

**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, PRETORIA**

**CASE NO: 75343/2017**

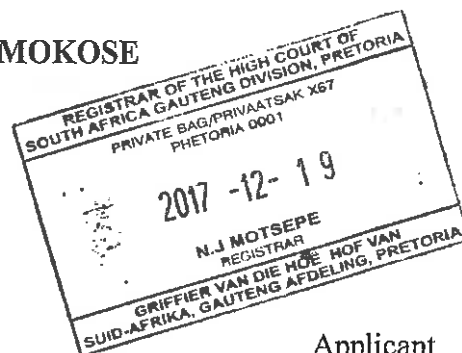
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19/12/2017

**PRETORIA THIS 19<sup>TH</sup> DAY OF DECEMBER 2017**

**BEFORE THE HONOURABLE ACTING JUSTICE MOKOSE**

In the *ex parte* application of:

**EXECUTIVE OFFICER OF THE  
FINANCIAL SERVICES BOARD**



**Applicant**

In re: The appointment of a curator in terms of section 5(1) of the Financial Institutions (Protection of Funds) Act, 2001 for the whole of the business of the Municipal Councillors Pension Fund.

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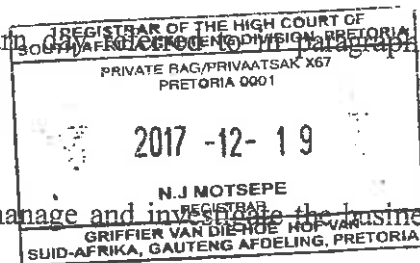
**DRAFT ORDER**

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Having heard counsel for the applicant and having read the documents filed of record, it is ordered that -

1. The whole of the business of **MUNICIPAL COUNCILLORS PENSION FUND** (hereinafter referred to as "the Fund" and "the business" respectively) be placed provisionally under curatorship in accordance with the provisions of section 5 of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act"), and in accordance with this order.
2. **JUANITO MARTIN DAMONS** and **SOPHIE THABANG KEKANA** be appointed curators ("the curators") of the business of the Fund and, as such, be absolved from furnishing security.

3. The business be and is hereby placed provisionally under the curatorship and management of the curators, subject to the supervision of the Registrar of Pension Funds ("the Registrar") and any other person now vested with the management of the business be and is hereby divested thereof.
4. Pending the return day of this order, all actions, proceedings, the execution of all writs, summonses and other processes against the Fund be stayed and not instituted or proceeded with, without the leave of this Court.
5. The curators be and are hereby, pending the return 6  
hereunder -



- 5.1 authorised to take immediate control of, manage and investigate the business and operations of and concerning the Fund, together with all assets and interests relating to such business, such authority to be exercised subject to the control of the Registrar in accordance with the provisions of section 5(6) of the FI Act, and with all such rights and obligations as may be pertaining thereto;
- 5.2 vested with all executive powers which would ordinarily be vested in, and exercised by, the board of management and principal officer of the Fund, as the case may be, whether by law or in terms of the rules of the Fund;
- 5.3 directed, at all times during the tenure of their appointment, to act in the best interests of the members of the Fund;
- 5.4 authorised to pay benefits to members and beneficiaries of the Fund who are legitimately entitled thereto, having regard to the rules of the Fund;
- 5.5 directed to take custody of the cash, cash investments, investment policies, stocks, shares and other securities held or administered by or on behalf of the Fund, and of other property (movable or immovable) or interests in such

property, or effects belonging to or held by or on instruction of the Fund or any entity directly or indirectly controlled by, affiliated to or associated with the Fund;

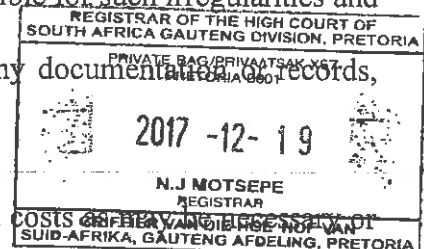
5.6 directed to conduct any investigation with a view to locating the assets belonging to and or administered or controlled by or on behalf of the business or the Fund, including such assets which may be in the form of claims by the Fund;

5.7 directed to investigate any irregularities committed by the Fund, the board of management or officers of the Fund and any other party presently or previously involved in the affairs of the Fund, including service providers with a view to locating the assets belonging to and or administered or controlled by or on behalf of the business or the Fund, including such assets which may be in the form of claims by the Fund against those persons responsible for such irregularities and for that purpose authorised to have access to any documents or records, wheresoever kept, in connection with the Fund;

5.8 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control or operations of the Fund, and to pay same from the assets held, administered or under the control of the Fund;

5.9 permitted to engage, after consultation with the Registrar, such assistance of a legal, accounting, administrative, or other professional or technical nature, as they may reasonably deem necessary for the performance of their duties and to defray reasonable charges and expenses thus incurred from the assets held or under control of the Fund;

5.10 authorised to institute or prosecute any legal proceedings, civil or criminal, on behalf of the Fund and to defend any litigation against the Fund;



- 5.11 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or in financial instruments which are financially sound and appropriate;
- 5.12 authorised to take control of and to operate, freeze or close existing bank accounts of the Fund whether conducted in South Africa or offshore, and to open and operate any new bank accounts for the purposes of the curatorship;
- 5.13 directed and authorised, at any time at during their tenure of appointment, to report to the Registrar should the curators deem it necessary or expedient that application be made for appropriate relief regarding any aspect of the business or the Fund's affairs;
- 5.14 authorised to claim all costs, charges and other expenditure reasonably incurred in the execution of the curators' duties in terms of this appointment, including their own remuneration referred to below; and
- 5.15 directed at all times to act in accordance with the Guidelines for Conduct of Curators published in terms of Government Gazette No. 38550 on 6 March 2015 as Board Notice 56 of 2015;
6. *A rule nisi* do hereby issue calling upon the Fund, its stakeholders or any other interested party to show cause to this Honourable Court on **19 March 2018** at 10:00 am why –
- 6.1 the appointment of the curators ordered in paragraphs 1, 2 and 3 above should not be confirmed, with the powers and duties set out in paragraph 5 above;
- 6.2 an order should not be granted that, whilst the curatorship exists, all claims, actions, proceedings, the execution of all writs, summonses and other processes against the Fund be stayed and not be instituted or proceeded with, without leave of the Court; and



6.3 the costs of these proceedings, as between attorney and own client, the costs of any investigation conducted of the affairs of the Fund, the costs of the curatorship and remuneration of the curators, should not be payable by the Fund, alternatively from the assets held by or under the control of the Fund or the business of the Fund.

7. In the event of the Fund, any of its stakeholders or any interested party wishing to appear on the return date mentioned in paragraph 6, notice of such intention to oppose the confirmation of the aforesaid *rule nisi*, together with an affidavit in support of such opposition, shall be lodged with the Registrar of this Honourable Court and copies thereof served on the applicant's attorneys, Rooth & Wessels Inc, (ref: Mr A Bloem) by not later than **16 February 2018**.



8. The curators are directed –

- 8.1 to compile a statement reflecting the overall financial position of the Fund and its financial soundness and to report thereon to this Honourable Court on the return day;
- 8.2 to report to this Honourable Court on any irregularities committed by either the Fund, its board of management, officers or service providers in the conduct of the business;
- 8.3 to conduct a survey of the assets serving as security for or covering the Fund's liabilities towards members, including the soundness, integrity and viability of the assets and to report thereon to the Honourable Court on the return day;

- 8.4 to recommend to the Honourable Court on the return day what further or alternative steps should be taken and by whom, in order to protect the interests of the Fund, its members and stakeholders and other creditors of the Fund;
- 8.5 to furnish the Registrar with progress reports on the curatorship on a monthly basis, with the first written report to be submitted to the Registrar within 2 weeks of the confirmation of their appointment and every month thereafter;
- 8.6 file their report to the Court with a copy served on the Registrar's office by no later than **23 February 2018**.
9. The curators shall be remunerated in accordance with the Guidelines for Conduct of Curators published in terms of Government Gazette No. 38550 on 6 March 2015 as Board Notice 56 of 2015 and which remuneration shall be reasonable and in accordance with the norms of the attorneys' profession and as agreed with the Registrar.
10. This order shall as soon as possible be served at the Fund's registered address and be published in one issue of the Government Gazette and on the official website of the Financial Services Board, and the attached abbreviated version of the order be published in one issue of the Business Day newspaper. A copy of the application may be inspected at the offices of the Applicant's attorneys.

