing loan.

15.1.3 The Discussion Paper also supports in principle the proposals of the Taylor Commission that access be allowed on loss of employment after the exhaustion of UIF benefits.

15.1.4 No party may reward anyone for inducing a member to transfer his savings from one fund to another.

15.2 Response:

15.2.1 In principle leakage should be minimized to promote the aims of retirement savings and reduction of claims on social pensions. In the South African work environment, however, limited access to retirement savings should be permitted on loss of employment. To prevent excessive administrative burdens on funds, the limitation of the quantum should be determined by formula.

15.2.2 The principle of preserving some portion of savings for access only in the form of income is nevertheless valuable. A proposal is put forward for consideration in 14.2.4 above.

15.2.3 In 8.2 above we noted the potential for major disruption in the second pillar of retirement saving constituted by the National Savings Fund proposals. BUSA contends that such proposals could defeat the objectives of preservation and increased coverage. BUSA recognises that the current tax regime in respect of occupational funds is a disincentive to low income earners. The freedom to migrate from occupational

funds to the National Savings Fund, including possible transfer to the National Savings Fund of accumulated savings in occupational funds without penalty, and with no restriction on access to these savings in the National Savings Fund, could dissipate current retirement savings of low income earners and very clearly frustrates the preservation proposals of section 3.12 of Annexure 3.

15.2.4 Education in and promotion of a savings culture in general and a retirement savings culture in particular are essential for the future. BUSA believes that the regulator should be tasked with driving such a campaign.

16. Interest on Late Payment (Annexure 3 Section 3.13)

16.1 Summary:

Once a benefit claim is admitted, the management board should be required to invest this amount in an interest bearing account and pay the interest earned when the claim is settled.

16.2. Response:

The requirement to pay interest on benefits that are paid late is supported, but there should be no statutory requirement on a fund to switch investments when a benefit becomes payable and in particular no requirement to move such pending benefits to an interest bearing account, i.e. it could remain invested in the normal investment portfolio of the retirement arrangement. In either event a consistent policy should be applied to all members.

17. Unclaimed Benefits (Annexure 3 Section 3.14)

17.1 Summary:

The Discussion Paper recommends that boards of trustees of a retirement fund be required to attempt to trace beneficiaries of unclaimed benefits. If unsuccessful, the board must after a certain period (2 years is suggested) transfer the unclaimed benefit to a central unclaimed benefits fund to be established by statute. Moneys unclaimed in the central fund could be released to the State.

17.2 Response:

17.2.1 A central unclaimed benefit fund with an additional layer of bureaucracy and regulatory cost is strongly opposed. BUSA doubts that a central fund is likely to have more success in tracing beneficiaries than the original funds.

17.2.2 Instead, it is strongly proposed that

17.2.2.1 Funds are required to submit data on unclaimed benefits after a certain period to a central data base maintained by the regulator. This data base can serve as a reference point for potential beneficiaries.

17.2.2.2 A cost-effective process of tracing beneficiaries of unclaimed benefits is prescribed.

17.2.2.3 The prescription period for retirement fund benefits is extended (to ten years, for example).

17.2.2.4 The Guardian's Fund be given the additional capacity to receive and handle unclaimed benefits in those cases where all prescribed tracing procedures have been followed, the funds have little prospect of success and do not wish to or cannot hold the benefits to prescription.

18. Housing Loan Guarantees (Annexure 3 Section 3.15.1)

18.1 Summary:

18.1.1 Only housing loan guarantees by a fund should continue to be permitted.

18.1.2 These guarantees should be subject to certain conditions and strict controls.

18.1.3 The amount of the loan must not exceed the member's minimum individual reserve, less tax and subject to a maximum (prescribed) Rand amount.

18.2 Response:

18.2.1 BUSA supports the future limitation of benefit pledge to a housing guarantee.

18.2.2 The maximum should be the member's share of the fund that may be taken in cash on retirement, less allowance for tax (and possibly some cushion for fluctuation of fund values) and subject to a Rand cap.

19. Other Life Crisis Needs (Annexure 3 Section 15.2)

19.1 Summary:

19.1.1 An occupational or individual retirement fund can provide loans or guarantees only for housing.

19.1.2 The National Savings Fund should permit withdrawal of savings for any purpose, but should provide incentives for retention.

19.1.3 If a member is terminally ill and the fund provides an income on disability, accelerated payment of the insured portion of the death benefit should be allowed.

19.2 Response:

BUSA supports proposals to limit leakage, but has noted concerns and disagreement about pre-retirement access to savings in the National Savings Fund in 8.2 above.

20. Divorce (Annexure 3 Section 3.17)

20.1 Summary:

20.1.1 The member's minimum individual reserve should be deemed to form part of his/her assets available for splitting on divorce.

20.1.2 The court may determine a split of the member's individual reserve between the member and his/her former spouse.

20.1.3 After such split the member's former spouse should be deemed to be a member of the fund in respect of the portion awarded to him/her by the court.

20.1.4 The member's former spouse should have the option to transfer his/her share of the court award to an individual retirement fund or an occupational fund in which he/she participates.

20.2 Response:

20.2.1 BUSA supports the "clean break" principle on divorce.

20.2.2 BUSA recognises that many occupational funds will find it administratively impossible to handle a member's former spouse as a member in his/her own right and occupational fund rules will not accommodate this. BUSA recommends that the member's former spouse be required to transfer his/her court award to another fund in which he/she participates (other than the National Savings Fund – concerns about leakage have been noted above).

21. Deductions (Annexure 3 Section 3.16)

21.1 Summary:

Only deductions in respect of tax and housing loans or guarantees should be permitted from benefits on exit of a fund member.

21.2 Response:

21.2.1 The wording of this proposal could be interpreted to go so far as to prohibit deductions from a retired member's pension payments, made at the behest of the member. Pensioners frequently instruct funds or insurers to deduct amounts from their pensions and pay these amounts (after tax) towards policies of insurance, medical schemes and the like. This is done as a service to the pensioners. BUSA contends that it would be disadvantageous for members if these services were to be prohibited by these proposals.

21.2.2 BUSA however does support the restriction on other deductions at the date of a member ceasing to be an active member and withdrawing / retiring with pension from the fund.

22. Death Benefits (Annexure 3 Section 18)

22.1 Summary:

22.1.1. Trustees must require members to submit written nomination forms for death benefit purposes every five years.

22.1.2 Trustees must comply with the wishes in nomination forms unless there are compelling reasons not to do so.

22.1.3 Death benefits should be paid in the form of an income unless they are too small to make this the cost efficient.

22.1.4 The trustees should be able to establish a trust for beneficiaries who the trustees determine are not capable of managing income.

22.2 Response:

22.2.1 BUSA notes that the distribution of death benefits in terms of section 37C of the Pension Funds Act is a difficult and time-consuming part of the duties of fund trustees.

22.2.2 While following a nomination form would reduce these difficulties, the reference to the criterion of “compelling reasons” for ignoring the deceased’s nominations in effect will require a thorough examination of the deceased’s circumstances in every case. What constitutes a compelling reason reintroduces the difficulties associated with the current section 37C, and potentially further difficulties as yet unexplored. It must also be noted that a large number of members fail or refuse to provide nomination of beneficiary forms and are also not rigorous in updating these forms when their circumstances change.

22.2.3 BUSA recognises that the current section 37C does not deal adequately with customary law issues.

22.2.4 BUSA believes that a firm decision must be made as to whether the non-paternalistic or the paternalistic model is appropriate. If the former is chosen, then benefits should be paid in accordance with nominations, or in the absence of nominations, to the deceased’s estate. If the paternalistic model is chosen, then a modified version of the current Section 37C approach may be appropriate.

23. Disability (Annexure 3 Section 3.19)

23.1 Summary:

23.1.1 Retirement funds should be permitted to pay an income on temporary and permanent disablement of a member.

23.1.2 No minimum benefit should be prescribed.

23.2 Response:

BUSA supports the proposals but notes that the mechanics of funding of disability benefits may need attention in regulation.

ANNEXURE 4: GOVERNANCE AND REGULATION

24. Powers of the Regulator (Annexure 4 Section 2)

24.1 Summary:

24.1.1 The Registrar of Pension Funds should fall under the supervision of appropriately constituted board.

24.1.2 Some of the Registrar's supervisory functions should be performed by licensed practitioners with whistle-blowing rights and obligations.

24.1.3 The Registrar should be given greater powers to conduct inspections of retirement funds and their service and product providers.

24.1.4 The Registrar should be given greater powers to act against trustees and service providers.

24.1.5 The Registrar should be obliged to adopt a risk based approach to regulation.

24.1.6 The Registrar should be obliged to promote education among fund members.

24.1.7 The Registrar should be empowered to formulate codes of good practice.

24.2 Response:

24.2.1 The general stress on governance is welcomed. In particular, the recommendations on cost-benefit analysis and risk matrix regulatory devices are welcomed.

24.2.2 Licensing of authorised practitioners may require more detailed prescriptions in statute to ensure consistency of decisions, and avoid extra cost to the industry. This should not just be a shifting of costs and responsibility from the regulator to the industry, but a genuine reduction in operational overheads.

24.2.3 The Regulator cannot be accuser, judge and executioner. His powers must be subject to appeal to an appropriate tribunal and the exercise thereof must follow a clearly delineated process. The reference to due process: in section 5.6.15 is therefore welcomed.

24.2.4 The Reform Document does not clearly indicate whether Government and Bargaining Council Funds are to be regulated along with other funds in terms of the new dispensation. A clear statement is needed on this.

24.2.5 Codes of good practice should not become a means of circumventing the legislative process in order to produce "quick law". The status of such codes must be clarified.

25. Dispute Resolution (Annexure 4 Section 4)

25.1 Summary:

25.1.1 A specialist tribunal (which may be an extension of the current Adjudicator's office) should be established to deal with all occupational and individual retirement funding disputes.

25.1.2 There should be a right of appeal against a determination by the tribunal to the High Court or the specialist FSB Appeal Board.

25.2 Response:

25.2.1 BUSA supports rationalisation of tribunals and the reduction of overlapping jurisdictions. BUSA also supports the resolution of disputes on retirement fund matters by adjudicators/ombudsmen knowledgeable in these areas.

25.2.2 The suggestion that there should be a specialist tribunal to settle disputes between funds or members and their service providers, even if for example the FAIS ombudsman already has jurisdiction, needs further thought. It will not be desirable to have similar disputes dealt with by different dispute resolution bodies, and separate and possibly conflicting bodies of precedents developing as a result.

26. Governance and Trustee Conduct (Annexure 4 Section 5)

26.1 Summary:

26.1.1 Every fund should be required to have a board of trustees.

26.1.2 Members of funds should be given the right to elect at least 50% of the members of the fund's board, unless the fund is exempted by the Registrar. A condition of exemption is that the board of trustees must have independent trustees approved by the Registrar as "fit and proper" comprising 50% of the board and 50% of any quorum. These trustees, if paid, must be paid for their services by the funds alone. They must be given special "whistle-blowing" obligations and protection from victimisation.

26.1.3 There must be a codification of the main common law duties of trustees.

26.1.4 Trustees who lack appropriate expertise must undergo training at the expense of their funds to obtain such expertise or seek the advice of appropriate experts.

26.1.5 Various requirements are proposed in respect of disclosure and remuneration of product and service providers to retirement funds.

26.1.6 The regulator should have the power

26.1.6.1 after consulting interested parties, to formulate codes of good practice for trustees.

26.1.6.2 after due process, to penalise trustees and service or product providers.

26.1.7 Trustees must inter alia.

26.1.7.1 be given reasonable paid time off work to attend to trustee work.

26.1.7.2 hold annual general meetings of the members of their funds unless exempted from this requirement by the regulator for reasons which the regulator regards as sufficient.

26.1.8 Trustees may be paid for their services but only by their funds.

26.1.9 Umbrella or multi-employer funds should be subject to specific provisions including

26.1.9.1 a limit on the number of funds which can form part of one umbrella fund;

26.1.9.2 a requirement that there be separate annual financial statements for each sub-fund and a prohibition on cross-subsidisation between subfunds;

26.1.9.3 a provision stating that any fund rule which purports to make use of a specified service provider compulsory, be of no force or effect.

26.1.10 Retirement funds, membership of which is by individual choice, must

26.1.10.1 give members a 'cooling off' period after joining during which they may elect to withdraw their membership without charge.

26.1.10.2 permit members to have their retirement savings transferred to other funds of their choice without financial penalty and after disclosure of the costs of such transfer – which may be limited by legislation.

26.2 Response:

26.2.1 As a general comment BUSA prefers clarity to exemption procedures.

26.2.2 Proposals should take into account the practicality of administration requirements.

26.2.2.1 BUSA strongly supports the position in current in law that trustees are not constituency representatives and must represent the fund as a whole. BUSA would caution against development of proposals that would cause significant divergence from trustee law as it stands.

26.2.2.2 Members should in general have the right to elect at least half the trustees to the board of a fund.

- 26.2.3 Criteria for independence of trustees should be set; but approval by the registrar should not be a requirement. This should be monitored by trustee boards.
- 26.2.4 There is no good reason for differentiation between “independent” and other trustees. The “fit and proper” criterion must apply to all trustees, whether “independent” or not.
- 26.2.5 Whistle-blowing should be a right with concomitant protection in law, rather than an obligation on a trustee, and should apply to all trustees.
- 26.2.6 BUSA contends that there should be no divergence in standards or criteria relating to the activities of financial services providers from those set in terms of the FAIS Act.
- 26.2.7 Codes of good practice should not be used as a means of making “quick law”. See comment in 24.2.5 above.
- 26.2.8 Paid time off should be determined by agreement among parties, not statute.
- 26.2.9 BUSA supports the proposals to ensure adequate disclosure of fund matters to members and opportunities for putting issues to trustees. BUSA does not support the proposal for annual general meetings of members, which is impractical and of little value to very large funds and funds with membership spread across a wide geographic range.
- 26.2.10 A prohibition on payment of trustees by service providers is supported, but there is a case for allowing funds (or possibly employers) to pay trustees.
- 26.2.11 The proposals on umbrella funds appear to ignore the rationale for umbrella funds, which is to provide cost effective retirement savings solutions for multiple small and medium employers.
- 26.2.11.1 Reports in respect of sub-funds should be simple (1 or 2 page documents) for cost-effectiveness reasons, and should not require separate audits.
- 26.2.11.2 Limiting the number of employers per umbrella fund will just lead to a proliferation of umbrella funds, often with common trustees. No value is therefore seen in this proposal.
- 26.2.12 The independence of funds from providers is supported in principle. However, the position of fund sponsors and whether they have any contractual rights after establishing funds requires further debate.
- 26.2.13 With regard to individual retirement funds:
- 26.2.18.1 Cooling off provisions must take account of market fluctuations as is the case with similar.
- 26.2.18.2 regulation of other instruments. The cooling off period should be reasonably short (eg 30days).

The impact of this on Financial Intelligence Centre Act exemptions for retirement funds should be explored to determine whether this requirement can be accommodated without further inadvertently increasing administrative costs.

26.2.18.3 Transfer should be to other registered/approved funds. The recouping of acquisition costs and current release provisions of smoothed bonus investments must be permitted.

26.2.18.4 Proposals on governance should add value and be practical. We submit that some of the proposals do not meet these criteria: such as the requirement of trustees to hold annual general meetings of fund members and the requirement to allow a “cooling off” period for new members of individual retirement funds without consideration of issues like markets falling in that period (referred to above).

27. Intersection of Labour Law and Pensions Law (Annexure 4 Section 6)

27.1 Summary:

27.1.1 An employer should be entitled to procure the conversion of a defined benefit fund to a defined contribution fund, or to procure the transfer of its employees from a defined benefit fund to a defined contribution fund without the consent of the employees (but after fully informing them of the proposed conversion), provided that certain provisions protective of members are complied with.

27.2 Response:

27.2.1 In principle BUSA supports this section. There should be clarification that the conversion may also provide appropriately for pensions, eg, by outsourcing the pensions to an insurer. Clarity is needed as to whether sections 6.6 and 6.5.3 + are compatible.

28. Investment (Annexure 4 Section 7)

28.1 Summary:

28.1.1 Shareholder activism should be encouraged among retirement funds.

28.1.2 Maxima should be set by the regulator for fund investments in participating employers, any single investment and investments outside the RSA.

28.1.3 There should be no prohibitions on investments in any particular asset class.

28.1.4 Standard prudential limits should be set for the various asset classes.

28.1.5 A fund that adopts a properly formulated investment strategy may apply to the regulator for exemption from the standard quantitative limits on certain conditions.

28.1.6 Funds should be required to state in writing to members and participating employers whether they intend to invest any part of the assets of the fund in socially desirable investments which are likely to yield returns lower than those which may be expected of other investments by the fund.

28.1.7 Trustees should be prohibited from granting investment choice to members unless certain specified conditions are fulfilled, including limitation of the number of options from which members may choose.

28.2 Response:

28.2.1 In principle BUSA supports this section, but believes that activism should not be prescriptive.

28.2.2 Foreign investment limits should be an exchange control rather than a retirement regime issue. All other asset classes are just governed by prudential limits from which exemption can be obtained, and the same should apply for foreign investments.

28.2.3 Exemptions should not be subject to onerous bureaucratic requirements. An average sized fund should reasonably be able to avail itself of the exemption. Reports on compliance should be part of the regular audit process.

29. Funding and Calculation Techniques (Annexure 4 Section 8)

29.1 Summary:

29.1.1 Where appropriate, every fund must be actuarially valued at least once every three years.

29.1.2 Assets that back non-insured pensioner liabilities must be held in a separate pensioner account. These assets and liabilities must be actuarially valued every year before a pension increase can be awarded.

29.1.3 The regulator must be obliged to establish an actuarial review committee to determine standards, review methods and provide guidance on actuarial matters related to funds.

29.2 Response:

29.2.1 BUSA believes that the regulator should be empowered rather than obliged to set up an actuarial review committee. The obligation appears onerous.

29.2.2 There must be alignment between these proposals with the provisions currently in legislation and regulation dealing with surplus.

30. Winding Up (Annexure 4 Section 9)

30.1. Summary:

30.1.1 The new statute should include provisions that enable the efficient and inexpensive partial or total winding up of retirement funds.

30.1.2 A task force should review the desirability of a pension guarantee scheme to protect members of those funds which are wound up in circumstances of insolvency.

30.1.3 If it is decided not to proceed with a pension guarantee scheme, instead, adequate fidelity/professional indemnity cover and strong funding must be required.



30.2 Response:

30.2.1 BUSA supports the objective of an efficient and inexpensive winding-up process.

30.2.2 A pension guarantee scheme is not supported. This would tax the compliant for the benefit of the non-compliant. It tends to contradict the purpose of all the other regulatory devices. Conceptually, it also seems far less relevant for defined contribution than defined benefit schemes, leading to added inherent distortions.