

## Unclaimed retirement benefits in the mining industry

By Nicci van Vuuren, Senior Associate, Minenhle Shabalala, Candidate Attorney & Diyajal Ramrajh,  
Candidate Attorney from Webber Wentzel

*Union Funds in the mining industry are holding particularly large sums in unclaimed benefits, for several reasons, including poor record-keeping*

A substantial amount of unclaimed benefits lie idle in trade union funds, one of the two most-common types of retirement funds in the South African mining industry.

There are various reasons why this is happening. Unclaimed benefits have long been a problem for the Financial Sector Conduct Authority (FSCA), and although draft legislation is currently under consideration which will result in stricter governance of retirement funds, Government has yet to address this particular issue. Below we consider the reasons for the unclaimed benefits and whether the draft legislation would assist in reducing such unclaimed benefits.

Various types of retirement funds are utilised in various industries in South Africa to assist employees to prepare and save for their retirement. In the mining industry, the most common are large umbrella funds and trade union funds.

Large umbrella funds are suitable for any employer who either lacks a sufficient number of employees to maintain a stand-alone fund or is looking for economies of scale to generate greater returns on investment for members. Trade union funds have become popular in the various sectors in which they operate, particularly mining, particularly among lower-income earners, such as mineworkers.

Normally, when employees start work, they are given the option to choose the fund they wish to join, being either the employer's designated fund (i.e., an umbrella fund) or a trade union fund. While employed at that company, employees cannot then change their minds later and opt for the other fund.

What is the appeal in joining a trade union fund? The answer to this, is likely the same as to why employees choose to become a member of a trade union. They believe that a trade union represents their best interests in the employment relationship and may also represent their best interests in their retirement. Many employees feel that it makes more sense to join the retirement fund of their union, which union is already representing them. They may also believe that it makes more sense to join a union-affiliated fund as they are already paying membership fees to such union.

Trade union funds fall under the same laws and regulations as other retirement funds and are therefore regulated by the FSCA. Most trade union funds are either self-administered (meaning that they have been approved by the FSCA to administer the fund themselves) or are administered by large, approved administration companies. This ought to suggest that, apart from some minor issues, these funds should be free from major issues. Unfortunately, this is not the case.

A huge problem that the FSCA has been facing for some time is unclaimed retirement benefits. Unclaimed benefits include withdrawal benefits (usually as a result of termination of employment),

death benefits (where a member has passed away and the beneficiary has not claimed the benefit), surplus benefits (where the fund has had a surplus distribution to members) and finally retirement benefits (as a result of members retiring and not claiming their benefit).

According to the FSCA's 2020/21 annual report, South Africa currently has unclaimed retirement benefits amounting to approximately ZAR 47 billion. According to the FSCA, although many funds have unclaimed benefits, more than 80% of this ZAR 47 billion resides in trade union funds, with the majority in just two funds, one of which is a mining industry fund. Most individuals that own these unclaimed benefits are low-income mineworkers.

The FSCA, as well as most large funds and administrators, has established procedures for claiming unclaimed benefits and tracing members, but the number of unclaimed benefits continues to increase.

There may be several explanations why this may be a particular problem within the mining industry, and why this industry accounts for the majority of unclaimed benefits.

Firstly, there seems to be poor record-keeping by many funds as well as employers. Often, the fund and employer do not regularly update the employee/member's personal information, with the effect that it becomes outdated.

Secondly, a lack of knowledge and literacy about retirement funds among low-income earners contributes significantly to this problem. Many of these workers may not have sufficient literacy to understand the consequences of failing to update their information regularly with their employer or trade union fund, and they may not receive or understand communication about the fund. As a result, they are often unaware that they are entitled to benefits.

Finally, although this issue is not unique to trade union funds, the tracing of members seems to be a slow and protracted process, seldom yielding successful results. The majority of funds attempt to trace members every six months, using the same, out-of-date information they have always had. Naturally this results in unsuccessful traces.

The result of the above is that members and beneficiaries remain untraced, benefits remain unclaimed, and the pot of unclaimed benefits continues to grow. This is however, not to the disadvantage of the funds themselves. The FSCA stated that "*asset managers and fund administrators continue to earn fees from these unclaimed assets.*"

It has long been the view of the regulator that employers should be active participants in retirement funds, whatever type of fund those might be, including a trade union fund. Active participation by the employer would ensure (amongst other things) that:

- employee information is regularly updated;
- unclaimed benefits are monitored regularly, together with fees charged by service providers for administering or managing the unclaimed benefits; and

- employees receive communications about their fund and benefits in a manner and language which they can understand.

As mentioned above, Government has proposed draft legislation which will compel an employer to play a more active role in the governance of funds in which they participate. We hope that this will assist in reducing the amount of unclaimed benefits.

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