SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION
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PRESENTATION TO IMPSA CONFERENCE

RETIREMENT FUND RESTRUCTURING COLLECTIVE AGREEMENT

03 NOVEMBER 2021

INTRODUCTION

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- In the local government sector there are about 280 000 employees who are spread among 200 various entities (municipalities and their entities).
- Pension Fund regime within the LG sector is split among three (3) types of pension funds which include the Defined Benefit (DB) funds, the Defined Contribution (DC) funds and the Hybrid Pension funds.
- The SALGBC parties are agreed to the need to cut down on administration costs of multiple funds and governance structures.
- Some of the pension funds are regulated through the Provincial Ordinances and not by the Pension Fund Act.
- The DB funds have exposed municipalities to unnecessary financial strains as there is an obligation to top up in the event of the fund concerned having under-performed during a particular financial year. An example of Natal Joint Pension Fund's 32% top up requirement at the beginning of 2016 was shared with National Treasury.
- The SALGBC parties further agreed that the "Moratorium on Transfers" must be retained pending the finalization of this Collective Agreement on the matter.
- As early as 2012, the SALGBC Parties resolved to embark on the rationalization process to reduce the operative Retirement Funds in the sector that cause "administrative nightmare" for our municipalities. Mr Chris Todd, a Pension Fund Lawyer, was appointed to facilitate the parties' engagements as well as interactions with the Funds and/ or MRO.
- The parties also resolved to appoint an Actuary, Mr Jeremy Andrew, to assist in the assessment of the financial consequences of any agreement.

KEY FUNDAMENTAL FACTORS THAT UNDERPINNED THE PROCESS..

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- Protection of Vested Rights: The unfunded liabilities as well as funds in deficit must become fully funded. No one should be worse off as a result of the rationalization process. There may be a need to conduct a comprehensive survey and make comparison of benefits under the existing regime.
- Taxation Challenges: The implications of "transfers" from DB to DC funds need to be established. The tax free benefits up to 1988 must remain protected.
- Redundancy Benefits: The impact of transfers from funds with benefits to funds without benefits needs to be established.
- Defined Benefits Funds: There is a need to protect pensioners and no reduction of benefits should take place. There is a proposed protection of benefits of members who remain in DB funds. Employer needs to guarantee shortfalls. There is a need to determine long –term sustainability of some funds that currently require employer contribution of about 32% and above (e.g. Natal Joint/ Potchefstroom or Germiston pension funds).
- Freedom of Association and Transfers: There is a need to address the challenges of what will happen in the event that a member dies while the transfer process is still dragging.
- Funds Accreditation: There is a need to establish the impact if a member joins a fund with high employer contribution from a fund with less contribution. There is also a need to determine the "frequency" of accreditation as well as what happens in the event of a fund losing accreditation status.

SALGBC PARTIES' STANCE ON PENSION FUNDING

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- The Pension funds are established to give effect to the terms of the contracts of employment that are agreed between employer and employees. Specifically, they are established to give effect to what is sometimes referred to as the "pension promise" made by employers to employees.
- These are the terms that the parties (employer and employee) have agreed on to provide retirement savings or pension benefits to employees and their families on retirement or early termination of employment.
- Thus, pension funds are not primary actors in the employment relationship. They are vehicles, established under and regulated by law, to manage and give effect to the pension promise and the retirement savings accumulated by members in consequence of the pension promise.
- The Trustees of a fund would breach their obligations to the fund and its members if they took actions that were motivated by interests other than the interests of the fund and its members.
- Pension funds must, therefore, make provision in their rules that properly give effect to the contractual terms that are agreed from time to time between employer and employee.
- The terms of a collective agreement such as the one recently signed between the parties will, where applicable, vary or amend the terms of the contracts of employment of those employees who fall within the scope of the agreement.
- The trustees of pension funds that were established to give effect to those contractual arrangements must take all reasonable steps necessary to ensure that the fund continues to reflect, properly, what has been agreed between employer and employee.

CRITICAL OBSERVATIONS ON THE GOVERNANCE OF PENSION FUNDS

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- The Actuary accessed information from FSCA relating to 44 funds operating in the sector;
- In the case of one fund, annual investment management fees were R165 million;
- In the case of another, annual administration fees were R79 million;
- One fund had annual board expenses of R6.7 million;
- Staff expenses of one fund exceed R13 million;
- One fund has operating lease costs of almost R20 million;
- And finally, one fund records unspecified "other" costs of R132 million.
- The overall costs across all 44 funds are staggering: more than R1.5 billion per annum.
- The above state of affairs further justifies the reasoning of the SALGBC parties to embark on the rationalization process as it is evident that employees' money is being channelled to other centres other than benefiting the employees, as members.

PENSION FUNDS' COMMENTS/ INPUTS

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FUND	COMMENT/ INPUT
Municipal Gratuity Fund and Natal Joint Municipal Pension and Provident Funds	**PFTT has no mandate** to reduce costs and reduce the number of funds. **Funds have no obligation to amend their rules in order to give effect to a collective agreement.**
KZN Municipal Pension Fund	**Funds are not bound by any collective agreement.**
National Fund for Municipal Workers	**Regulators should deal with governance problems not the SALGBC**
CRF for Local Government	**Rationalization should be managed through the FSCA**
Germiston Municipal Retirement Fund	**Well administered performing funds should not be forced to participate in any rationalization.**
Natal Joint Municipal Pension and Provident Funds	**SALGBC members are conflicted because they have their own funds to promote and should therefore not be driving the restructuring.**
Free State Municipal Provident Fund	**Prejudiced by historic moratorium.**

PENSION FUNDS' COMMENTS/ INPUTS.. *Cont*

FUND	COMMENT/ INPUT
MEU Retirement Fund	Option to transfer to be offered on a regular basis but not more frequently than every 5 years
National Fund for Municipal Workers + Municipal Workers Retirement Fund	Limit consolidation to small funds – large funds already enjoy the benefits.
Municipal Gratuity Fund	The R40 pmpm is not attainable, and not realistic taking account of the full range of services offered.
Free State Municipal Provident Fund	Effectiveness and efficiency is principal consideration
Cape Municipal Pension Fund	Costs should be measured according to % of pensionable payroll. MGF maintains its costs within the range of 0,55% to 0,75% of pensionable payroll.
MEU Retirement Fund	Size does not guarantee effectiveness / efficiency. Many smaller funds operate with reasonable cost levels.

THE RETIREMENT FUND COLLECTIVE AGREEMENT

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THE OBJECTIVES:

- Establish a uniform approach to the provision of retirement fund benefits to employees in the sector.
- Provide equitable access to retirement fund benefits for employees in the sector.
- Provide uniform rates of contribution to retirement funding for employees in the sector, subject to preserving the accrued rights of employees in existing defined benefit arrangements.
- Improve overall efficiency and governance of funds.
- Give employees an opportunity to exercise an election to move from one local, regional or national fund in which their employer participates to another, within parameters established by this agreement.

THE RETIREMENT FUND COLLECTIVE AGREEMENT

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GENERAL PROVISIONS :

- New employees in the sector will be required or permitted to join only an accredited defined contribution retirement fund in which their employer participates.

- Employers in the sector will pay over contributions, made by and on behalf of existing employees for future service, only to a retirement fund that is accredited as contemplated in this agreement, subject to the provisions of clause 9 and section 13A of the Pension Funds Act.

- All contributions will be paid within 7 days of the end of the month for which they fall due.

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❑ ACCREDITATION OF FUNDS :

- The criteria for accreditation and the process for requesting accreditation are set out in the accreditation procedure (separate).
- Employers in the sector will contribute as participating employers to accredited funds only, subject to the further terms of this agreement.
- Each employer will:
  - *With effect from the implementation date continue to participate in those funds in which it participated immediately prior to the implementation date, if they have been accredited as contemplated in this agreement, and subject to the further terms of this agreement and the terms on which the funds have been accredited; and*
  - *Subject to any criteria that may be established by the Council from time to time to determine the number and identity of accredited funds in which any particular employer shall participate, a party or an employer may apply to the Council either to increase or decrease the number of accredited funds in which an employer participates.*
- The Council will publish a list of accredited funds.
- Employees must elect to join an accredited fund in which their employer participates with effect from the commencement of employment. Once such election is made, the employee may review that election at the next available date in terms of clause 7 below.

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❑ INDIVIDUAL MOVEMENT OF EXISTING MEMBERS BETWEEN FUNDS:

- All in-service members of an existing retirement fund will be given an initial election to transfer to any accredited DC fund in which that member's employer participates, but not to an accredited DB fund.
- If an accredited fund has both DC and DB categories of membership within the same fund, the categories will be treated as if they were different funds for the purposes of this clause, and the initial election referred to above will include an election to transfer from the DB to the DC category of the same fund or to any other DC fund in which the employer participates.
- The election referred to above must be exercised in writing, in a form published or agreed by the Council, within six months of the implementation date or by such other date determined by the Council.
- The parties agree that employees will, subject to any applicable law and subsequent collective agreements concluded between them, be given a similar election three years after the implementation date, and at intervals of five years thereafter.
- Nothing in this agreement prevents two or more DB funds, or two or more DC funds, from merging or transferring groups or categories of members between them in terms of section 14 of the Pension Funds Act. Such funds may agree that members may decide individually to transfer between them within such period, or at such effective date as they determine and inform their members accordingly.

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NEW EMPLOYEES AND CONTRIBUTION RATES:

- Each new employee in the sector will be required and permitted to become a member only of a defined contribution retirement fund in which his or her employer participates and which is accredited as contemplated in this agreement.

- The employer contribution rate to an accredited DC retirement fund will be 18% of pensionable salary, subject to the clause below.

- If an employer is, as at the date of signature of this agreement, paying a higher contribution rate than the rate referred to in the above clause on behalf of a member of a defined contribution fund, the employer will, unless otherwise agreed by collective agreement, and for so long as the fund is accredited and the employee remains a member, continue to pay the higher contribution rate in respect of that employee. Exception!!

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❑ EXISTING FUNDS NOT ACCREDITED:

- An existing retirement fund that is not accredited will be given notice of termination of participation by participating employers who are bound by the terms of this agreement, or notice of full or partial termination, where applicable, subject to the provisions of the Pension Funds Act, as amended from time to time.
- Any notice in terms of the above clause will be given to the relevant fund by the relevant participating employer or employers or, to the extent permissible, by SALGA on their behalf, and a copy will be delivered to the General Secretary of the Council as well as to the trade unions.
- If an existing retirement fund is not accredited or has its accreditation withdrawn ("the old fund"):
  - *In-service members of the old fund will, with effect from the effective date of withdrawal by their employer or termination of the fund, as the case may be, cease contributions to the old fund and commence contributions to an accredited fund in which their employer participates ("the new fund"); provided that the provisions of clause 8.3 will apply, read with the changes required by the context, to the employer contribution rate to a defined contribution fund;*
  - *Subject to clause below, the affected members may elect that their members' interests in the old fund be left "paid up" in that fund or may elect that, subject to the provisions of the rules of the respective funds and the provisions of section 14 of the Pension Funds Act, and provided that any tax benefit applicable to pre-1998 accrued benefits is preserved, their members' interests in the old fund be transferred to the new fund;*

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❑ EXISTING FUNDS NOT ACCREDITED:

➢ **If an existing retirement fund is not accredited or has its accreditation withdrawn ("the old fund"):**

- *Where a member has a housing loan from the old fund, or the old fund has guaranteed a housing loan provided to the member by a financial institution, if the new fund is not able (or is not willing) to take over such housing loan or guarantee, the member must leave his member's interest "paid up" in the old fund until such time as his loan is repaid or the new fund is prepared to issue a guarantee in respect of a housing loan from a financial institution to cover the balance of the amount owed;*

- *If the old fund is not liquidated, the employer or employers participating in the fund immediately prior to the cessation of participation by the employer, as the case may be, will assume responsibility for funding any shortfall in the fund as at the date of transfer of the members; and*

- *If the old fund is liquidated, the employer or employers participating in the fund immediately prior to the cessation of participation by the employer will assume responsibility for funding any shortfall in terms of section 30(3) of the Pension Funds Act.*

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IMPLEMENTATION:

- The Council (SALGBC) will be responsible, through its Executive Committee (EXCO), for oversight of the accreditation process and the implementation of this agreement.

- Municipal Managers will be responsible for implementation of the terms of this agreement within each municipality, subject to any delegation.

CONCLUSION

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THE IMPSA CONFERENCE SHOULD TAKE NOTE OF THE FOLLOWING:

- That the adopted "*Accreditation Criteria*" has to be satisfied by all Pension Schemes for them to continue to operate in the local government sector;
- That, as a transitional measure, the possible *"dual" Pension Fund Regime* should be accepted as both Defined Benefit and Defined Contribution Funds may meet the objective criteria;
- That the *"Moratorium on Transfers"* should be allowed only after the signing of the Collective Agreement in order to safeguard the interests of all municipalities;
- That *"Good Governance"* should be one of the key important factors that underpins the accreditation criteria;
- That Funds' *"Administration Costs"* should be further considered as another critical element that demonstrates Funds' commitments towards members' interests;
- That SALGBC parties should not be involved in any "merger decisions" as the Trustees should take the responsibility thereof;
- That the SALGBC should report any identified irregularities to the Pension Fund Adjudicator without delay;
- That all municipalities should keep the database of operating funds within their administration and monitor the employer/ employee contribution rates therein. This information must be shared with SALGA in this process;

CONCLUSION; *CONT..*

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The IMPSA Conference should Take Note:

- **That all municipalities should ensure that employer/ employee trustees serve in the Funds operating within their administration in order to safeguard members' interests. Such trustees should be withdrawn immediately they leave the employ of the municipality;**
- **That National Treasury had to be further consulted for a possible "bail out" in case some of the DB Funds become liabilities for some municipalities;**
- **That COGTA Minister had to be further consulted in the matter in order to consider converting the "accreditation criteria" into "Regulations" should all else fail.**

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THANK YOU….