

# MEMBER NEWS

Newsletter for Municipal Councillors Pension Fund



## Message from the Desk of the PEO/CEO

Issue 1 of 2016

Dear Councillor,



**MCPF CHAIRPERSON-  
TRUSTEE BUSISIWE  
MODISAKENG**

Having taken into cognisance the oversight role played by the Chairperson of the Board supported by the Board of Trustees as outlined on PF 130 we bring you important updates from the Municipal Councillors Pension Fund.



**MCPF PEO/CEO-  
MILDRED MLINJANA**

In my capacity as the Principal Executive Officer of the Municipal Councillors Pension Fund ("MCPF") together with the Board of the MCPF as well as the staff members, we warmly welcome you to the desk of the PEO wherein communication with you on recommendations made by various committees to the board leading to key decisions taken on behalf of members. The purpose of this newsletter is to keep you well-informed of all the latest developments in the MCPF. In terms of the governance structures implemented by the Board, the services provided by the Principal Executive Officer includes both statutory and management duties directed at ensuring that the Fund fulfills its promise to the members and all other stakeholders. By doing so it's for the purposes of smooth running of the fund taking into account board resolutions, good governance and key critical issues that emanated from various provinces during members report back meetings and queries raised by members. We therefore want to ensure that you are kept abreast in this regard. Attached at the end of this newsletter is the addendum which seeks to give clarity on the impact of the recent approval of the Taxation Laws Amendment Acts No. 25 of 2015 in order to allay fears to members.

### Fund Investment and Financial Performance

As a result of the movements in the financial markets, the MCPF total market value was: R2 682 620 042 as at the end of December 2015. For the past 12 months to December 2015 the Total Fund return was 11.11% whilst it was 11.43% p.a for the past 5 years to November 2015. The members can be rest assured that the Board of Trustees are doing all they can to account and making sure that members investments are safe and accruing interests. Monthly performance figures are posted on the Municipal Councillors Pension Fund website for easy access to members.

### Establishment of the Municipal Pension Fund Forums

The Board of Trustees on their meeting of 05 November 2015 approved the establishment Municipal Pension Fund Forums in Municipalities. The Municipal Pension Fund Forums (MPFF) will be utilised by the Members to deliberate on all Pension Fund related matters. The MPFF's should be chaired by the Speakers of the Councils and that also the terms of reference must be adopted. This forum will also be established at the Provincial level as the Provincial Pension Fund Forum and the aforementioned must find expression in the Rules of the Fund.

## National Pension Fund Forum

The Board of Trustees, at its meeting held on 15 November 2015 resolved that the National meeting should be convened. The meeting will be held in Gauteng Province and the Birchwood Hotel is earmarked, on the basis of its affordability and proximity to the airport. National meeting be convened from 17 -18 March 2016. This meeting will serve as a general meeting where suggestions on fund rules can be made by members for board consideration. Prior to the national meeting, municipalities are encouraged to establish Municipal Pension Fund Forums (MPFF) convened by the speakers. The terms of reference for the MPFF will be sent to all municipalities for guidance.

It is recommended that up to 4 delegates (2 politicians (Member elected representatives) and 2 official (HR Manager and Senior Manager in Speaker's Office) per municipality be invited to attend the National Meeting. Should each member municipality send the maximum number of delegates it will translate into approximately 1000 delegates.

## Gauteng Property Investment



On the special board meeting held on 15 November 2015, the Board of Trustees recommended the purchase of Willows Office Park in Midrand. This will allow the Fund to save cost on rental but also to increase its property investment portfolio locally. It is important to note that the current Fund's Offices is a risk to the safety of employees noting that some employees were robbed at the premises.

## Municipal Councillors Pension Fund revised rules

The Board of Trustees in attempt to run the affair of the Fund effectively resolved to revise the rules of the Fund. This is informed by the need to deliver excellent services to members. Some of the revised rules looks into Board composition, MCPF Property Company, election of member Trustees, Role of the Board and process of electing Chairperson, Deputy Chairperson and Sub –Committees. Further the rules outlines the frequency of meeting with members at local, provincial and national level. The draft revised rules are attached as addendum B for members in preparation of the discussion during National Pension Fund Forum Meeting. The current Fund rules can be found on the MCPF website [www.mcpf.co.za](http://www.mcpf.co.za) or can be requested from our offices.

## 5 Rules Amendments

Out of 5 rule amendments sent to Financial Service Board (FSB) for approval, only one rule amendment of contribution at 15% was approved. Due to FSB taking too long to register the rules the fund retrospectively implemented rules. The amendments of the rules were in progress taking into consideration of the inputs of members. It was reported that the rules would be amended from 3 x pensionable salary to 5 x pensionable salary. The Fund is awaiting feedback from the FSB and has since engaged its attorneys to engage the FSB with a view to expedite the registration and approval of these rule amendments.

## Visibility to members



The Board of Trustees resolved that the fund need to be visible to members and it will be important to go to the District level in order to interact with members and address their challenges. In this effect we can confirm that from July 2015, the MCPF embarked on the roadshows to provinces. The meetings were taken down to the district level in order to listen to members concerns. The Fund managed to visit Gauteng, Limpopo, Mpumalanga, North West, Western Cape, Freestate and Eastern Cape. The Fund could not visit Northern Cape due to suitable dates not secured.

All issues raised by members during the meetings will be presented before the Board of Trustees for consideration. We acknowledged the cooperation and support shown by Speakers and Mayors for arranging meetings as well as councillors who attended and engaged with the MCPF in order to build the fund for the better.

### **Trustee Remuneration**

While Trustees devote time on running the affairs of the Fund, The approved Policy on Trustee remuneration was approved by the current Board of Trustees. It was resolved that the following trustee remuneration be adopted taking into consideration annual CPI increase:

Chairperson: R6825.00;

Deputy Chairperson: R5775

Trustees: R4725.00

Data: R300.00 and

Cell phone: R1500.

### **Meeting attendance**

Independent Trustee get R1200 per hour.

Member and Employer Trustee get R1260 per seating.

### **Review of Investment Framework in relation to MCPF Investment strategy**

The MCPF currently invest in cash, bonds, property, alternative assets and international investments. The Board of Trustees have considered to review the investment framework in order to look at the best investment strategy for the fund. The Board of Trustees recommended that Selekane Asset Consultants, be appointed to conduct a re-engineering of investment strategy of the Fund. Selekane Asset Consultant proposed not only to re-engineer the Fund's investment strategy, but also assist in formulating the investment policy and implement the proposed strategy. The objective of the review was to identify factors in the framework that are likely to contribute to sub optimal investment decision-making and result in poor performance. The review will also provide comment on goods governance and global best practice for retirement funds. The revised investment policy statement will be circulated to members for inputs and it will also be presented at the National Meeting to be adopted by members.

### **Asset Managers Site Visits**

Over the years, Asset Managers were left to manage the investments without being monitored. As part of oversight role by the current Board of Trustees, site visits were undertaken on the 8<sup>th</sup> and the 9<sup>th</sup> of July 2015 to all Assets managers that are based within South Africa. There is still a need to conduct site visit for those that are based outside South Africa. This is a monitoring tool in which the board deploy to engage with the Asset Managers who advice the MCPF on where to invest the funds. This is in line with the revised investment framework.

### **Deloitte and Touché retained**

From 26 companies that used to provide services to MCPF, Deloitte and Touché was one of the six companies retained while other companies were not renewed in order to cut costs by the Board of Trustees. Deloitte and Touché is charged with the responsibility to assist MCPF to address the audit findings from the previous financial year. The service provider will be monitored closely as per the project plan submitted to the Board of Trustees.

## **Appointment of Moruba Actuaries and Consultants**

As part of ensuring sound service delivery, the MCPF Board of Trustees on its meeting on 11 December 2015 appointed Moruba Actuaries and Consultant to provide actuarial services based on their technical expertise, proposed approach and methodology, their understanding of the public sector pension funds, previous performance record, commitment and value for money. The Board had also made sure the Service Level Agreement is in place and the service provider gave a clear project plan in order to monitor their deliverable. The Board will continue to monitor the service provider performance.

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### ***Addendum A***

## **Clarity on the impact of Taxation Laws Amendment Acts No. 25 of 2015**

Generally, the recent Taxation Laws Amendment Acts No. 25 of 2015; Act No. 43 of 2014; and Act No. 39 of 2013 (the "Pension Fund Amendments") do not have material and/or negative impact on the members of the MCPF. The Pension Fund Amendments are mostly affecting people or members who have Provident Funds.

Below we consider and explore the following key issues in the Taxation Laws Amendments:

### **1. Definition of the Pension Funds and Provident Funds**

- a. Section 1 of the Income Tax Act defines Pension Funds and Provident Funds in terms of the Pension Funds Act, Act No. 24 of 1956 (as amended).

### **2. Definition and categorization of the MCPF**

- a. the Pension Benefits for Councilors of Local Authorities Act, 1987 (Act No. 105 of 1987), also defines its Pension Fund in terms of the Pension Funds Act, Act No. 24 of 1956.
- b. And therefore the MCPF is a Pension Fund as defined and categorized.

### **3. Pension Funds vs Provident Funds**

- a. Before the Pension Fund Amendments came into effect, members of the Provident Fund were allowed to make a once off withdrawal, i.e. the Cash-Lump Sum, of the member's interest in the fund as at the retirement date.
- b. Once the Pension Fund Amendments become effect as from the 1 March 2016, all new contributions into a Provident Fund will be subjected to the new rules in that the members of the Provident Fund will no longer be allowed to make a once-off Cash Lump withdrawal at retirement date, except in the instances explained further down in this memo.
  - i. The rules of one third (1/3) allowed as a Cash Lump withdrawal and two thirds (2/3) being paid out as an annuity over a life time of the member will now apply to the Provident Funds.
  - ii. Please note that, the rules on bullet point number 3 (b) (i) were always applicable to the Pension Funds.
- c. Whilst on the other hand members of the Pension Funds are not allowed to withdraw all of their member's interest at the retirement date.

- d. The Pension Fund members would be allowed to withdraw only a third (1/3) of their member's interest as at the retirement date, and the rest of the two thirds (2/3) would be paid out, on a monthly basis, to the member over his/her remaining life time (i.e. the member would receive an annuity).
- e. Therefore the members of the MCPF are already subjected to the rules stated on bullet point number 3 (b) (i) due to the fact that the MCPF is defined and classified as a PENSION FUND and NOT as a Provident Fund.

#### 4. Tax Deductions - Pension and Provident Funds

- a. The National Treasury press release (the "Press Release"), dated 3 December 2015, states: *"All individual taxpayers who contribute towards a retirement fund (pension or provident fund or retirement annuity) after 1 March 2016 (i.e. from the next tax year), will qualify for a tax deduction up to 27.5% of the greater of taxable income or remuneration, up to a limit of R350 000."*
- b. The increased tax deduction, as stated above, will benefit the taxpayers as the amount of up to R350 000 will not be taxed.
- c. This tax deduction benefit will also be enjoyed by the members of MCPF when they retire after the 1 March 2016.

#### 5. New Contributions into Provident Fund after 1 March 2016

- a. The Press Release further states that: *"...all new contributions into provident funds after 1 March 2016 by those younger than 55 years will be subject to the two-thirds annuitisation requirement, but only once the amount at retirement exceeds the de minimis threshold. It will take several years before many provident fund members under the age of 55 years reach this higher limit."*
- b. On Provided Fund proviso, Section 1 of the Income Tax Act (as amended) under subsection (v) under the following sub-subsections:
  - i. *"(b) the rules of the fund provide-*
    - 1. *"(iv) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that a the remainder must be paid in the form of an annuity (including a living annuity) except where the two-thirds of the total value does not exceed R165 000 or where the employee is deceased:*

*Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account –*

- a) *in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2016 –*
  - (i) *any amount contributed to a provident fund of which that person is a member on 1 March 2016;*
  - (ii) *with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2016; and*
  - (iii) *any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subitem (A) or amounts credited contemplated in subitem (B)..."*

- c. The main principle in the above bullet is that all provisions made/contributed before the 1 March 2016 will not be affected by the new rules.
  - i. On the other side, based on the statement made under bullet point 5 (b) (i) above, it can be deducted that the employees who are 55 years or older as at 1 March 2016 will not be affected by new law and therefore in simple terms these employees can still be able to withdraw all their contributions including those made after the 1 March 2016 provided that the new contributions do not reach the threshold of R247 500.
- d. The new *de minimis* threshold has now been set at R247 500, which means only when the R247 500 threshold has been reached will the annuitisation requirement be applied.
- e. Now, if one takes into account the statement made on point 5 (a) read together with the definition of Provident Funds under Section 1 of the Income Tax Act (as amended), it can reasonably be concluded that all Provident Fund contributions made before 1 March 2016 will not be affected.

## 6. **Notes**

- a. We are continuing to engage SARS to clarify all areas of concern and interpretations.
- b. We will keep MCPF members updated on any interpretation issues with regard to the Taxation Laws Amendment Acts.

## 7. **Conclusion**

- a. Based on the above and the work performed, we can reasonable furnish MCPF with our considerations and advise that the members of MCPF are not affected by the new Taxation Laws Amendments.
- b. The MCPF is Pension Fund as defined and therefore original system of withdrawing or cashing in one-third (1/3) at retirement date with the remaining two-thirds (2/3) being paid as an annuity over the remaining years of the member will continue as normal.
  - i. However the MCPF members will now enjoy the increased tax deduction of up to R350 000 at retirement date.

*Addendum B*

**MUNICIPAL COUNCILLORS PENSION FUND**

**PROPOSED RULE AMENDMENTS**

Informed by ongoing engagements with members as well as the recent provincial engagements with Members it is proposed that the Rules of the **MUNICIPAL COUNCILLORS PENSION FUND** be amended for the reasons set out below

–

**1. DEFINITIONS**

By the amendment of certain definitions as follows –

**[Problem Statement: a number of the definitions require amendment in order to be more reflective]**

**“SALGA’ means** the South African **Local Government Association (Authorities)** and its legal successor, being the national organisation as contemplated in section 2(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997).

**“SERVICE” means the term/s of office of a member in his or her capacity (Service)** as a COUNCILLOR.

**“TRUSTEE” means the chairperson, deputy (Vice)-chairperson or any other member of the BOARD.**

By the addition of the following definitions –

**[Problem Statement: in response to the demand from members across the provinces that the fund, in identifying areas of investment, must focus on supporting socially responsible investments which promote social goals, BEE, local infrastructure and poverty alleviation, the Fund resolved to directly invest in property. As such, a property company has been established as a vehicle to champion this course. Consideration to be given to reintroducing the definition of “Property Company” and specifically its administration in the rules.]**

**“Property Company” means a company whose main assets comprise fixed property, or one whose main assets comprise investments in the shared in, or loans to such companies.**

**2. COMPOSITION OF BOARD OF TRUSTEES**

By the addition of the following to Rule 4 –

**[Problem Statement: the rules do not specifically provide for the composition of the Board of Trustees and certain Rules linked to the Control of the Fund are packaged elsewhere within the rules. ]**

#### **“4. CONTROL OF THE FUND**

- 1.1 Subject to the provisions of the ACT and of these RULES, the sole responsibility for the management of the FUND shall be vested in the BOARD appointed or elected in terms of RULE 8.
- 1.2 The Board of Trustees consists of:-
  - (a) Two Employer Trustees appointed by the Employer Body;
  - (b) Nine Member Trustees as elected directly by MEMBERS for each of the nine provinces;
  - (c) Two Independent Trustees as appointed by the Board of Trustees.
- 1.3 The BOARD must at all times comprise :-
  - (a) no less than 8 (eight) TRUSTEES;
  - (b) at least 1 (one) INDEPENDENT TRUSTEE;
  - (c) at least 1 (one) EMPLOYER TRUSTEE; and
  - (d) at least 6 (six) MEMBER TRUSTEES.
- 1.4 There are no alternates to any TRUSTEE, but in the event of any temporary vacancy, or in the event that the BOARD does not comply with the requirements in RULE 4.3, the BOARD may, notwithstanding the provisions of RULE 5, 6 and 7, appoint a person to fill a vacancy on a temporary basis.”

#### **3. ELECTION OF MEMBER TRUSTEES**

[Problem Statement: RULE 6.4 provides for the filling of the vacancy of MEMBER TRUSTEE automatically by the candidate that achieved the next highest vote or by the EMPLOYER BODY. The problematic nature of this is that the right of members to elect their MEMBER TRUSTEE is removed by allowing for the EMPLOYER BODY to fill that vacancy.]

By amending Rule 6.4 as follows-

“6.4 In the event of any vacancy in office of a MEMBER TRUSTEE, the vacancy is filled by that candidate subject to RULES 6.2 and 10.2, who received the next highest vote in the same PROVINCE in the election in RULE 6.2. If there is no such candidate able to fill such vacancy then the election procedure as outlined in RULE 6.2 must be followed within 30 (thirty) days of such vacancy arising.

#### 4. ROLE OF THE BOARD

[Problem Statement: The RULES do not specifically provide for what must happen at the first sitting of the BOARD after the election and appointment of new TRUSTEES.]

By the addition of the following to Rule 8A –

- (1) At the first meeting of the BOARD held after each MUNICIPAL ELECTIONS, the BOARD shall –
  - (a) elect a chairperson and deputy-chairperson from their own ranks by way of a vote per secret ballot;
  - (b) constitute a remuneration committee comprising the chairperson, deputy-chairperson and two other TRUSTEES;
  - (c) constitute such other sub-committee of the BOARD as the BOARD considers appropriate and appoint the Chairpersons of such sub-committees.
- (2) The BOARD must furnish to the every sub-committee a written mandate setting its responsibilities as sub-committee, sub-committees may only act in terms of a written mandate provided by the BOARD to that sub-committee. The mandate must set out the authority and responsibilities of the sub-committee, which responsibilities must in respect of a sub-committee include the obligation to meet regularly, maintain minutes of each meeting and report in writing to the BOARD at each BOARD meeting about the activities of that sub-committee during the preceding period. Each sub-committee of the BOARD, may have delegated to it such powers of the BOARD as the BOARD enjoys.
- (3) The remuneration committee must establish, and revise from time to time, a remuneration policy for the TRUSTEES, as well as a policy setting out the travel, accommodation and expense policy in respect of the TRUSTEES and the PRINCIPAL OFFICER.

#### 5. MUNICIPAL, PROVINCIAL AND NATIONAL MEETINGS

[Problem Statement: The rules of the Fund makes provision for the Board to convene “as often as may be necessary for the dispatch of business, but not less than once in a calendar year” or where requested by at least

half of the members of the Board. The rules do not allow for structured meetings of the governance structures, which would allow Trustees to from time to time, to obtaining a mandate from provincial members, which is partly creating a distance between MEMBER TRUSTEES and provincial members. It is proposed to amend the Rules of the Fund to make specific provision for structured meetings of the Board of Trustees, perhaps twice and year, and preceding Board meetings to make provision for meetings at provincial level with provincial members or at least municipal representatives. This could also be achieved by means of a Governance Framework, which could go further by ensuring that municipal representatives also report to individual members at municipal level.]

By replacing RULE 8B with the following –

#### MUNICIPAL PENSION FUND MEETINGS

- (1) The BOARD shall convene MUNICIPAL MEETINGS in respect of each member MUNICIPALITY, at least twice a year, by giving at least thirty days' written notice to each member MUNICIPALITY of the time, date and venue of each MUNICIPAL MEETING.
- (2) The purpose of such MUNICIPAL MEETING shall be elect municipal REPRESENTATIVES to the PROVINCIAL and NATIONAL MEETINGS, to take note of the financial statements and to make recommendations to the BOARD on any matter relating to the business and activities of the FUND.
- (3) The MEMBERS of every member MUNICIPALITY shall be entitled to attend the MUNICIPAL MEETING held at a venue at the municipal offices.
- (4) The MEMBER TRUSTEE of the relevant PROVINCE, or his appointee, shall act as the Chairperson of the MUNICIPAL MEETING.

#### PROVINCIAL MEETINGS

- (5) The BOARD shall convene PROVINCIAL MEETINGS in respect of each Province, at least once a year, by giving at least thirty days' written notice to each member MUNICIPALITY of the time, date and venue of each PROVINCIAL MEETING.
- (6) The purpose of such PROVINCIAL MEETING shall be to take note of the financial statements and to make recommendations to the BOARD on any matter relating to the business and activities of the FUND.

- (7) The MEMBERS of every member MUNICIPALITY shall, from amongst themselves, elect two REPRESENTATIVES to attend the PROVINCIAL MEETING held at a venue to be determined by the BOARD.
- (8) The MEMBER TRUSTEE of the relevant PROVINCE, or his appointee, shall act as the Chairperson of the PROVINCIAL MEETING.

#### NATIONAL MEETINGS

- (1) The BOARD shall convene a NATIONAL MEETING, at least once a year, by giving at least thirty days' written notice to each member MUNICIPALITY of the time, date and venue of each NATIONAL MEETING.
- (2) The purpose of such NATIONAL MEETING shall be to take note of the financial statements and to make recommendations to the BOARD on any matter relating to the business and activities of the FUND.
- (3) The MEMBERS of every member MUNICIPALITY shall, from amongst themselves, elect two REPRESENTATIVES to attend the NATIONAL MEETING held at a venue to be determined by the BOARD.
- (4) The Chairperson of the BOARD, or his/her appointee, shall act as the Chairperson of the NATIONAL MEETING.
- (5) After the Chairperson has satisfied himself or herself at the commencement of a NATIONAL MEETING that every member MUNICIPALITY present at the meeting has been duly appointed or elected in terms of section 5, he/she declares the meeting legally constituted.

#### 6. MEMBERSHIP

**[Problem Statement: In terms of the rules of the fund “a member shall not cease to be a member while he remains a Councillor of a participating municipality”. This effectively means that “once a member chooses to belong to the Fund that member cannot terminate membership for as long as a member is still serving as a Councillor”. As such termination is only allowed if that member is no longer a councillor, creating some discomfort with members.**

In **T. Ndlovu and The Vegmoflora Fund and another Case No: PFA/KZN/605/01/KM**, The complainant, together with several other employees of the employer, wished to terminate their membership of their Fund and join another Fund and was challenged. The Pension Fund Adjudicator held that, “It is clear that in terms of the fund rules the complainant is bound to remain in the scheme until termination of his employment. In assessing whether this rule is sustainable regard must be had to the question of whether it infringes the right to freedom of association. The rule clearly has the effect of compelling the complainant to remain a member of a group with whom he is forced to share financial interests and risks, patently against his will. This is so irrespective of the performance of the fund. It also has the correlative effect of preventing the complainant from associating with a group with whom he actively wants to become associated” The Adjudicator went further to state that “It would be hard in view of this to find otherwise than that the complainant’s right to freedom of association has been infringed. However, that does not end the enquiry, for, notwithstanding the infringement, it still remains to be seen whether it is not justified in some way. It must be remembered that the transfer of the complainant from one fund to another impacts on the employer as it must become a participating employer in the new fund. It may well be that if the employer does not wish to become involved with the new fund then compelling it to do so would equally be infringing the employer’s right to freedom of association.”...

It is clear from the above that denying requests by certain members from leaving the Fund to join another fund or simply just resign would not necessarily amount to violation of their right to freedom of association. It is, however, proposed to consider the following:-

1. amending the rules of the Fund to at least allow for termination of membership with the option to transfer funds into another approved retirement annuity or preservation fund of a member’s choice;
2. Allow returning members to continue membership but they should have access to at least 33.33% of membership value; alternatively
3. The fund explore the possibility of the creation of an internal “short term loan scheme” and “education trust”.]