

# RF TALKS

## Q2

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## Editor's note



Welcome to this edition of RF Talks, where we reflect on a season of dynamic engagement, regulatory innovation and collaborative progress in the retirement funds sector.

Over the past few months, the FSCA has participated in pivotal conversations shaping the future of retirement savings, both in South Africa and across the continent. At the 2025 IRFA Conference in Cape Town, the message was clear: resilience requires action.

From embedding sound governance to advancing ESG integration and cross-border collaboration, African regulators and industry leaders shared inspiring examples of how innovation and cooperation can create sustainable outcomes for members.

The FSCA's participation in the Allan Gray Retirement Benefits Conference underscored the Authority's ongoing focus on transparency, transformation and inclusion. Key updates included findings from our review of the Two-Component System implementation costs, highlighting the need for fair and reasonable fees; the outcomes of our Regulation 28 B-BBEE survey, which calls for stronger procurement policies and measurable transformation; and progress on trustee training and compliance. The coming Conduct of Financial Institutions (CoFI) Bill promises to further empower the FSCA to protect members by strengthening oversight of employers and improving enforcement against arrear contributions.

In parallel, regulatory reforms continue to gather momentum. The recently published Conduct Standard 2 of 2025 (RF) - Conditions Prescribed in respect of Pension Fund Benefit Administrators replaced outdated rules with a modern, principles-based framework to enhance governance, improve data and complaints management and safeguard fund members through clearer accountability.

These developments all point to a single goal: a retirement industry that delivers better outcomes for members built on fairness, inclusion and long-term sustainability.

Finally, we close with a legal update, covering recent court decisions that carry significant implications for the industry.

As we navigate this period of change, the FSCA remains committed to working with trustees, administrators and stakeholders to ensure a resilient and inclusive retirement savings landscape for all South Africans.

We hope that you find this edition both insightful and informative. As always, we welcome your feedback and encourage you to share your thoughts or queries with us by e-mail to [Sanchia.Petrie@fsca.co.za](mailto:Sanchia.Petrie@fsca.co.za).

***Deputy Commissioner***

*Astrid Ludin*

# SUPERVISORY ACTIVITIES

## Strengthening oversight of benefit administrators

*By: Sanchia Petrie*

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Section 13B(1) of the Pension Funds Act, 1956 empowers the Financial Sector Conduct Authority (“FSCA”) to approve and regulate benefit administrators (entities responsible for administering the receipt of contributions and the payment of benefits on behalf of retirement funds). The section further allows the FSCA to prescribe conditions for benefit administrators with which they must comply. While Board Notice 24 of 2002 - Conditions for Administration of Pension Funds (“BN 24”) introduced conditions for the administration of retirement funds, evolving market practices and regulatory challenges have highlighted the need for a more robust and outcomes-focused approach.

### Identifying the gaps

Supervisory experience has revealed several shortcomings under BN 24. Key concerns include:

- **Governance:** The absence of a formal governance framework has made it difficult to take swift action against administrators’ directors and senior management where business is not conducted in line with Treating Customers Fairly (“TCF”) principles.
- **Conflicts of Interest:** Administrators’ directors and senior management sometimes hold positions on retirement fund boards, creating barriers to addressing maladministration.
- **Fit and Proper Standards:** Requirements as set out in the Pension Funds Act, 1956 are only applied at registration, limiting the FSCA’s ability to act when directors or key persons no longer meet the standard.

- **Complaints and Record-Keeping:** Weak documentation and inadequate trend analysis have hindered the identification and resolution of member issues.
- **Operational Weaknesses:** Challenges with termination of administration agreements, notification of auditor changes and accountability for statutory submissions have raised risks for both funds and their members.

## **A principles-based framework**

The introduction of the Financial Sector Regulation Act, 2017 and the Twin-Peaks model marked a shift from a rules-based to a principles-based regulatory approach. To align with this framework, the FSCA published Conduct Standard 2 of 2025 (RF) - Conditions Prescribed in respect of Pension Fund Benefit Administrators (“Conduct Standard”). This Conduct Standard repeals the conditions made in respect of administrators acting on behalf of retirement funds as published in BN 24 and harmonises benefit administration regulation with broader financial sector laws.

## **Key features of Conduct Standard 2 of 2025**

The Conduct Standard expands regulatory expectations to strengthen governance, accountability and member protection. Among its notable provisions are:

- **Governance and TCF Compliance:** Clear obligations for administrators to implement documented governance arrangements and conduct business in line with TCF outcomes.
- **Fit and Proper Requirements:** Ongoing competence, honesty, integrity and good standing requirements for benefit administrators, its directors, senior managers, key persons and heads of control functions.
- **Conflicts of Interest:** Mandatory policies to identify and manage conflicts, ensuring transparency in decision-making.
- **Complaints Management:** Establishment of robust frameworks for complaints handling, escalation, record-keeping and member communication.
- **Operational Resilience:** Requirements for adequate human, technical and technological resources; secure data management; and accurate member records.
- **Financial Soundness:** Minimum liquidity and capital thresholds to safeguard member interests.
- **Administration and Outsourcing:** Written administration and service-level agreements, and oversight of outsourcing arrangements to ensure continuity and quality of service.

## **Better outcomes for Members**

By tightening governance requirements and aligning with the FSCA's proactive, outcomes-focused mandate, the Conduct Standard aims to improve administration services and protect the interests of retirement fund members. Enhanced accountability, stronger operational controls and clearer communication standards are expected to foster fair and transparent practices across the sector.

# INTERNATIONAL & LOCAL DEVELOPMENTS

## 2025 IRFA Conference

*By: Sanchia Petrie*

*Fund Governance and Trustee Conduct Department*



The Institute of Retirement Funds Africa (“IRFA”) conference, held in Cape Town from 24-26 August 2025, brought together leaders, regulators, trustees and industry stakeholders from across Africa under the theme “Building Resilience: Leading Change for Positive and Lasting Impact”. The event positioned Africa’s retirement sector as a proactive force in governance, advocacy and collaboration – key ingredients for a sustainable and inclusive future.

### **Driving Governance and Collaboration**

The conference highlighted that governance in the African retirement sector must go beyond compliance to embed ethical practices, transparency and accountability at every level of fund management. Participants were urged to adopt member-centric policies,

strengthen governance structures and foster regional and global collaboration to create a resilient retirement ecosystem.

International lessons, particularly from Australia's retirement system, demonstrated the power of compulsory savings, fund consolidation, professionalised trusteeship and transparent performance testing. These insights offer valuable direction for South Africa, where coverage remains low and the savings culture requires strengthening. Locally, the updated Trustee Training Toolkit was acknowledged as a key step in equipping trustees with the knowledge and skills to deliver better outcomes for members.

### **Sustainable Retirement Security: ESG, Impact, and Member Outcomes**

The FSCA emphasised the importance of cross-border collaboration and the need to harmonise supervisory approaches across African jurisdictions. Limited regulatory resources and growing complexity in areas such as environmental, social and governance ("ESG") investing remain key challenges.

The FSCA highlighted the role of the Africa Pension Supervisors Association ("APSA") in connecting retirement regulators across the continent to share insights, avoid duplication and accelerate reforms. Through APSA, the FSCA and peer regulators are advancing work on an African Sustainable Finance Taxonomy and an ESG Information Hub, both designed to combat "greenwashing" and ensure that ESG practices are measurable and credible.

Low retirement coverage across the continent remains a pressing concern, with formal retirement participation averaging 9-10% of Africa's working-age population. Innovations such as Rwanda's Ejo Heza Long Term Savings Scheme (a fully digital, government-backed micro-pension model that enables informal sector workers to save using mobile technology) provide a blue-print for other countries with coverage issues in the informal sector. The FSCA underscored the potential of similar micro-pension and auto-enrolment models to expand coverage in South Africa, particularly for informal and vulnerable workers.

The FSCA reiterated the importance of integrating ESG factors into investment decision-making, not merely as a compliance exercise, but as a strategy to secure long-term returns while safeguarding the environment for future generations. Impact investing was presented as a practical way for retirement funds to align member benefits with broader development goals, from renewable energy and healthcare to affordable housing and inclusive finance.

### **Building a Sustainable Future**

The 2025 IRFA Conference underscored that lasting change requires both policy reform and mindset shifts. By embedding governance principles, embracing technology and

strengthening regulatory collaboration, Africa's retirement industry can drive positive societal impact while ensuring members retire with dignity and security.

The FSCA's participation reinforced its commitment to innovation, collaboration and capacity building, ensuring that South Africa remains at the forefront of efforts to build a resilient and inclusive retirement savings landscape.



# The 6th APSA Annual Conference 2025

*By: Duduzile Nhlapo*

*Fund Governance and Trustee Conduct Department*



The Africa Pension Supervisors Association (“APSA”), with support from Financial Sector Deepening (“FSD”) Africa and in collaboration with the Supervisory Authority of Insurance and Social Welfare (ACAPS) of Morocco, hosted its 6th Annual Conference at the Jaal Riad Resort in the city of Marrakesh, Morocco.

The Financial Sector Conduct Authority (“FSCA”), represented by Ms Zareena Camroodien, who chairs the APSA, attended this year’s conference held from 09-11 July 2025. The theme of the conference was “Building Resilience in Africa’s Pension Landscape”. This event provided a platform for stakeholders across the continent to review Africa’s pension landscape, identify gaps, and explore strategies for building resilient pension systems. Participants gained insight into the current state and prospects of African pensions, including emerging issues like technological solutions for pension administration and supervision, adoption of innovative solutions, climate change and micro-pensions.

The conference brought together a diverse audience comprising of stakeholders in the pensions sector, where meaningful ideas and experiences on creating adequate retirement income were exchanged. Representatives from Seychelles, Zambia, Eswatini, Rwanda, Uganda, Nigeria, Malawi, Tanzania, Kenya, Namibia, Zimbabwe, Ghana, South Africa, Morocco, Burundi were present making it 15 out of 18 countries that are members of APSA.

The importance of the role of pension funds in securing the future of people on the African continent was highlighted. It was also mentioned that Africa's pensions systems face mounting pressures from micro-economic volatility, demographic shifts, low formal employment, technology disruptions and weak governance in some markets. It was emphasised that pension systems must be built to be resilient to these challenges, ensuring continuity, and creating long term value. It was mentioned that building resilience is important for social protection, physical health and sustainable development. It was suggested that broadening of pension coverage can be done through innovative platforms, flexible instruments, and improved financial literacy. It was emphasised that strengthening regulatory and governance frameworks, diversification of portfolio investments that provide better returns and addressing risks will pave way resilient pension systems and will assist in improvement of decision-making.

### **Conference Presentations and Discussions:**

#### **Evolution of Supervisory Frameworks for Public and Private Pension Schemes from Compliance to Risk based supervision**

Public and private pension plans' supervisory frameworks evolving from a traditional, compliance-based approach to a more proactive, Risk-Based Supervision (RBS) model, was the main topic of this discussion. This change reflects the increasing understanding that maintaining compliance with regulations alone would not ensure the long-term stability and well-being of pension systems.

Presentations highlighted the Risk Based Supervision Model is important to secure the retirement future of millions of Africans, while channelling pension assets for economic development. It was emphasised that the vision is to have a target that by 2030 all African countries make use of an operational RBS system, have technology enabled supervision, expand pension coverage to approximately 30% and enhance retirement security for all. It was mentioned that the challenges for implementing an RBS include resources constraints which entails limited funding for supervisory authorities and insufficient technical expertise. Other challenges that were highlighted are the data quality issues, regulatory barriers, industry readiness and environmental factors. Implementing RBS enhances the governance of the retirement schemes and early detection of risks. RBS

also helps to have uniformity and consistencies and regulated entities know what is expected from them.

### **Keeping an eye on emerging risks for the pension sector and seeking their resolution**

Due to the internal and external risks faced by the Pension sector which keep on emerging, the importance of keeping an eye on the emerging risks on an ongoing basis in the sector is important. The proper management of emerging risks and opportunities for the pension sector and the sustainable resolution mechanisms sought was discussed. The key risks that prevent pension systems from delivering good long run outcomes that are fair and inclusive include the broad coverage of men and women, in a formal or informal sector, as contributors as well as recipients in old age, a decent adequacy in old age protected against inflations and longevity, an efficient pension system , a sustainable pension system and a secure pension system.

Securing the Africa's Pension sector against risk which is occasioned by technological disruptions is important. A few decades ago, the risks around cyber threats, operational system failures, data privacy breaches were almost non-existent. For Regulators, fund managers, stakeholders to secure Africa's Pension sector from risks is to implement forward looking, adaptive and resilient mitigation measures to ensure that the risks do not severely impact the pension operations in the long term and also that it is not eroding trust of the pension fund members. Mitigation measures include understanding the cyber security, data protection frameworks and IT governance. Mandatory encryptions should be implemented to assist in the mitigation of risks. Ensuring capacity and literacy of pension members, staff members, and all stakeholders involved in the pension sector, ensuring there is evolvment on digital tools and launching awareness programmes on scams and digital frauds are ways that can be used to mitigate risks within the pension sector.

### **Responsible investment in the Pensions Sector in Africa**

It is important for African pension funds to consider and integrate ESG considerations into their investment strategies. However, this presents opportunities and challenges. The greatest challenge is the absence of an African-focused ESG taxonomy to define and classify economic activities that support environmental sustainability, social progress, and good governance within Africa's context.

The African ESG Taxonomy provides a framework for determining eligibility of investments and financial products for sustainable finance. It is important to mandate

ESG reporting and monitor pension funds under regional or international frameworks for alignment with ESG considerations. It is equally important to develop rules requiring pension funds to report taxonomy alignment of their portfolios. It is important for Pension Funds supervisors to provide guidance on asset allocation to reflect sustainable aspirations.

### **Unlocking diversified investment opportunities for Pension Funds**

Consequent to the growth in Pension Funds, there is an increased number of profitable investment opportunities that are sought. The investment is also consequently evolving, and pension schemes are exploring alternative investments to diversify and boost returns. Strong governance is a key pre-requisite for portfolio diversification.

It's important to capacitate the trustees with knowledge about investments in order to be able to diversify investment opportunities. Investment alternatives to be considered include infrastructure debt and equity, private equity and venture capital, real estate investment trust and regional corporate bonds.

### **Testing new micro pension models to increase pension coverage in Africa**

The majority of informal labour workers in the continent are not saving for retirement. There are a couple of jurisdictions that are innovating ways to provide for pension coverage for informal labour workers as the existing pension system does not largely cater for them. The micro-pensions model is being tested to expand pension coverage in Africa for most workers in the informal labour markets. Micro pensions provide an accessible and flexible savings mechanisms tailored to the needs and circumstances of informal sector workers.

It is important to allow members to save as per their own incomes and cashflows. It was suggested that it would be ideal to use of fiscal incentives to jumpstart voluntary participation and saving adequacy by women and youth. It would also be ideal to make provision for members to be able to use a portion of their pension savings in case of emergencies like the savings pot in the Two Pot system in South Africa. It is important to target members by occupations and demographic segments. Lastly in important to create a micro-pensions model that is simple to create an use.



# 2025 Allan Gray Retirement Benefits Conference

*By: Sanchia Petrie*

*Fund Governance and Trustee Conduct Department*



The 2025 Allan Gray Retirement Benefits Conference, held virtually on 16-17 September 2025, brought together industry leaders to explore pressing challenges and opportunities in South Africa's retirement sector. The Financial Sector Conduct Authority ("FSCA") shared key regulatory updates and insights on critical issues shaping the industry's future.

## **Safeguarding Members under the Two-Component System**

A major focus was the cost and fee implications of implementing the new Two-Component System. Following concerns around transparency and reasonability of fees, particularly withdrawal costs, the FSCA issued Information Request 2 of 2024 to 111 registered section 13B benefit administrators and 6 self-administered funds.

Analysis of 76 valid responses revealed:

- Once-off implementation costs of approximately R1,629 billion, averaging R252 per member but ranging widely from R0 to R3 072, driven largely by system upgrades and hiring of additional staff.
- Diverse recovery methods, with 40% of administrators absorbing costs and others increasing administration or withdrawal transaction fees.
- Ongoing costs remain uncertain, with significant variation across administrators.

The FSCA noted evidence of cross-subsidisation, where members who withdraw may be subsidised by those who do not, or where smaller benefit holders may subsidise larger ones. The FSCA will continue monitoring these dynamics and engaging with outliers to ensure costs remain proportional and in members' best interests.

### **Advancing Transformation through Regulation 28**

The FSCA also presented findings from its Broad-Based Black Economic Empowerment ("B-BBEE") Survey, which assessed how retirement funds are applying Regulation 28 to the Pension Funds Act, 1956 to promote economic inclusivity. Key findings included:

- Only 40% of funds have procurement policies, a gap that undermines fair and transparent contracting.
- While 88% consider B-BBEE in contracting and 81% request certification, only 51% receive proof of compliance.
- Just 52% have measure to address non-compliance and 62% consider B-BBEE in appointing independent trustees.

The FSCA urged funds to develop robust procurement policies, require and document B-BBEE certifications and regularly review service provider compliance. The Authority's Memorandum of Understanding ("MoU") with the Broad-Based Black Economic Empowerment Commission supports ongoing collaboration to align regulatory oversight with transformation objectives.

### **Strengthening Trustee Competence**

Trustee training remains a cornerstone of good governance. With Conduct Standard 4 of 2020 mandating completion of the Trustee Training Toolkit ("TTK"), the FSCA recently redeveloped the TTK to reflect new legislative developments.

Through Information Request 3 of 2024, updated trustee data was collected and cross-referenced with TTK completion statistics. The FSCA identified 1 252 trustees (20% of trustee register) who had not completed the training and has issued section 26(4) letters which afforded recalcitrant trustees 30 days to revert with reasons why regulatory action should not be taken against them. Ensuring that trustees possess the necessary knowledge and skills is key to protecting fund members and upholding fiduciary standards.

## **Tackling Arrear Contributions and Strengthening Enforcement**

Arrear contributions remain a long-standing challenge, with R5,2 billion in arrears reported across 7 770 employers as of late 2023. While publishing the names of defaulting employers has prompted some repayment, regulatory gaps persist because the FSCA does not currently regulate employers directly.

The Conduct of Financial Institutions (“CoFI”) Bill promises to be a game changer by granting the FSCA direct regulatory authority over employers, enabling proactive engagement and enforcement to protect members’ savings.

## **Expanding Coverage and Inclusion**

Coverage gaps continue to threaten retirement security. Around 30% of formal sector workers remain outside retirement funds, while informal sector workers are largely excluded. The FSCA highlighted auto-enrolment and micro-pension models, inspired by international successes such as the UK’s National Employment Savings Trust (“NEST”), Kenya’s Mbao Pension Plan and Rwanda’s Ejo Heza as promising solutions.

Digital platforms enabling flexible, low-cost savings could be critical in fostering a culture of retirement savings and broadening access to retirement security.

## LEGAL INTERPRETATION

# Summary of South African local government bargaining council and others v municipal workers retirement fund and others (770/2023) [2025] ZASCA 120 (21 August 2025)

*By: Mohomotsi Monyela*

*Fund Governance and Trustee Conduct Department*

The Supreme Court of Appeal (SCA) handed down judgment dismissing the appeal of SALGA and the Unions against the decision of Gauteng Division of the High Court, Pretoria, which set aside the Retirement Fund Collective Agreement concluded in the South African Local Government Bargaining Council (the Council)

On 15 September 2021 a collective agreement termed the 'Retirement Fund Collective Agreement' (the CA) was concluded in the South African Local Government Bargaining Council (the Council). The parties to the agreement were the South African Local Government Association (SALGA) and the two majority trade unions, the Independent Municipal and Allied Trade Union (IMATU) and the South African Municipal Workers' Union (SAMWU) (collectively the appellants). The central feature of the CA was an accreditation regime in terms of which all pension funds wishing to operate within the local government sector were to be accredited. The retirement funds would be required to amend their rules, including provisions granting in-service members an election to transfer their membership to accredited funds and adhere to annual reporting obligations to the Council. The CA empowered SALGA and the unions to apply for accreditation on behalf of funds and established an Accreditation Committee with authority to withdraw accreditation. The CA further provided that employers would cease making contributions to non-accredited funds.

This CA was the culmination of extensive negotiations spanning from 2014 to 2019. Throughout this period, retirement funds were invited to provide input through various forms including workshops. During March 2019, a revised draft CA was circulated to the

respondents, who were various retirement funds, notably the Municipal Workers Retirement Fund (MWRF) and the Municipal Employees' Pension Fund (MEPF), together with certain fund stakeholders (the respondents). Between 2019 and 2020, comments on the revised draft CA were submitted. A summary of all submitted comments was circulated in June 2020. On 17 September 2021, the Council sent out a circular advising that the CA had been concluded. On 21 December 2021, the Council circulated accreditation applications and lists to various retirement funds.

On 7 June 2022, the MEPF launched an application in the high court. By then, several retirement funds had also jointly launched applications in the same court. They all approached the high court seeking to review and set aside the CA. They contended that the accreditation scheme would undermine the independence of the board of trustees of those pension funds, contravening the Pension Funds Act 24 of 1956 (PFA), and threaten their financial viability. They further argued that the CA prejudiced trustees' statutory duties and failed to comply with consultation requirements under s 71 of the Municipal Systems Act 32 of 2000 (MSA).

The high court heard the applications together by a panel of three judges sitting as a court of first instance. The high court gave one composite judgment in all three applications. It found that the CA prejudiced trustees' independence, was inconsistent with provisions of the PFA, and that the rule changes, set as prerequisites for accreditation, were inconsistent with some provisions of the PFA. It also found that there was no evidence of compliance with the provisions of s 71 of the MSA. Consequently, the high court set aside the CA in its entirety, save for clause 8, which dealt with terms for new employees and contribution rates. The appellants, dissatisfied with the order, sought and were granted leave to appeal to the SCA. The MEPF was also granted leave to cross-appeal against paragraph 75.2 of the order as they contended that the high court ought to have similarly set aside clause 8 as it was inextricably dependent on the accreditation regime and had no existence without the remainder of the CA.

The issues central to the appeal were: (1) whether the CA was a valid collective agreement in terms of ss 23 and 213 of the Labour Relations Act 66 of 1995 (LRA), (2) whether the accreditation regime unlawfully interfered with pension fund governance and municipal fiscal duties, (3) the main agreement mandates the conclusion of the CA, and whether IMATU had a mandate, and (4) whether the agreement was reviewable under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) or the principle of legality.

With regards to the validity of the CA, the SCA held that while collective agreements may, in principle, regulate pension arrangements when they concern terms and conditions of employment or matters of mutual interest, the CA's practical effect extended beyond the permissible scope of collective bargaining. The court found that the agreement sought to coerce changes to rules in retirement funds, required accreditation as a precondition to employers' contributions and affected non-parties, including pensioners, without the necessary Ministerial extension in s 32 of the LRA. The court concluded that the agreement's unlawful content and effect could not be insulated from legal review merely by virtue of its characterisation as a collective agreement.

With regards to interference with pension fund governance, the SCA found that the accreditation regime unlawfully interfered with pension fund governance in several material respects. The CA empowered non-trustee actors, including SALGA, the unions, and the Council's Accreditation Committee, to determine and withdraw accreditation from funds. The CA envisaged that non-accredited funds would cease receiving employer contributions, effectively compelling funds to amend their rules or become financially non-viable. Further, the appellants had failed to demonstrate any consideration of municipal budgets, fiscal capacity, or compliance with the mandatory consultation requirements in s 71 of the MSA. The SCA found further that these defects rendered the CA an impermissible fettering of trustees' statutory duties, undermined the PFA regulatory scheme and posed a substantial risk to funds' long-term viability.

In terms of reviewability, the majority of the SCA agreed with the High Court that the CA was reviewable and susceptible to constitutional legality review. The majority reasoned that the CA had consequences for non-parties because non-viability of retirement funds was likely to result in retirees not receiving the annual pension increments which the PFA entitles them to receive.

The SCA further pointed out that the principle of legality requires that every exercise of public power must be rational. The court considered the CA to fall into the category of collective agreements that amount to an exercise of public power. The court held further that there was a plausible risk that the implementation of the CA could result in increased financial liability for municipalities and, by extension, the national fiscus as a result of largescale winding up of retirement funds that are unable to meet their obligations. This is on account of (i) the wide powers accorded by the CA to the accreditation committee in relation to granting and terminating accreditation, which is an accreditation mechanism that allows arbitrariness; (ii) the absence of sufficient safeguards to prevent an irrational

exercise of such wide powers by the accreditation committee; (iii) the CA's usurpation of the powers granted to the trustees by the PFA, (iv) the CA's imposition of an obligation on municipalities to participate only in accredited funds, which could trigger a reduction in fund viability, and (v) the obligation of employer municipalities to carry any shortfall that could eventuate as a result of the winding up or termination of a retirement fund in circumstances envisaged in s 30(3) of the PFA. Moreover, the CA's far-reaching consequences were plainly inconsistent with its stated objectives of providing equitable access to retirement fund benefits and the quest for overall improved efficiency. The court concluded that since there was no rational connection between the CA and its stated objectives, a legality review had been established. Relying on several authorities, the court stated that it was trite that ultra vires acts, lack of rationality or improper motive for the conclusion of an agreement are proper bases for both a PAJA and legality review. It reasoned that its conclusion that the CA was reviewable under the principle of legality was therefore dispositive of the reviewability issue.

In conclusion, in respect of the cross-appeal, the SCA found that the interconnectedness between the remainder of the CA (particularly the accreditation regime) and clause 8 did not permit clause 8 to be carved out from the remainder of an agreement that had been set aside. Therefore, clause 8 must also be found to be unlawful in its terms and therefore be set aside.

In the result, the SCA dismissed the appeals with costs and upheld the cross-appeal with costs. The Court set aside the high court order and replaced it with an order that the Retirement Fund Collective Agreement signed on 15 September 2021 is reviewed and set aside.



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