



Government Employees Pension Fund Board of Trustees

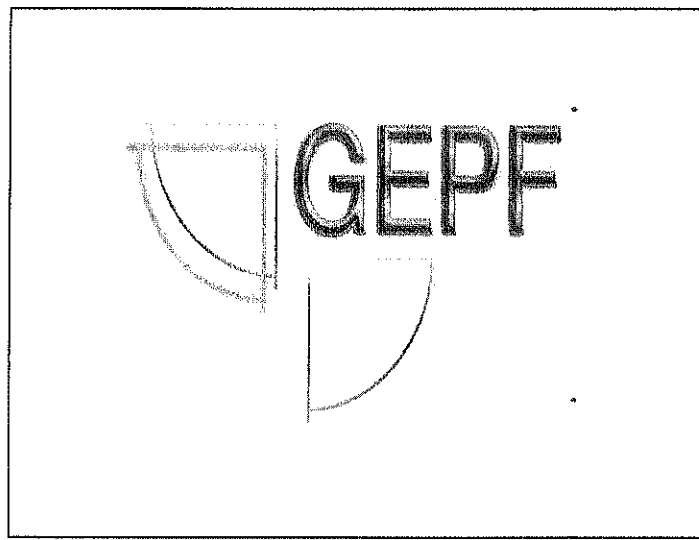
For decision

Gratuity Distribution Policy

Submitted to:
Date approved:

Board of Trustees
2008 -07- 08





GOVERNMENT EMPLOYEES PENSION FUND

**DISTRIBUTION POLICY
FOR THE DISTRIBUTION OF BENEFITS
UPON DEATH OF A MEMBER OR
PENSIONER**

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Document versions

Version	Revision Date	Prepared / Revised by	Business Unit	Status
0001	February 2007	A Nothnagel	Legal Section	First draft
0002	September 2007	R Fourie	Legal Section	Second draft
0003	November 2007	R Fourie	Legal Section	Third draft
0004	November 2007	H Auret	External	Fourth draft
0005	February 2008	A Nothnagel and R Fourie	EB1 and Legal Section	Fifth draft

Document reference library

Document File Name	Context and Relevance

Business areas impacted by this policy

Business Unit	Context and Relevance
Finance: Debt Management	
Employee Benefit Operations	
Legal	

Glossary of terminology

Abbreviation/Terminology	Definition & Description
BAC	Benefits and Administration Committee
BoT	Board of Trustees of the GEPP, and/or its delegated functionary
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIVPEN	Civil Pension System
FA-C	Finance and Audit Committee of the Board of Trustees
FINCOM	Financial Committee of the GEPP
GEPP	Government Employees Pension Fund
GEP Law	Government Employees Pension Law, Proclamation 21 of 1996

1. POLICY OVERVIEW

- 1.1 The objective of this policy is to set guidelines for the distribution of the gratuity benefits due to beneficiaries of a deceased member or pensioner, as per the discretion provided to the BoT in terms of section 22 of the GEP Law and rules 14.5.9 and 14.6.1 thereto.

2. PURPOSE

- 2.1 The purpose of the policy is to:
- Explain the legal principles applicable to the identification of beneficiaries and the exercise of the BoT's discretion in the allocation of benefits as alluded to in section 22 of the GEP Law and rules 14.5.9 and 14.6.1 thereto;
 - Ensure consistency and efficiency throughout the relevant GEPF business units when distributing the gratuity benefit payable in terms of rules 14.5.1, 14.5.2 and 14.6.1 of the GEP Law, whilst exercising the discretion provided for in section 22 of the GEP Law and rules 14.5.9 and 14.6.1 thereto; and
 - Stipulate the base line principles applicable to the actual distribution of the gratuity benefits.

3. LEGAL FRAMEWORK

- 3.1 The following legislation is applicable:

- Government Employees Pension Law, Proclamation 21 of 1996 (GEP Law) and rules thereto.

- 3.2. The BoT has the power to make rules, prescribe and take steps in relation to the distribution of benefits. The following sections of the GEP law and rules thereto are applicable:

3.2.1.1 Section 29(1)(a)(ii):

Subject to the provisions relating to negotiations regarding the terms and conditions of employment contained in any law applying in respect of labour relations arrangements in the Public Service, including Education, and subject to negotiations in accordance with any labour relations legislation or arrangements applicable to the South African Police

Service, the South African National Defence Force, the National Intelligence Agency and the South African Secret Service regarding their terms and conditions of employment, the Board shall make **rules** with regard to-...

- (ii) the payment of contributions to the Fund and the payment of benefits from the Fund to or in respect of members on their retirement, discharge, resignation or death;...

3.2.1.2 Section 29(2)(g):

(2) The **rules** referred to in subsection (1), may-...

- (g) from time to time prescribe the benefits payable from the Fund to members or their beneficiaries determined in the rules, in respect of the pensionable service of members in cases or classes or categories of cases specified by the rules, and the manner in which such benefits shall be calculated and the times at which and the manner in which such benefits shall be paid;

3.2.1.3 Section 6(6), Rules 4.2.4 and 4.2.9:

6 Management of the Fund by the Board of Trustees

6(6) The BoT may delegate any of its powers, functions and duties to a management committee, committee or person.....

4.2 Powers of the board

Save for the appropriate provisions of the Law, the Board shall in the exercise of it's powers and duties be entitled to-...

4.2.4 **prescribe** in which way claims must be lodged against and handled by the Fund;

4.2.9 in general **take any steps** necessary or perform any actions which are advantageous for the achievement of the Fund's objectives...

- 3.3 On the death of a member, rules 14.5.1 and 14.5.2 provide that a gratuity is payable to the member's beneficiaries. If there are no beneficiaries, the pension benefits are payable to the deceased estate of the member.

Rule 14.5.9 provides that if the gratuity is payable to two or more beneficiaries, that the gratuity shall be paid to any such beneficiaries and in such proportions as the BoT may determine.

- 3.4 On the death of a pensioner, rule 14.6.1 provides that, if the pensioner dies within five years after retirement or discharge, that there shall be paid to the beneficiaries, or to the deceased estate of the pensioner if there is no beneficiary, a benefit equal to the sum of the annuity which would have been payable to the pensioner during the period, as from the first day of the month immediately following the date on which the pensioner dies up to and including the last day of the month in which the said period of five years would have expired had the pensioner not died, based on the amount of the pensioner's annuity on date of death – for the purpose of calculation of the benefit the additional amount payable in terms of rule 14.2.1(c) is not taken into account.

Rule 14.6.1 further provides that if this gratuity is payable to two or more beneficiaries, that the gratuity shall be paid to any such beneficiaries and in such proportions as the BoT may determine.

- 3.5 Section 1 of the GEP Law defines a beneficiary as follows: '**beneficiary**' means the *dependant or nominee* of a member or pensioner, as the case may be.

- 3.6 Section 1 of the GEP Law, defines a dependant as follows:

'dependant', in relation to a member or a pensioner, means-

- (a) any person in respect of whom the member or pensioner is legally liable for maintenance;
- (b) any person in respect of whom the member or pensioner is not legally liable for maintenance, if such a person-

- (i) was, in the opinion of the Board at the time of the death of the member or pensioner in fact dependent upon such member or pensioner for maintenance;
- (ii) is the spouse of the member or pensioner, including a party to a customary union according to indigenous law and custom, or to a union recognised as a marriage under the tenets of any religion; or
- (c) a posthumous child of the member or pensioner; and
- (d) a person in respect of whom the member or pensioner would have been legally liable for maintenance had that person been a minor.

3.7 A *nominee* is not defined by the GEP Law or the rules. However one can define a nominee as a *beneficiary nominated by a member or pensioner prior to his or her death, to share in the gratuity benefit which will become available as result of the death of the member or pensioner who so nominates him or her*. Specifically section 22(1) of the GEP law allows the member to nominate beneficiaries and to stipulate the proportions in which they will receive of the gratuity. The member indicates who the intended nominated beneficiaries are and what percentage of the gratuity each is to receive, by completing a WP1002 nomination form, and submitting the originally completed form to the GEPF. Anybody may be nominated as a beneficiary – a nominee does not have to be related to the member making the nomination.

Despite the aforementioned, section 22(2) provides the BoT with the discretion to disregard the nomination form. In any instance where the GEPF exercises its discretion, the reasons and/or a motivation for the decision reached, must be recorded in writing.

Section 22 reads as follows:

[p21y1996s22]Payment of gratuity to beneficiaries designated by member
 (1) If a gratuity is payable on the death of any member to the dependants of such a member or to his or her estate, that member may, on the prescribed form and subject to the prescribed conditions, notify the Board of his or her wish that the said gratuity be paid on his or her death to the beneficiaries

mentioned in that form and be divided among such beneficiaries in the proportion mentioned in that form.

(2) Notwithstanding anything to the contrary in any law contained, the Board may on the death of a member who so notified the Board pay at its discretion the gratuity concerned in accordance with the member's wish.

4. POLICY STATEMENT

Introduction

- 4.1 The gratuity benefit resulting from the death of a member, or a pensioner who passes away, is payable to his or her beneficiaries, or to his or her estate if there are no beneficiaries.
- 4.2 Beneficiaries are either dependants or nominees.
- A *dependant* is a beneficiary by virtue of his or her reliance on the deceased member or pensioner for maintenance, or by virtue of his or her relationship to the deceased member or pensioner.
 - A *nominee* is a beneficiary nominated by the member or pensioner to share in the gratuity, by means of the completion of a WP1002 nomination form. A member can nominate anybody as a beneficiary, regardless of the relationship to that person.
- 4.3 The BoT has discretion to decide the allocation, and the proportions of such allocation of the gratuity benefit payable to the beneficiaries, if there is more than one beneficiary. The BoT must exercise its discretion with due care, diligence and in good faith. The BoT must therefore apply its mind and the process must pass the test of reasonableness.
- 4.4 The duty of the BoT to apply its mind requires that a thorough investigation be done to, as far as is reasonably practical, identify all beneficiaries and to determine the respective level of dependency of each. From the inception of the relevant operational unit tasked with investigating and identifying beneficiaries, a proper investigation must be done to ensure that all relevant information is available to the GEPF and is sufficient to make an informed decision. All reasonable steps must be taken to obtain the necessary information, and/or to allow the affected parties, to provide their respective submissions, before the GEPF exercises its discretion.

- 4.5 All possible documentation must be obtained and considered as per the guidelines stipulated in the GEPF Gratuity Distribution Procedure Guideline.
- 4.6 In any instance where the GEPF exercises its discretion, the reasons and/or a motivation for the decision reached, must be recorded in writing and in detail.

The Process of Consideration and Elimination

- 4.7 As stated, the eventual decision of the BoT should stand the test of reasonableness. The question then arises: "Who should be considered for payment of a portion of the death benefit and who should or may be excluded from payment?"
- 4.8 This is the area to which the BoT must apply its mind. It may be said that the BoT's first responsibility lies with the dependants of the member or pensioner and that the nomination of persons is only an expression of the wish of the member or pensioner and may, in its discretion, be disregarded by the BoT in favour of dependants.
- 4.9 The following are some (but not necessarily all) of the beneficiaries that should be considered by the Trustees:

4.9.1 A dependant: A dependant includes, but is not limited to, the following persons:

4.9.1.1 A person who had a right to maintenance from the deceased. For example:

- The biological child of the deceased;
- The adopted child of the deceased; and
- Any person who had a maintenance order against the deceased on date of death.

4.9.1.2 Any person who was factually dependant on the deceased on date of death;

4.9.1.3 A major child of the deceased, regardless of dependency; and

4.9.1.4 The spouse of the deceased. "Spouse" includes a life partner and a wife/wives in a customary union.

4.9.2 A nominee: The deceased may have nominated a beneficiary to receive a portion of the death benefit, even though the nominee was not a dependant in terms of the GEP Law and was not financially dependant on the deceased. Again, the nominee must be considered for payment, but the first duty of the Trustees is to ensure that the actual dependants, and in particular the immediate family of the deceased is financially cared for.

4.10 In the event of there being no dependants or nominees, benefits may be paid to the deceased's estate. In instances where there is reason to believe a beneficiary may come to the fore at a later date, the benefit – or a portion thereof – may be withheld for a period to be determined based on the facts of the particular case.

GEPF Gratuity Distribution Procedure Guideline

4.11 The procedure to be followed in the event of the death of a member or pensioner must be addressed in the GEPF Gratuity Distribution Procedure Guideline, which must include as a minimum, the following:

4.11.1 A process map identifying where and how the processes necessitated by this policy are integrated into the existing processes of the GEPF;

4.11.2 The procedures for obtaining documentation and information relating to the identification of beneficiaries, inclusive of the procedure for interviewing, either personally, or by telephone, or obtaining affidavits or otherwise from all known dependants, nominees or other relevant persons with a view to ascertaining *inter alia*:

- personal and financial circumstances;
- degree of dependency;
- any other possible dependants; and

- who the guardian of minor children are, what ages the children are, etc. If there are minor children, who are to receive a portion of the benefit, the benefit of the minor child / children must be dealt with in accordance with Rule 18.1.

- 4.11.3 An identification of the officials responsible for the investigation of beneficiaries and their powers;
- 4.11.4 If applicable, the identification of officials to whom the BoT has delegated the authority of making distributions of the gratuity benefit and their powers;
- 4.11.5 Examples of possible distribution scenarios and best practice in relation to each in order to ensure, as far as is reasonably practicable, uniformity in approach to distributions.

Distribution principles

4.12 The principles for distribution are as follows:

- 4.12.1 The parties to be considered as beneficiaries are defined in the GEP Law.
- 4.12.2 Each beneficiary, be that a dependant of nominee, must be considered. However dependency remains the foremost consideration. Although all persons claiming or qualifying as a beneficiary must be investigated, the BoT are not obliged to award a share of the benefit to all claimants and/or beneficiaries, as rules 14.5.9 and 14.6.1 stipulate that where a gratuity is payable to two or more beneficiaries, such gratuity shall be paid to any such beneficiaries and in such proportions as the Board may determine. The BoT may decide that a "nil" proportion may be allotted to any particular claimant.

4.13 The proportion awarded to each dependant is commensurate to the relative dependency of each beneficiary to the deceased. The degree of dependency is always a factual question which must be carefully considered by the official who has been tasked with the distribution. The following factors, *inter alia*, determine dependency:

- 4.13.1 The age of the beneficiary. The younger a beneficiary, *prima facie* the greater the dependency on the deceased;

- 4.13.2 Factual dependency. (There are limitless possibilities – for example, the deceased was supporting his/her parents (who are senior citizens) financially, or they were staying in the deceased's house);
- 4.13.3 A disability of any nature;
- 4.13.4 The relationship to the deceased e.g. a spouse or spouses are considered to be dependant on the deceased spouse and has a right to benefit. Putative spouses can be considered to be factually dependant. The factual dependency of estranged spouses should be considered within the context of each particular case.
- 4.13.5 The amount awarded to a nominee will depend on the percentage stipulated by the deceased in the nomination form. (The current practice of the GEPF is that, although the BoT has a discretion to give credence to the nomination form or not, they do not have the authority or a discretion to amend the percentages awarded by the member or pensioner stated in the nomination form, should they decide to follow it.)

4.13 Where there are no beneficiaries, the gratuity is paid to the estate.

4.14 Practical guidelines and matters pertaining to the redistribution of benefits are addressed in the GEPF Gratuity Distribution Procedure Guideline. These guidelines are not hard and fast rules and each case must be reviewed on its own merits while taking into consideration all the relevant facts at hand.

4.15 The BoT introduces these procedures in order to ensure that it makes an informed decision when allocating death benefits, which will ensure that it exercises its duty of care and passes the test of reasonableness. Also to ensure that it can properly defend its decision where a beneficiary (or beneficiaries) only come to the fore after processing of matter had been concluded.

Practical considerations

- 4.16 Employers and their representatives must be informed of any relevant procedures, which must be implemented by them.
- 4.17 Representatives of the GEPF must be educated and trained on the necessity and importance of the procedures. Accuracy of information must be accentuated during these information sessions.
- 4.18 Interim payments can be made to certain beneficiaries, e.g. the spouse or minor children whose claims have been verified, in order to avoid hardship while the investigation and determination process is running.

Redistribution

- 4.19 Where a new beneficiary (or beneficiaries) comes to the fore after the gratuity has been paid out by the GEPF, the GEPF shall deal with the matter in terms of its Redistribution Policy.

5. LIMITATIONS AND CONDITIONS

The policy is applicable to the distribution of gratuity benefits to beneficiaries. No limitations apply.

6. APPROVAL

- 6.1 The policy will, as the first step to BoT approval, be submitted to the benefits and Administration Committee for approval.

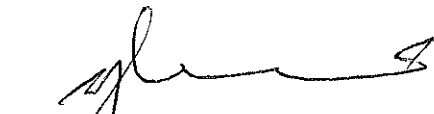


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CHAIRPERSON: BENEFITS AND ADMINISTRATION COMMITTEE

Date: 1/8/08

Approved / ~~Not approved~~



M KUSCUS

CHAIRPERSON: BOARD OF TRUSTEES

Date: 28/5/08
