

9 June 2022

**TO: ALL PARTICIPATING EMPLOYERS**

Dear Sir/Madam,

**IMPLEMENTATION OF THE COLLECTIVE AGREEMENT IN RELATION TO RETIREMENT FUND PARTICIPATION IN LOCAL GOVERNMENT**

1. I refer to the above and write to you to seek the municipality's co-operation with the matter concerning its employees, who are also the members of our retirement fund.
2. As you may be aware, SALGA, IMATU and SAMWU have concluded an agreement, purportedly following a collective bargaining exercise, in terms of which they intend to introduce significant changes to the retirement funds serving local government employees. The agreement proposes to do so by giving SALGA and its Council the power to "accredit" certain funds, subject to several draconian criteria being met, failing which the fund will not be accredited. The agreement suggests that municipalities (in their capacities as contributing employers) will be *prohibited* from transmitting their contributions to unaccredited funds, irrespective of the provisions of the rules of the fund in question.
3. The vast majority of the funds reject and question the legitimacy of this approach. SALGA has confirmed on affidavit that only 15 funds have to date asked for accreditation and only 12 have been accredited. Funds who have refused to apply for accreditation (which includes our fund) have done so because they do not believe that the matters contained in the agreement are the subject matter of collective bargaining (to the exclusion of the funds in question) and reject the attempted control of the funds by the bargaining parties via the implementation of the "accreditation" system.
4. Through the Municipal Retirement Organisation (MRO), which is a voluntary organisation in which our fund participates, we – together with other funds and other applicants – have initiated legal proceedings to challenge the agreement in question and have it set aside. We are not alone in these efforts – at least one other fund, established by SAMWU, has also independently approached the Courts for the same relief, and other funds appear to be gearing up to do the same.
5. We have tried to reach agreement with SALGA to delay the implementation of the impugned agreement until such time as these legal challenges are finalised, but our reasonable requests in this regard have been refused.
6. We are concerned about the implementation of the impugned agreement and the ad-hoc way this might take place. We are told that with effect from 1 July, municipalities will no longer be entitled to contribute to our fund on account of it being "unaccredited". You appreciate that this would have an extremely disruptive effect on our fund. Our budgeting and ability to secure the disability and death benefits specifically will be

massively affected – all in the circumstances where we are confident that the impugned agreement will ultimately be set aside.

7. As funds catering for our members, and employers who must protect the best interests of their employees, we have a common interest in protecting the interests of the people ultimately affected by this – our members and your employees.
8. If it is your intention to not make any contributions to our fund as at 1 July 2022, as the result of being compelled to implement the agreement which is subject to review and setting aside, we ask that you inform us of this decision timeously (and by no later than close of business on Tuesday, 14 June 2022) so that we can approach the Court in order to protect the fund's position.
9. We record that to date we have not received any such notice from you or any other municipality and trust that this is so because the impugned agreement is, in fact, incapable of being implemented (because its implementation would be contrary to law, is prejudicial to our members and would cause a massive administrative challenge for employees managing the payroll).
10. However, in the interests of prudence, we wish to ensure that we and our members are fully protected.
11. In the circumstances, if it is your intention to discontinue contributions, or to give a notice of non-participation to our fund at the beginning of next month because the municipality considers itself bound by the purported collective agreement referred to above, we will gladly approach the Court for an order which would provide you with a clear legal basis to decline to abide by the terms of this agreement pending the determination of the dispute. As you know, the planning around retirement fund re-organisation has been a point of debate for the past 20 years and the municipality will certainly not experience any prejudice if the status quo remains for a few more months, pending the finalisation of the MRO's (and other applicants') legal challenge. The municipality is also entitled to apply for exemption from implementing in terms of clause 12 of the collective agreement until the court cases are finalised.
12. We trust that you will receive this letter in appreciation of our good faith and the best intentions with which it is dispatched. We wish to retain good relations with all contributing employers and our suggestion of an approach to the court for the necessary order should not be perceived as threatened litigation against the municipality. It is intended to assist the municipality by obtaining a court order (at our cost) which will be a complete answer to any pressure under which the municipality may discontinue its contributions to our fund.
13. This will simply allow the status quo to continue until the legal challenge concerning the agreement is finalised. The alternative will not only be grossly prejudicial to our fund and our members investments and insured risk benefits – but also to the municipalities, who would have to reconcile payroll data to divert contributions to other (accredited) funds and deal with the administrative problems which will inevitably follow then, and also when the impugned agreement is ultimately set aside.
14. We look forward to your favourable response and record, for the sake of complete transparency, that this letter will be placed before the Court hearing any application for an interdict, which will make it plain that any such application is not adversarial to the municipality. We also confirm that no costs will be sought against any municipality in any application which is heard on an unopposed basis.

Yours sincerely



**Danie Carstens**  
**Chairperson**