

**PENSION LAWYERS**  
ASSOCIATION

The logo features the word "revolution" in a lowercase, sans-serif font, with the letter "O" replaced by a large, white, stylized circular graphic that has a small gap at the top. To the right of this graphic, the word "LOTION" is written in a similar lowercase, sans-serif font. Below the word "LOTION", the phrase "for RETIREMENT FUNDS" is written in a smaller, uppercase, sans-serif font. The entire logo is centered within a large, light orange circular shape that overlaps a larger, darker orange circular shape in the background.

revolution  
for RETIREMENT FUNDS

- CONFLICT: WHICH ACT PREVAILS
- Section 210 LRA vs Rule of interpretation that more recently enacted statute (Pension Funds Amendment Act, 2007) is reflective of intention of legislature
- Amendments to LRA must go through NEDLAC – already saw with Labour Relations Amendment Bill of 2000 that NEDLAC stakeholders rejected FSB regulation of bargaining council funds
  
- POSSIBLE SOLUTION:
- Amendment to PFA to give Registrar powers of exemption in relation to bargaining council funds
- Draft not yet before Parliament
- Reluctance to make further piecemeal changes to PFA

- CONFLICT: WHETHER SEPARATE LEGAL ENTITY
- Section 59(6) LRA vs Section 5 PFA
- FSB preparation for *Angus* case found only 7 pension funds in SA operate exclusively in terms of a published bargaining council agreement – all others have adopted constitutions and rules that establish them as separate from the bargaining council itself
- IMPLICATIONS:
  - Contributions must be paid into fund bank account or trust account separate from the assets of the bargaining council
  - Bargaining councils who only collect contributions and use section 13B PFA registered administrator for balance of admin to consider applying for exemption under section 13B(4)

- CONFLICT: DISPUTE RESOLUTION
- Section 24(1) LRA vs Section 30A – 30Y of PLA
- Bargaining council or CCMA conciliation and arbitration to Labour Court vs Adjudicator to High Court
- Section 32(3)(e) – (f) LRA allows non-parties to be exempt from provisions of collective agreement that details rights and obligations under fund
  
- POSSIBLE SOLUTION:
- Section 24(1) LRA only applies to collective agreements, so possibly convert current bargaining council collective agreement to Fund Rules (and provisions lose status as collective agreement)
- PROBLEM:
- Bargaining council collective agreement is only way to bind non-parties in industry or sector (Section 32 LRA)

- CONFLICT: ACCOUNTING RECORDS, AUDITS AND REGULATOR'S POWERS
- Section 53 LRA vs Section 15 PFA
- Sections 54(4) and (5) vs Sections 24 and 25.
- Duplicated reporting
- 2 regulators
  
- POSSIBLE SOLUTION
- Registrar of Labour Relations has indicated disinclined to enforce LRA compliance and exercise powers
  
- CONFLICT: INVESTMENTS
- Section 53(5) LRA vs PFA Regulation 28

- **CONFLICT: TIMING OF CONTRIBUTIONS AND BENEFIT PAYMENTS**
- Bargaining council funds often require pension fund contributions to be made with other council payments (e.g. levies, trade union membership fees, holiday fund contributions, sick benefit fund contributions) later than 7<sup>th</sup> day of month
- Bargaining council funds often impose waiting period before payment of benefits in case re-employed in industry
  
- **POSSIBLE SOLUTION:**
- Exemption in terms of section 33(1) PFA

- CONFLICT: BENEFITS
- Collective bargaining vs PFA minimum benefit provisions (Sections 14A and 14B)
- Minimum benefits will apply to registered bargaining council funds
- Fund rules must be amended by trustees – not necessarily parties to bargaining council (won't require collective agreement to adopt minimum benefits)
  
- CONFLICT: SEPARATE BOARD OF TRUSTEES REQUIRED
- POSSIBLE SOLUTION:
- Exemption in terms of section 7B(1)(b) of PFA

- QUESTIONS?