

**PF-5 [2007]****FURNITURE BARGAINING COUNCIL**5<sup>th</sup> Floor ♦ Rennie House ♦ 19 Ameshoff Street ♦ Braamfontein ♦ JohannesburgCorrespondence to be addressed to: THE GENERAL SECRETARY ♦ Post Office Box 32789 ♦ Braamfontein ♦ 2017  
Telephone (011) 242-9200 ♦ Facsimile (011) 339-5410 ♦ e-mail council@furnbed.co.za ♦ Website www.furnbed.co.za

Our ref: WvR/lp 16-07

Your ref:

20 April 2007

The Secretary to Parliament  
c/o Mr A Hermans  
Committee Section  
Parliament of the Republic of South Africa  
P O Box 15  
**CAPE TOWN**  
8000

Dear Sir

**PROPOSED PENSION FUNDS AMENDMENT BILL, 2007**

This Council became aware of the above-mentioned proposed bill at a very late stage. It was placed on the agenda for discussion by the full Council and this letter is addressed to you in execution of a resolution taken at our Council meeting of 3 April 2007.

In terms of section 2(2) of the Pension Funds Amendment Bill, 2007 (hereinafter referred to as the Proposed Amendment), "2(2) A pension fund established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995, or the Labour Relations Amendment Act, 1998, which is not yet registered in terms of section 4, must register in terms of this Act before or on 1 January 2008."

Section 2(2) as enunciated directly above will have serious consequences if promulgated in its current format.

Our Provident Fund was established for the first time in 1961 under Government Notice number R.44 of 13 January 1961. Since then it underwent various amendments to accommodate changes in the structures of the then Industrial Councils and to ensure maximum protection to the members belonging to the Fund. In terms of item 7(1) of Schedule 7 of the Labour Relations Act, 1995 (Act 66 of 1995)(hereinafter referred to as the LRA), this Council is deemed to be a bargaining council under the LRA and as such, continues to be a body corporate.

In terms of section 28(1)(g), the powers and functions of a bargaining council, in relation to its registered scope include, inter alia, the right to establish and administer a provident fund for the benefit of members of parties to the Council.

In terms of section 30 of the LRA, the constitution of every bargaining council must, inter alia, at least provide for:

- the appointment of representatives of the parties to the bargaining council, of whom half must be appointed by the trade unions that are party to the bargaining council and the other half by the employers' organisations that are party to the bargaining council; and
- the investment of funds; and
- the purposes for which funds may be used; and
- a procedure for changing its constitution.

In terms of clause 6 of the Council's Constitution, representatives of both the unions which are parties to this Council must elect representatives who shall either be paid officials or employees actively engaged or employed in the Industry. On joint labour side, six (6) out of nine (9) delegates are employees actively engaged in the Industry.

In terms of section 53 of the LRA, the money of a council or of any fund established by a council that is surplus to its requirements or the expenses of the fund may be invested only in a prescribed manner. A council shall also keep books and records, prepare financial statements and have these books and records of account audited annually. These financial statements and the auditor's report must be made available to the parties to the Council and/or their representatives for inspection.

In terms of section 54 of the LRA, the financial statements together with the auditor's report must be provided to the registrar annually. The registrar may also request explanations of anything relating to the financial statements or the auditor's report.

All the above-mentioned and other existing check points have made the bargaining council system and in particular the administration of bargaining council funds safe and secure.

Contrary to what the Financial Services board believes, employers and for that matter, nobody can allow or have unimpeded access to the members' retirement benefits. Employers or employer delegates alone are, in terms of the voting procedures, as reflected in this Council's Constitution, not in a position to force any recommendation to become a resolution. No resolution can be made and no voting can be held without all the parties being represented. Voting may only take place when a quorum is present and when the labour side and the employer sides are equal in numerical strength. It is therefore absolutely safe to say that the massive Fidentia-type plundering of retirement savings, would not be possible in the bargaining council structure.

Any complaints from any member of the Provident Fund may be submitted with the Registrar of Labour Relations and/or the members' trade union. No surpluses, if any, or funds are left unregulated and all unclaimed benefits are kept available ad infinitum. No funds are unsupervised and the bargaining council system has in the last 45 years had no incidents of maladministration.

Any representative of any party may at any time request an actuarial valuation and each fund is administered totally separate from the Bargaining Council's other funds. All assets are subject to prudent investment regulations as reflected in section 53(5)(a)-(d) of the LRA. A large amount of power is granted to the Registrar: Labour Relations in terms of section 54(4) if a council fails to comply with any provisions of the LRA.

In terms of clause 10 of Chapter 2A of the Council's Collective Agreement, contributions and returns must be submitted with the Council by not later than the 10<sup>th</sup> day of the month following the month during which the employees' deductions were required to be made. The vast majority of employers in our Industry employ ten (10) or less employees. They do not have access to the modern computer equipment and follow a proper based administrative system which includes the posting of contributions and returns to the Council. Many of our establishments also lie in distant border areas. Once the payment and return is received the contributions must still be reconciled by the Council which takes time.

One of the main motivations for the implementation of the 1995 LRA as amended was to decriminalise the Bargaining Council sphere. If our Provident Fund falls under the Pension Funds Act, it seems that non-compliance will be catered for again via criminal prosecution.

The Council's retirement fund would become subject to the powers of the Pension Funds Adjudicator. As mentioned previously the majority of the members belonging to the Fund are unskilled labourers who do not accurately complete their dependant nomination forms. While the Council currently makes every effort to trace bona fide dependants of deceased members, any dispute that might arise after the Council has paid all known beneficiaries could be referred to the Pension Funds Adjudicator, which would cause a further administrative burden on the Council and the Financial Services Board.

The Council advances loans to members for informal housing purposes from the Council's Home Ownership Scheme. The Home Ownership Scheme advances loans to members to build or renovate houses on tribal land as well as for "zozo" type accommodation. This type of loan is made as the bulk of the members are low income earners and cannot afford fixed property as defined by the Pension Funds Act. This type of loan would not be allowed if the Council fell under the Pension Funds Act.

Certain members are off work for a long period of time due to ill health or incapacity. These members are given assistance from their Provident Fund to cover their loss of income while they are not earning any wages. This practice would have to be stopped as it is contrary to the Pension Funds Act.

Employees who resign from their employment have to wait for six months prior to their Provident Fund benefits being paid to them. This waiting period is enforced to stop employees resigning in order to claim their Provident fund in order to spend the money and then seek re-employment once such benefits are exhausted. Under the Pension Funds Act employees would normally be paid within a month or two. The waiting period imposed by the Council ensures that employees who resign preserve their retirement benefits for the purpose that the benefits are intended.

The Council has over the years of its existence developed sound and unique rules which take into account the needs of the type of member employed within its scope. As explained above falling under the Pension Funds Act would be detrimental to both the employers and the employees of the industry and would certainly increase the administration cost to its Retirement Fund thus reducing the growth of its members retirement benefits which surely cannot be the intention of the Pension Funds Act or the Minister of Finance.

Due to the above reasons the Council hereby places on record its objections for its Retirement Fund to be registered in terms of the Pension Funds Act. However, if the proposed amendments to the Pension Funds Act make special provision to accommodate the unique circumstances under which bargaining councils and their retirement funds operate, we are sure that our objection can be addressed in an amicable manner.

Please find attached a copy of a letter received from the Registrar: Labour Relations, which serves as a very good example of the control and the powers exercised by the Department of Labour over bargaining council retirement funds.

Please note that the first reaction on joint labour's side when confronted with the factual intention of National Treasury to elevate the Financial Services Board to become the watchdog of bargaining councils' retirement funds was a request to liquidate the existing Provident Fund and pay out all benefits to participants. It was quite clear that none of the proposed amendments, which will affect our members on employer and employee sides were brought under their attention.

As previously indicated, the majority of our participants are not sophisticated enough to either understand the consequences of the proposed amendments or to deal with the opportunity to raise public comment. It is very clear that the drive behind these proposed amendments is not due to any failure of a bargaining council to adequately administer its retirement funds.

It serves to mention that this announcement elicited violent threats from certain quarters. It is strongly advised that the National Treasury go to the trouble to follow a route of proper engagement and consultation with all bargaining councils, their parties and other concerned bodies or individuals.

Yours faithfully



WA JANSE VAN RENSBURG

General Secretary

cc Registrar: Labour Relations  
Minister: Department of Labour  
National Association of Bargaining Councils  
Henry Strydom: Cape Building Bargaining Council