

## **Divorce claims against a Members Retirement Fund**

### **Alexander Forbes interpretation of the applicable legislation:**

When a divorce order is presented to a fund we administer, the order is analysed for validity and tested against the provisions Section 37D(4) of the Act read together with section 7(7) and section 7(8) of the Divorce Act, to determine whether it is enforceable against the fund concerned.

Section 37D (4) of the Act (as set out above) requires that the fund concerned must be named or identifiable in the decree of divorce.

Section 7(7) and 7(8) of the Divorce Act requires that the fund records be endorsed and the fund must be ordered to pay that part (the exact amount) due to the non-member spouse in terms of the divorce.

Therefore, the legislative requirements that need to be met for a divorce order to be enforceable against a fund are as follows:

1. The Fund must be named or identifiable from the order;
2. The amount must be clear and ascertainable; and
3. The Fund must be ordered to pay the amount to the non-member spouse.

### **Alexander Forbes view on the requirements that need to be met for an order to be enforceable:**

1. Any application for the payment of a divorce benefit must be made against the Fund and not against Alexander Forbes.
2. The Fund must be named or identifiable from the order/agreement;
3. The amount must be clear and ascertainable; and
4. The Fund must be ordered to pay the amount to the non-member spouse.
5. The First Respondent must be active as at the date of the divorce order.

The Pension Fund Act is very specific regarding timelines of divorce orders, for your reference below are the Provisions stated therein:

- Once the fund is notified of the divorce order it has 45 working days to send the requirement documentation to the non-member spouse.
- The non-member spouse has 120 days to make an election (i.e. submitting the certified documentation back to the Fund.
- Upon receipt of the full set of certified completed documentation, the Fund has 60 days to make the payment to the non-member spouse.

### **Once a divorce has been granted kindly follow the below steps:**

- Send a copy of the Divorce Decree and Settlement Agreement to the [divorceorders@aforges.co.za](mailto:divorceorders@aforges.co.za)
- Once the Order is vetted by the divorce team they will send the requirements needed in order to effect payment to the Non-member Spouse.
- Once documents are received the fund has 60 days to make payment to the Non-member Spouse once the last required certified document is received.
- Once payment has been made we will send payments letters to both parties confirming the amount paid to the Non-member Spouse.

Should the members have any queries they can contact the Divorce Order team on the below contact details:

#### **Divorce Order Helpdesk**

Tel - 0860 100 333

Fax - 011 263 0901

Email - [divorceorders@aforges.co.za](mailto:divorceorders@aforges.co.za)

*The security and protection of your personal information is important to the Fund. For more details, please visit*

<http://unisarf.co.za/unisarf/policies-and-rules>