



SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

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To All Municipal Managers

The Parties:

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SAMWU	Mr. D Magagula	Per Email
IMATU	Mr. J Koen	Per Email

And To:

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Dear Sir/Madam

CIRCULAR NUMBER 4/2022

ACCREDITATION OF RETIREMENT FUNDS IN TERMS OF THE RETIREMENT FUND COLLECTIVE AGREEMENT (RFCA)

The purpose of this circular is to:

1. Provide a brief background to the RFCA;
2. Publish a list of funds, accredited by the SALGBC;
3. Provide a list of funds that did not apply for accreditation, including a list of funds that have litigated against the SALGBC;
4. Inform the sector of the freedom of association period; and
5. Inform the sector of the Regulations that exist in KwaZulu-Natal.

1. Brief Background

The parties to the South African Local Government Bargaining Council (SALGA, SAMWU and IMATU) concluded a Retirement Fund Collective Agreement (RFCA), dated 15 September 2021.

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The RFCA is the final product of protracted negotiations since 1996, when the parties in the erstwhile National Labour Relations Forum (NLRFB) agreed that they will strive for uniform conditions of service. This, *inter alia*, included annual leave, sick leave, maternity benefits, hours of work, retirement fund arrangements, medical aid contributions, etc. Uniformity was achieved by concluding various collective agreements since 2001, however, a uniform retirement fund dispensation remained outstanding. It must be noted that the parties concluded a uniform conditions of service collective agreement and a medical aid collective agreement, amongst others, in 2002/2003.

The parties to the NLRFB recognized that pension funds, prior to 1994, were in many instances racially segregated. Some pension funds were only open for membership for black employees, whilst others only permitted white employees as members. The parties to the NLRFB acknowledged that changes had to be made to the retirement fund dispensation.

The pension funds also had different benefit arrangements, different contribution rates, different financial and governance arrangements, etc.

The bargaining partners in the NLRFB, therefore, made three key decisions with regard to retirement funds, between 1994 and 2001, these being:

- a) The NLRFB resolved that fund members, albeit for a brief period in 1996/1997, be permitted to transfer from one pension fund to another;
- b) The NLRFB placed a moratorium on the establishment of new pension funds in the local government sector; and
- c) After the initial opportunity to transfer between pension funds was allowed, a moratorium was placed on the movement of members between pension funds.

When this agreement was reached on the moratorium, the parties had every intention for the moratorium to be temporary and to conclude a retirement fund collective agreement that would regulate the pension fund dispensation in the sector.

This agreement on the moratorium was later re-affirmed in the SALGBC in July 2001, immediately after the SALGBC was registered in March 2001.

Whilst the parties endeavoured to conclude such an agreement since 2001, the RFCA was finally concluded in 2021.

The 1996 vision and commitment by the bargaining partners to transform and restructure the retirement fund arrangements is now upon all stakeholders in the sector, including members of funds, employees and employers.

With the conclusion of the RFCA, the moratorium now falls away. For the first time since 2001, employees (members of funds) will be permitted to elect to transfer, or move, from one accredited retirement fund to another accredited retirement fund, subject to the parameters permissible by the RFCA.



The parties to the Council (SALGA, SAMWU and IMATU) have committed themselves to discuss and find solutions to any challenges that employees, fund members and/or municipalities may face during the implementation of the RFCA.

2. List of Accredited Funds

The first task of the SALGBC, in terms of the RFCA, was to invite funds to apply for accreditation. It must be noted that the RFCA provides for SALGA, municipalities and trade unions to apply for accreditation on behalf of a fund.

On the 21 December 2021, the SALGBC issued circular number 10/2021 calling upon all retirement funds or pensions funds to apply for accreditation, which circular was copied in a separate letter to funds in the sector.

Funds had to submit applications for accreditation by 28 January 2022.

The SALGBC received 15 applications from various funds on or before the aforementioned date.

The Executive Committee, at its meeting held on 11 April 2022, resolved to accredit the following funds*:

Name of Fund	Number of Active, paid up or deferred members	Number of Pensioners
National Fund for Municipal Workers	54 280	105
Consolidated Retirement Fund for Local Government	51 583	779
eJoburg Retirement Fund	32 038 (includes deferred retirees)	
SALA Pension Fund (Hybrid Fund)	7241 Defined Benefit Members 7320 Defined contribution members	4303
Cape Municipal Pension Fund	9694	4662
Tshwane Municipal Provident Fund	6077	28
City of Johannesburg Pension Fund	2103	11
MEU Retirement Fund	874	0
Free State Municipal Provident Fund	619	10
Vrystaat Munisipale Pensioenfonds	392	978
Tshwane Municipal Pension Fund	143	1214
Oudtshoorn Munisipale Pensioenfonds	140	0

* *The funds above are listed according to the number of members in the fund.*

The 12 (twelve) funds, listed above, have either:

- a) Fully complied with the accreditation criteria and provisions of the RFCA, or
- b) Agreed to submit the relevant rule amendments to the Council once the Rule amendments have been approved by the Board of Trustees of the Fund or once the Fund receives the requisite approval of the rule amendment, from the Financial Services Conduct Authority (FSCA).

The Executive Committee had requested some funds to confirm rule amendments in compliance with the RFCA.

The accreditation of the twelve funds covers approximately **172 504** employees, approximately 64% of employees in the sector.

There are three (3) funds with pending applications due to outstanding information or documentation. These funds are the Mafikeng City Council Pension Fund, Phuthaditjhaba Municipal Pension Fund and Phuthaditjhaba Municipal Provident Fund.

The Local Authority Fund that apparently exists at the Emfuleni Municipality did not apply for accreditation, although they showed an interest through the Funds administrator. The Council is awaiting feedback from the municipality on the status of the fund.

3. List of Funds that did not apply for accreditation

3.1 There are some closed Funds or disestablished funds that did not apply for accreditation. The Executive Committee accepted the position advanced by these funds. These funds are:

a) Umhlatuze Municipality Provident Fund

The Council was advised that the Fund resolved to disestablish itself and the deregistration process is almost 99% complete.

b) Durbanville Munisipaliteit Voorsorgfonds

This fund is in the process of liquidation and the fund only has three members.

c) Pietermaritzburg Corporation Provident Fund

The Council was advised that this fund was disestablished in 2019. Employees were transferred to one of the KwaZulu-Natal Funds.

d) The Phumula Retirement Fund (erstwhile Johannesburg Municipal Pension Fund)

The Fund submitted motivation to the Council indicating that they fall outside the scope of the RFCA. The SALGBC has accepted the Fund's position. This is a closed fund.

3.2 The Executive Committee noted that some smaller funds did not apply for accreditation. The status of these funds was sourced from the FSCA website. These funds are:

a) The Soweto City Council Pension Fund

The Executive Committee noted a report from the HR department of the City of Johannesburg, which stated that the members of the Fund were transferred to the GEPF. The details recorded on the FSCA active fund list reflects that the Fund has 938 defined benefit members, which is contrary to the report of the HR Department of the City. The status of the fund is being investigated by the Council.

b) Alexandra City Council Pension Fund

The Executive Committee noted a report from the HR department of the City of Johannesburg, which stated that the Alexandra City Council Pension Fund has been closed and members were transferred to the Municipal Employees Pension Fund.

The Executive Committee noted the details recorded on the FSCA active fund list, which reflects that the Fund has 105 members, which is contrary to the report of the HR Department of the City. The status of the fund is being investigated by the Council.

c) Krugersdorp Munisipale Pensioenfonds

The Executive Committee noted the FSCA active fund list, which reflects that the Fund has 48 members.

d) Joint Municipal Pension Fund

The Executive Committee noted the FSCA active fund list, which reflects the Fund as having 324 active members and 2316 pensioners.

e) Welkom Munisipaliteit (1992) Voorsorgfonds

The Executive Committee has noted the details recorded on the FSCA active fund list that this Fund is pending cancellation.

f) Potchefstroom Municipal Pension Fund

The Executive Committee noted the details recorded on the FSCA active fund list that this fund is not an active fund.

g) Potchefstroom Munisipale Aftreefonds

The Executive Committee noted that the FSCA active fund list records that the Fund has 660 members.



- h) EC Local Authorities Provident Fund, EC Group Municipal Pension Fund, EC Group Municipal Gratuity Fund, and the Umtata Municipality Provident Fund

The Executive Committee noted that there are three or four Funds that exist at the King Sabata Dalindyebo Local Municipality. However, at the date of the Executive Committee meeting, the Council did not receive any applications from these funds.

The Executive Committee resolved that these funds (EC Local Authorities Provident Fund, EC Group Municipal Pension Fund, EC Group Municipal Gratuity Fund, and the Umtata Municipality Provident Fund) did not apply for accreditation, as per their undertaking that they were allowed to submit their applications by 28 February 2022.

3.3 Some funds have initiated legal action (or are threatening to do so) against the SALGBC and the parties to the SALGBC. These funds have chosen not to apply for accreditation and they are attempting to set aside the RFCA. All these actions are being opposed by the Council and the parties to the Council. These funds are:

- a) Municipal Workers Retirement Fund (MWRF)

This MWRF has lodged an application against the SALGBC, SALGA, IMATU, SAMWU, Minister of Employment and Labour and the FSCA in the High Court.

- b) The Municipal Retirement Organization (MRO), Germiston Municipal Retirement Fund, and the Municipal Gratuity Fund

The MRO, GMRF and MGF have lodged an application against the SALGBC, SALGA, IMATU and SAMWU in the High Court.

It must be noted that some funds, who are members of the MRO, have applied for accreditation, whilst others have not applied for accreditation. In addition to the MRO members in (b) above, the other MRO members who have not applied for accreditation are:

- Potchefstroom Municipal Pension Fund
- KZN Municipal Pension Fund (eThekweni-based fund)
- Durban Pension Fund
- LA Retirement Fund

- c) KwaZulu-Natal Joint Municipal Pension Fund (Superannuation), KwaZulu-Natal Joint Municipal Pension Fund (Retirement) and KwaZulu-Natal Joint Municipal Provident Fund

The attorneys acting on behalf of these funds have sent a letter to the SALGBC indicating that they intend joining the litigation of the MRO but have not done so to date.

d) Municipal Employees Pension Fund (MEPF)

The attorneys acting on behalf of the MEPF, in a letter to the SALGBC, dated 25 April 2022, stated that it is the intention of their client to challenge the RFCA but no legal proceedings have been instituted to date.

The SALGBC parties wish to advise members of the Funds listed above to raise any issues they may have with their respective Principal Officers or Boards of Trustee members.

4. Freedom of Association (FOA): 1 July 2022 to 31 December 2022.

Employees or members of accredited funds will have a right to move (transfer) to any one of the accredited funds, provided the fund is one of the accredited funds recognized by their municipality or employer. Fund members may also opt to remain in their current fund, provided that it is accredited.

Employees or members will be able to move (transfer) from 1 July 2022 and this window period will close on 31 December 2022.

5. Administrative Guidelines

Further details may be provided in a proposed set of implementation guidelines that will be issued by the Accreditation Committee of the SALGBC. Such guidelines, may deal with the following matters:

- Freedom of association, including the marketing of an accredited fund.
- The issues relating to section 14 transfers in terms of the Pension Funds Act. The SALGBC notes that Section 14 transfers fall under the jurisdiction of the FSCA.
- The disputes relating to funds or employers refusing to allow members to transfer from one fund to another. The SALGBC notes that the jurisdiction of such disputes may fall to the Office of the Pension Fund Adjudicator (OPFA) where the rules of the respective funds enable the transfers.
- Consider a *pro forma* form to assist members to request to transfer from their current accredited or non-accredited fund to another accredited fund only.
- Administrative procedures to assist HR departments of the employers; and
- FAQs for employees and employers.

6. KZN (excluding eThekweni based funds)

The application of the RFCA to municipalities and employees in KZN is hamstrung by the existing KZN regulations (previously in the form of Provincial Ordinances) that stipulate that municipalities in KZN must contribute to the KZN Funds only. These KZN regulations

go against the principles contained in the RFCA, which permits employers (municipalities) and employees the freedom to associate or disassociate with a fund of their choice, subject to the accreditation provisions.

A task team of the Executive Committee has met with the Executive Authority, MEC of COGTA (KZN) on two occasions to seek the assistance of the KZN Provincial Government to overcome this challenge and ensure the RFCA is implemented in KZN.

This repeal of the KZN regulations remains work in progress and the SALGBC task team is waiting for feedback from the Honourable MEC and Executive Authority.

7. The Council request that this circular be placed on all municipal notice boards.

Yours faithfully



SS GOVENDER
GENERAL SECRETARY