

CIRCULAR 23 / 2018

FROM : CHIEF EXECUTIVE OFFICER

TO : SALGA PROVINCIAL CHAIRPERSONS
EXECUTIVE MAYORS / MAYORS
SPEAKERS
CHIEF WHIPS
MUNICIPAL MANAGERS

CC : PROVINCIAL EXECUTIVE OFFICERS
EXECUTIVE DIRECTORS

DATE : 05 JULY 2018

UPDATE ON DEVELOPMENTS IN THE MUNICIPAL COUNCILLORS PENSION FUND

We refer to the SALGA Circular 18/2018 with regard to the outcomes of the SALGA NEC meeting held from 10 – 11 May 2018.

Informed by the sustained clarification requests from member municipalities, this Circular attempts to provide a detailed status report on key developments within the Municipal Councillors Pension Fund (MCPF).

(i) Factual Background

Following communication from the Municipal Councillors Pension Fund (MCPF) to members in December 2017, it is evident that the events which have taken place in relation to the MCPF are namely, *inter alia* –

- that the High Court (Gauteng Division, Pretoria) granted an order placing the MCPF into provisional curatorship ("**the Provisional Order**") after hearing the application brought in this regard by the Executive Officer of the Financial Services Board in terms of section 5 of the Financial Institutions (Protection of Funds) Act, 28 of 2001 ("**the Application**");
- the appointment of Juanito Martin Damons and Sophie Thabang Kekana as the provisional curators of the MCPF;

- the replacement of the interim board of the MCPF ("**the Interim Board**") which had been appointed in terms of section 26 of the Pension Funds Act, 24 of 1956 ("**PFA**"); and
- that any stakeholders or interested parties are entitled to object to the provisional curatorship order being confirmed on 19 March 2018.

Based on the number of enquiries from municipalities (following the MCPF's December 2017 communique) SALGA considered, inter alia:-

- whether there are any grounds which arise from the particular circumstances in which the MCPF has been placed into provisional curatorship, which would motivate or necessitate any objection to the provisional curatorship order becoming final on 19 March 2018;
- whether there are any grounds which arise from the general circumstances or historical experience of funds in general being placed into curatorship, which would motivate or necessitate any objection to the provisional curatorship order becoming final on 19 March 2018;
- whether the granting of the Provisional Order has, or is likely to have any impact on the rights and entitlements of members of the MCPF to their benefits in the ordinary course.

Detailed below is information relevant to the curatorship of the MCPF and the specific queries raised by the members of the MCPF.

(ii) What are the powers of the Curators under the appointment?

In terms of the powers granted to the curators under the Provisional Order, and confirmed by the court, the curators have the power to, inter alia –

- investigate the business of the MCPF. This entitle the curators to investigate any historical maladministration that has taken place;
- conduct any investigation with a view to locating the assets of the MCPF, including assets which may be claims by the MCPF against third parties; and
- investigate any irregularities committed by the MCPF, the board or officers of the MCPF, or any other third party including service providers, with a view to locating the assets of the MCPF, which assets include possible claims which the MCPF may have against such person for their conduct.

Given the above powers, the curators are entitled to proceed with claims to recover any damages suffered by the MCPF as a result of irregular transactions and to recover any assets or monies paid out by the MCPF as a result of fraud committed by any party on the MCPF.

Further to the foregoing, the curators would continue to be required - in discharging their functions under the Court Order – to act in the best interests of the members of the MCPF.

It is important to note that the Court Order requires the curators to –

- compile a statement reflecting the financial position of the MCPF;
- report on historical irregularities committed in relation to the MCPF;
- recommend to the court what steps should be taken to protect the interests of the MCPF;
- furnish the Registrar with monthly progress reports.

In light of the above, the appointment of the curator provides for a transparent mechanism by means of which the members of the MCPF can obtain clarity as to the financial status of the MCPF, and will be entitled to monthly reports on the actions taken by the curators.

(ii) Are there any need/grounds to oppose the final appointment of the Curators and how could members ensure that the curator are accountable?

The High Court remains the ultimate custodian of the interests of the member. In light of the foregoing, SALGA held the view and believed that it is generally in the best interests of the members of the MCPF for the Provisional Order to have been granted and for such order to have been confirmed. Given the historical maladministration of the MCPF, it is necessary for the irregular transactions and other issues which form the subject matter of the motivation for the Application, to be fully ventilated.

It would however be necessary for SALGA to recommend and caution the members that they should continue to monitor the actions taken by the curators in regard to their investigations and any proposed course of action to recover assets of the MCPF or to pursue claims on behalf of the MCPF, to ensure that the members are aware of what is being done and are satisfied that their interests are being fully served by the curators.

Members are advised that they would during curatorship, continue to be entitled to approach the High Court, as interested parties in their capacity as members of the MCPF, to compel the curators to take specific action that may be justified, or to desist from taking proposed action, or for appropriate further relief.

(iii) Members' access to benefits

In terms of the Full Order given by the High Court on 19 December 2017, in granting the application to place the MCPF under provisional curatorship, the High Court ordered that the curators are *"authorised to pay benefits to members and beneficiaries of the [MCPF] who are legitimately entitled thereto, having regard to the rules of the [MCPF]."*

In addition hereto the MCPF Circular 1/2018 specifically advises members that –

*"While the [MCPF] is under Curators, the [MCPF] remains fully functional and operational. The Curators will continue to manage the affairs of the [MCPF] and **have been authorised to continue making benefit payments to all qualifying exiting members and their beneficiaries.**"*

In light of the foregoing, and as specifically authorised by the Full Order, the curators have confirmed that members will continue to be able to avail themselves of the rights and entitlements which they had to claim payment of their benefits, or fund credit values, in the event that a termination of membership or other event recognised by the rules of the MCPF as allowing payment of such benefits, takes place.

Provided that the rules of the MCPF allow for payment of the relevant benefit, including fund credit values on termination of employment with the relevant employer entity and consequent exit from the MCPF, members would be entitled to access to their benefits in the ordinary course, and the granting of the Provisional Order does not have any effect on these rights. As such, members' rights to benefits are not affected, as set out above.

(iv) SALGA position on the Provisional Court Order

SALGA held the view that it is generally in the best interests of the members for the appointment of the curators to be confirmed by the High Court and did not believe that there is any legal basis upon which the members can challenge or oppose such confirmation. Historical data suggests that curatorship may be a lengthy process, but that the interests of the fund seem to be served by such process. The members should always continue to involve themselves in the curatorship process, and to be vigilant and to avail themselves of their rights to approach the High Court should they believe that their interests would be comprised by any proposed action by the curators.

With regard to members' rights to benefits, both during provisional curatorship and even if the appointment of the curators is confirmed, members will be entitled to continue to access their benefits and to be paid in terms of the rules of the MCPF.

Informed by the above, SALGA supported the appointment of the curators, which was confirmed by the High Court on 19 March 2018.

(v) SALGA NEC Engagement with the MCPF Curators (11 May 2018)

An invitation was extended to the Curators of the MCPF, to on 11 May 2018 provide the NEC with a detailed presentation of the state of the Fund as well as a response to key proposals previously made on the future form and shape of Pension

Fund arrangements within local government. Based on the report from the Curators of the MCPF the following progress to date was noted:-

1. Curators have taken full control of all the bank accounts and investments of MCPF as from 19 December 2017, confirming that the funds are safe;
2. The Curators have managed to settle outstanding issues with the staff and the union and now have full cooperation of all staff and the backing of the union of the curatorship process.
3. Embarked on streamlining and **cost** cutting exercise - requested all service providers to prepare presentations and present the full extent of the services they provide and the fees being charged;
4. After discussions with some of the service providers they have agreed to reduce their charges and fees;
5. Revisited all attorneys instructions;
6. Working with the investment advisors, to deal with non-compliance with Regulation 28;
7. Four reports filed in terms of court order - Curators reports to placed on the FSB and MCPF websites;
8. In the process of investigating all allegations of mismanagement, fraud, theft and negligence - Section 26 trustees have reported matters to the Law Society and the Hawks;
9. Investigating the purchase of vacant property and the reasoning behind these investments - No development will take place until our monies are repaid;
10. Have conducted the following provincial road shows meeting with members:-

Province	Date	Municipalities
Free State	19 January 2018	Mathjabeng Municipality
Western Cape	5 March 2018	City of Cape Town
Eastern Cape	07 February 2018	Raymond Mhlaba Municipality
	20 March 2018	Nyandeni Municipality
North West	15 February 2018	SALGA North West workshop

Limpopo	01 February 2018	Tzaneen Municipality
	08 March 2018	SALGA Limpopo Speakers forum
	13 February 2018	SALGA Limpopo the Governance and Finance Working Group
	15 February 2018	LIM 345/ Collins Chabane Municipality-
	26 March 2018	Meeting With SALGA Limpopo PEC to brief them
	27 February 2018	MCPF with Limpopo Members
KZN	14 march 2018	Ugu District Municipalities
Mpumalanga	7 March 2017	Gert Sibande Municipalities

The NEC noted the report and resolved as follows:

- i. The status of off-shore investments be outlined to the NEC and all members;
- ii. A report on the investments be provided to all members;
- iii. The webpage on member benefits and growth be activated for all members to access;
- iv. The issue of the SA Constitution vs the rules of the fund with regard to withdrawals and other related matters be looked into and an update be presented in the next NEC meeting;
- v. The MCPF investment strategy be presented in the next NEC meeting;
- vi. The Curators be allowed to do work and to provide updates on developments to members;
- vii. The Presidency and the Chairperson of the Councillor Welfare, Governance and IGR be mandated to seek additional expertise and act as an advisory committee to the Curators of the MCPF;
- viii. Terms of Reference be developed to govern the relationship between the SALGA and the Curators of the Fund;
- ix. Regular briefings be held between the advisory committee and the Curators;
- x. A joint circular be sent to all municipalities to provide explanations on curatorship and progress made and to further persuade municipalities to review withdrawal from the fund; and
- xi. The matter of pursuing Government regarding the merger of the fund with Public Office Bearers Pension Fund be pursued as a matter of extreme urgency.

As SALGA, we are currently seized with the implementation of the aforesaid SALGA NEC resolutions and will from time-to-time communicate progress with members. In the interim, we continue to encourage members that have specific questions regarding the day-to-day administrative matters of the MCPF, to engage the fund directly.

We trust that this communication will go a long way in keeping members abreast of developments as considered by the SALGA leadership.

Yours faithfully,



XOLILE GEORGE
CHIEF EXECUTIVE OFFICER