#MyPension

PENSION LAWYERS CONFERENCE 2015

20th Annual Pension Lawyers Association Conference 2015

#MyPension
PENSION LAWYERS CONFERENCE 2015

Pension Power?
Trade Unions and Retirement Funds

Edward Webster
Professor Emeritus, University of the Witwatersrand;
Director, Chris Hani Institute

The Argument

- First, I set the stage for the key actors and institutions in the policy-making process – COSATU, the Alliance , the labour constituency of NEDLAC, and key government departments - Treasury, Social Development and Labour.
- Second, I trace the history of labour's role and policies on retirement funds.
- Third, I show how the past continues to shape the present, and this helps explain the current situation.
- I conclude by arguing that:
  - the door has been opened, but labour – and the shareholders – seem reluctant to walk through this door;
  - there is an opportunity to address the persisting inequalities of the past and address labour's demands for radical redistribution .

Emergence of COSATU and the Alliance

- Establishment of COSATU in 1985 was a "strategic compromise" between two broad traditions in the labour movement: the post-1973 shop-floor-based independent unions, and those allied to the African National Congress and the South African Communist Party through the notion of a National Democratic Revolution.
- Significant gains for labour have been made through this Alliance but since GEAR in 1996 it has been an "unhappy marriage" although "divorce" seemed unthinkable until NUMSA's 2013 withdrawal and 2014 explusion.

Transition to Democracy and NEDLAC

- COSATU played a leading role in shaping the transition to democracy.
- Key post-apartheid leaders grew out of the trade union movement, creating informal social networks and commitments.
- Key ideas – worker rights such as the right of workers to be elected trustees on the Pension Funds.
- Key labour market institutions – CCMA and NEDLAC – a peak-level social dialogue institution.
- NEDLAC is designed for the social partners – labour, business and the community – to reach consensus on socio-economic issues before these policies/laws go to Parliament.

#MyPension
Pension Lawyers Conference 2015

Pension Power becomes an Industrial Relations Issue in early 1980s

- Some of the new post-1973 black unions succeeded in establishing provident funds that allowed for early exit.
- Other unions won the right to join existing pension funds.
- The apartheid government proposed that black workers only be able to withdraw provident funds after they retire.
- Strikes break out; government withdraws its proposal.
- Unintended consequence: widespread shift of retirement funds from defined-benefit to defined-contribution.

Workers' Rationale for Withdrawing Contributions before Retirement

- In the absence of adequate wages, workers demand that money should be available to them when they need it.
- During periods of unemployment it is difficult to get unemployment benefits or work.
- High dependency ratio – added burden on those with jobs by dependents who are unemployed.
- Benefits due to them on retirement are usually too small to sustain them.
- Workers are aware that pension money is reinvested to accumulate, while they suffer exploitation.
- (Renee Roux, Striking for pensions, *South African Labour Bulletin*, July 1981: 51)

Unions Pioneer New Approach to Investment

- 1983 – MAWU (forerunner of NUMSA) wins the right to sit on pension fund.
- 1987 – CWIU wins right to co-manage Chemical Industries Pension Fund (CIPF).
- Idea grows that union trustees could influence funds to invest in socially responsible ways - e.g. housing for their members.
- Unions played an important role in putting the idea of "social investment" and corporate citizenship on the retirement fund agenda.

But Workers Lack Information

- "Workers have virtually no information on how much they have contributed, how the money is invested and how interest is calculated" (Alec Erwin, Education Officer, Federation of South African Trade Unions, 1981).

Global Trend to Greater Union Control through Social Investment

- Debate – Will union trustees and shareholder activism encourage sound investment practices?
- 1992 – Unions initiate Community Growth Fund (CGF) to invest workers' funds in companies that comply with socially responsible investment.
- Triggers strong critique from many unionists that unions are now managing capitalism.
- Others – such as Cyril Ramaphosa, NUM general secretary – support the CGF initiative.
- Pension Fund Act amended in 1996 to allow members to be elected to retirement funds- implemented in 1998.

Social Investment: Retirement Funds or Union Investment Companies?

- By early 2007 the Community Growth Fund reached R2.5 billion.
- CEO Zithulele Cindi maintained that CGF had held its own against average investment returns on the JSE.
- Labour calls for “socialisation of investment” to “ensure that investment (both government and private) meets social needs such as job creation, affordable housing and social technology – and the reintroduction of prescribed assets ” (Ravi Naidoo, NALEDI, 1996).
- But the novelty of CGF social audit wears off as government introduces Employment Equity and BEE.
- Some unions “break ranks” as an alternative strategy of union investment companies emerges – for example, Mineworkers Investment Company and Hosken Consolidated Investments.
- Part of a broader failure of COSATU to realise the potential of worker pension power.

Problems and Dilemmas:
Lack of Trustee Training

- Trustee training by unions not developed. Training must empower trustees to deal with all challenges- core issues - such as governance, risk and return (Numsa resolution)
- Trustees tended to be passive, relying on service providers for expert advice.
- Trustees often see appointment as a perk and are intimidated by asset managers (NALEDI, 2003).
- Encouraging recent developments with Financial Services Board launching an E-learning project.

Problems and Dilemmas: Conflict of Interest

- 2002 CEPPWAWU resolution: Worker trustees must be accountable to the union – must take mandate from the union before and after attending trust meetings.
- 2007: Court declares resolution unlawful.
- Trustees are caught between being elected on the basis of their popularity and their ethical standing (Alan Greenblo, *Today's Trustee*, 2011)
- But NUMSA wants the Act amended to allow union representation on the funds, including union recall and accountability .

Problems and Dilemmas: Inefficiency and Lack of Communication

- There is R20 billion in unclaimed benefits.
- Much of this belongs to foreigners, but no adequate mechanisms are available for cross-border migrants to locate their benefits.
- Many beneficiaries are not adequately informed by employers, unions and fund administrators that their dependants – including children – are entitled to death benefits.
- Members are not told that even if they are dismissed they are entitled in law to a prescribed minimum benefit (Rosemary Hunter, Interview, 9 February 2015).

Current Situation: Union View

- The labour constituency in NEDLAC believe that the government unilaterally introduced the Taxation Laws Amendment Act (No 32) of 2013.
- They requested Treasury to postpone the implementation of these laws for one year – until 1 March 2016. But if there is no agreement in NEDLAC by 30 June 2015, then the tax rules will only be introduced in March 2017.
- COSATU believes that “forced preservation” of provident funds can only be put on the table for discussion as part of a comprehensive social security policy and the creation of a National Social Security Fund.
- August 2014: COSATU distributed a pamphlet urging workers not to panic or resign from their current Funds.
- Called on members who are public servants not to be misled by rumours on GEPF.

Building a National Social Floor

- For unions, holding out for a National Social Security Fund(NSSF) is more valuable than a reformed pension sector.
- In spite of 15,8 million people on social grants, with a total annual cost of R118 billion, SA does not have a comprehensive social security system.
- People between the ages of 18 and 59 have no assistance, unless they are able to access the child grant or are disabled.
- Government committed to a “social floor” for all citizens.
- Treasury will be tabling the Comprehensive Review at NEDLAC, which has the support of the Department of Social Development and the Department of Labour.

What is the ILO Concept of a Social Floor?

- A compulsory retirement scheme for all
- Child benefits
- Access to health care along the lines of the NHI
- Temporary employment guarantee (Community Work Programme) or income transfer (Basic Income Grant) to the long-term unemployed

Is this Path Politically Feasible and Economically Sustainable ?

- The ILO has challenged what they call the “non-affordability myth”.
- Decent employment is the best form of social protection and social security.
- Retirement and pension funds have a crucial role to play in encouraging vigorous and informed “shareholder activism”.
- “Directors are voted by shareholders but rarely do this group of shareholders (retirement fund contributors, who are overwhelmingly black) exercise this right…. One of the ways of achieving this is to advocate for a 50/50 workers/other owners representation of the boards of JSE-listed companies” (ANC Gauteng Provincial Conference Sectoral Discussion Papers, 2014).

Black Ownership of the JSE

(Trevor Chandler & Associates, 2011)

- Black South Africans own at least 17% of Top 100 companies.
- More black South Africans own shares through mandated investments than through BEE deals.
- Middle-class black South Africans are the main beneficiaries of mandated investment, by number.
- Currently black people own at least 28% of available shares.

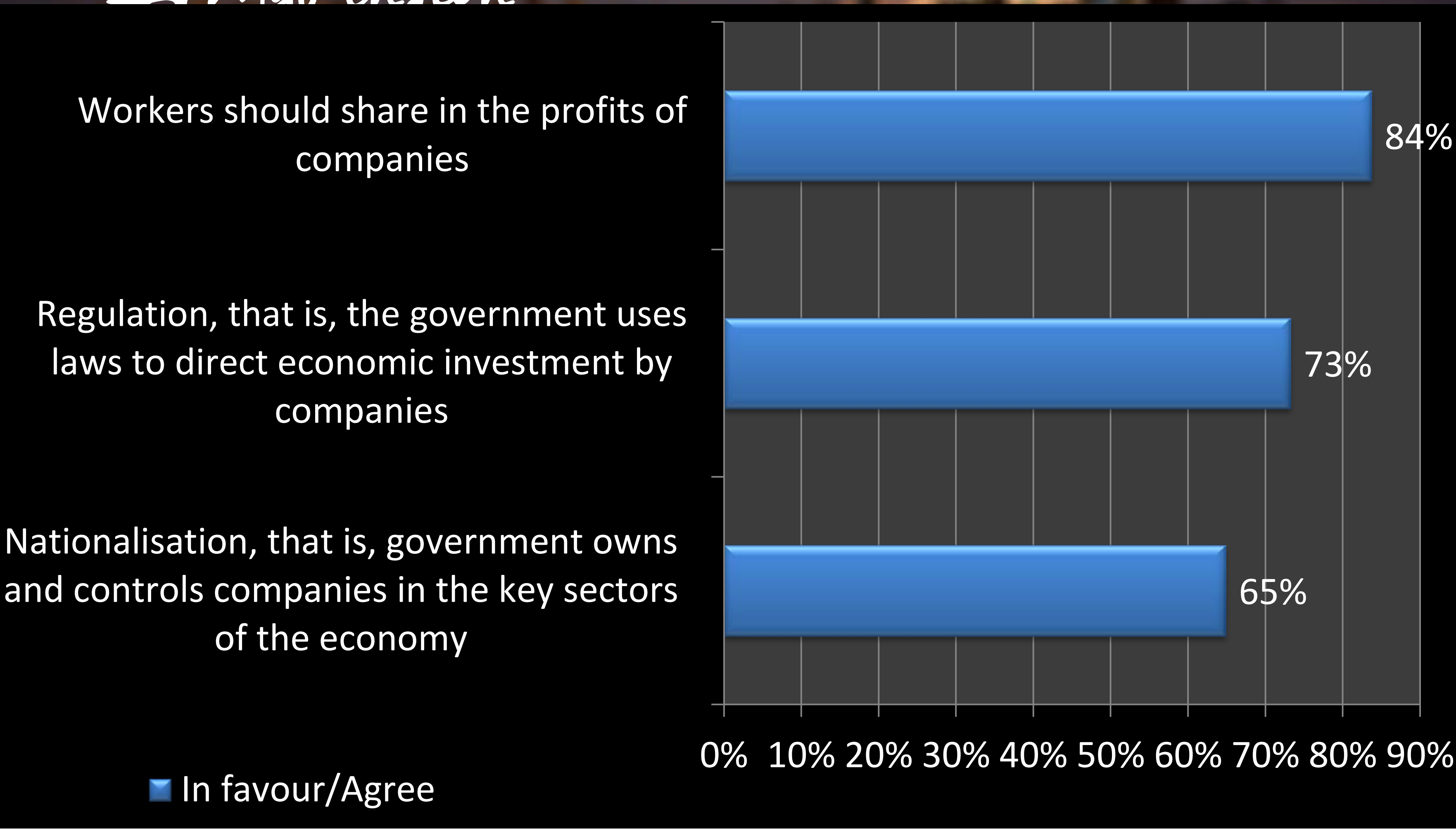
Varieties of Capitalism:
The German Model?

- "Such an agenda implies that COSATU must come to engage more actively, indeed more innovatively, in the running of South African capitalism.... COSATU and its trade unions are already involved in the running of investment arms, and the allocation of high value contracts to suppliers. What matters now is … the specification of the principles and practices which should guide it" (Southall, 2011: 16-17).

The door is open; it is time to walk through it.

- The Pension Fund Act opened the door for labour to influence investment in the retirement industry. 1998 Job summit agreed on 5% of assets on SRI
- Unions need to provide training to trustees and union leadership on pension matters.
- Pension reform is now being developed in an incremental and strategic way, with the long-term goal of developing a comprehensive social security system.
- The opportunity now exists for labour's demands for redistribution – unchanged since 1992 – to be addressed.
- 1992: Workers should share in company profits (95%); favoured nationalisation (67%); 16% opted for government regulation of the economy, *without necessarily taking control;* 17% favoured privatisation.

Views on the Economy



THANK YOU