

# GFSL 20

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11 May 2008

Secretary to Parliament  
Co Mr Bradley Viljoen  
Committee Section  
Parliament of the RSA  
P O Box 15  
CAPE TOWN  
8000

Fax no: 021 4038204

Dear Sir

## GENERAL FINANCIAL LAW AMENDMENT DRAFT BILL 2008 ("Bill")

1. I refer to the copy of the Bill which only come to my attention this morning.
2. Although the closing date for representations on the Bill, according to the publication notice of the Bill, was 9 May 2008, I hereby wish to make representations and trust that you will still be able to accept it.
3. I was divorced on 7 December 2007 and I attach a copy of the divorce order as well as the Settlement Agreement as respectively Annexes "A" and "B".
4. In terms of the Settlement Agreement (and I refer you to pages 2 and 3 of the copy thereof), my ex-husband undertook to cause payment to me of 35% of his entitlement at the date of the order of divorce to -
  - 4.1 the Absa Provisor Preservation Pension Fund ("Absa fund"); and
  - 4.2 the Liberty Corporate Selection Retirement Fund ("Liberty fund").
5. I wish to draw your attention to the fact that the Decree of Divorce was issued subject to, *inter alia*, the said undertakings referred to in 4.1 and 4.2.
6. In terms of clause 2.3 of the Settlement Agreement, I as Plaintiff, was entitled to payment of the said amounts from the respective fund administrators within 60 days of 7 December 2007.

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7. However, no payment according to clause 2.3 was forthcoming from neither of the fund administrators and I, therefore, on 27 February 2008 in writing demanded payment of my entitlement in terms of the Settlement Agreement.
8. Shortly thereafter I received a telephone call from the Absa fund informing me that my entitlement in terms of the Settlement Agreement to the Absa fund was not a pension interest as envisaged by the definition of "pension interest" in terms of the Divorce Act 70 of 1979. ("Divorce Act")
9. I subsequently received a written note from Absa in which their legal advisors gave reasons why this entitlement was not a pension interest. A copy of that note is attached as Annex "C".
10. The gist of the legal opinion was that a beneficiary as regards benefits from a preservation fund is not entitled to any benefit on resignation from his office as such benefit is only payable on reaching a certain age, namely 55.
11. *Prima facie*, it appears as if there is substance in the opinion, which means that my ex-husband was not entitled to benefit from neither of the preservation funds as he was not entitled to any benefit of his resignation of his office.
12. The Liberty fund also informed me that for the same reasons as those put forward by Absa, my ex-husband was not entitled to any benefit to their fund until reaching a certain age and that resignation from his office also would not entitle him to any benefit from the Liberty fund and that his resignation from his office would also not entitle him to any benefit.
13. As a result of Absa's and Liberty's attitude, I no longer have any claim against my ex-husband in terms of the Settlement Agreement as regards the Absa fund and Liberty fund, meaning that amounts of R680.774-15 (Absa fund) and R227.281-48 (Liberty fund) are not recoverable by me, leaving me in dire straits.
14. In an article (which also came to my attention only this morning) in the Personal Finance Bulletin of 3 May 2008, Ms Laura du Preez, in her comments on the Bill, is of the opinion that the proposed amendment states, *inter alia*, that an award to a non member former spouse must be deducted by the fund named in the divorce order or by a fund to which the interest in the fund was transferred. She further concludes, that a benefit which has been transferred by a member to a preservation fund, could therefore be deducted from the preservation fund and be awarded to a non-member former spouse. A copy of this article is attached as Annex "D".

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15. I, however, have reservations as to whether this is a correct interpretation of the relevant provision of the Bill. In the Bill no mention is made of the definition of pension interest in the Divorce Act which means that a preservation fund still is not covered by section 7(8)(a) of the Divorce Act.
16. For the sake of completeness the definition of "pension interest" in section 1 of the Divorce Act as well as the provisions of section 7(8)(a) of the Divorce Act are quoted:

#### Section 1

"pension interest', in relation to a party to a divorce action who-

- (a) is a member of a pension fund (excluding a retirement annuity fund), means the benefits to which that party as such a member would have been entitled in terms of the rules of that fund if his membership of the fund would have been terminated on the date of the divorce on account of his resignation from his office;
- (b) is a member of a retirement annuity fund which was bona fide established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of that party's contributions to the fund up to the date of the divorce, together with a total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), for the purposes of that Act;"

#### Section 7(8)(a)

- "(8) Notwithstanding the provisions of any other law or of the rules of any pension fund-
  - (a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that-
    - (i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party when any pension benefits accrue in respect of that member;
    - (ii) the registrar of the court in question forthwith notify the fund concerned that an endorsement be made in the records of that fund that that part of the pension interest concerned is so payable to that other party and that the administrator of the pension fund furnish proof of such endorsement to the registrar, in writing, within one month of receipt of such notification;"

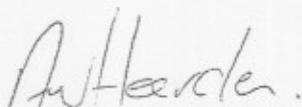
17. I am willing to appear in person before the Portfolio Committee if necessary.

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My telephone and fax number is: 011 675 6556 and my cell number is 0721806014. My e-mail address is: ancil@perceptivelegal.co.za.

Thank you very much for the opportunity to make these representations.

Yours faithfully



ANCIL VAN HEERDEN (BIDDULPH)