

CIRCULAR 2/2020

ADDRESSED TO: **ALL RETIREMENT FUNDS, RETIREMENT FUND ADMINISTRATORS**

SUBJECT: **COVID - 19 RELIEF – EARLY-ACCESS TO RETIREMENT BENEFITS BY EMPLOYEES OF COMPANIES IN FINANCIAL DISTRESS AND TEMPORARY SUSPENSION OR REDUCTION OF EMPLOYER/EMPLOYEE CONTRIBUTIONS**

STATUTORY REFERENCE: **SECTION 5 OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT, 2010, SECTION 14 & 16 OF THE RETIREMENT FUNDS ACT, 2005.**

EFFECTIVE DATE: **21 MAY 2020**

PURPOSE:

The Financial Services Regulatory Authority (“the Authority”) is cognisant of employers and employees who are financially distressed in light of the unprecedented financial challenges that Covid-19 presents, which may impact employers and employees ability to comply with the full and/or any payment of contributions in terms of section 16 of the Retirement Fund Act 2005.

The Authority takes heed of the Press Statement on Employment Contingency Measures in response to the Covid-19 National Emergency issued on 8 April 2020 by the Ministry for Labour and Social Security, requesting employers and employees in consultation with the Registrar of Retirement Funds to explore, where feasible, the granting of employees advance salaries or pre-access to any other form of social security measures as may be available within the enterprise for medium or long term contingencies such as pension schemes and provident funds.

The Authority notes that the imposition of the following circular poses significant threat to the financial viability of Retirement Funds in Eswatini and therefore undertakes to remind all Retirement Funds Board of Trustees that the purpose of this circular is not to permit the

depletion of funds nor does it promote reckless disinvestment of fund assets. Instead, this circular seeks to extend the fiduciary responsibilities of Retirement Funds Board of Trustees to provide members in severe financial distress due to COVID 19 with assistance by availing some relief to members; and extend relief to employers to continue supporting their employees, while considering the financial soundness/position of the fund

Therefore, in terms of Section 5(d) of the Financial Services Regulatory Authority Act, 2010, the Authority hereby notifies Retirement Funds of the following measures which can be applied during this National Emergency period.

PART 1: EMERGENCY RULE AMENDMENTS FOR EARLY ACCESS TO MEMBER BENEFITS OR SUSPENSION OF CONTRIBUTIONS

Where employers have indicated their inability to pay retirement fund contributions to retirement funds on behalf of employees as a result of financial distress resulting from the effects of the COVID 19 pandemic, the Board of Trustees may consider such requests and apply relevant rules given the particular circumstances of the employer. Wherein such provisions in the rules do not exist, the retirement funds must consult the relevant professionals (for example, actuaries, investment advisors and legal counsel) and may submit applications for emergency rule amendments to the Authority.

PART 2: EARLY ACCESS TO MEMBER BENEFITS

A. QUALIFYING CRITERIA FOR EARLY ACCESS TO MEMBER BENEFITS:

All applications for early access to retirement fund benefits must be made to the Registrar of Retirement Funds by retirement funds on behalf of their members who have requested relief and meet the following minimum criterion:

1. The employee is a member of a registered local retirement fund;
2. The employee has been temporarily laid off without pay or has been subjected to a pay reduction due to COVID 19 preventative measures undertaken by their employer;
3. The employee's employer has received approval from the Ministry of Labour and Social Security to lay off employees or reduce pay on or after 1 April 2020 by 50 per cent or more; and
4. The employee's retirement fund has been approved by the Commissioner General for tax purposes.

B. AMOUNT TO BE ACCESSED AND DURATION

1. The member will be entitled to access an amount not exceeding the lesser of his/her net salary paid to bank and E3,000.00 (Three thousand Emalangeni) per month, subject to availability of funds as determined by the Board of Trustees.
2. Where an employee/member receives a reduced salary from the employer as a result of COVID 19, such an employee or member will only qualify to claim the difference paid by the employer and the amount stated in B1 above.
3. The amount payable shall cease to be paid by the fund when an employee/member resumes work and or receives a salary above the amount set in B1 above.
4. The cumulative amount paid to a member during the National Emergency period shall not exceed 10% of the members withdrawal benefits.
5. If an employee is a member of more than one retirement fund, the employee should not receive early access retirement benefits exceeding the limit set in B1 above and such amount can only be drawn from one retirement fund.

C. DOCUMENTS TO ACCOMPANY APPLICATION

1. A schedule of all members indicating:
 - a. their request for early access to their retirement benefits;
 - b. net salary prior to lay off or current salary in case salary was reduced;
 - c. the amount to be drawn from the fund and
 - d. current withdrawal benefit;
2. Agreement between the employer and employee (member of the fund) indicating the amount to be deducted from the fund in lieu of the salary;
3. An agreement between the fund and the member consenting to access their retirement benefit in lieu of salary;
4. Approval letter from the Ministry of Labour and Social Security to the laying off of employees and/or reduction of salaries;
5. Resolution of the Board of Trustees that they are availing this option to members of the fund;
6. Employer's financial statements for the previous financial year;
7. Employer's current management accounts and details of the impact of covid-19 on the financial position of the business; and
8. Report from the Board of Trustees indicating the maximum amount that can be accessed by members without threatening the fund's solvency.

PART 3: TEMPORAL SUSPENSION OR REDUCTION OF CONTRIBUTIONS

QUALIFYING CRITERIA FOR RETIREMENT FUNDS TO SUSPEND OR REDUCE CONTRIBUTIONS

All applications for temporal suspension or reduction of contributions shall be made to the Registrar of Retirement Funds by retirement funds where employers have indicated inability to pay retirement fund contributions to the fund on behalf of employees as a result of financial distress resulting from the effects of the COVID 19 pandemic. The application should be accompanied by the following documents:

1. Resolution from the Retirement Fund Board of Trustees approving the reduction, suspension or deferral of employer/ employee contributions;
2. A letter from the Employer setting out current financial vulnerability as a result of the COVID 19 pandemic;
3. The Employer's proposed strategy to reduce (in full or partially) any payment of contributions as per section 16 of the Retirement Funds Act, 2005;
4. Total amount of contributions deducted from payroll monthly in compliance with section 16 of the Retirement Funds Act, 2005, split as employer and member contributions and the anticipated reduced contributions;
5. An assessment of the impact on the fund's solvency as a result of the reduction, suspension or deferment (in full or partially) of any payment of contributions as well as the trustees' plans to maintain fund solvency during the pandemic;
6. The estimated duration of the suspension of contributions or remittance of reduced contributions;
7. Copy of the agreement between the employer and the fund regarding the terms under which the suspension or reduction of contributions is approved;
8. Confirmation of member communication regarding the reduction or suspension of contributions and the impact this will have on their withdrawal benefit; and
9. Measures that have been put in place by the trustees to ensure that premiums for risk benefits will continue to be paid and or arrangements in place with insurers to ensure that these policies will not lapse.

All applications will be considered after the relevant rule amendments have been approved by the Authority.

PART 4: ENFORCEMENT OF THE CIRCULAR

This circular will cease to be applicable upon pronouncement by the Eswatini Government of the end of the Covid-19 National Emergency.



FINANCIAL SERVICES REGULATORY AUTHORITY