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

**CASE NO: 7543/2017**

In the *ex parte* application of:

**EXECUTIVE OFFICER OF THE FINANCIAL  
SECTOR CONDUCT AUTHORITY  
(formerly known as 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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**THE JOINT CURATORS' FIFTH REPORT TO COURT**

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## INTERPRETATION

1. "AFS" means the annual financial statements;
2. "Akani litigation" means arbitration proceedings *in re* Akani overcharging of administrative fees;
3. "Akani" means Akani Retirement Fund Administrators (Pty) Ltd;
4. "business" means the business of MCPF;
5. "curators" means Juanito Martin Damons ("Mr Damons") and Sophie Thabang Kekana ("Ms Kekana");
6. "FSCA" means the Financial Sector Conduct Authority which is the Financial Services Board's successor in title;
7. "ISAGO" means ISAGO@M12 Development (Pty) Ltd with registration number 2006/029695/07;
8. "MSMM" means Maluleke Seriti Makume Matlala Inc;
9. "the curators' first report" means the curators' report dated 22 February 2018;

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10. "the curators' second report" means the curators' report dated 31 October 2018;
11. "the final order" means the order handed down by the Honourable Justice Ranchod on 19 March 2018;
12. "the MCPF" means the Municipal Councillors Pension Fund;
13. "the PFA" means the Pension Funds Act, 24 of 1956;
14. "the Property Company" means the MCPF Property Company (Pty) Ltd;
15. "the provisional order" means the order handed down by the Honourable Acting Justice Mokose on 19 December 2017 under case number 75343/2017;
16. "the Registrar" means the Registrar of Pension Funds;
17. "the return day" means 19 March 2018;
18. "the rules" means the revised rules registered on 28 December 2011, which includes any registered rule amendments thereafter;

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19. “the section 26 trustees” means the trustees appointed by the Registrar in terms of section 26(2) of the PFA;
20. “this Court” means the Gauteng Division of the High Court of South Africa;
21. “Willows Office Park” means the office park situated at 276 George Road, Erand Gardens, Midrand.

## INTRODUCTION

22. It is common cause that MCPF has been placed under curatorship by this Honourable Court because it was administered contrary to the provisions of the PFA. The application to place the MCPF under curatorship discloses those breaches.
23. We do not intend regurgitating those breaches. We do however point out that, the administration of the MCPF has improved since it has been placed in curatorship.
24. We had previously reported that the MCPF, like many other entities, has been affected by the lockdown imposed by the Honourable President Cyril Ramaphosa because of the Covid-19 pandemic.

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25. The lockdown and the phased recovery of economic activity, has not had a negative impact on the MCPF's business and cashflow. The municipalities have continued contributing to the MCPF, and after an initial downward trend, the MCPF's funds have stabilised. We deal with this aspect in more detail later hereunder.

26. In this report, we deal with, *inter alia*, the following topics:

26.1 the description of the MCPF;

26.2 bi-monthly reports to the Registrar;

26.3 actions taken by the curators since the delivery of the fourth report to court;

26.4 the overall financial position of the MCPF and its financial soundness, including the soundness, integrity and viability of the assets;

26.5 compliance and enforcement of section 13A of the PFA;

26.6 whether the irregularities committed by either the MCPF, its board of management, officers or service providers in the conduct of business have been remedied; and



26.7 matters raised in the fourth report to court which needed further reporting.

## **THE ADMINISTRATION OF THE MCPF**

27. For the purposes of this report and given the nature of the issues we are required to report on, we deem it prudent to discuss how the administration of the MCPF works. The relevance hereof will become apparent hereunder. The MCPF is a defined contribution fund in terms of Section 1 of the Income Tax Act of 1962.

### **Benefits: Retirement, resignation and death benefits**

28. In terms of the Rules of the MCPF the objective of the MCPF is to provide retirement and other benefits for councillors of the participating employers and benefits for their dependants in the event of their death.

### **Retirement Benefits**

29. A member who ceases to be a councillor:

29.1 must retire if at that time he or she is 55 (fifty-five) years or older but less than age 60 (sixty), unless such member elects in

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writing to the MCPF not to retire within such period as the Board determines or is precluded from not retiring in terms of any provision of the Income Tax Act, 1962 (including any subordinate legislation thereto) or any directive of the Commissioner. Such a member who does not in this circumstance retire has his/her member share in MCPF entitled to his/her member's share on that date, payable in terms of paragraph 30 below.

30. A member may at the time of his/her retirement elect to commute up to one third of his/her member's share to a lump sum. The balance of the member's share shall then be appropriated by the member for a pension by purchasing a pension from an insurer in the member's name. Such member's membership of the MCPF shall cease as soon as the purchase of the pension is concluded. Once the pension is purchased, the MCPF will have no further liability in respect of such member.
31. A deferred pensioner may elect to retire at the age of 55 (fifty-five) years or older by notice in writing to the MCPF, and must retire by no later than age 70 (seventy) years. The provisions in paragraph 30 above apply in the same way to a deferred pensioner on retirement.



Resignation Benefits

32. If a member, who is not qualified to retire in terms of retirement benefits, ceases to be a councillor and is not entitled to benefits in terms of any other rule of the MCPF, he/she shall be entitled to a benefit equal to his/her member share, payable in part or wholly as a gratuity according to the decision of that member.
33. If the member does not so decide within the time period stipulated by the Board, he is deemed to have elected to take the full benefit as a gratuity. The payment of a gratuity is subject to the deduction of such tax thereon as may be required in terms of the Income Tax Act, 1962.
34. A member may elect that any part, or the whole, of the benefit in paragraph 33 *supra* be dealt with as follows:
- 34.1 transferred to an approved retirement annuity fund chosen by him/her; and/or
- 34.2 transferred to a preservation fund chosen by him/her; and/or
- 34.3 transferred to an approved fund chosen by him/her; and/or



34.4 retained as a deferred benefit in the MCPF, in which event he/she becomes a deferred pensioner. The decision to become a deferred pensioner is only effective if notified in writing to the MCPF within such period after ceasing to be a councillor as the Board stipulates from time to time. A deferred pensioner may at any time, but subject to retirement benefits and the provisions of the Income Tax Act, 1962 and any directive of the commissioner, withdraw from the MCPF in which event the provisions of this benefit apply in the same way.

#### Death Benefits

35. The benefit payable on the death of a:
- 35.1 deferred pensioner, is the amount equal to the credit of his/her member share at the date of death;
  - 35.2 member who is a councillor, is entitled to:
    - 35.2.1 his/her member share at the date of death.

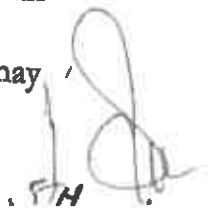
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35.2.2 an amount equal to 3 (three) times his/her annual pensionable remuneration, which is an insured benefit, subject to the following provisions:

35.2.2.1 this insured benefit is only payable by the MCPF on the death of a member if the insurer from whom the MCPF has purchased this insured benefit actually pays that benefit to the MCPF;

35.2.2.2 it is recorded that the Board in consultation with the valuator determines what proportion of the contributions is to be allocated to the expense account for payment of the premium in respect of the insured benefit, as well as the expenses of the MCPF.

36. Payment of the benefit in the event of death must be made in terms of Section 37C of the PFA.
37. A beneficiary may elect to receive his or her benefit in cash or alternatively by way of the purchase of one or more annuities from an insurer, or as a mixture of cash and annuity as the beneficiary may

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decide. Notwithstanding the beneficiary's election of the manner of payment the Board may override the beneficiary's decision, and make payment of the benefit in any other manner permitted in terms of Section 37C.

38. Should the beneficiary fail to make an election as above, the Board may make payment of the benefit in any manner permitted in terms of Section 37C.
39. The proceeds in respect of an insured benefit must be credited, when received by the MCPF from the insurer, to the member's share of the member in respect of whom that insured benefit is payable, and included as part of the benefit payable in terms of this benefit.
40. Notwithstanding any other provision specifying otherwise, to the extent that any benefit in terms of this benefit comprises the insured benefit, then such insured benefit is limited or restricted in terms of the policy providing the insured benefit with the insurer, including but not limited to any requirement that a member undergo regular medical examinations, the exclusion in respect of any existing or pre-existing condition, or any other term or condition.

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41. A beneficiary may commute for cash the whole or part of the annuity he/she is entitled to in terms of paragraph 37 *supra* subject to any taxation thereon and subject to the requirements of the Income Tax Act, 1962, and the commissioner.

#### Arrear Contributions

42. All benefits are payable subject to any arrear contributions allocated to a member's share are up to date.
43. Where payment of arrear contributions or other amounts are being made by a member in instalments and membership ends before such arrear payments have been completed, the benefits to which the member, his/her estate or his/her dependants are entitled, shall be calculated with due regard to any outstanding contributions or other amounts on a basis as determined by the Board upon advice from the valuator.

#### Unclaimed benefits

44. If an amount due to or in respect of a former member is not claimed within three years after he/she left the service of a municipality, the beneficiary shall nevertheless at any time thereafter be entitled to claim

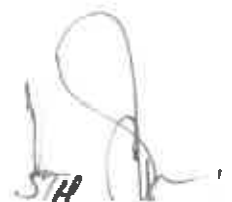
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the said amount from the MCPF. The MCPF shall pay investment return on the said amount.

45. There is another category within the MCPF, namely, deferred pensioners. These are former councillors who were previously members of the MCPF and on ceasing to be councillors decided to preserve their benefits and remain in the MCPF.
46. Their member share will grow with net fund returns until they decide to withdraw from the MCPF or retire.

#### Beneficiary benefits

47. The benefits of beneficiaries of deceased members consist of their proportion of the deceased member's member share plus death benefit. Beneficiaries who were spouses or children of the deceased member are entitled to funeral cover.
48. Previously the benefits were administered within the MCPF but since July 2011 Fairheads Benefit Services (Pty) Ltd has been appointed in terms of Section 37C(3) of the PFA to administer the benefits of all minor beneficiaries.




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Contributions by members

49. Subject to the provisions in paragraphs 51 to 54 *infra*, every member shall every month contribute to the MCPF at the rate of 13.75% or 7.5% of his monthly pensionable remuneration in respect of future service as he/she shall have notified the MCPF in writing. The member must give notice of the rate at which he/she wishes to contribute on joining the MCPF and may thereafter, by notice in writing to the MCPF, elect to switch the rate at which he/she is to contribute with effect from the beginning of any financial year.
50. In addition to his/her contributions in terms of paragraph 49 *supra*, a member shall contribute to the MCPF an additional amount to provide for additional past service (a member or municipality can, subject to the provisions of the Rules of the MCPF, elect to increase his/her service), if applicable.
51. Any person who becomes a member, shall contribute to the MCPF from the first day of the month in which his/her membership commences.
52. If a member:

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- 52.1 ceases to be a councillor of a municipality or dies, contributions shall be paid to the MCPF in full for the month in which he/she ceased to be a councillor or died, as the case may be;
- 52.2 for any other reason ceases to be a councillor of a municipality:
- 52.2.1 before or on the fifteenth day of any month, he/she shall not contribute to the MCPF in respect of that month; or
- 52.2.2 after the fifteenth day of any month, shall contribute in full to the MCPF in respect of that month,
- subject to the provisions of the Public Office Bearers Act.
53. If a member received less than his/her full pensionable remuneration in respect of any calendar month, subject to paragraphs 52.1 *supra*:
- 53.1 he/she shall contribute to the MCPF in respect of that calendar month on the basis of his/her full pensionable remuneration if he/she has received pensionable remuneration for fifteen or more days in respect of that calendar month;

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- 53.2 he/she shall not contribute to the Fund in respect of that calendar month if he/she has received his/her pensionable remuneration for less than fifteen days in respect of that calendar month.
54. If a member contributed in full in respect of a month in terms of paragraphs 51, 52.1, 52.2.2, 53.1 *supra*, that month, in full, shall be deemed to be part of his pensionable service.
55. If a councillor who becomes a member and is in terms of paragraph 49 *supra*, obliged to make contributions, fails to do so, such councillor shall, on the date of it coming to the notice of the Board, pay the arrear contributions in one sum or by instalments, as the Board may decide, together with investment return, calculated from the date on which the said person should have commenced making contributions, up to the date of payment.
56. If a municipality fails to make contributions, such municipality shall pay the arrear contributions in one sum, together with interest, calculated from the date on which that councillor should have commenced making contributions, up to the date of payment.

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Contributions by municipalities:

57. A municipality shall, in respect of its councillors who are members, on or before the seventh day of each month:

57.1 deduct the contributions payable by each member from the member's pensionable remuneration and pay such amount to the MCPF's bank account; and

57.2 pay to the MCPF's bank account an amount equal to such percentage of each such member's monthly pensionable remuneration as determined in terms of the Public Office Bearers Act, payable by the municipality.

58. The employer contributions payable to the MCPF are:

58.1 15% in respect of a member's monthly pensionable remuneration, payable by the municipality, in respect of a member who shall have elected to contribute to the MCPF at the rate of 13.75% (member contribution) of monthly pensionable remuneration; or

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58.2 7.5% in respect of a member's monthly pensionable remuneration, payable by the municipality; in respect of a member who shall have elected to contribute to the MCPF at the rate of 7.5% (member contribution) of monthly pensionable remuneration.

59. Each municipality must deliver to the MCPF on or before the fifteenth day of each month a contribution statement in such format as the Board may determine, containing such information as the PFA prescribes and the Board may determine.

60. If payment of all or part of the contributions due in terms of paragraph 49 *supra* is received by the MCPF after the seventh day of any month, the investment return, as prescribed by the PFA, on the amount outstanding by the municipality concerned shall be payable to the MCPF, calculated from the first day of the month in which such contributions became due, up to the date on which the outstanding payment is received.

61. The Board in consultation with the valuator shall from time to time determine what portion on the contributions payable in terms of paragraph 49 *supra* is to be allocated to the expense account for



payment of the premium in respect of the insured death benefit as well as the expenses of the MCPF.

62. The current recommended and approved rate for risk benefits and administration costs is 6%. The employer contributions are allocated as follows:

62.1 a portion paid towards risk benefits relating to death;

62.2 a portion to go towards administrative costs of the MCPF; and

62.3 the remainder into the member share account.

63. Any failure to pay contributions within seven days after the end of any month is a criminal offence punishable with a fine in terms of section 13A read with section 37 of the PFA.

Pensionable remuneration

64. "Pensionable remuneration" in respect of any member shall mean the amount which his/her municipality shall have informed the MCPF in writing is his/her basic salary in terms of the Public Office Bearers Act; provided that:

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- 64.1 where the municipality shall not have so informed the MCPF, it shall be such amount as the MCPF calculates, based on the actual contribution received by the MCPF, according to the rate of contribution and the maximum rate of contribution which may be made by a municipal council to the pension fund of which a councillor is a member in terms of a Government Notice pursuant to Section 8(5) of the Public Office Bearers Act;
- 64.2 if the MCPF does not receive the contributions in respect of a member who dies for the month immediately preceding the date of the member's death, then that member's pensionable remuneration is equal to the average of last three- month period when contributions were received by the MCPF for that member;
- 64.3 the MCPF is under no obligation to verify whether a member's pensionable remuneration is in accordance with the provisions of the Public Office Bearers Act or any other legislation or any employment contract relating to that member.
65. Having dealt with the administration of the MCPF, we now turn to deal with the remaining topics.



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## REPORTS LODGED WITH THE REGISTRAR AND THE FSCA

66. Since our final appointment, we have now submitted twenty-four (24) reports to the Registrar and subsequently the FSCA. The last eighteen reports have been dealt with in the previous reports to court. Accordingly, it is our intention to only deal with the nineteenth (19<sup>th</sup>) to twenty-fourth (24<sup>th</sup>) reports to the Registrar in this report. We attach copies of the nineteenth to twenty-fourth reports as annexures "FCR1" to "FCR6".
67. The reports are self-explanatory and we respectfully request the Honourable Court to incorporate the contents thereof herein. However, we have summarised and incorporated those aspects reported on in the reports to the Registrar which will enable this Honourable Court to establish the progress made by us.
68. The reports largely show that progress has been made in stabilising the MCPF and that the curators, although independent, are collaborating with the Registrar to ensure that the MCPF complies with all its statutory and legal obligations.

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**THE TAKING CONTROL OF, MANAGING AND INVESTIGATING THE OPERATIONS AND BUSINESS OF THE MCPF**

69. Previously, we exercised our responsibilities and oversight by engaging management in communication about governance matters which included monthly meetings with the MCPF's senior managers to establish goals for performance. The meetings have continued albeit virtually because of the Covid-19 lockdown regulations.
70. Like many other entities, the MCPF has been forced to operate remotely due to the Covid-19 pandemic. However, we continue to manage the return of staff members to the workplace via a phased approach.
71. Due to the regulations imposed by the Honourable President on 27 December 2020, it was prudent that employees continued working from their places of residence in order to reduce the spread of the Covid-19 virus.
72. Moreover, the MCPF had reports of a number of positive cases amongst its employees and, therefore, allowing the employees to

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operate remotely was deemed to be a reasonable measure to limit the spread of the virus.<sup>1</sup>

73. During the period between March and May 2021, we focussed on consulting with members in anticipation of the 2021 bulk exit.
74. As discussed above, municipal elections have been called by the Honourable President. This will mean that citizens will be electing councillors of their choice. Those councillors will become eligible to become members of the MCPF. In respect of those members who are not re-elected as councillors, their membership will automatically cease with the MCPF. The end result is that those councillors whose membership has ceased, are entitled to their benefit as contemplated by the Rules and the PFA. The MCPF is in a position to pay those benefits.
75. A copy of the dates with engagement with municipalities and stakeholders in preparation of the bulk exit is attached hereto as Annexure "FCR7". The MCPF has also addressed members on the state of the readiness for the MCPF to exit and pay members at the SALGA National Conference held on 14 May 2021.<sup>2</sup> A copy of the

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<sup>1</sup> Twentieth Report to the Registrar.

<sup>2</sup> Twenty-Second Report to the Registrar



bulk exit plan is attached hereto as Annexure "FCR 8". [Drafting note: bulk exit plan to be obtained from Mukovhe].

76. During July 2021, Justice Moseneke's report relating to the local government elections was published. The report recommended that the elections be postponed to February 2022. On 18 September 2021, the Constitutional Court handed down its judgment and it was ordered that the local government elections would take place on 1 November 2021. We will, accordingly, update our records once the results of these elections have been published.
77. We had previously reported that we had identified non-contributing municipalities and individual councillors as a major issue. Letters were addressed to both municipalities and individual councillors informing them of the consequences of non-payment of contributions. Municipalities were particularly informed that their failure to contribute would attract liability in terms of section 13A of the Act.
78. With the assistance of the MCPH's attorneys, letters of demand were issued against the defaulting municipalities and a number of responses have been received wherein some of the municipalities have proposed to enter into a repayment arrangement. We are currently considering the respective proposals and there have been a number of settlements

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agreements which are being negotiated between the different municipalities and the MCPF's attorneys. In particular, the MCPF met with four municipalities and SALGA to discuss the resolution of the section 13A issues.

79. We continue to advise all the affected members of the consequences of their continued non-payment of their contributions and hope that these matters will be resolved expeditiously.
80. In relation to the MCPF's membership, we set out two tables hereunder which juxtapose the total active members at September 2020 with the total active members at July 2021. We draw the above Honourable Court's attention to the fact that there has been a decrease in active members in the MCPF. We intend to persistently engage with the various municipalities and councillors in order to entice membership to the MCPF.

#### Membership as at September 2020

Description	Sept 2020
Total active members at start of period	5472
Total active new members joined for the period	7
Total exits for the period	6

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<b>Total active members at end of the period</b>	<b>5473</b>
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**Membership as at July 2021**

<b>Description</b>	<b>July 2021</b>
Total active members at the end of period	5384
Total active new members joined for the period	9
Total exits for the period	14
<b>Total active members</b>	<b>5379</b>

81. A breakdown of the contributions received from municipalities is set out in the tables hereunder. We highlight that the number of municipalities that have been arrears for more than three months has decreased. The engagement with the municipalities appears to be effective in decreasing the number of non-contributing municipalities. We will therefore continue to work closely with the remaining non-contributing municipalities in order to further address this issue.

**Contribution breakdown September 2020**

<b>Description</b>	<b>No of Municipalities Sep 2020</b>
Contributing and updated Municipalities	182

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Municipalities in arrears (not contributed for 3 months or less)	15
Municipalities in arrears more than 3 months (Municipalities which decided to stop contributing)	26
<b>Total municipalities</b>	<b>223</b>

### Contribution breakdown July 2021

Description	No of Municipalities July 2021
Municipality that have contributed	192
Municipalities in arrears (not contributed for 3 months or less)	0
Municipalities in arrears more than 3 months (Municipalities which decided to stop contributing)	27
<b>Total Municipalities</b>	<b>219</b>

82. We had previously reported that there were municipalities which had paid over a lump sum of members' contributions but had failed to provide the MCPF with a list of members for the purposes of allocation. We have followed up with the municipalities and have received some lists which have enabled us to allocate some of the contributions properly. We will continue to resolve this issue.

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**Trust update**

83. We have previously reported to the FSCA that we have sourced and acquired a tracing system from Dracore Tracing Systems called “My Trace” which had been able to assist in tracing beneficiaries.
84. We had further appointed two tracing agents being Dzoka and Fics tracing agents who had made substantial progress shortly after their appointment. However, the tracing agents have been negatively impacted by the Covid-19 lockdown regulations.<sup>3</sup> The tracing agents have used the desktop tracing to try and locate some of the potential beneficiaries.<sup>4</sup>
85. At March 2021, the tracing agents have only been able to successfully trace 43% of all beneficiaries.<sup>5</sup> In the meantime, we are reviewing our mandate to the panel to determine if there are any other means available to successfully trace the remaining beneficiaries.<sup>6</sup>
86. We are still engaging the services of the two tracing agencies which will continue to provide us information on the remaining trust beneficiaries.

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<sup>3</sup> Nineteenth Report to the Registrar

<sup>4</sup> Twentieth Report to the Registrar

<sup>5</sup> Twenty-First Report to the Registrar

<sup>6</sup> Twenty-Third Report to the Registrar

**Property-owning company**

87. In anticipation of the bulk exit project, we have embarked on a process to try and dispose of the immovable properties. We have engaged the services of auctioneers who have advertised the sale of the properties online. We have also received an informal offer for the purchase of the remaining stand in Matelosana.
88. However, we are still negotiating in the hopes of receiving an improved offer. This must be seen in context and in light of the economic downturn that the MCPF has received such low offers. We, therefore, see the need to negotiate with prospective buyers in order to improve the offer.
89. The sale of the properties is crucial since there may be a need to liquidate the assets of the MCPF to ensure that there is sufficient liquid cash to pay out the exiting members.
90. We have previously reported that we had succeeded in recovering the capital amount of R120 000 000.00 (one hundred and twenty million rands) excluding VAT from ISAGO. We are currently engaging with experts in respect of determining a value of the return on the

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investment whereafter we would be able to advise members of how the amount would be distributed.

91. M C Attorneys continue collecting the arrear rental from defaulting tenants on behalf of the MCPF.
92. Currently, there are three tenants in the commercial property who are in arrears and have not paid for rentals. We have, therefore, instructed our attorneys to proceed with the necessary eviction processes to evict the three tenants. At present, the draft application for the eviction proceedings against the three tenants has been finalised by counsel and will be served by the MCPF's attorneys in due course.
93. All arrear rental claims are in the process of litigation. Judgment has been obtained against Matlama Consultants. A warrant has now been issued and we are in the process of pursuing the defendant as we had received a return of non-service from the Sheriff in respect of the warrant.
94. A notice of bar was served on Cebekhulu Construction through their attorneys since no plea was received. They have requested a copy of the summons, which has been transmitted to their attorneys' offices.

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95. We have had to trace Tiisang Risk since we received a return of non-service of the summons. It has now been traced and the summons has been amended accordingly and will be served by the Sheriff shortly.
96. In respect of Wirells Connection, we have received a query for the application for default judgment. The query requires us to update the application for default judgment to the new form as per the new Practice Directive. We are in the process of amending the application accordingly.
97. In respect of PM Pelican, there is the same query on the application for default judgment as mentioned *supra* and we are also in the process of amending the default judgment application accordingly. In addition, the eviction application is also ready to be launched.
98. Another query has been raised on the application for default judgment for Medirwe Investments, which query is the same query mentioned *supra*. We are again in the process of amending the default judgment application accordingly.
99. In respect of Empire Consortium, a default judgment application has been lodged with the Registrar of the court and we are awaiting the outcome of the application.

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100. Lastly, the matter against Talcrete Construction has become opposed. However, the opponent has requested a statement for the settlement of all its outstanding rental. It has been agreed that a settlement proposal will be delivered by it on or before 19 October 2021, failing which we will file an application for summary judgment.
101. We have since received a settlement proposal in which Talcrete Construction has offered to pay an amount of R2500.00 (two thousand five hundred rand) per month. We are of the view that this amount is too low and are in the process of negotiating a higher amount. In the event that settlement negotiations fail, we will proceed with summary judgement.

### Investigations

102. We have previously reported that the former section 26 trustees referred the matter relating to MSMM in respect of the over-charging of fees to the Law Society of the Northern Provinces (which now falls under the auspices of the Legal Practice Council). The former section 26 trustees also referred the matter to the Hawks who are still investigating.

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103. We had also previously reported that the Legal Practice Council has now moved the matter to the Mpumalanga Provincial Office. The matter was set down to be heard on 20 June 2020 but due to the lockdown regulations the matter was unable to proceed.
104. We are informed that the criminal investigation by the Hawks is still underway. We were further advised that there have been a number of interviews conducted with some of the implicated individuals as identified by the investigating officer. We were further advised that, at the conclusion of the interview, the docket would be handed over to the National Prosecuting Authority for a decision on whether they would proceed with prosecution of the implicated individuals.
105. There were also investigations being conducted by the Legal Practice Council. We were informed that there were challenges faced by the Legal Practice Council in establishing the Fee Assessment Committee. But, more importantly, the Legal Practice Council required the MCPF to pay security for costs before it could consider the complaint against the law firm relating to the overcharging of fees. We are still deciding whether to pay the security for costs in light of the fact that the security for costs amounts to R1 million.

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## Investments

106. It must be pointed out at this juncture that the investments have continued to be negatively impacted by the COVID 19 pandemic. However, we have been continuously engaging our investment advisors in order to ascertain the best way to mitigate the impact. In the interim, we have diligently monitored and the activity of the investments and the growth potential and are optimistic that the investment returns may improve despite the threat of the resurgence of the Covid-19 pandemic.<sup>7</sup>

## Governance

107. We are pleased to report that we have continued to implement the monthly management meetings with senior managers for purposes of keeping abreast with current and outstanding issues.<sup>8</sup>
108. The operational meetings continue on a monthly basis wherein we exercise oversight responsibility over the senior managers and Fund employees. This has yielded positive results as the employees and management have to report on the progress of each project that has

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<sup>7</sup> Nineteenth Report to the Registrar

<sup>88</sup> Nineteenth Report to the Registrar

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been undertaken by the MCPF. Employees are also held accountable where there is a lack of progress. This is confirmed by the positive feedback we continue to receive from the MCPF's members. Members are also encouraged to communicate with us where they encounter challenges in dealing with the MCPF's administration.<sup>9</sup>

109. We have also drafted and implemented a number of internal policies, including a privacy policy, ensuring the regulation of the governance and compliance of the MCPF and its staff. This has led to increased accountability and sustainability by the MCPF towards its members. A product of this can be determined in its interactions with its stakeholders which were previously concentrated on mismanagement and distrust, to positive feedback and dialogue with respect to the MCPF operations and its benefit to its members.
110. The MCPF's structures and processes are designed to ensure accountability, transparency, responsiveness and stability. The establishment of these structures has yielded positive results for the MCPF. We also ensure that the MCPF is compliant with the relative legislation and submits all statutory returns timeously.<sup>10</sup>

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<sup>9</sup> Twenty-First Report to the Registrar

<sup>10</sup> Twenty-Second Report to the Registrar

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## Complaints

111. The complaints register has been attached in each report submitted to the FSCA. We do not intend to traverse this section in detail. We highlight that there is only one matter in progress in the MCPF and nine matters in which we await the outcome from the Pension Fund Adjudicator. As at July 2021, we did not receive any further complaints for the period under review.<sup>11</sup> We believe that this is indicative of the members satisfaction with the MCPF and the overall progress the Fund.

### Complaints as at September 2020

Description	No of complaints
Total new complaints received	0
Complaints in progress by the Fund	1
Awaiting PFA decision/ determination	9

<sup>11</sup> Twenty-Third Report to the Registrar.

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## Legal Proceedings

112. We had previously reported that we had been served with an application by twenty-eight (28) councillors from the Nyandeni Local Municipality. The matter has not yet been finalised. We discuss this later in this report.
113. In respect of the legal proceedings with Akani, the MCPF has decided to proceed with arbitration in this matter. We have received an opinion from our attorneys in this matter relating to prospects of success. However, the attorneys have requested further documents and information which we have provided to them. We await the comprehensive opinion from the attorneys.
114. We have since received the opinion from our attorneys who have advised that the MCPF has only a fifty percent chance of succeeding in the matter. Due to the costly financial implications associated with litigation, it is our view that it would not be financially viable to proceed with the matter against Akani.



V  
SM

115. The only pending matter against the MCPF is the proceedings relating to Nyandeni Local Municipality.<sup>12</sup>

### **Death benefit claims**

116. We are continuing to investigate and finalise the pending death benefit claims. We have further established a committee to deal with this on a monthly basis. The MCPF will continue to make payments of the resolved matters.
117. It should be noted that the administration of the Distribution of Death Benefit Claims committee has increased in its efficiency which has significantly bettered the claims turnaround times.
118. In the last year, the administration team, under the guidance of the sub-committee, were able to clear the previous backlog of death claims.
119. The majority of the claims are being finalized within the legislated period of 12 months and there are fewer matters being referred to the PFA for adjudication. This has been one of the significant “wins” operationally.

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<sup>12</sup> Twenty-First Report to Court



## Data Verification

120. We had previously reported that during 2017, we identified an issue relating to the data captured on our Compen system. We had since undertaken a project to reconstruct the files and members' records and review the data on the system. The purpose would be to ensure that all active members are loaded onto the system and to capture all claims that have been paid for to avoid uncertainty.
121. The data verification process is still ongoing but it is at its finalisation stages and should be concluded in the near future.<sup>13</sup> We are now working with our actuaries to finalise the verification process.<sup>14</sup>

## FURTHER ACTION TAKEN BY THE CURATORS SINCE OUR APPOINTMENT

122. Under this section, we will deal with the following:
- 122.1 compliance with Regulation 28 of the PFA;
  - 122.2 investment returns;

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<sup>13</sup> Nineteenth Report to the Registrar

<sup>14</sup> Twenty-Third Report to the Registrar

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- 122.3 roadshows and interactions with the South African Local Government Association ("SALGA");
- 122.4 the 2019 annual financial statements;
- 122.5 cost savings;
- 122.6 litigation;
- 122.7 actions taken to minimise the turnaround time in processing claims and complaints lodged with the Pension Funds Adjudicator; and
- 122.8 self-administration.

### **Regulation 28 of the Pension Fund Regulations**

- 123. We are pleased to report that at 30 June 2021, the MCPF was compliant with regulation 28. The asset value of the MCPF as at 30 June 2021 is R2 153 633 464.00.
- 124. We are also pleased to report that the asset value has substantially increased from previous years. We will continue to administer the funds



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diligently and report thereon in due course. The regulation 28 report is attached hereto as annexure "FCR9".

### **Roadshows and interactions with SALGA**

125. The MCPF adopted a bulk exit plan which details the actions and engagement that the MCPF will have with members and stakeholders. The engagement with the Municipality and SALGA has already been attached as Annexure "FCR7".

### **Litigation**

126. Under this heading we will deal with the following:
- 126.1 MSMM;
  - 126.2 Akani;
  - 126.3 collection of arrear rentals for the Willow Office Park property;  
and
  - 126.4 application by councillors of Nyandeni Local Municipality.

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**MSMM**

127. In the first report to court, we had indicated that the section 26 trustees had referred the issue of fees charged by MSMM to the Law Society of the Northern Provinces. The matter is now with the Legal Practice Council ("LPC") for investigation. The investigation is still ongoing.

**Akani**

128. As stated earlier in this report, we have decided not to proceed with arbitration in this matter. We are represented by Moeti Kanyane Attorneys. As stated earlier, we have decided not to proceed with the litigation in this matter due to our low prospects of success and the high costs associated with litigation.

**Actions to be instituted for arrear rentals**

129. We have already stated that we have appointed Moumakoe Clay Inc attorneys, to collect the arrear rental for the Willow Park Office property and have issued legal proceedings against those tenants who have abandoned their offices and those that still unlawfully occupy their offices.

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**Application by councillors of Nyandeni Local Municipality**

130. We have already stated that twenty-eight councillors have instituted proceedings against the MCPF. They seek to have their benefits paid out to them in each of their respective personal bank accounts.
131. Our attorneys of record, Moumakoe Clay Inc Attorneys, have now served the counter-application. In the counter application, we contend that the councillors and the municipality have a duty to contribute toward the MCPF in terms of the PFA and the rules of the MCPF. We intend to claim the arrear contributions due and payable by the councillors and the municipality as well as future contributions that may become payable to the MCPF.
132. We have since received correspondence from the opposing attorneys who have requested that we consider settling the matter. We are in the process of considering our options and the terms of settlement, if any.

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**Action to be taken to finalise the turnaround of claims and compliance with the Pension Funds Adjudicator**

133. As is evident from the reports submitted to the FSCA, we are pleased to report that no complaints have been received by the MCPF.
134. We will continue to efficiently and effectively deal with all future complaints received by members of the MCPF. This will be reported on in due course.

**Self-administration**

135. Good governance is increasingly recognised as an important aspect of an efficient private pension system, enhancing investment performance and benefit security.
136. We have considered options in respect of the governance of the MCPF and have previously reported to the authorities and the members that we intend having the administration of the MCPF placed on an open tender process and invite section 13B administrators to make proposals on how best they intend to administer the MCPF.

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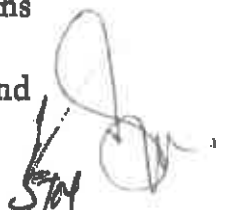
137. With the challenges occasioned by the Covid-19 pandemic, we had attempted to commence with the procurement of a Section 13B administrator. However, we were faced with challenges as a potential bidder could not be called in for a briefing and/or inspections owing to the pandemic. Moreover, we tried to make use of the MCPF's IT systems to see if the process could be dealt with online.

138. Consequently, we took a decision that the MCPF would appoint external procurement experts to assist with the appointment of a Section 13B Administrator. Unfortunately, this process cannot be attended to at present as the MCPF is fully focussed on the bulk exit.

#### **THE OVERALL FINANCIAL POSITION OF THE MCPF AND ITS FINANCIAL SOUNDNESS**

139. In compliance with the court order, we set out the overall financial position of the MCPF hereunder. The financial statement is attached hereto as annexure "FCR10". The financial statement summarises the transactions and net assets of the MCPF.

140. At the outset, the auditors state that they are not aware of instances of non-compliance with the laws and regulations, including the provisions of laws and regulations that determine the reported amounts and

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disclosures in the annual financial statements.<sup>15</sup> In addition, the board of the Fund agrees that the annual financial statements are confirmed to be complete and correct and fairly represent the net assets of the Fund at 30 June 2020, as well as the results of its activities for the year then ended.<sup>16</sup>

141. The Principal Officer of the MCPF also confirmed that, for the year under review, the MCPF had timeously submitted all regulatory and other returns, statements, documents and any other information that was required in terms of the Pension Funds Act and all applicable legislation.<sup>17</sup>

142. In connection with the audit of the financial statements, the auditors' responsibility is to read "*other information*" and, in doing so, consider whether that information is materially inconsistent with the financial statements or their knowledge obtained in the audit, or otherwise appears to be materially misstated. In this regard, the auditors concluded that there was no material misstatement to report on in this regard.

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<sup>15</sup> Page 5 of the Annual Financial Statements

<sup>16</sup> Schedule B: Statement of Responsibility by the Board of the Fund – p 6 of the Annual Financial Statements

<sup>17</sup> Schedule C: Statement of Responsibility by the Principal Officer – p 7 of the Annual Financial Statements



143. Further, the Statement of Responsibility by the Board of the MCPF describes instances of non-compliance with laws and regulations, including those that determine the reported amounts and disclosures in the financial statements that have come to the attention of the Board and the corrective action taken thereafter. The auditors have found no additional instances of non-compliance with laws and regulations during the course of their audit of the financial statements.<sup>18</sup>
144. In relation to Regulation 28, the auditors found that the investment in SAMPADA Private Equity is shown at cost price instead of the fair value as required by accounting policy and the trustees have signed a resolution to confirm this.<sup>19</sup>
145. In respect of the Isago development, we had previously reported that we had successfully recovered R120 million, excluding VAT, in relation to an amount that was paid for vacant land. This amount represents the full purchase price which the MCPF paid to Isago@N12 Development for the land. The property was initially valued at approximately R70 million at the time of the sale. The auditors have

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<sup>18</sup> Independent Auditor's Report dated 2 March 2021

<sup>19</sup> Schedule E: Report of the Board of the Fund – p 20 of the Annual Financial Statements

undertaken to allocate the funds to the members of the MCPF once an in-depth analysis has been done.<sup>20</sup>

146. The auditors have also taken into account the effect that Covid-19 has had on the MCPF. They were of the view that the lockdown and the phased recovery of economic activity has not had a negative impact on the MCPF's business and cash flow. The municipalities have continued contributing to the Fund and, after initial downward trends, the Fund's investments have stabilised.<sup>21</sup>

#### **Fund accounts established in terms of the Rules of the MCPF**

147. The assets of the MCPF, in terms of the Rules, must be held in the following accounts:

147.1 the share account;

147.2 data reserve account;

147.3 expense account; and

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<sup>20</sup> Schedule E: Report of the Board of the Fund - p 20 of the Annual Financial Statements

<sup>21</sup> Schedule E: Report of the Board of the Fund - p 20 of the Annual Financial Statements



147.4 process error reserve account.

148. The composition of the accounts are set out below.

### **Share account**

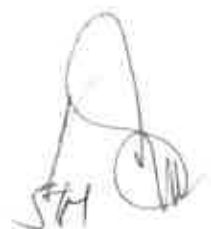
149. The share account shall comprise the member's share. It shall be maintained for each member. The following transactions shall be recorded in this account:

#### Credits

149.1 an opening balance comprising the value of a member's investment return in the MCPF on the date of transfer to the gratuity section, as calculated by the valuator;

149.2 the member's contributions;

149.3 the municipality's contributions in respect of the member, less that portion of such contributions, determined by the Board in consultation with the valuator to be used to meet the MCPF expenses, towards the provision of retirement benefits;



- 149.4 investment return transferred from the process error reserve account;
- 149.5 a contribution by a member or municipality, which must be reflected separately from the contributions referred to in paragraphs 149.2 and 149.3 *supra*;
- 149.6 an amount following a transfer to the MCPF in respect of the member;
- 149.7 the proceeds of any Insured death benefit paid to the MCPF in respect of a deceased member.

#### Debits

- 149.8 the benefit payable to a member or to a deferred pensioner;
- 149.9 the transfer to an insurer upon the respective retirement of a member or deferred pensioner;
- 149.10 the benefit payable to a member or to a deferred pensioner;
- 149.11 any amount transferred to an approved retirement annuity fund, a preservation fund, or an approved pension fund;



149.12 any amount transferred to the expense account; and

149.13 amounts which the Board may deduct from the member's benefit or as relevant.

### **Contingency reserve account**

150. Although independently provided for in the Rules of the MCPF, the combination of the data reserve account, expense account and the process error reserve account are referred to as the contingency reserve account in the Rules.

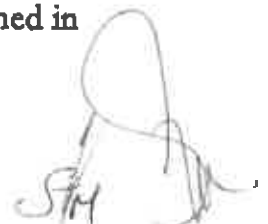
### **Data reserve account**

151. This reserve account is set for any shortfalls that may arise due to data errors.

152. The following shall be recorded in the data reserve account in which the following transactions are recorded:

#### Credits

152.1 The balance as at the surplus apportionment date contained in the nil-Fund approved by the Registrar;



- 152.2 Any amount relating to data errors or data omissions which resulted in a positive cash flow to the MCPF; and
- 152.3 Investment return transferred from the process error reserve account.

Debits

- 152.4 Any amount relating to data errors or data omissions which resulted in a payment from the Fund which was not previously taken into account in the valuation of the MCPF.

**Expense Account**

153. This reserve account is set for MCPF expenses as well as premiums due to death benefits and for funeral benefits. The following shall be recorded in the data reserve account in which the following transactions are recorded:

Credits:

- 153.1 the amount as at 1 October 2013 used as the opening balance as determined by the Board on the advice of the valuator;

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- 153.2 such portion of the contributions in respect of MCPF expenses;
- 153.3 the premium, payable by the municipality in respect of each councillor who is a member, for the insured funeral benefit;
- 153.4 any amount received from a Member's Share; and
- 153.5 any amount transferred from the process error reserve account;

Debits

- 153.6 all MCPF expenses.
154. **Process error reserve account**
155. This reserve accounts are set for investment fees and tax related expenses.
156. The following shall be recorded in the process error reserve account in which the following transactions are recorded:

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Credits

- 156.1 the balance as at the surplus apportionment date contained in the nil-Fund approved by the Registrar; and
- 156.2 investment return on the MCPF's assets after deduction of any expenses or tax relating to those assets;

Debits

- 156.3 investment return transferred to the member share account;
- 156.4 investment return transferred to the data reserve account;
- 156.5 investment return transferred to the expense account.

**Fund expenses**

157. All the MCPF expenses, as defined below, must be paid by the MCPF.

MCPF expenses means:

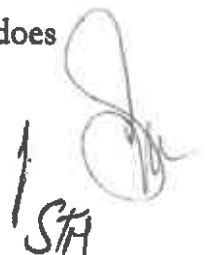
- 157.1 the fees and disbursements due to the administrator in terms of the agreement between it and the MCPF;



- 157.2 the fees and disbursements of any person providing any service or advice to the MCPF including, without limiting the generality of this provision, the valuator, auditor, legal advisor, investment advisor and the custodian of the MCPF's assets;
- 157.3 the disbursements, allowances and remuneration in respect of any Trustees;
- 157.4 any tax payable by the MCPF, excluding taxes payable by a member or beneficiary in respect of any benefit payable from the MCPF;
- 157.5 any levies or charges imposed by the Registrar or any statutory body;
- 157.6 any fees and expenses relating to the management of the MCPF assets which are not deducted from investment returns;
- 157.7 the premiums in respect of the insured death benefit provided for in the rules;
- 157.8 the premiums in respect of the funeral benefit for each member who is not a deferred member/pensioner;



- 157.9 any other expenses which the MCPF is liable in law to pay;
- 157.10 the MCPF expenses must be debited from the expense account.
158. Although the Board is required to ensure that the expense account is adequately funded through the allocation of such portion of the contributions received, the Board may, if it considers it appropriate and after receiving advise from the valuator:
- 158.1 subtract so much from the members' shares, in such proportions as it considers fair, as is sufficient to ensure that the expense account does not have a negative balance;
- 158.2 in respect of a specific MCPF expense relating to a Member or a category of members, direct that the member share of that member or of that category of members be debited with the amount of the expense concerned and the expense account correspondingly credited;
- 158.3 utilise an amount of the investment return, transferred from the process error reserve account, to eliminate a negative balance in the expense account provided this is done in a way as does

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not unfairly prefer any category of member at the expense of another category of member.

159. An excerpt of the net assets and funds is set out below:

**STATEMENT OF NET ASSETS AND FUNDS AS AT  
TUESDAY, 30 JUNE 2020**

	30 June 2020 R	30 June 2019 R
<b>ASSETS</b>		
<b>Non-current assets</b>	<b>2 070 723 571</b>	<b>2 034 082 631</b>
Plant and equipment	176 927	394 517
Investments	2 070 546 644	2 033 688 114
<b>Current assets</b>	<b>128 166 681</b>	<b>107 083 354</b>
Accounts receivable	29 045 862	26 247 226
Arrear contributions	16 033 999	14 285 140
Cash at bank	83 086 820	66 550 988
<b>Total assets</b>	<b>2 198 890 252</b>	<b>2 141 165 985</b>
<b>FUNDS AND LIABILITIES</b>		
<b>Members' funds and surplus account</b>	<b>2 032 679 182</b>	<b>1 911 812 731</b>
Members' individual accounts	2 004 063 099	1 872 453 915
Amounts to be allocated	28 616 083	39 358 816
<b>Reserves</b>		
Reserve accounts	57 472 463	54 832 090
<b>Total funds and reserves</b>	<b>2 090 151 645</b>	<b>1 966 644 821</b>
<b>Non-current liabilities</b>	<b>43 028 111</b>	<b>49 930 905</b>
Financial liabilities	26 555 851	35 386 002
Unclaimed benefits	16 472 260	14 544 903
<b>Current liabilities</b>	<b>65 710 496</b>	<b>124 590 259</b>
Benefits payable	53 624 379	113 227 369
Accounts payable	12 086 117	11 362 890
<b>Total funds and liabilities</b>	<b>2 198 890 252</b>	<b>2 141 165 985</b>

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160. There is no strategy for the reserve accounts in the MCPF which has resulted in the reserve accounts not being invested in a specific portfolio. The reserve accounts are invested in the various portfolios that the MCPF holds. The investment policy statement of the MCPF needs to be reviewed and updated to ensure capital protection for the reserve accounts. The reserve accounts are calculated by the valuator of the MCPF.<sup>22</sup>
161. The financial statements summarise the transactions and net assets of the MCPF. In accordance with the Rules, the actuarial position of the MCPF, which does take into account of such liabilities, is examined and reported on by the valuator at intervals not exceeding three years. The last statutory valuation was carried out as at 30 June 2018, which was submitted to the Registrar on 30 June 2019. The valuator declared that the Fund was 100% funded as at 30 June 2018. The next statutory valuation was due on 30 June 2021.
162. In terms of the report of the valuator attached to the annual financial cost statement, it is stated that, as at the statutory valuation date, being 30 June 2018, the MCPF was in a financially sound position with:

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<sup>22</sup> Schedule E: Report of the Board of the Fund – p 17 of the Annual Financial Statements



- 162.1 adjusted net assets of R1,798 million, exceeding R1,653 million, being the total value of Members' Share and trust benefit accounts; and
- 162.2 the remaining assets of R57 million established a Contingency Reserve.
163. The valuator had not, for the period ended 30 June 2020, reviewed the build-up of the reserve accounts of the MCPF as contained in the annual financial statements.<sup>23</sup>
164. To properly appreciate the financial position of the MCPF, we replicate the surplus and reserve accounts as completed by the auditors below:

### SURPLUS AND RESERVE ACCOUNTS

	Members' Funds and Amounts to be allocated	Reserve Accounts Total	Process error reserve	Data reserve
	R	R	R	R
At beginning of year	1 911 812 758	54 832 090	27 416 045	27 416 045
Benefits payable	(8 153 811)	-	-	-
Beneficiary benefits and Bad Debts	135 793	-	-	-
Unclaimed benefits and LPI	(5 012 355)	-	-	-
Section 13A Contributions and LPI	1 050 833	-	-	-
PI Claims	85 883	-	-	-
Expenses, PO and Staff salaries and ABSA Trust account	(609 500)	-	-	-

<sup>23</sup> Schedule HB: Report of the Valuator for the period ended 30 June 2020

Prior period benefit adjustment	(42 255 322)	-	-	-
Reinsurance recoveries and SARS PAYE, penalties and interest	4 719 136	-	-	-
Interest	1 267 224	-	-	-
Contributions received and accrued	347 121 991	-	-	-
Reinsurance proceeds	32 006 642	-	-	-
Net investment income	(5 829 124)	-	-	-
Allocated to unclaimed benefits	(1 298 378)	-	-	-
Other income	13 157	-	-	-
- Section 13A Contributions Outstanding	13 157	-	-	-
Less:	(73 977 039)	-	-	-
- Re-insurance premiums	(44 149 288)	-	-	-
- Administration costs	(29 827 751)	-	-	-
<b>Net income before transfers and benefits</b>	<b>2 161 077 888</b>	<b>54 832 090</b>	<b>27 416 045</b>	<b>27 416 045</b>
<b>Transfers and Benefits Benefits</b>	<b>(125 758 333)</b> <b>(125 758 333)</b>	-	-	-
<b>Net income after transfers and benefits</b>	<b>2 035 319 555</b>	<b>54 832 090</b>	<b>27 416 045</b>	<b>27 416 045</b>
Transfer between reserve accounts	(2 640 373)	2 640 373	1 320 186	1 320 187
<b>At end of year</b>	<b>2 032 679 182</b>	<b>57 472 463</b>	<b>28 736 231</b>	<b>28 736 232</b>

165. It is evident that the net income after transfers and benefits at the end of the year is an amount of R2 032 679 181, which amount are members' funds and amounts to be allocated.

166. The auditors found that the underlying investments were not in compliance with the signed investment policy statement and, where applicable, the portfolio management agreement/investment mandate.

It was also recorded that we had indicated that the signed investment policy will only be implemented once the MCPF is in a stable position.<sup>24</sup>

167. The auditors found that amounts disclosed as arrear contributions, as at 30 June 2020, have been paid to the MCPF within the prescribed period and in accordance with the requirements of section 13A of the Act. However, the following exceptions were noted:

Participating employer	Date received
Lukanji/Enoch Mgijima	17/07/2020
Mokhaka	9/07/2020
Mpofana	15/07/2020

168. Late payment interest was raised in all the above instances.<sup>25</sup>

<sup>24</sup> Procedures and Findings p 2


<sup>25</sup> Procedures and Findings p 10

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## INVESTMENTS

### Investment strategy

169. The MCPF's current Investment Policy Statement was adopted on 5 June 2015 and was compiled with the input of Sele Kane Asset Consultants (Pty) Ltd.
170. The MCPF invests a portion of its assets in socially responsible investments and applies preferential procurement principles in appointing asset managers.
171. The MCPF's investment strategies comply with the provisions of Regulation 28 of the PFA.
172. The MCPF's objective is to provide a saving mechanism that can be used as a provision towards retirement, maximising the members' benefits over a 5-year period at acceptable risk levels. The municipal election cycle is taken into consideration when setting the MCPF's investment objectives and strategy. Typically, a more aggressive investment strategy will be followed for the first three years after an election. In the last two years, prior to a subsequent election, the MCPF gradually transitions to a more conservative strategy to preserve the



assets and liquid investment strategy to allow for possible benefit payments soon after elections.

173. The Investment Policy Statement of the MCPF stipulates that three portfolios are to maintained:

173.1 active portfolio;

173.2 beneficiary benefits portfolio; and

173.3 money market portfolio.

174. The following are considered to be appropriate asset classes for investment by the MCPF:

174.1 South African equity;

174.2 South African government and corporate bonds and money market instruments;

174.3 equity structured products;

174.4 guaranteed products;

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- 174.5 alternative investments;
- 174.6 foreign investments;
- 174.7 Listed and unlisted property;
- 174.8 socially responsible investments;
- 174.9 derivatives.

#### **Socially responsible investments**

175. The former Board adopted a policy of investing a portion of the MCPF assets in socially responsible projects and securities. Socially responsible investments are defined as economically targeted Investments which are chosen to promote specific social goals, BEE, gender equality, governance, environment sustainability, infrastructure and poverty alleviation and are based on the fact that South Africa's society as a whole would benefit if MCPF as an investor used its financial power not only to make an investment return for its members. but also further South Africa's current social economic objectives. The nature of such investments must further support the vision of the MCPF to show broader visibility, active support and positive impact in the

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communities that the MCPF members serve. The nature of the investments may be private equity, fixed or variable interest Instruments, or listed and unlisted equity.

176. The SRI investments will be classified as follow in order of risk:
- 176.1 corporate bonds – these are private sector bonds which finance SRI initiatives such as the development of infrastructure and other SRI initiatives. These have a low risk and return profile, and an investment holding period of up to five years;
  - 176.2 private equity – investments in unlisted companies whose focus is on SRI and black economic empowerment. These have a moderate risk and return profile, and an investment holding period of five to ten years; and
  - 176.3 venture capital – Funds which finance infrastructure development and other projects. These have the highest risk and return profile, and an investment holding period of up to ten to twenty years.

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177. The Board is to broaden the list of SRI options to include initiatives by all parties that would facilitate the broader vision the fund has for SRI initiatives options include:

177.1 funding structures to support job creation;

177.2 fund structures to support home ownership;

177.3 funding infrastructure investments;

177.4 funding educational initiatives.

#### **Reserve accounts**

178. There is no strategy for the reserve accounts in the MCPF which resulted in the reserve accounts not being invested in a specific portfolio. The reserve accounts are invested in the various portfolios that the MCPF holds. The investment policy statement of the MCPF needs to be reviewed and updated to ensure capital protection for the reserve accounts. The reserve accounts are calculated by the valuator of the MCPF.



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**Active portfolio**Structure

179. The Member's Share of Active Members and Deferred Pensioners are invested in this portfolio.
180. The investment horizon for this portfolio is defined in accordance with the term of office of municipal councillors, generally five years.
181. The portfolio follows a growth investment strategy for the first three years following elections with the aim to provide superior returns relative to inflation. For the last two years leading up to municipal elections the portfolio follows a progressively more conservative strategy with the aim of providing reasonable returns relative to inflation and an increasing degree of capital protection for members who will withdraw their Member Share if not re-elected for another term.
182. If the term of office of municipal councillors is shortened, the investment horizon of the portfolio will also be shortened in line with the new term of office and an investment strategy review will be



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conducted to determine a new investment structure appropriate to the shorter investment horizon.

Return objective

183. A return of CPI + 3.50% pa (net of fees) over a 5-year period is required.

Risk objective

184. Produce positive returns over rolling 12-month periods more than 65% of the time.

**Beneficiary benefits portfolio**

Structure

185. The Beneficiary Benefits Members invest in this portfolio.
186. These members receive both regular payments and capital lump sums. The objective of the portfolio is to achieve a balance between capital protection and above inflation returns in order to protect the purchasing power of the capital lump sum.

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Return objective

187. A return of CPI + 2.75% pa (net of fees) over rolling 3-year periods, is required more than 50% of the time.

Risk objective

188. Produce positive returns over rolling 12-month periods more than 95% of the time.

**Money market portfolio**Structure

189. This portfolio will be used for the investment of assets matching Benefits Due, Unclaimed Benefits and any other liabilities of the MCPF. The investment horizon for this portfolio is short and thus capital protection is the key objective.
190. The MCPF's investment policy statement was not effected for the unclaimed benefits as no benefits were allocated to a dedicated money market portfolio.

Return objective

191. A return in excess of the STeFI Composite Index over rolling 12-month periods is required.

Risk objective

192. Produce positive returns over rolling 12-month periods all of the time.

**South African equity**

193. Equities listed on the Johannesburg Securities Exchange.

**South African government and corporate bonds and money market instruments**

194. Credit rating must be within asset manager mandate limit and the instrument must have adequate liquidity.

**Equity structured products**

195. Products must be implemented and managed by reputable companies approved by the Board. The downside risk of traditional equity asset

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classes is reduced with these products, but the risk is that they may produce lower returns during a bull market.

### **Guaranteed products**

196. Products (fully and partially vesting) must be managed by reputable Life Companies approved by the Board.

### **Alternative Investments**

197. The MCPF may invest in alternative investments, as approved by the Registrar, which include hedge funds, private equity funds, fund of funds that invest in these types of Investments and unlisted companies that invest in direct opportunities. The aim of investing in these investments is to achieve diversification. The Board will examine all the risks involved in these investments and ensure the MCPF is not over exposed to any large risk. The liquidity of these investments should be relatively high and the MCPF should be in a position to exit these investments in a reasonable time.

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## Foreign Investments

198. Securities listed on an approved stock market or held by pooled vehicles approved by the board, subject to exchange control requirements.

## Listed and unlisted property

199. Listed property offers better liquidity than direct property. It includes listed real estate shares (which include property unit trusts, property loan stocks, etc.).
200. Unlisted property will include direct investments into property developments either as a direct investor and/or through an unlisted property company. Investment holding must be restricted to ten years.
201. The investment policy statement of the MCPF allows for direct investment in immovable property, either as a direct investor or through an unlisted property company. The properties acquired are to be housed in the MCPF Property Company (Ply) Ltd, wholly owned and controlled by the MCPF, per resolution of the former Board. These properties were valued according to the MCPF's accounting policy - refer Schedule HA accounting policy 1.1.

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202. The Property Company is recognised as an asset of the MCPF and the underlying properties which the Property Company owns are reflected in these financial statements. based on its value as per the latest valuation done by an independent professional property valuer. He determined the market values through an arms-length transaction on date of valuation.

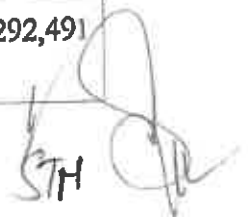
### Derivatives

203. The MCPF may make use of derivatives but not for gearing or speculative purposes. Derivatives are used only to hedge, to change the exposure to any asset class or to supplement buy and sell strategies, subject to regulatory requirements.
204. An excerpt of the management of investments is replicated below.

### REPORT OF THE BOARD OF FUND FOR THE YEAR ENDED TUESDAY, 30 JUNE 2020

	30 June 2020	20 June 2019
Prescient Management Company	275,453,841	252,701,889
Benguela Global Fund Managers (Pty) Ltd	123,155,443	128,478,193
Futuregrowth Asset Management (Policy)	257,372,940	239,292,491

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Futuregrowth Asset Management (Segregated)	116,301,912	114,289,207
Investec Asset Managers	280,911,557	261,498,232
Mergence Investment Managers	117,888,113	137,116,158
Umthombo Wealth (Pty) Ltd (Sampada Private Equity (Pty) Ltd (2))	20,000,000	40,000,000
Sanlam Investment Managers	127,158,639	138,105,275
MCPF Property Company (Pty) Ltd (4)	50,000,000	96,827,600
First National Bank	387,638,578	336,421,467
Futuregrowth Asset Management (Investment in PE)	4,651,325	4,651,326
<b>Total value of investments managed</b>	<b>2,070 546 644</b>	<b>2,033,688,114</b>

205. The aforementioned figures constitute the fair value of the MCPF's investments, including property and private equity companies, administered by the investment administrators and the MCPF. It is evident from the aforesaid table that the net investment value of the MCPF is R2 070 546 644. This is an increase from June 2019 which amount was R 2 033 688 114.

206. We have received the reports from Benguela Global Fund Managers for the period until June 2021. Their reports are attached hereto as annexure "FCR11". It appears from the reports that the total clean

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book value of the investment as at 30 June 2021 is R129 722 670.05.

We will provide a further update on this investment in the next report.

207. We have also received reports from Mergence Investment Managers for the period until August 2021. Their reports are attached hereto as annexure "FCR12". It appears from the reports that the total clean book value of the investment as at 31 August is R144 750 957.66. We will provide a further update on this investment in the next report.

208. Further, we have received reports from FutureGrowth Asset Management. The consolidated market value of the investment at 31 August 2021 is R269 655 395.86 FutureGrowth reports are attached hereto as annexures "FCR13"

209. The table below is an excerpt of the financial statements which set out the administration expenses of the MCPF:

#### ADMINISTRATION EXPENSES

	30 June 2020	30 June 2019
	R	R
Actuarial & consultancy fees	1 042 229	430,030
Audit fees - Audit services (6)	633,800	609,500
Consultancy fees	1,414,126	1,347,622
Depreciation	217,591	343,159
Fidelity insurance	494,824	495,328
FSB levies	139,876	123,263
Other Expenses	12,916,071	13 982,919
Printing	78,068	148,162
Subscription fees	-	9,626
Bank charges	31,796	53,565
Storage rental	178,211	12,467

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Computer expenses		74,724	73,759
Office rental, water & municipal rates		-	564
Advertising fees		303,825	-
Asset re-evaluation		900	-
DNA testing (disputed death benefit)		8,492	-
Short term insurance		16,868	14,343
Legal fees		982,071	2,522,638
Com_Pen licence fees		2,094,624	1,957,445
IT services		847,301	779,522
Curators fees		6,533,647	6,199,614
Professional Fees		1,765,844	2,211,214
Office expenses		738,508	903,545
Provincial and annual report back meetings		-	529,375
Board of Fund expenses	11.1	906	
Staff expenses	11.2	10,851,452	10,493,372
Principal Officer expenses	11.3	1,378,368	1,145,171
<b>Total</b>		<b>29,827,751</b>	<b>30,403,284</b>

210. The cost of the curatorship as at 30 June 2019 was R30,403,284 (thirty million four hundred and three thousand two hundred and eighty-four rand). The table above evidences a decrease in the costs of the curatorship from June 2019 to June 2020. We are pleased to report that these costs have not been deducted from the members' share in the MCPF. The costs have been incorporated into the administration costs of the MCPF. The result thereof is that there is no prejudice to the members in respect of the member shares to which they are entitled.
211. We will continue to monitor the administration expenses of the MCPF and endeavour to continue dealing with expenses prudently.



## **ACTIONS GOING FORWARD**

212. Under this section we will deal with our intentions in the future administration of the MCPF.

### **Number of contributing members**

213. We previously reported that, at 30 June 2016, the number of contributing members was 5 440. This figure had declined in 2017 with the number of contributing members standing at 4 815 at 30 June 2017. As at July 2021, the total number of active members has been recorded as 5379. There has therefore been a significant increase in the number of contributing members.

214. We have already stated earlier in this report that an application brought by the councillors of Nyandeni Local Municipality is pending in the Mthatha High Court. Part of the litigation proceedings includes an application brought by us, on behalf of the MCPF, against the councillors and Nyandeni Local Municipality. The application is in terms of section 13A of the PFA.

215. We have also stated earlier that there has been a request by the opposing attorney to settle the matter. In the event that the matter is not settled,



the counter-application will be a test case which will determine the manner in which we deal with non-contributing members and municipalities in the future. The importance of this issue cannot be overstated. It is an issue which must be dealt with because the consequences of not recovering the arrear contributions will have a detrimental effect on the sustainability and viability of the MCPF.

### **Contribution statements**

216. We had previously received lump sum payments from some of the municipalities without the contribution statements and we are therefore unable to allocate the benefits of some members. After having addressed the issue with some of the municipalities we have obtained some of the contribution statements and have been able to allocate the benefits to certain members. We continue working with the municipalities in order to ensure that contribution statements are received regularly.

### **2021 AFS**

217. We are in the process of finalising the annual financial statements for the 2021 financial year end. We will report to the above Honourable Court on this in our further reports.

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### **Regulation 28 of the Pension Fund Regulations**

218. We have already traversed this topic above. The Internal Auditors report expressed a view that the assets held in compliance with Regulation 30 at June 2020 by the MCPF has been prepared in all material aspects in accordance with the Regulatory Reporting Requirements for Retirement Funds in South Africa and in compliance with the Regulation.
219. We reiterate that the MCPF was compliant in terms of Regulation 28 as at June 2020.

### **MCPF's website**

220. We are pleased to report that we have updated the MCPF's website and it is now fully updated with information, including the details of both curators and all the reports to the FSCA. We have also endeavoured to continuously update news pertaining to the MCPF on the website which members can easily access.
221. Members are also able to login and have access to their benefit statements. The MCPF's website is also integrated with social media

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platforms to make it even more accessible to members. Members can also have access to all forms which are used by the MCPF.

### **Monthly management meetings**

222. We will continue to engage with the acting principal officer and management which we believe will continue to improve the functioning of the MCPF. We have already discussed the results of these meetings above.

### **Investment policy**

223. We are continuously engaging with our investment advisors to review the investment policy and ensure that the MCPF's investment policy and strategy is strictly implemented.

### **Privacy Policy**

224. In compliance with the Protection of Personal Information Act 4 of 2013 ("the POPI Act"), the MCPF has adopted a private policy for. The purpose of the policy is to inform Data Subjects about how the MCPF processes their personal information.

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225. We, therefore, strive to observe and comply with our obligations under the POPI Act, as well as accepted information protection principles, practices and guidelines when the MCPF processes personal information from, or in respect of, a Data Subject.

**Personal liability of the erstwhile principal officer and erstwhile trustees of the MCPF**

226. We will address this issue in our further reports.

**Investigations by the curators and matters which needed further reporting**

227. We will address this issue in our further reports.

**Continuous improvement of systems to detect and prevent mismanagement of funds**

228. We have continued to employ the services of a chartered accountant who plays an invaluable role in ensuring that all transactions, claims and expenses are verified before they are implemented and paid. This has prevented any mismanagement of funds.

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### Investigation by the Asset Forfeiture Unit ("AFU") and the Hawks

229. We have already discussed earlier that we have not made any real progress with the investigation undertaken by the AFU and the Hawks. We will report on any progress in further reports submitted to the above Honourable Court.

### CONCLUSION

230. We are of the opinion that significant progress has been made notwithstanding the Covid-19 pandemic. We are in the process of finalising the execution of the bulk exit plan and hope to hand over the administration of the MCPF in the near future.

231. Accordingly, we respectfully request the above Honourable Court to:

231.1 allow us to file our next report in 12 months' time; and

231.2 continue filing bi-monthly reports with the FSCA.

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DATED AT Pretoria ON THIS THE \_\_\_\_ DAY OF

OCTOBER 2021

Juanito Martin Damons  
JUANITO MARTIN DAMONS

Sophie Thabang Kekana  
SOPHIE THABANG KEKANA  
PRETORIA

I CERTIFY that this Affidavit was signed and sworn to before me at Pretoria on this the 27<sup>th</sup> day of OCTOBER 2021, the Deponent having acknowledged that he knows and understands the contents of this Affidavit, the requirements in terms of Section 10 of Act 16 of 1963, as read with regulations published under Government Notice R1258, in Gazette No. 3619, dated 21<sup>st</sup> July 1972, having been fulfilled.

STN Maluleke  
COMMISSIONER OF OATHS

**STN Maluleke**  
Commissioner of Oath RSA  
Practising Attorney  
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FULL NAME: \_\_\_\_\_

ADDRESS : \_\_\_\_\_

CAPACITY : \_\_\_\_\_

