

PENSION LAWYERS
ASSOCIATION

The logo features the word "revolution" in a lowercase, sans-serif font. The letter "O" is a large, white, stylized circle with a small gap at the top. To the right of the "O" is the word "LOTION" in a similar lowercase, sans-serif font. Below "LOTION" is the phrase "for RETIREMENT FUNDS" 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 7th 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?