

BUILDING INDUSTRY BARGAINING COUNCIL (CAPE OF GOOD HOPE)

CIRCULAR NO.: LEG01 / 2026

DATE: 03 March 2026

TO: ALL EMPLOYERS AND EMPLOYEES OPERATING WITHIN THE REGISTERED SCOPE OF THE BIBC

SUBJECT: LEGAL CONSEQUENCES FOR CIRCUMVENTION OF THE BIBC'S MAIN COLLECTIVE AGREEMENT THROUGH LIQUIDATION OR DEREGISTRATION

Purpose of this Circular

- 1 The purpose of this Circular is to warn employers against any attempts to evade their legal and financial obligations under the BIBC's Main Collective Agreement (CA) by deregistering or liquidating their existing businesses and setting up new entities.
- 2 As explained below, such conduct may constitute criminal offences and the liability incurred remains enforceable against both the old and new entities, as well as the individuals involved.
- 3 The BIBC will not hesitate to institute legal action where necessary and employers are therefore urged to comply with their obligations.

All correspondence to be addressed to the Secretary

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B2 Birkenhead Building Hermanus 7200 • PO Box 1825, Hermanus 7200 • Tel: 028-312 2861 • Fax: 028 312 2866
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Clause 6 of the BIBC's Main Collective Agreement

- 4 In accordance with clauses 6(3) and (5) of the CA, the BIBC **reserves the right to refuse or cancel the registration of an employer** who is substantially the same as a previously registered employer that remains indebted to the BIBC. The new employer will not be issued with a letter of good standing until the previous employer's debt is settled.
- 5 Being unable to secure a valid letter of good standing from the BIBC could have **serious implications for employers in relation to their ability to tender for and continue with projects within the building industry.**

Consequences in terms of the Companies Act, 2008¹

- 6 In *Furniture Bargaining Council v AXZS Industries (Pty) Ltd Trading as Don Elly Enterprises* (2018/40163) [2020] 1 All SA 391 (GJ) (11 October 2019) the High Court held that “...**the failure of a company to pay over pension fund contributions deducted from employees' salaries is often a sign that the employer is under such severe cash flow constraints that it is impelled to raid its employees' pension fund in order to finance the business. It may also be a sign that the company is trading fraudulently or recklessly in violation of section 22 of the Companies Act 71 of 2008....**” Such conduct **could result in a notice being issued** to the company in terms of section 22 of the Companies Act **ordering it to cease operations with immediate effect.**
- 7 ²Section 83 of the Companies Act provides that the removal of a company's name from the CIPC register does not extinguish or affect any liability of the company, its directors, or its shareholders in respect of any act or omission that occurred prior to the removal. **Liability may therefore be enforced against the company and the responsible individuals as if the company had not been deregistered.** In the recent case of *James v Genesis Distribution Projects (Pty) Ltd & Another* (2026) 47 ILJ 201 (LC)³ (the Genesis case) the Labour Court

¹ Similar provisions apply in relation to Closed Corporations with reference to the Closed Corporations Act, 1984.

² The BIBC has been advised that an application for leave to appeal and condonation application has been filed which is unlikely to succeed given that the judgment follows the principles established by the Labour Appeal Court in [Masoga and Another v Pick n Pay Retailers \(Pty\) Ltd and Others \(JA14/2018\) \[2019\] \(2019\) 40 ILJ 2707 \(LAC\) \(12 September 2019\)](#).

³ At para [35] – [36].

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confirmed that any former director or shareholder remains liable in their personal capacity if an arbitration award is not complied with – even after deregistration of the entity.

- 8 Section 214(1)(c) of the Companies Act further makes it **a criminal offence for any individual** to participate in actions or omissions intended to defraud a creditor or employee. Any attempt to deregister or liquidate an entity in order to establish a new one for the purposes of evading the payment of levies, wages, or other contributions therefore amounts to a criminal act. Any person convicted of such an offence could be **sentenced to pay a fine or imprisonment for a period not exceeding 10 years, or to both.**⁴

Consequences in terms of the Labour Relations Act, 1995

- 9 Section 197 of the Labour Relations Act (LRA) provides that an employer who **transfers its business operations to a new entity remains liable for all employment-related obligations of the original employer.**
- 10 The **employees of the original employer transfer to the new employer automatically** (by operation of law) on the same terms and conditions. If the employees are not transferred to the new entity and are instead dismissed, the new employer is at risk in terms of section 187(1)(g) of the LRA for **compensation awards of up to 24 months remuneration (automatically unfair dismissals).**
- 11 It should further be noted that section 200B of the LRA, extends the definition of "employer" to include individuals who ***“carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law.”***
- 12 The Labour Appeal Court applied section 200B in the matter of *Masoga and Another v Pick ‘n Pay Retailers (Pty) Ltd and others* [2019] ZALAC 59, and specifically stated that:

“The purpose of the section is said to be: to prevent simulated arrangements or corporate structures that are intended to defeat the purposes of the LRA or any other employment law, and to provide for joint and several liability on the part of persons found to be employers under this section for any failures to comply with an employer's obligations

⁴ Section 216.

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under the LRA or any employment law. This is particularly important in the context of subcontracting and outsourcing arrangements if these arrangements are subterfuges to disguise the identity of the true owner.”

- 13 **The BIBC is accordingly empowered by the LRA to recover outstanding debts from newly registered entities or individuals (including directors or shareholders) who were responsible for the failures of previous entities to comply with the CA.**
- 14 In the Genesis case (referred to above), the Labour Court relied on section 200B of the LRA to **hold a former director of a deregistered entity in contempt of court** for failing to comply with an arbitration award against the deregistered entity. The Court **ordered the former director to reinstate the dismissed employee into the new associated entity or pay a fine, failing which she would be imprisoned.**

Consequences in terms of the Pension Funds Act, 1956

- 15 Clause 31(12) of the CA provides that:

“When an employee fails to qualify for death, disability, and/or funeral benefits in terms of the Fund because an employer has failed to pay contributions owing by it in respect of the employee's membership, such employer shall be liable to pay to such employee or his beneficiary an amount of money equal to the death, disability and/or funeral benefits that would have been payable to the employee under the rules of the applicable fund had the contributions been paid by the employer.”

- 16 The **Pension Fund Adjudicator** takes non-compliance by employers with the Pension Fund Act very seriously. It **has successfully enforced liability against various employers**. By way of example, see *Gafane v the The Orion Money Purchase Pension Fund (SA) – PFA/GA/761/99/NJ*; *Martin v The Printing Industry Pension Fund for SATU Members (2003) 4 BPLR 4562 (PFA)*; and *Mbundu v Security Employees National Provident Fund (PFA/WE/2314/05/KM)*.
- 17 Section 13A(8) of the Pension Funds Act further holds any director, member of a closed corporation, or person actively involved in the management of a business personally liable for

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unpaid pension contributions. **This means that individuals can be held personally liable even if the employer is liquidated or deregistered.**

- 18 In *Engineering Industries Pension Fund v Installair (Pty) Ltd and Others* [2025] ZAWCHC 8, the Western Cape High Court confirmed that financial distress does not excuse an employer's failure to remit retirement fund contributions deducted from employees' salaries. The Court relied on section 13(A) when ordering the directors to pay the outstanding contributions and interest in their personal capacities.
- 19 In addition, section 37 makes it **a criminal offence to fail to pay pension contributions in full. Penalties can include a fine of up to R10 million, imprisonment for up to 10 years, or both.**
- 20 **The BIBC has already reported multiple cases to the South African Police Service for investigation and potential prosecution. These cases are opened against the employers and the responsible individuals in their personal capacity.**
- 21 In so far as reputational risk is concerned, the Financial Sector Conduct Authority (FSCA) also maintains a publicly accessible list of employers who have deducted but failed to pay over contributions. **This list poses a risk of reputational damage for employers as it is available on both the FSCA and BIBC's websites.**

Key takeaways

- 22 The BIBC remains committed to protecting employees' rights and maintaining fair competition within the industry.
- 23 Any attempt by employers to evade their obligations under the CA or applicable legislation through deregistration, liquidation, restructuring, or the establishment of new entities will therefore be met with decisive enforcement action. Such attempts do not extinguish existing liabilities and may expose both the legal entities and the responsible individuals involved to civil claims, personal liability, contempt proceedings, and criminal prosecution – which could result in substantial fines and even imprisonment.

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- 24 Should any employer or individual be uncertain about its obligations, it is encouraged to seek guidance from the BIBC without delay.



Regards: Pearl Pugin - CEO

Building Industry Bargaining Council

(Cape of Good Hope)

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