Financial Services Tribunal

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: A8/2025

In the matter between:

TSHWANE MUNICIPAL PROVIDENT FUND **APPLICANT**

and

FINANCIAL SECTOR CONDUCT AUTHORITY **RESPONDENT**

TRIBUNAL PANEL: Judge FD Kgomo (Chair), Adv SM Maritz and Adv X Khanyile

Appearance for Applicant:	Adv R Tshetlo
Appearance for Respondent:	Adv SR Rossouw
Date of Hearing:	24 July 2025
Date of Decision:	13 August 2025

Summary: Application for reconsideration of decision in terms of section 230(1) of the Financial Sector Regulation Act, No. 9 of 2017 ("FSR Act") – Revocation of Decision by Financial Sector Conduct Authority in terms of section 95 of the FSR Act. Exclusion of some members of the Board of Management. Effect on a quorum.

DECISION

INTRODUCTION: NEW RULE AMENDMENT 5

1. This is an application by the Tshwane Municipal Provident Fund **(" the TMP Fund")** in terms of Section 230(1) of the Financial Sector Regulation Act, No 9 of 2017**("the FSR Act"**), for the reconsideration of the decision taken by the Financial Sector Conduct Authority **("Authority/Respondent")** on 18 December 2024 to revoke or withdraw, in terms of Section 95 of the FSR Act, its earlier decision to register and approve the TMP Fund's Rule Amendment No 5. This Amendment resulted in the removal of employer-appointed trustees from the Board of Management **("the BOM")** of the TMP Fund.

2. Section 95 (1) and (2) in terms of which the revocation was made by the Authority provides:

> *"95 (1) A financial sector regulator may, by a notice to a person in relation to whom the regulator made a decision in terms of a financial sector law (or, if more than one such person, all of them), revoke the decision if-*
>
> *(a) the decision was made as a result of fraud or illegality;*
>
> *(b) the information on which the decision was made was inaccurate or incomplete and the financial sector regulator would not have made the decision if it had had accurate and complete information; or*
>
> *(c) the decision is, for any reason, invalid.*
>
> *(2) A revocation of a decision in terms of subsection (1) has effect from the date on which the revoked decision was made."*

3. The text as gleaned from paragraph 3.5 of the Minutes of the BOM held on 21 August 2024 is captured in this manner:

> *" The Board noted that in terms of the Rules of the Tshwane Municipal Provident Fund, the Board of Management shall comprise 8 (eight) persons, of whom 2 (two) shall be appointed by the Principal Employer and 6 (six) shall be elected by the Members from their own ranks in accordance with the election procedures determined by the existing Board Members and in terms of Rule 8.17."*

4. The BOM resolved on 21 August 2024 to amend Rule 10.1.2 of its rules as follows:

The Board of Management will comprise of 6 (six) persons, all of whom will be elected by the Members from their ranks. **No nominations will be accepted in cases where the nominated person holds a full-time office bearer position in a trade union or political party.**

"Reasons for Amendment

All members of the board of management will be elected and the number of board members is reduced to six. There will not be any employer appointed Member anymore.

The Fund has over the past few years experienced declining membership numbers due to exits (retirements, resignations, death, etc) and the Employer having put a moratorium on recruitment/employment processes. The Employer has also not been granting employees salary increases. These have resulted in the member and employer contribution rates/payroll shrinking while costs are rising with inflation.

The Employer does not contribute to costs of Employer Appointed Trustees and therefore the burden to carry all costs is on members. The Fund is a Defined

Contribution Fund, and the role of Employer Appointed Trustees is not vital to the sustainability of the Fund."

CHRONOLOGY OF EVENTS AND ENGAGEMENT OF PARTIES

5. For clarity and ease of comprehension, the events should be presented in the chronological sequence in which they occurred. On 28 August 2024 the Authority raised a query pertaining to the rational for the bolded part of para 4 (above). On an unspecified date TMP Fund in essence simply responded with reference to what is captured under "**Reasons for Amendment**" above.

6. On 12 September 2024, the Authority is recorded as having acquiesced to the TMP Fund's exposition in the following terms:

"Pensions Fund Act, 24 of 1956 and Income Tax Act, 58 of 1962: Amendments 5 [Rule]: (Effective 12 September 2024) - Tshwane Municipal Provident Fund.
Your application of 26 August 2024 refers. I have enclosed a copy of the Amendments duly approved and registered in terms of Section 12(4) of the Pension Fund Act, and gave the assurance that: The Fund continues to be recognized as a Provident Fund in terms of the Tax Act."

7. For contextual purposes, it is apposite to set out the provisions of section 12(4) of the Pension Funds Act, 24 of 1956 **("the PFA"),** as referred to in paragraph 6 above, which state as follows:

"12 Amendment of rules

(4) If the registrar finds that any such alteration, rescission or addition is not inconsistent with this Act, and is satisfied that it is financially sound, he shall register the alteration, rescission or addition and return a copy of the resolution to the principal officer with the date of registration endorsed thereon, and such alteration, rescission

or addition, as the case may be, shall take effect as from the date determined by the fund concerned or, if no date has been so determined, as from the said date of registration."

Section 1A of the PFA stipulates further that:

Relationship between the PFA and the Financial Sector Regulation Act is:

(1) A reference in the PFA to the registrar or the Financial Service Board must be read as a reference to the Financial Sector Conduct Authority.

8. The Acting Group Head: Group Human Capital Management of the City of Tshwane ("COT"), wrote to the Executive Officer of the Authority on 01 October 2024 decrying the rational and process pertaining to the rule amendment leading to Rule Amendment 5. It is reflected unadulterated for good reason:

"*CONCERNS REGARDING THE RULE AMENDMENT AND REMOVAL OF EMPLOYER REPRESENTATIVES FROM THE BOARD OF TRUSTEES OF THE TSHWANE MUNICIPAL PROVIDENT FUND AND APPOINTMENT OF THE PRINCIPAL OFFICER.*

Dear Sir/Madam,

We write to you on behalf of the City of Tshwane, the sole sponsor and employer for the Tshwane Municipal Provident Fund, to raise serious concerns regarding the recent rule amendment which has resulted in the removal of employer representatives from the Board of Trustees of the Fund.

The FSCA approved the rule amendment to abolish the employer representatives from the board of trustees on September 12, 2024. This came from a board of trustee meeting held on 21 August 2024. The City of Tshwane is aware that the matter was

raised however no discussion and resolution was made on the matter despite the FSCA granting approval for such an amendment. The City of Tshwane reserves the right to information on, how the FSCA came to the conclusion that the rule amendment was legal and procedural. The minutes of the same meeting have not been adopted and will only be adopted during the next meeting to be held on 6 October 2024.

As a responsible employer, we are deeply concerned about the impact this change may have on the governance and effective management of the Provident Fund. The inclusion of employer representatives on the Board of Trustees has historically ensured that the interests of the employer are adequately represented, and that the governance framework is balanced, as required by the relevant legislation and good governance practices.

We would like to draw your attention to the Pension Funds Act 1956 (Act No. 24 of 1956), specifically Section 7A (1), which mandates that a board of trustees of a pension fund must consist of at least 50% of members elected by the fund members, and the remaining may be appointed by the employer. This legal provision reflects the importance of having employer participation in the management of such funds to ensure fiduciary responsibilities are met and that both employee and employer interests are aligned.

Furthermore, the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), places a duty on financial institutions, including pension funds, to adhere to principles of fairness, transparency, and accountability. The removal of employer representatives may lead to an imbalance in the representation on the board, potentially jeopardizing these principles.

It is important to note that the City of Tshwane, as the sole sponsor of the Tshwane Municipal Provident Fund, has a vested interest in the sustainability and sound governance of the fund. The removal of employer representatives from the board not only dilutes our role as a key stakeholder but also raises concerns about the capacity

of the board to make decisions that appropriately consider the employer's contributions, responsibilities, and obligations.

The COT requests that the FSCA intervene to consider this amendment to ensure that it complies with the Pension Funds Act and other applicable regulations. The City of Tshwane is of [the] view that the presence of employer representatives on the Board of Trustees is crucial for the ongoing representation of both the employer's and employees' interests and to ensure the fund's long-term stability.

The City of Tshwane would further request that the FSCA confirms the procedure for the appointment of the Principal Officer based on fairness, transparency and process. We trust that the FSCA will give this matter the urgent attention it requires and look forward to your feedback on the way forward."

9. The Authority responded on 11 October 2024 that it had accepted in good faith that the TMP Fund had duly adopted the resolution amendment introducing Rule Amendment 5 and, on that basis, "*continued to consider and register the same in terms of the PFA*." The Authority, consequently, requested to be furnished with a copy of the BOM Minutes of the meeting of 21 August 2024. This was complied with on 18 October 2024. It is prudent to introduce the submissions of the legal representative of the Respondent (FSC Authority), at this point. He contends that the Authority was justified at the initial stage to rely on the certification carried out by the Chairperson of the BOM, a Board Member, and the third signatory, the Principal Officer, dated 23 August 2024. It reads as follows:

" We, the undersigned, hereby certify that this resolution to amend the revised Reules of the Fund was duly adopted in accordance with the provisions of the Rules of the Fund on the date on which the amendment document was signed."
Underneath this certification is embossed the stamp:

“Registered in terms of the Pension Fund Act, No 24 of 1956. Date: 12 September 2024. For the Financial Sector Authority.”

The BOM Minutes, bearing a signature and furnished to the Authority only on 18 October 2024, were pivotal to the Authority’s decision-making.

10. Having traversed the Minutes of the meeting of the BOM that lasted from 09h00 to 18h00 and covering some 23 pages (record pp108 -130), none other than the Deputy Commissioner of the Authority wrote to the Principal Officer of the TMP Fund on 31 October 2024 on what was perceived to be fatal flaws in the process of the exclusion of the employer-appointed Trustees from the meeting and the resultant permanent removal of such Trustee representation. The Deputy Commissioner of the Authority wrote in relevant part:

“ Notice of Intention to Revoke the Registration of the Financial Sector Regulation Act, 9 of 2017.

2. The Authority has ascertained from paragraph 5.1.2 of the minutes of the board of management ("board") meeting held on 21 August 2024 that the representatives of the principal employer were asked to excuse themselves during the board's deliberations to amend rule10.1.2.

3. After the deliberations were concluded, the minutes record that the employer- appointed board members were called back into the meeting and were informed of the decision to reduce the board from eight (8) to six (6) members by way of the Amendment, thus removing employer appointed board members.

5. The principal employer representatives were not present at the time the resolution was adopted. It was therefore not correct for the resolution to have been certified as having been adopted in accordance with the rules of the Fund, which incorrect certificate the Authority relied upon to approve and register the Amendment. This is so because rule 10.2.1 quoted above was not adhered to as regards the quorum required by rule 10.2.5 for binding board decisions.

6. Further, paragraph 5.1.2 of the board minutes records that the resolution which culminated in the removal of employer appointed board members was a risk mitigating measure against unbecoming conduct apparently displayed by said board members. It is further recorded in the minutes that the board found no value add on the part of the affected board members.

7. *The board resolution to amend fund rules for the purpose of removing employer appointed board members for the reasons stated above was a breach of the board's duty of good faith imposed by section 7C(2)(b) of the PFA. A duty of good faith entails, among others, excising a power or discretion for the purpose for which it is given without improper motive and taking into account relevant considerations while disregarding irrelevant ones.*
8. *Rule 10.1.6 of the Fund confers a discretion on the Board to remove a member elected board member where the board is satisfied that such board member has breached his or her fiduciary duties towards the fund. Rule 10.1.6 is silent on the powers of the board to remove an employer appointed board member under similar circumstances.*
9. *To circumvent the above omission, the board appears to have resolved to amend the rules such that employer appointed trustees were completely removed from the board. This occurred in circumstances where the code of conduct and the performance assessment mechanism of the Fund should have provided the fund with the appropriate remedy. As result, the Authority is of the view that the Amendment was not adopted for the right reasons and that the board had regard to irrelevant considerations.*
11. *In terms of section 95(4) of the FSR Act, the Fund is hereby invited to make submissions in response to the Authority's intention within 14 days of this letter. In the absence of submissions, the Authority will proceed with the revocation."*

11. Something of significance that the Deputy Commissioner of the Authority omitted to mention is that in para 5.1.2 of the Minutes it is stated:

"The Board raised a concern that they have not been seeing the value of having Employer representatives in the Fund. It was noted that most items that needed the assistance of employer trustees would be attended to by some of the members' representatives."

This assertion in fact debunks the speculative notion that nothing of worth can emanate from employer appointed Trustees.

12. The justification for the impugned steps taken by the TMP Fund appears from its *seriatim* response in these terms on 07 November 2024, in relevant part:

Point 2 and 3:

“Kindly note that the amendments of rule 10.1.2 was done consistently in line with the rules of the Fund. The request for the Employer Trustees to be excused from the meeting was to allow the board to freely discuss the matter without the conflict of interest that comes with discussing board members in their presence. The employer trustees were given an opportunity to give their contributions before they were requested to be excused from the meeting. The employer trustees were also given feedback after the discussion point, to which they did not object to the board resolution.

Point 4 and 5 -Fund Quorum

The Authority seems to have relied on rule 10.2.5 of the Fund rules without considering rule amendment number 3 approved by the FSCA, wherein the reference to employer trustee was removed for quorum purposes.

Point 6 - Reasons for the amendment

*The Fund would like to bring to the attention of the Authority that although the behaviour of the Employer Trustees was discussed**, it was ultimately not the reason for the removal of the role**. The Authority is once again referred to the reasons provided on the rule amendment for the motive of the removal of the employer trustees. The board has been undertaking cost cutting measures which started with the removal of Alternate Trustees in rule amendment 2, and therefore the removal of Employer Trustees is part of the Board’s role in fulfilling its fiduciary duties.*

Point 7- Duty of good faith

As highlighted in point 6, resolution was arrived at after taking into account relevant and compelling facts, which include the fund’s costs, no increase to wage bill, the declining Fund membership and the value add that Employer Trustees bring in a defined contribution Fund. The Board exercised its discretion appropriately and therefore the assertion made is denied.

Point 8 and 9- Rule10.1.6 Discretion to remove Board members

The Board had previously successfully used its code of conduct to deal with improper conduct in a case that was brought to the attention of the FSCA . The Board was therefore in no way circumventing this process by adopting the rule amendment, and therefore this assertion is denied.

Rule 10.1.6 relates to the rights of the Principal Employer and Members to remove Employer Appointed Trustees and Member Elected Trustees respectively. Reference to the clause is therefore irrelevant and not applicable to the current situation. It should not be confused with the right of the board to remove trustees. In this case, the positions/posts were abolished by the Board and not the Principal Employer nor by members.

The Board would like to reiterate that there were no ulterior motives in the removal of the board members, and the board would have reached the similar decision regardless of the identity of employer trustees or their conduct prior to the resolution."

13. On 21 November 2024, the Deputy Commissioner of the Authority addressed this communication to the TMP Fund in an effort to establishing its justification and stated from paragraph 3:

"3. *The Conduct Authority acknowledges its error in failing to consider Rule Amendment No. 3, in terms of which the quorum board meetings of the Fund were amended to remove specific reference to an employer appointed trustee. However, the error does not detract from the Conduct Authority's finding that the board's decision under consideration was adopted at odds with the rules of the fund and as such invalid. The reasons therefore are outlined below.*

4. Rule 10.2.5 of the registered rules governs the manner in which valid resolutions of the in board are to be adopted for such decisions to be binding on the fund and provides thus in relevant part-

"The decision of the majority of BOARD MEMBERS present at the meeting of the BOARD of MANAGEMENT will be binding, provided a quorum is present at the meeting.

5. *According to the minutes of the relevant board meeting, the affected individuals were not present at the time the resolution to remove said individuals was taken. Accordingly, the impugned decision was taken by the majority of board members voting as distinguished from the majority of members present at the meeting as contemplated by rule 10.2.5 above. Therefore, the enquiry does not go further to establish the presence of a quorum or otherwise as the meeting was no longer properly constituted for purposes of the relevant resolution, following the removal of the affected board members.*

6. *Where a member has a direct or indirect interest in any decision to be taken by the board, rule 10,2.11 provides that such member must declare his or her interest and refrain from voting, which by implication means that the member will continue to be present at the meeting. Said rule 10.2.11 does not contemplate the removal of any individual board member from a meeting under any circumstances.*

7. *The procedure followed at the meeting was a further violation of said rule 10.2.11 of the fund rules, which provides further that all board members in their dealings with the matters of the fund represent the fund and not any other party. This being the case, it was improper for the board to single out the affected individuals as being employer representatives and be excluded as such during the deliberations that culminated in the adoption of Rule Amendment No.5. The fund's assertion that the affected individuals were given an opportunity to express their views on the subject before they were asked to leave the meeting is not borne out by the minutes.*

8. *The Conduct Authority has considered the reasons provided for [Rule] Amendment No 5 pursuant to Regulation 24 to the Pension Funds Act, 1956 in the context of the board minutes, which do not bear out the assertions made in the fund's letter under reply. Accordingly, the Conduct Authority is not persuaded that it should not proceed with the revocation of its decision to register Rule Amendment No.5.*

9. *In terms of section 95(4) of the FSR Act, the Fund is hereby invited to make further submissions within 14 days of this letter only in response to the further grounds outlined above."*

14. On 04 December 2024 the Principal Officer of the TMP Fund merely contended in the reply to the Authority as follows:

"We believe the Fund has adequately responded to the matters raised by the Authority."

ASSESSMENT OF THE EVIDENCE

15. The Minutes reflect that at the inception of the meeting on 21 August 2024 when the Principal Officer (PO**),** who presided, declared that *"a quorum was duly constituted,"* the two employer appointed trustees were reckoned in as part of the quorum. Their names are reflected on the roll call. The Minutes also record that: *"The Board noted that in terms of the extract from the Fund's rules (Rule Amendment 3), section 10.2.1, A quorum of the BOARD OF MANAGEMENT will consist of 50% plus one of the BOARD MEMBERS. The quorum shall be authorized to perform all necessary actions on behalf of the Fund."*

A declaration of interest form was completed by all the trustees, and "*No conflict of interest was declared."*

16. Interfering with or taking away a vested right should not be done or treated lightly. It seems safe to infer that the Principal Employer was not apprised timeously or given reasonable notice of the drastic measure with such far reaching implication pertaining to the contemplated termination of its representativity on the BOM. The Minutes are silent on this aspect. However, paragraph 5 thereof, "*Confirmation of the Agenda*", gives a strong indication of an ambush. The Minutes read, relevantly:

"5.1 The Board members to advise if any other matters need to be tabled for discussion at the meeting. The agenda was approved as presented, with the following four additional items proposed;
5.1.1 Conduct of Trustees
5.1.2 Employer appointed Representatives."

The other two agenda items are not germane.

17. The Acting Group Head: Human Capital of COT observed on this aspect on 01 October 2024: "*The inclusion of employer representatives on the Board of Trustees has historically ensured that the interests of the employer are adequately represented, and that the governance framework is balanced, as required by the relevant legislation and good governance practices*." In the premises the exclusion from engagement and permanent removal of Trustees from the BOM are not trifling matters.

18. On the question of a properly constituted quorum the Applicant's legal representative (the TMP Fund) made this submission: TMP Fund's Board comprises 8 (eight) members. The required quorum is therefore 4 (four) members plus 1(one). There was no need for an Employer Trustee to be present in the meeting. The resolution to amend was deliberated upon, agreed to and taken by six (6) members of the Board, unanimously. In the premises, counsel contended, there was compliance with Rule 10.2.5 which provides that the decision of the majority of the Board Members present at the meeting of the Board was binding

as a quorum was formed. He also stated that, on the back of the foregoing, even I f the Employer Appointed Trustees were present and voted against the resolution the result would have remained the same. It was as irreversible as the "*law of the Medes and Persians."* This argument is not only startling but also fallacious in light of the authority and principles cited below.

19. Whilst a decision taken by a majority may be valid if a trust deed permits a majority vote, nevertheless, as stated in *Van Der Merwe NO and Others v Bosman And Others 2010 (5) SA 555 (WCC)*, a majority decision is competent only if adopted by a majority of the trustees present at a quorate meeting of trustees. The Court observed:

" [16] It is evident from these provisions that unanimity amongst the trustees is not required in order for a decision to be made effectively, in respect of transactions concerning the administration of the trust and the dealing with its assets, in terms of the powers conferred on the trustees. It is sufficient if the relevant decision enjoys the support of the majority. ***A majority decision is competent only if adopted by a majority of the trustees present at a quorate meeting of trustees. Whether such a 'meeting' would need to be one at which trustees attending were physically present together, or whether the 'meeting' could be held in some alternative form. It is evident, however, that, in order to qualify as a 'meeting,' all the trustees in office would have to receive notice thereof so as to be able to participate in it if they so wished.*** *Slabbert did not receive any such notice and was therefore not afforded an opportunity to participate in the decision by the Trust to sell the fixed property.* ***In terms of the trust instrument which provide for the trustees to make a decision by a majority vote at quorate meeting do not provide an exception to the rule that all trustees must act jointly, a majority decision will bind the dissenting or absent trustees."***

I do not read the Constitutional Court judgment in *Shepstone and Wylie Attorneys v De Witt N.O. and Others [2025] ZACC14*: Decided on 01 August 2025 to have gone against the above enunciation.

20. According to WD Geach Trust Law in South Africa, Juta, 2017 at 220-222, trustees must act jointly in trust affairs, consult with each other and strive to reach agreement on disputed matters. Trustees have a fiduciary duty to fulfil the trust obligations, and this means that they should be committed to find common ground on disputed issues. From the above exposition, Geach reckons, that no trustee can be sidelined or not be allowed to participate in a trustee decision-making process. Where a trust deed does allow for a majority vote, the decision of the majority will prevail and; and if a decision is made by a majority vote it is not a "majority vote resolution" of trustees but a "resolution of trustees" simpliciter, the author reasons.

21. It was enquired from Counsel for the TMP Fund, with reference to the Minutes and/or the record of the application for Reconsideration what in so many words, was conveyed to Siwela, Moleli and Motaung beyond the bare "decision," the *ipse dixit* and the *fait accompli*. He contended that Minutes are not meant to be a verbatim recordal of what transpired at a meeting as only decisions or resolutions are reflected. He conceded though, fairly, that in the absence of a transcript or the audio recordings he is constrained from elaboration.

22. What has to be determined is whether the Employer-appointed Representatives were excluded from full and meaningful participation in the debate or engagement as well as the deliberations concerning the termination of the membership of Employer appointed Trustees from the Board of Management. The answer must be an unequivocal "yes". Secondly, as to whether the Employer appointed Representative were targeted – and solely they were targeted – the answer is likewise in the affirmative, as the record plainly demonstrates. To suggest that they were consulted before and after the resolution was taken and that they raised no

objection is ridiculous in the extreme and merely have to be mentioned to be rejected. What is also telling is that paragraph 5.1.1 is plain. It states:

> *" When Mrs (MM) Siwela, Mr (NDD) Motaung and Mr (LJ) Moleli were invited back in(to) the meeting, they were informed of the Board's decision."* Mr Motaung is an Alternate Employer Appointed Trustee.

23. It is impossible to fathom why, according to the TMP Fund, Ms Siwela and Mr Motaung were really excluded from the meeting.

23.1 First, it was suggested that they were conflicted. It was subsequently conceded, correctly, that they were not. There was no evidence of a conflictual situation.

23.2 Secondly, there was a half-hearted intimation by the Fund that they were unruly or errant. No evidence of such conduct could be pointed to. There was none as shown below:

" The Fund would like to bring to the Authority that although the behaviour of the Employer Trustees was discussed, it was ultimately not the reason for [their] removal."

23.3 Thirdly, it was claimed that the reasons emanate from *"the rule amendment for the motive of the removal of the employer trustees."* The reasons are quoted at para 4 and require no repetition. An assessment thereof portrays a mixture for their exclusion and the termination of the membership of the Trustees sponsored by the Principal Employer. It boggles the mind.

24. In summary, there is no gainsaying that their removal was spurious, irrational and done for an ulterior motive. When the realization by the Fund set in that there was no merit for their egregious decision, they should have eaten the proverbial humble pie and summoned the locked-out members back in. Their exclusion, therefore, unjustly deprived them of the opportunity at the meeting of persuading their fellow trustees to a contrary view, in case of a disagreement.

CONCLUSION AND DECISION OF THE FCS AUTHORITY

25. On the 18 December 2024 the Authority (through Ludin) consequently revoked the registration of TMP Fund in terms of Section 95 of the FSR Act on the basis that:

"3. *The Authority is not persuaded that it should not proceed with the revocation of its decision to register Rule Amendment No.5 based on the following reasons: 3.1 According to the minutes of the relevant board meeting, some board members were not present in the meeting at the time the resolution was taken. Accordingly, the impugned decision was taken by the majority of board members voting as distinguished from the majority of members present at the meeting as contemplated by rule 10.2.5.*

3.2 Where a member has a direct or indirect interest in any decision to be taken by the board, rule 10.2.11 provides that such member must declare his or her interest and refrain from voting, which by implication means that the member will continue to be present at the meeting. This rule does not contemplate the removal of any individual board member from a meeting under any circumstances.

3.3 The procedure followed at the meeting was thus a violation of rule 10.2.11 of the fund rules, which provides that all board members in their dealings with the matters of the fund represent the fund and not any other party. This being the case, it was improper for the board to single out the affected individuals as being employer representatives and be excluded as such during the deliberations that culminated in the adoption of Rule Amendment No.5. The fund's assertion that the affected individuals were given an opportunity to express their views on the subject before they were asked to leave the meeting is not supported by the minutes.

4. Accordingly, the Authority has, with effect from date of this letter, revoked the registration of Amendment No. 5 of the Fund in terms of section 95(1)(b) of the FSR, Act. The amendment has thus no force or effect."

26. In a valiant last-ditch effort to stave off the revocation by the FSC Authority of Rule Amendment 5, Counsel for the TMP Fund called into question the power by FSC Authority to do so. He develops his argument in this manner:

" *The Tribunal must (as it is respectfully implored to) readily accept the Board's bona fides and the reasons advanced for the rule amendment. It is not open to the FSCA, in an ex post facto justification (as it has done), to cure its revocation decision by impermissibly providing "reasons" that engage the substance of the rule. It is limited in response, to the grounds it advanced for its section 95 decision. To be clear, the FSCA is functus officio, for all other purposes. Section 95 of the FSCA is not an unconstrained permission to engage in all manner of self-reviews*."

27. The contention is devoid of substance in light of the clear and unambiguous language of section 95 (1) and (2) of the FSR Act quoted in para 2 above. The issue of acting *ultra vires* or being *functus officio* does not arise. Not only did the FSC Authority act within the ambit and scope of their authority but it was mandatory for it to act. Failure to do so would have amounted to abdication of its responsibility and impaired the integrity of the entity. [See: *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1999 (1) SA 374 (CC) at paras 56 and 58*; and *Pharmaceutical Manufacturers Association of SA: In re Ex parte President of the Republic of South Africa 2000 (2) SA 674 (CC) at para 17*].

28. In the result, this Tribunal finds no reason to interfere with the decision of the Financial Sector Conduct Authority as the Tshwane Municipal Provident Fund has not demonstrated that it misdirected itself.

ORDER

The following order is made:

1. The application for reconsideration is dismissed.

DATED ON THIS 13TH DAY OF AUGUST 2025.

SIGNED FOR AND ON BEHALF OF : FD KGOMO J (CHAIR)

SDG

__Sgd S M Maritz__

ADV SM MARITZ