- COLLECTIVE BARGAINING MATTERS
- DRAFT STAFF REGULATIONS;
- KEY EMERGING ISSUES ON SENIOR MANAGERS APPOINTMENTS AND CONDITIONS OF EMPLOYMENT.
UPDATE ON SALARY AND WAGE NEGOTIATIONS – 2017 and BEYOND;

UPDATE ON THE PENSION FUND RESTRUCTURING PROCESS;

UPDATE ON THE SIGNED DISCIPLINARY PROCEDURE COLLECTIVE AGREEMENT;

UPDATE ON THE WAGE CURVE NEGOTIATIONS AND MUNICIPAL CATEGORIZATION; and

UPDATE ON DRAFT STAFF REGULATIONS

VARIOUS ISSUES ON SENIOR MANAGERS APPOINTMENT AND CONDITIONS OF EMPLOYMENT REGULATIONS
The 2015/2018 Salary and Wage Collective Agreement will lapse on the 30 June 2018. It is therefore imperative that processes get underway to ensure that by the 01 July 2018, there is a New Salary Framework and collective agreement regulating same.

The National Executive Committee (NEC) of SALGA approved the Bargaining Strategy developed which guides SALGA negotiators.

This followed the collation of all reports received from the various Work-Streams that were set up to conduct research on certain identified critical areas in order that a clear and well-informed Bargaining Strategy is developed by the 31st March 2018.

The National Working Group Chairperson has already approved the representative SALGA Bargaining Team which comprises of delegates from all categories of municipalities and internal SALGA officials.

All relevant stakeholders that must be consulted prior to negotiations taking place were already identified and interactions are currently taking place to secure convenient dates in this regard.
# THE INITIAL PARTIES’ POSITIONS

The negotiations commenced on the 05 and 06 December 2017 and the second round thereof took place on the 31 January and 01 February 2018.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TRADE UNIONS POSITION</th>
<th>SALGA POSITION</th>
</tr>
</thead>
</table>
| SALARY INCREASES          | - An across the board salary increase of 15% (fifteen percent) or R3 155 (Three Thousand One Hundred and Fifty-Five Rand) whichever is the greater.  
- The calculation of CPI by STATSSA is distorted as it does not take into account “real inflation” and VAT charges borne by workers.  
- SALGA can’t plead “poverty”/affordability challenges as its members have been exposed by the Auditor General around poor governance and maladministration. | - SALGA offers the “projected” CPI of 4.6% as expected in the first quarter of 2018.  
- For the “Outer Years”, an average CPI for the period February to January of the following year plus 0.25%.  
- Salaries and Wage increases to be linked to CPI “inflation”.  
- CPI figures as produced by STATSSA the only reliable data that should guide cost of living adjustments.  
- The impact of the envisaged WAGE CURVE implementation to be taken into account.  
- Finally, SALGA proposes that the parties agree to the “Protection Clause” for all financial years.  
- SALGA has intervened on AG findings through MASP, etc. |
- SALGA should “persuade trade unions regarding its proposed “multi-year” collective agreement.  
- LG employees did not benefit from the previous multi-year agreements | - Multi-Year Collective Agreement (5 years covering 2018/19 – 2022/ 23 Financial Years)  
- Stability has proven to work for the LG Sector  
- Certainty in terms of Budgeting Processes is also ensured.  
- LG employees received wages above average inflation by 1.85% |
## Trade Unions’ Positions

<table>
<thead>
<tr>
<th>Item</th>
<th>Trade Unions’ Position</th>
<th>SALGA Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Wage</td>
<td>➢ Minimum Wage to increase to R10 000 per month.</td>
<td>➢ Minimum Wage to be guided by the agreed upon Percentage increase for July 2018.</td>
</tr>
<tr>
<td></td>
<td>➢ Current Minimum Wage of R6 845.09 is way above the National Minimum Wage of R3 500 as agreed at NEDLAC in 2016.</td>
<td></td>
</tr>
<tr>
<td>Housing Allowance</td>
<td>➢ The “Housing Allowance” to be increased to a flat rate amount of R2 000 (Two Thousand Rand) per month and extended to all employees;</td>
<td>➢ SALGA is opposed to any notion of promoting rental through a housing allowance that does not discriminate from home owners as it encourages “home ownership”.</td>
</tr>
<tr>
<td></td>
<td>➢ The Housing Allowance for Cllrs averages around R4 000 per month.</td>
<td>➢ SALGA proposes that an increase on the “Housing Allowance” shall be guided by the same percentage increase as indicated in paragraph 1, above (4.6%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>➢ The SALGBC parties have already commissioned an investigation for the introduction of a housing allowance which will be accommodative of the employees that constitute the “gap market” within the local government sector.</td>
</tr>
<tr>
<td>Medical Aid</td>
<td>➢ NIL proposal.....</td>
<td>➢ Maximization of employee “access” to medical aid through retention of the current employer contribution rate (R3 942.23) and the application of the 60/40 principle.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>➢ The current maximum employer contribution needs to be capped as provided for in the Main Collective Agreement.</td>
</tr>
</tbody>
</table>
UPDATE ON PENSION/RETIREMENT FUND RESTRUCTURING
INRODUCTION

- In the local government sector there are about 280,000 employees who are spread among various entities (municipalities and their entities).
- Pension Fund regime within the LG sector is split among three (3) types of pension funds which include the DB funds, the DC funds and the Hybrid Pension funds.
- The SALGBC parties are already agreed on the consolidation of the various pension funds to emerge with one or two Super Funds in the LG sector which would cover both the DC and DB types of funds.
- The Pension Fund Restructuring issue has been on the table since 2012.

- The Parties have finalized a “Draft” Collective Agreement which is premised on the following:
  1. Establish a uniform approach to the provision of retirement fund benefits to employees in the sector.
  2. Provide equitable access to retirement fund benefits for employees in the sector.
  3. Provide uniform rates of contribution to retirement funding for employees in the sector, subject to preserving the accrued rights of employees in existing defined benefit arrangements.
  4. Regulate retirement funds in the sector so as to improve overall efficiency and governance of funds.
  5. Give employees an opportunity to exercise an election to move from one local, regional or national fund in which their employer participates to another, within parameters established by this agreement.
ONCE IMPLEMENTED:

- New employees in the sector will be required or permitted to join only an accredited defined contribution retirement fund in which their employer participates, as further provided by clause 8 below; and
- Employers in the sector will pay over contributions made by and on behalf of existing employees for future service only to a retirement fund that is accredited as contemplated in the agreement, subject to the provisions of clause 9 and section 13A of the Pension Funds Act.
- All contributions will be paid within 7 days of the end of the month for which they fall due.
- The number and identity of accredited funds in which a particular employer will participate will be determined by decision of the SALGBC Executive Committee, applying a policy or criteria established by the bargaining council. A municipality will be required to participate in more than one fund only in terms of such decision.
- Prior to or in the absence of a decision of the SALGBC Executive Committee, a municipality will be required to participate only in a fund in which it participates as contributing employer as at the implementation date and which is accredited in terms of this agreement.
- The SALGBC will publish a list of accredited funds.
- Where an employer participates in more than one accredited fund, employees will be given an election at the start of employment as to which fund to join; and during the first six months of employment may choose to change funds.
- Within the first Six (6) Months of the implementation date, all existing employees will be given the opportunity to transfer to an accredited DC Fund.
THE KEY ISSUES ON THE DRAFT AGREEMENT

ONCE IMPLEMENTED:

- An existing retirement fund that is not accredited will be given notice of withdrawal by participating employers who are bound by the terms of this agreement, or notice of full or partial termination, where applicable, subject at all times to the provisions of the rules of the fund read with the provisions of the Pension Funds Act as amended from time to time.

- In-service members of the old fund will, with effect from the effective date of withdrawal by their employer or termination of the fund, as the case may be, cease contributions to the old fund and commence contributions to an accredited fund in which their employer participates (“the new fund”)

- Appropriate arrangements will be made wherever possible to facilitate continuation of any security offered by the old fund for any home loan or housing bond.

- The members’ interests in the old fund will, subject to the provisions of the rules of the respective funds and the provisions of section 14 of the Pension Funds Act, and as far as reasonably possible preserving any tax benefit applicable to pre-1998 accrued benefits, be transferred to the new fund;

- If the old fund is liquidated, the employer or employers participating in the fund will assume responsibility for funding any shortfall in terms of section 30(3) of the Pension Funds Act.

- The Accreditation Criteria focuses on “Governance and Administration” issues of Funds.
PROGRESS MADE THUS FAR...

- The negotiations on the matter took place on the 07 December 2017.
- The parties resolved to direct the Facilitator to re-visit the Facilitator proposal and attend to the following:
  - The re-look of the definition of “Member’s Interest”;
  - The potential challenges that might be occasioned by the “Decentralization” of the “accreditation process” to the SALGBC Divisions;
  - The creation of the “choice option” for employees while maintaining the limitation of funds that can be allowed to operate in a municipality;
  - The consideration of the “concurrent legislation” through COGTA to assist in the implementation of the restructuring process; and
  - The consideration of the fact that some funds might have allowed members to acquire “home loans” with their promised pension as a guarantee.
- The report from the Facilitator has since been received and awaits further engagements at the next round for negotiations on the same.
- The Minister (COGTA), at the meeting with the EXCO of the SALGBC on the 18 January 2018, was briefed about the Pension Fund Restructuring and the envisaged conversion of the “accreditation criteria” into Regulations should challenges be encountered at the implementation stage.
- The Minister conveyed his full and unreserved support for the process and the fact that it is long overdue.
- The revised Facilitator proposal has been shared with all operative Funds in the sector and their comments were further solicited.
- SALGA CEO has been mandated to conclude and sign a collective agreement in this matter.
UPDATE ON THE SIGNED DISCIPLINARY PROCEDURE COLLECTIVE AGREEMENT
THE BACKGROUND

- For the past three (3) years, our Local Government sector didn’t have any Collective Agreement regulating the management of discipline in municipalities.
- This follows the successful challenge on the application of the expired Collective Agreement which had been a subject matter of litigation at the Labour Court and the Labour Appeal Court.
- SALGA informed all municipalities that, as the erstwhile DC Collective Agreement had been nullified, municipalities should rely on the provisions of the Schedule 8 of the Labour Relations Act which guides on the processes to be followed.
- The majority of the municipalities have expressed their comfort in the afore-stated arrangement as it does not restrict them on the management decisions as well as timeframes to be followed.
- During October 2017, SALGA consulted all municipalities to solicit a mandate on the Facilitator Proposal around the Disciplinary Procedure Collective Agreement.
- SALGA received a “mandate to accept” the Facilitator Proposal from all provinces and this was duly communicated to the Bargaining Council.
- The “Drafting Team” was set up to convert the Facilitator Proposal into a collective agreement which has been signed by all parties on the 06 February 2018.
- A SALGA Circular has been developed for all municipalities informing them of these developments.
SALGA had resolved to emerge with a more flexible collective agreement in this matter drawing lessons from the last collective agreement which rendered the management of discipline so onerous that Courts had to be dragged into the process. SALGA believes such has been realized.

The DC collective agreement is effective from the 01 February 2018 and will endure until 2023.

SALGA believes the retention of DC collective agreement as “peremptory” doesn’t turn anything as compliance by all municipalities with collective agreements is “mandatory” anyway.

The DC collective agreement allows Municipal Managers to be the final determiners on the case that has been levelled against the employee. The timeframes issue is now dependant on the MM’s decision. The Municipal Manager or delegate shall first consider the allegations of misconduct and decide on the next course of action.
This collective agreement has also provided clarity on the two levels of representation. The agreement separates between the Presiding Officer and the Employer Representative that the municipality should appoint. The municipality is at liberty to appoint a “suitably qualified” Presiding Officer from outside in the event that no one is available within the municipality.

An employer representative can also be appointed from within the municipality, if it is practically possible. If the municipality wants to utilize the services of the “legal practitioner” as the employer representative, representations shall be made to the Presiding Officer who shall make a determination. Thus, there are minimal restrictions in this regard.

The DC collective agreement further differentiates the two cases of “precautionary suspension” while it also outlines processes regarding “Collective Misconduct”.

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UPDATE ON THE WAGE CURVE NEGOTIATIONS AND MUNICIPAL CATEGORIZATION..
PROGRESS MADE THUS FAR....,

- Emanating from the Salary and Wage negotiations of the 06 December 2016, 21st Century has since submitted its revised report on the Wage Curve and Municipal Categorization.

- The last round took place on the 02 February 2018 wherein the parties further enlisted critical negotiation matters which entailed the following:
  - Adoption of the Revised 21st Century Report;
  - Determination of Pay Scales that will be utilized for negotiation purposes;
  - Frequency of Review of Municipal Categories and Salary Scales;
  - Handling of Migration of existing employees from Old Employment Contracts;
  - Handling of Appeals against Municipal Categories;
  - Management of Job Evaluation as a pre-cursor to the Wage Curve implementation;
  - Adoption of the Interpolation Scenario as recommended by 21st Century;
  - Incorporation of “Performance Management” System to regulate Notch increments;
  - Handling of “Person to Holder” cases.

- The parties further resolved that a small team of four (4), two from SALGA and one from each of the trade unions, shall engage on the above and formulate positions for further negotiation at the next round of negotiations scheduled for the 07 March 2018.

- The Facilitator assisted the parties with the template that guides the team in this regard.
SALGAS POSITION ON THE DRAFT LOCAL GOVERNMENT: MUNICIPAL STAFF REGULATIONS & GUIDELINES FOR THE IMPLEMENTATION THEREOF.
INTRODUCTION AND BACKGROUND

• On the 26 October 2016, the President of SALGA was invited to submit comments on the **DRAFT LOCAL GOVERNMENT: MUNICIPAL STAFF REGULATIONS, AND THE DRAFT LOCAL GOVERNMENT: GUIDELINES FOR THE IMPLEMENTATION OF THE MUNICIPAL STAFF REGULATIONS** issued for public comments in terms of section 120 (4) of the Municipal Systems Act, in Government Notice number 1073 and 74 respectively, before 30 November 2016.

• In the main, SALGAs position reiterate its interest to preserve the municipal council’s constitutional authority, protecting the bargaining council’s scope of authority while supporting the closing of policy implementation gaps in the areas that were not regulated, and where institutionalising uniformed norms and standards is considered imperative.
BROAD COMMENTS

SALGAs position reiterate its intent to preserve the municipal council’s constitutional authority, protecting the bargaining council’s scope of authority while supporting the closing of policy implementation gaps in the areas not regulated, and where institutionalising uniformed norms and standards is considered imperative. It was further emphasised that this position paper was made in addition and complimentary to SALGAs position submitted and not conceded upon by the department;

• The draft regulation in its initial text sought to regulate matters that are in the domain of the South African Local Government Bargaining Council (SALGBC).

• The draft regulation provides for matters already regulated by some other legislation such as the Skills Development Act etc., this could result in duplicated efforts, increased reporting and compliance burden to municipalities, in that they would have to report to CoGTA and other custodian bodies, such as the SETA, DoL etc. at different times and on different reporting formats and templates.

• The scope of application is also questionable, as whilst the regulation indicates that it intends to regulate staff below senior managers, it also, in that same vein, states that senior managers are covered.
Some of the provisions in the proposed regulations are contradictory with those contained in the Regulations published senior managers during 2014, for an example the issue of staff establishment.

A call was made for consolidation of the regulations into a compendium of human capital management regulations, with the following chapters; municipal institutional development to regulate organisational development issues;

- regulation of issues pertaining to senior managers, and; the third chapter could regulate matters pertinent to staff below senior management issues.

The above proposal would avoid fragmentation, duplication and contradictory regulations and further ensure “user friendliness” and ease of administration.
## PROPOSED REGULATORY PROVISIONS AND HIGH LEVEL COMMENTS MADE BY SALGA

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>GUIDELINE</th>
<th>SALGAS COMMENT</th>
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</thead>
</table>
| 1. Staff establishment, job description, and job evaluation | ▪ Determining human resource requirements;  
▪ Developing a job description;  
▪ Oversight report template; | ▪ The SALGA’s current TASK job evaluation system as adopted by its NEC and as per the TASK MOU between the MMs within the different DMs should be recognised job evaluation system for municipalities.  
▪ JE is an employer driven process therefore consultation should not be with the SALGBC but with SALGA.  
▪ Only one system should be in place for municipalities.  
▪ Establishment of standards for job descriptions should read “the Municipal Manager may” not the Minister |
### 2. Recruitment, selection, and appointment of staff

- Recruitment, selection, and advertising of vacant posts;
- Recruitment requisition form;
- Interview guide;
- Conflict of interest declaration by interview panel member;
- Induction of staff;
- Attraction and retention of competent staff;
- Confidential exit interview;
- Human resource support for offices of the mayor, speaker, and whip

**SALGAS COMMENT**

- Provided refinements on this section. Echoed sentiment on over prescription on this section.
### PROPOSED REGULATORY PROVISIONS AND HIGH LEVEL COMMENTS MADE BY SALGA (Cont…)

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>GUIDELINE</th>
<th>SALGAS COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Terms and conditions of employment</td>
<td>• Employment contract;</td>
<td>• That the draft regulation seeks to regulate matters that are in the domain of the South African Local Government Bargaining Council (SALGBC).</td>
</tr>
<tr>
<td></td>
<td>• Staff member’s personal data form;</td>
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<td></td>
<td>• Probation review form;</td>
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<tr>
<td>CHAPTER</td>
<td>GUIDELINE</td>
<td>SALGAS COMMENT</td>
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<tr>
<td>3. Skills development</td>
<td>- Roles and responsibilities for skills development;</td>
<td>- Section proposed for matters already regulated by some other legislation such as the Skills Development Act. Cautioned against duplication and an increased reporting and compliance burden on municipalities, in that they would have to report to CoGTA and other custodian bodies, such as the LGSETA and DoL on different times and reporting formats.</td>
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<td></td>
<td>- Skills needs analysis;</td>
<td></td>
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<td></td>
<td>- Staff skills audit;</td>
<td></td>
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<td></td>
<td>- Personal development plan;</td>
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<td></td>
<td>- Evaluating skills development quality and impact.</td>
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<tr>
<td>CHAPTER</td>
<td>GUIDELINE</td>
<td>SALGAS COMMENT</td>
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<tr>
<td>4. Discipline</td>
<td>Notice of intention to suspend; Precautionary suspension letter.</td>
<td>Not supported. Draft regulation sought to regulate matters that are in the domain of the South African Local Government Bargaining Council (SALGBC).</td>
</tr>
<tr>
<td>5. Remuneration</td>
<td></td>
<td>107 - Information on remuneration Delete clause, catered for in the Basic Conditions of Employment Act</td>
</tr>
</tbody>
</table>
KEY EMERGING ISSUES ON SENIOR MANAGERS APPOINTMENTS AND CONDITIONS OF EMPLOYMENT
As with other elections, the 2016 Local Government Election presented challenges and opportunities for municipalities in the space of talent management, amongst others as the contracts of employment of senior managers linked to the political term of office would expire; These “long-tenured” employees (employed in the same position on an average of approximately 5 years) would be leaving municipality, in certain cases taking valuable institutional memory with them. This meant that councils had to work even harder to oversee the retention and or recruitment efforts to close this vacuum.

An inevitable spike in the search and retention of competent senior managers was experienced during this season. SALGA was at the centre of providing council with the much needed support in this regard. Circular 03/2017 (Guidelines on the Recruitment, Selection and Placement of Senior Managers) and other on demand services such as the rendering of competency assessments to assist municipalities comply with regulations refers.

The recruitment of senior managers was monitored, alongside other support measures offered. In this regard, only publicized advertisement for senior managers posts for period March 2017 – February 2018 are being reported upon on the subsequent slides.
A total of 458 senior manager vacancies were advertised from January 2017 to February 2018;

Once again, it should be noted that these numbers do not account for vacancies that were not publicly advertised as contemplated by chapter 4, regulation 9 (2), of the LG: Regulations for the appointment and conditions of employment of senior managers (2014).
SALGA assessed a total of 276 candidates for senior managers positions between March 2017 and February 2018.
### Provincal Breakdown of the Number of Positions for Which SALGA Rendered Competency Assessments Services

<table>
<thead>
<tr>
<th>Province</th>
<th>Total</th>
<th>WC</th>
<th>NW</th>
<th>NC</th>
<th>MP</th>
<th>LP</th>
<th>KZN</th>
<th>GP</th>
<th>EC</th>
<th>Total Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>113</td>
<td>9</td>
<td>3</td>
<td>15</td>
<td>7</td>
<td>10</td>
<td>51</td>
<td>1</td>
<td>13</td>
<td>458</td>
</tr>
</tbody>
</table>

- SALGA rendered competency assessments services to municipalities for a total of 113 senior management positons
- Total Vacancies as per the publicised adverts
SALGAs continued interactions with municipalities revealed progress made by municipalities in filling vacancies as depicted in the graph above. A total of 39 positions were filled out of the 113 posts assessed for.
VACANCY STATUS ON ASSESSMENTS CONDUCTED BY SALGA PER SENIOR MANAGEMENT CATEGORY

- Municipal Managers
- CFO
- Other Senior Managers

**FILLED**
- 24%
- 4%
- 72%

**NOT FILLED**
- 46%
- 13%
- 41%

- The graph depicts the category of senior management placements made in instances where assessments were conducted by SALGA on behalf of municipalities.
Some of the reasons for delays in filling vacancies as cited by municipalities:

- Non finalisation of the appointment process due to internal complexities;
- Re-advertisement of positions emanating from council decision;
- COGTA MEC directive nullifying SALGA assessments as non-compliant to regulations;
- Pending council resolution on appointments;
- Concurrence conundrum.
The graph depicts positions that have been filled, however the recruiting municipalities indicated that they utilised the services of COGTA and other service providers. This picture was gathered via telephonic interviews with custodians of this information in municipalities. It should be noted that this is work in progress as other municipalities have not provided information as yet, whilst others are still to be contacted.
As you are aware, COGTA has developed local government sector specific batteries to be utilised for determining competencies of senior managers in municipalities. We therefore humbly request that service providers appointed by SALGA be trained and accredited in the COGTA specific batteries and form part of the broader provincial service providers to perform such function.

For more information in this regard, your office is welcome to contact Mr Tebogo Motlashuping, Acting Deputy Director-General: Institutional Development on (012) 334 5763/ 0998 or email: TebogoMo@cgta.gov.za

Kind regards,

[Signature]

DIRECTOR-GENERAL: ACTING FOR DCOG

Date: 8/11/17
COGTA’S RESPONSE TO SALGA APPLICATION FOR INCLUSION ON THEIR POOL OF ASSESSORS

- THE LETTER DATED 8 NOVEMBER 2017 FROM THE THEN ACTING DIRECTOR GENERAL FOR DCOG, FOLLOWS MANY ATTEMPTS BY SALGA AT ENTERING INTO COLLABORATION WITH COGTA;
- SALGA HAS SINCE NOVEMBER 2017 BEEN PROMISED TRAINING AS A PREQUISITE FOR INCLUSION ON THE PANEL BY COGTA.
- FOLLOW UP EFFORTS TO PURSUE THE TRAINING HAS TO DATE NOT YIELDED ANY EFFORTS.
EMERGING ISSUES & LEGAL ACTIVITIES

SALGA has observed that there have been a significant circulation of legal opinions and “directives” issued by way of circulars in the municipal space on the issue of the appointment and conditions of employment of senior managers in recent times. The slides below give an overview of some of these developments:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>THEME</th>
<th>OPINION/SIGNIFICANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circular no. 14 of 2012, dated 28 May 2012 issued by the Chief Executive Officer of SALGA – Mr Xolile George</td>
<td>Status of contracts of Municipal Managers and Managers Directly Accountable to Municipal Managers;</td>
<td>Advised municipalities that Legislation provides for extension of contract by agreement with Council;</td>
</tr>
<tr>
<td>Circular no. 29 of 2016, issued on the 22 July 2016 by the Acting Director-General Department of Cooperative Governance, Mr Muthotho Sigidi</td>
<td>Management Of The Various Transition Measures:</td>
<td>Provides for renewal of contracts prior to termination and by council approval if contract permits and subject to manager attaining a outstanding or at least significantly above expectations during his or her tenure of office.</td>
</tr>
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</table>
EMERGING ISSUES & LEGAL ACTIVITIES

<table>
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<tbody>
<tr>
<td>Communique issued by Fikile Xasa, MEC: COGTA (EC), dated 28 July 2016 to Mayors</td>
<td>The purpose of the communique was to clarify the legal status of the existing employment contracts of municipal managers and direct reports, whose contracts were to expire after the local government elections;</td>
<td>Transition management in respect of senior managers contracts.</td>
</tr>
<tr>
<td>A Legal by R. P. Quinn Senior Council, dated the 15 March 2017 – Eastern Cape – by the State Attorney on behalf of COGTA</td>
<td>Opinion on the Supervisory Role of MEC for Local Government in the Appointment of Municipal Managers and Direct Reports. Composition of panel and renewal of contracts</td>
<td>Remedies available to the Minister equally apply to the. MEC remedies are not limited to a declaratory order, may take any step as long it is appropriate. Section 54A preferred as opposed to s57 on renewal; Maximum number of 5 panel members recommended;</td>
</tr>
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EMERGING ISSUES & LEGAL ACTIVITIES

<table>
<thead>
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<tbody>
<tr>
<td>Circular no. 03/201, dated 10 March 2017, issued by the Chief Executive Officer of SALGA – Mr Xolile George</td>
<td>providing guidelines on the sourcing and placement of senior managers;</td>
<td>▪ Recruitment and selection guideline toolkit. Applicable sections of the MSA and regulations interpreted.</td>
</tr>
<tr>
<td>A Legal Opinion RGL Stelzner (SC), dated 25 April 2017. by various WC municipalities</td>
<td>on the Renewal of Municipal Manager Contracts Remuneration Payable – reduced remuneration</td>
<td>▪ Not in support of appointed at reduced remuneration, exposure of MMs to competency assessment etc</td>
</tr>
</tbody>
</table>
**EMERGING ISSUES & LEGAL ACTIVITIES**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>THEME</th>
<th>OPINION</th>
</tr>
</thead>
</table>
| Legal Opinion   | Lawfulness of the COGTA Circular 4 of 2016 – On Competency Assessment, dated 9 June 2017, rendered for SALGA by Advocate Lebogang Kutumela | • COGTA Circular 4/2016 is unlawful and unconstitutional, as it amounts to usurpation of the Municipalities' powers.  
• Municipalities are entitled to ignore the Circular with impunity,  
• Non-compliance with the Circular does not result in the appointment of senior managers being null and void  
• Municipalities to decide on the identity of the Competency Assessor. The Municipality should, in so doing, also comply with the applicable procurement prescripts.  
• SALGA should engage the Municipalities and advise them not to comply with the Circular but to instead appoint any suitable Competency Assessors, including SALGA,  
• In the event that COGTA seeks to enforce the Circular, Municipalities can then raise a collateral challenge and seek an order declaring the Circular unlawful and unconstitutional.  
• The Regulations (and the Act) do not empower COGTA to perform accreditation functions. COGTA's conduct of accrediting assessors is *ultra vires* and falls foul of the legality principle.  
• Municipalities are enjoined to comply with their procurement prescripts, including the Constitution, the MFMA, the Supply Chain Regulations and the relevant Circulars before appointing any service provider. Appointment of assessors in breach of such prescripts will result in irregularity and the expenditure incurred being declared as irregular expenditure. |
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<th>ITEM</th>
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| *Legal Opinion by Local Government – Western Cape - G. Budlender SC, dated 5 August 2017 – Western Cape;* | *Appointment of MMs in terms of the Systems Act 32, 2000* | - Renewal of contracts of senior managers triggers the provisions of section 54A,  
- Prescribed qualifications applies to contract entered into pre amendments;  
- No obligations to Councils to advertise post should there be prior vested rights;  
- All contracts of MM entered into after the commencement of the Amendment Act, including “renewed” contracts, are subject to the upper limits of remuneration as prescribed; |
## EMERGING ISSUES & LEGAL ACTIVITIES

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<td>Circular Dated 18 August 2017, issued by the Member of the Executive Council (MEC) of the (Cogta) in the Eastern Cape - Fikile Xasa;</td>
<td>Renewal of Employment Contracts of Municipal Managers and Direct Reports, affirming the Judgment Of The High Court In The Case Of Solomzi Xuma V Engcobo Local Municipality Case No. 383/2017).</td>
<td>Orders municipalities to appoint senior managers in accordance with processes set out by section 54A of the municipal systems act; Orders municipalities to rescind contracts renewed outside the above alluded to process.</td>
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<td>A Legal Opinion by Advocate JH De Waal commissioned by Sengqu municipality, dated 18 January 2018;</td>
<td>Renewal of Employment Contracts of MM and those Managers Reporting Directly to MM triggered by the MEC circular ordering rescission of renewed contracts. (The MEC relies on an opinion of Adv. R P Quinn SC dated 15/3/2017 and the judgment of Jolwana AJ in the matter of Xuma v Engcobo LM and Others (383/2017) [2017] ZAECMHC 35 (8/8/ 2017) (“Engcobo”).</td>
<td>Rescission will result in breach of those contracts; It is incumbent on the MEC to approach a Court for a declaratory order in respect of the validity of the renewal decisions and contracts with the senior managers in question.</td>
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SALGAS RESPONSE – LEGAL BRIEF

SUMMARY

In order to influence policy positions, informed by the afore-mentioned legal developments, SALGA has commissioned a legal opinion to address the issues. A broad consultation process would be incepted upon conclusion.

- The interpretation and application of section 54a, 56 and 57 of the Local Government: Municipal Systems Act, no. 32 of 2000 and the 2014 Regulations. Can any of these provisions be implemented exclusively from each the other? Do any contradictions exists?

- Whether the violation of the COGTA Circular 29 of 2016 constitute unlawfulness.

- What is the effect and force (if any) of the provisions of CoGTA provincial and national Circulars outlined above? What is the status of the circular? Is the MEC empowered to issue a directive to a municipality to rescind a decision of its council?

- Is the MEC’s remedy in the event of the alleged non-compliance by a municipality with the appointment procedures of a senior manager not to approach the court for a declarator or to apply for an order setting aside such appointment?

- Can the Municipality disregard the Circular or is it required to take action? If the latter, what action should the municipality take?
What is the effect of the opinion of Quinn SC and the MEC’s reliance thereon, including the effect of the declaration of invalidity of the Local Government: Municipal Systems Amendment Act 7 of 2011 by the Constitutional Court in the matter of South African Municipal Workers’ Union v Minister of Co-Operative Governance and Traditional Affairs (CCT54/16) [2017] ZACC 7; 2017 (5) BCLR 641 (CC) (9 March 2017) and how should SALGA posture itself against this to be able to fulfil its mandate in the best interest of its members?

The Engcobo judgment and the MEC’s reliance thereon.

Who is prejudiced by the failure to comply with s 54A(4) of the Systems Act?

The effect of the Circular on existing employment contracts.

Make recommendations on how SALGA should authoritatively proceed in view of the prevailing status.

With due regard to the myriad of legal opinions already Commissioned and/or circulars in circulation, what legal and/or constitutional remedies are available to SALGA as an association of municipalities seeking to protect the constitutional independence and interests of same municipalities.
CONTEMPLATED WAYFORWARD

- Finalisation of SALGA legal opinion constitutional law experts which is to inform SALGAs approach to dealing with matters in the domain of senior management regulations holistically, which may result in a declaration of an IGR dispute.

- Institute further structured engagement and support measures with affected municipalities with a view to assist them to overcome transitional and contractual matters at their disposal eg. eNgcobo, Walter Sisulu municipalities.

- Continue pursuing formalisation of SALGA accreditation status in the interest of cooperative governance goals and objectives, notwithstanding the authoritative legal advice received on the locus standi of COGTA circulars.
THANK YOU....