**Introduction**

This is a Submission to the Portfolio Committee TAPSOSA on behalf of its members and other interested companies. The organisation was formed in…………………2016 based on the mandate by a large number of employers who gathered at the Galaga Estate on the date mentioned above. We are in the process of finalising the registration of the organisation. This submission is concerns the misuse of the provident fund (Private Security Sector Provident Fund) by a certain section of the security employers. The fund is well-known by the name of PSSPF. This submission is sought to request the parliament the seems to be continuous abuse of powers by white employers and institutions of national importance such as FSB. We begin with the following submission to highlight our outcry and frustrations.

We will only deal with the highlights in our presentation so that members of parliament could read through the details contained in this submission in their own time.

**Appointment of Trustee**

The appointment of Trustees remains problematic as it excluded the significant section of employers and employees who are direct participant in the fund. In illustrating the challenges we highlight the following matters:

**Fund rules**

7 (A).1 Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least of whom 50% the members of the fund shall have the right to elect.

7 (B) 1 The registrar may on written application of a fund and subject to such conditions as may be determined by the registrar-

1. Authorise a fund to have a board consisting of less than four board members if such number is impractical or unreasonable expensive: provided that the members of the fund shall have the right to elect at least 50 percent of the board members;
2. Exempt a fund from the requirement that the member of the fund have the right to elect members of the board, if the fund-
3. Has been established for the benefit of employees of different employers referred to in the definition of “pension fund” and “provident fund” as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

Section 1 (xxy) of the Income Tax, 1962 (Act No. 58 of 1962) read “provident fund” means any fund (other than a pension fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied-

1. that the fund is a permanent fund bona fide established solely for providing benefits for employees on retirement from employment or solely for providing benefits for widows, children, dependant or nominees of deceased employee or deceased former employees or solely for a combination of such purpose; and
2. that the rules of the fund contain provisions similar in all respect to those required to be contained in the rules of the pension fund in terms of sub-paragraph (i), (ii), (iii), (v) and (iv) of paragraph (b) of the definition of “pension fund”; and
3. that the rules of the fund have been complied with

Without attempting to draw any legal argument, the reading of this section it presupposed that the other 50% shall be elected by employers who are participating employers and 50% by members. We are not informed of the reasons that led to the FSB granting the exemption for the participating employers and members not to have the direct right to elect employer and member trustees. It would appear that FSB, in all material reasonable grounds decided to use representation of a small grouping of white employers that portray themselves as organised employer and trade unions.

Our members are accordingly not prepared to be represented by the current employer trustees who have deliberately excluded black employers. We note the FSB’s granting of exemption to allow this grouping to undermine the democratic rights of participating employers to vote for the trustees of their choice but rather to allow SANSEA and SASA to appoint trustees on behalf of all participating employers. Is our belief that FSB should have tested this view will all participating employers and members before arriving at the exemption conclusion. {w}e fail to see how FSB can continue to unilaterally decide to grant exemption in the exclusion of majority. It is common cause that majority of the employer trustees in this current board are not even shareholders or an employee of, an employer but rather some of them are pensioners. We further contend that if the status quo is allowed to continue, it will continue the agenda of liquidation of predominantly black companies by the predominant white companies. The result of this narrow view by FSB is that a bigger portion of the employers are renegade to PSSPF as a way to demonstrate their disapproval of FSB’s decision. We feel that our democratic rights to have trustees of our choice is been trampled upon. It is improper that we are leaving in the 23 century of our democracy, that institutions of national important remain used to promote the agenda of the few against that of the majority. We can no longer be regarded as inferior and continue to be discriminated against through utilisation of unfair processes.

For us, this is fundamental as it touch to our core rights of existence and the right to trade without discriminated, intimidated, and harassment that is due to our colour of skin. There can be no us without us and we can’t keep quite whilst we continue to be oppressed. The recent court actions by members of SANSEA and SASA against tender boards for awarding tenders in favour of black companies is a proof of the cause of action that PSSPF is used as an mechanism to liquidate black owned companies. The mere fact, that PSSPF without the mandate of the board, is used to support court actions by members of SANSEA and SASA against tender boards and predominately black owned companies demonstrate the extent of abuse of powers by some trustees and the Principal Officer (PO) of the fund. It is our contention that PSSPF should never be used as an intervention tool to block certain companies from obtaining tenders. The role of the fund should is reduced to meddling with the awarding of tenders and not the policing of non-compliance. Resources intended for the benefit of members are allowed to be misused to advance the status quo of white supremacy and black people expected that they should enjoy the right to trade without under the control of the white master.

This submission is further motivated by the recent submission made to the Registrar of the Labour Relations by the trade unions, SANSEA, SASA and the alleged deregistered other employers’ organisation applying for the registration of the national bargaining council which notice is attached here as **annexure A**. This notice demonstrates the lack of representation by organisations but afforded the right by FSB to appoint trustees to the detriment of majority. The representation in the sector is address in detail under the section of the national bargaining council below.

The Department of Labour committed err in the conclusion that the fund established in terms of the Pension Fund Act (Private Security Sector Provident Fund) is capable to be granted compulsory status whilst this fund is not under the Department of Labour. The Basic Conditions of Employment Act No 66 of 1995 Section 43 Powers and functions of statutory Council (1)) The powers and functions of a statutory council are-© to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the statutory council or their members and (d) to conclude collective agreement to give effect to the matters mentioned in paraphs (a) (d) and (c). We are disabled to establish as to where the Minister of Labour is empowered to promulgate a one fund without the provisions of Section 43. We belief that by promulgating one fund she errs the constitutional provisions. We are of the view that the role of the minister should be to establish provident fund rates, the eligibility of members and criteria for funds to co-exist. The establishment and management of these funds should be left under the jurisdiction of FSB in line with the provisions of Pension Fund Act.

There is also allegation of abuse of powers and functions by member trustees who are accused by other unions and members of issuing member benefit certificates only to members who are willing to join their unions on a basis that they have access to the member’s benefit statement. According to the allegation benefit statement are printed once a member has signed up the stop order form for the union. It is further alleged that these unions also arrange with some employers to grant them workplace closed shop agreements in return they will be protected when they are non-compliant.

**We request the honourable members of parliament to investigate such allegation by doing random inspection to all companies where closed shop agreements have been signed with the unions currently represented in board. The list for such unions could be obtained from the CCMA.**

**Disqualification as Trustee**

The fund rules of PSSPF provide the following provisions:

12.5B.1 A person is disqualified from being nominated, appointed, or continuing in office as a Trustee if that Person:

12.5B.1.1 was previously a Trustee and was found by the Trustees to have been in breach of the Fund’s Code of Conduct, or has been previously removed as a trustee of another retirement fund, unless the trustees agree to the contrary, or

12.5B.1.2 is under 18 (eighteen) years of age; or

12.5B.1.3 is mentally or physically incapable of discharging his or her duties in terms of these rules and/or the Act; or

12.5B.1.4 has had his or her estate sequestrated or surrendered or assigned in favour of creditors and who has not been rehabilitated by a court; or

12.5B.1.5 has been convicted by a court of theft, fraud, forgery, or any offence involving dishonest; or

12.5B.1.6 has been discharge by a court from any office of trust on account of misconduct; or

12.5B.1.7 has been convicted by a court on any charge and sentenced to a prison term without the option of a fine; or

12.5B.1.8 being an employer trustee, is a shareholder in or is an employee of, an employer (which for the purpose of this rule include the holding company of an employer or any subsidiary company of such holding company) which at the time is either not exempted from participating in the Fund in terms of rule3.3 or which at the time is not compliant in respect of the contributions payable by that employer to the Fund because it has not contributed timeously with matching contribution schedules as required in terms of section 13A of the Act and these rules, for the immediate 3 (three) months before that date. In the event of any dispute as to whether, for this rule, an employer is so non-compliant, an employer is deemed to be non-compliance until the matter is settled.

**Our argument**

We are aware that one of the trustee currently in office was declared by the previous board that he was in breach of the Fund’s Code of Conduct and therefore prohibited from holding office. We are told that the reasons were because of the various transgression of the code of conduct by unilaterally acting on a frolic of his own as can be seen by the commissioner that was appointed by the board to investigate the matter. It was reported that the board could not condone such conduct and this was a determining factor not to accept his nomination. The board decision was not to accept his nomination but the high court directed that the matter should be referred to the FSB by the trustees although that did not avail with the new board.

The commissioner find that it was improper for this trustee to agree with EXTREME (the service provider), that EXTREME should be paid R200 upfront per member for the provision of collecting death certificates when the service level agreement only made provision of R300 or R500 on successful fully paid members’ claims. The consequences of his action resulted to the fund paying more as the upfront payment did not guarantee that the information collected will result to the conclusion of outstanding claims and thus the fund forced to pay twice or more until the information is successful and the claim is paid

There were recently further media report that link this trustee as a silent partner to the same service provider. An attachment of the article is marked herein as **annexure B.**

Notwithstanding the fact that the trustees should protect and promote the object of the fund, we continue to experience a continued agenda orchestrated against black owned companies in deviation to the object of the fund. PSSPF is being used as a mirror to the continued targeting of predominately black owned companies being advocated by SANSEA and SASA using their deployments. The Fund appears to be used as a backup system to systematically support actions undertaken by members of these association against black owned and emerging companies.

There is express anger from our members and black employer in general because they believe that the fund is been put under unduly influence and pressured against unwanted employers. What is clear is that by the end of the last century PSSPF had become an established wrong practice for the sustainability of the status quo. As the marginalised employers we undertake a task of inter alia quantifying the reasonable outcry and seek intervention from the honourable members of parliament.

In addition, in reading the provisions of the act and the rules of the Fund, majority of the current employer trustees don’t qualify to be trustees as they are not either employees, shareholders, or directors of any security company. It cannot be correct in these circumstances that a person who is not an employee, shareholder or director of any company can be allowed to use the representation of the legitimate employers and exclude them. It is for this reason that we humbly call on the honourable members of parliament that in the best interest of the members, employers and the public, they should disband this board and call on FSB to appoint an interim board to effect the election of permanent trustees by members and participating employers. Individuals other than a shareholder or an employee of an employer, and who want to be a trustee should apply as the independent trustee.

Worst of all, some of the current trustees are pensioners who receive government grant but assume position of trust although abuse them. We are also much concern about the amount of allowance in which are paid to trustees where some trustees are said to be taking home more than R150 000 per month. This is despite the fact that the same people they supposed to serve earn peanuts while the backlog of members’ claims continue to pile-up hence most of the members do not have alternative income and their claims have been outstanding for years. The expenses mentioned above exclude expenses for the hotel accommodation, flights, conference facilities, catering, and refund of trustees for their cars to and from the airport or meetings. It is so heart-breaking to note that some of these persons are making the trusteeship as a full-time career package.

In reading the pension fund act and the rules of the fund, the role and responsibilities of the trustees is more of a strategic nature. The day to day involvement of trustees on management and administration matters can only be financial beneficial to individual accumulation with no progress on members matters. **We ask this parliament to put an end to this cruel and greedy practice.**

Majority of members and employers have for long not having confidence to the trustees and the fund in general. A pursued narrow interest has overthrown the central interest of members and their dependants and manifest itself during tender adjudication.

It is an established norm that whenever tenders are adjudicated in favour of predominately black owned or emerging companies, the fund is used as a damage control system. It is apparent that tender awarded to businesses who are not competing SANSEA and SASA members, such tenders are never challenged. it is only in the event that members of these association were unsuccessful in obtaining tender, that the trustees and the PO jump and leave no stone unturned**. It is imperative to point out that the sole purpose of the fund by its own design is to provide benefits to members and their dependants and it is for this reason that the parliament is requested to give this matter a priority. It is concerning to note that to this date the fund is sitting with more than 69 000 old claims while a new backlog under the business as usual is beginning to grow at an alarming pace.**

All attempt to engage the trustees went in vein, instead we were recently insulted by drunk trustees and who did not want to hear anything from us instead throwing stones at us and calling us illegitimate. What puzzled us is when the other employer trustees where so rejoicing when the member trustee was unable to regain his balance and fall all over the place and treating us with disrespect.

It is further important that we highlight to the Portfolio Committee the recent events as follow:

1. It was alleged that members of SANSEA and SASA lost a tender bid to Isidingo. As the members of these associations did not take well the loss they apparently attempt to pressuring the previous board for the fund to join their court application in the High Court in Pietermaritzburg. Is alleged that the board was pushed to vote on the matter but the employer trustees were unsuccessful and very unhappy when lost the vote. As we understand, with the agreement of the parties, the matter was referred to the arbitration and Isidingo successfully wining the case.
2. The second matter was an alleged push of the previous board chairperson to sign a confirmatory affidavit without the mandate of the board. The then chairperson so brilliantly refused to sign this affidavit and it was the key for the members of SASA to succeed in their litigation hence they lost. The attached emails of exchange and the court order are marked here as **annexure C and D** respectively.
3. The most recent case is pertaining Mafoko and members of the two associations in which they were successful and using information of the fund being supported by the PO and as we understand without the mandate of the board.**.** We are further liable informed that some of the information used in the litigation was given to the fundby PSIRA in a position of trust as provided for in the MOU between the parties although the misuse as to maintain status quo.

**Establishment of the National Bargaining Council**

As set out in this submission the reason to seek intervention from the members of parliament, we are fearing that the registration and establishment of the bargaining council is mischievous and is to set an aggressive framework to target and continue marginalisation of black and emerging businesses by the predominant white companies. It would appear that the very strong motivation is informed by the will to take direct control of the enforcement institution for the advancement and advocacy of the retention of status quo amongst other things. For the mere fact, that the figures presented to support the application for the council are manufactured to mislead the Registrar, NEDLAC and the Minister of Labour into registering and establishing a bargaining council for sector in which its mandate would be to sustain and complete the project of liquidating black owned and other emerging businesses. Insofar as the reasons by the trade unions and some employers organisations are concern, this is not motivated or demonstrated by facts that will demonstrate that the existing regulatory bodies are not capable to fulfil their duties except the motive mentioned above. The attention of the honourable members of parliament is drawn to the pertinent issues as illustrated below:

According to the application for the registration of the bargaining council-

1. Employees who are members of trade unions = 92 612
2. Organised employer = 132
3. Total number of employers in the sector 6000
4. Total number of employees employed by the organised employers = 211 000
5. The total number of employees in the sector 250 000

We submit that these figures are the misrepresentation of facts and are manufactured to mislead not only the Registrar but also the NEDLAC and the Minister of Labour. According to the verification conducted by the CCMA at the end of July 2017 the verified figures are presented as follow:

1. The total number of employers who are party to the bargaining council remain at 132
2. The total number of employees employed by the employers and who are members of the unions is 134 823 which is an increase from the previously claimed during the application.
3. The total number of employees employed by the employers who are party to the council is 178 811 less than 211 000 claimed in the application

The figures mentioned in the application have severally impact to employers and employees due to the fees payable to the council. Furthermore, it will give more power to the minority to rule and prejudice majority. Thirdly, it will pursue the above-mentioned projects although to the detriment of black owned and emerging companies. According to the figures from PSIRA which were reported during the recent roadshows are as follow:

1. The total number of active employees in the sector is more than = 485 000
2. Total number of security business is more than 6000

We are further liable informed that the data of UIF and SARS provide as follow:

1. UIF, total number of businesses operating in the sector are more than 6700
2. Total number of employees employed in the sector are more than 700 000
3. SARS, the total number of security businesses operating in the sector are more than 7000
4. Total number of employees employed in the sector are more than 800 000

These figures may generally exclude the fly-by-night operators. We are informed that the gap between the above figures is as a result that a significant number of employers who are not registered with PSIRA are registered with UIF and SARS as their data is link to that of the registration of companies with CIPRO. Secondly, in order for some companies to hide from PSIRA and PSSPF they do not register as security company but operate as trading entities.

Our illustration herein seek to zoom and expose the orchestrated importing of the truth through manipulation of figures to suit the agenda of certain grouping. These data were made available to all roadshow participants although the parties to the application of the council appear to have deliberately ignore them as they do not suit their mission of misleading the Registrar, NEDLAC and the Minister of Labour.

It is important to bear in mind that the mere registration and the establishment of the council may guarantee the project of status quo and thus the transformation agenda being derailed. It may also be that, that the parties to the council may further manufacture the figures to ensure that the Minister is obliged to extend the main agreement to non-parties.

There is a growing negative perception that seek to suggest that the creation of the council is intended to interfere with the tender processes and to be used to prohibit the attainment of tenders by the oppressed and the rich people continue to be richer and flourishing. There is a fallacy created that seek to suggest that the bargaining council will improve the conditions of employment of security employees and increase the level of compliance although no scientific research accompanying to justify this. This is despite the fact that some of the individuals who are now champions to the establishment of the council went on retirement completely opposed to such formation although all of a sudden, they are keen and leaders of changes. These are the same people who have been misusing the information available to them through the position of trust they hold as trustees to patronise black and emerging businesses.

1. There is no convincing reason as to why they believe that the existing regulatory bodies such as the Department of Labour, PSIRA, FSB, Pension Fund Adjudicator and PSSPF are not capable to enforce compliance. This is except that the establishment will be a solution to maintain white supremacy to have direct control of the regulation.
2. The employers and employees cannot afford the payment of additional cost in addition to the already existing high regulation cost in the sector. As per the existing laws, the employers and employees are required to pay for PSIRA fees, through the provident fund pay for FSB and Pension Fund Adjudicatory, pay for the regulation of the sector through Department of Labour i.e. UIF and workman compensation and so forth and payment for the provident fund contributions and collection. All the mentioned, are tasked with the regulation of the sector which is already over regulated. The establishment of such council will not only be arbitrary but also its application will have irrational consequences to black employers.
3. There is an existing principle agreement between the trade unions and the small grouping organised under SASA, SANSEA and the alleged to be deregistered employers’ association, that the existing Sectoral Determination will be adopted as the main agreement for the council. It is therefore a fallacy for the unions to promised their members that the arrival of the council will deliver better working conditions. We have been on record calling for the scrapping of area 3 now 2 for the mere reason that it remains discriminating against security employees as if we are holding them liable for the creation of bantu-stands and homelands. If unions sit in the bargaining structure and still participating to the oppression of the very same members but keep them on the promised land while collecting membership fee every month year in year out. Defending of the scrapping of the apartheid wage gap is contradictory to the formation of the bargaining council and unions should refrain from such conduct. It is our belief that the abolishment of the magisterial areas or districts will automatically improve the living conditions of security employees and their families. It is in this context that we will not support the maintenance of the status quo. **The collapse of all areas into a single area, will with no doubt in our mind, level the playing field and do away with apartheid legacy.** On the 1 September 2017, we will see the wage gap widening further as a result of the agreement concluded between the above-mentioned associations and trade union two year ago. However, this agreement did not seek close the wage gap but rather to widen it further. The gap will mean the wage different is R1 795 between the lowest paid and the highest paid employee. The lowest paid security employee will remain at the bottom earning R3 414 and the highest paid will earn R5 209.
4. The maintenance of more than one area do not only disadvantage security office but also the emerging employers are most disadvantage in relation to constructing of correct tenders. A simple example is the costing formula when employer have to nominate between the magisterial district and the logic. Employers operating in Soweto use the area 1 rate that is applicable to Johannesburg but only to find out that they have over price their tender given that on the legal argument Soweto falls in area 3. For emerging employers to understand these principles, to the extent possible, it require intensive training and orientation and enabling systems.
5. We are of the view that such an establishment will with all probabilities be used as the machinery to continue to intervene and redirect the issuing of tenders in particular by the public sector for the benefit of the very already rich businesses. Tender processes should be market driven not enforcement institutions driven. The use of enforcement agencies to interfere with the adjudication of tenders, violets the separation of powers. There should always be separation of powers between enforcement agencies and tender boards. Where issues of non-compliance are identified, they should be reported to the enforcement institutions without seeking to block the awarding of tenders through dubious means. And lastly, where we identify weaknesses in the existing enforcement framework, we should instead correct such and participate in the finding of solutions rather than introducing other mischievous means.
6. The existing regulatory framework should be strengthened to give effect to the application instead of creating more red-tapes through creation of institutions that overlap each other. We should vigorously and robustly engage on the existing policing framework with a view to strengthen it and address loopholes. We need to strengthen the capacity of the existing regulatory bodies in particular PSIRA. The responsibility of the users of security services need to be given a particular focus as an attempt to level the playing field and make the competition to be more product base and less focus on the tender price. Even where a council is established the powers and functions vested with PSIRA will remain applicable and unchanged thus the unnecessary duplication of powers and functions.
7. Strengthen the regulatory authority to strongly intervene on matters of monopoly. The result of monopoly most of the time lead to manipulation of strategic and institutions of national importance. The current status quo of one major company wanting to buy all black and emerging companies need a specific focus and strengthening of the competition act as to give effect to the object. Is almost inevitable that should the parliament not intervention, PSSPF will fully be captured to serve a narrow interest against that of the majority and used to continue to marginalised emerging businesses.
8. There is an existing national bargaining forum that negotiate terms and conditions of employment in the sector and by zooming to the ongoing discussion in the sector, the scope of the council will be limited to the grace of the Minister to extend the main agreement to non-parties. The current ECC processes are no different as they are also depended on the Minister to extend the sectoral determination. It cannot be argued that this hasn’t work smoothly in all the years except the wanted direct control of the regulation to guarantee status quo. Therefore, the argument used to say that the establishment of the national bargaining council will bypass the minister is fallacy. Even in the bargaining council, for the agreement to be binding to non-parties it required the same Minister to extend such. The argument therefore lacks the substance and does not hold. We are not completely opposed to the formation of such council in the near future but we are of the view that we first need to resolve the would be overlapping of powers and functions with the existing regulatory authorities, overlapping payment of fees to be payable by employers and employees and unnecessary duplication of resources.

**Labour broker/Independent contractors**

We refer to the provisions of sectoral determination No 6 for the private security sector in relation to the classification or presumption as to who is an employee. Clause 18 (1) Any person on contract performing the duties of a security officer, as defined in sub clause 2 (59) to 2 (64)), as well as any person on contract performing the duties of other categories, as defined herein, except for managers. (2) Unless the contrary is proved, a person who works for, or provides services to, any other person is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present. To us without attempt to give effect to the interpretation and application of this provision, it encompasses all forms of who is an employee and characterise them as the employees. We acknowledge that our names have been blemished as the non-complying employers. Although we do acknowledge the shortcoming in certain aspects on our part notwithstanding that such shortcoming are proportionated on allegation of non-compliance by some of our members. But, in comparison to some of major companies who plead innocent and claim to be compliant, we are just a drop in the ocean. This statement is made without seeking to justify wrong doings.

**We therefore, invite the honourable members of parliament to randomly visit sites guarded by some of the major companies and interview employees on site and you will be disgusted.** We are aware that such companies as we speak, through PSSPF are represented here to come and blemish us as the non-compliant and bad employers while in actual fact a significant number of their employees are not with the fund because they are never declared. Such categories of employees are labelled as independent contractors or employed by labour brokers. This category of employees is paid in cash without any benefits and such companies make a fortune and still compete with our members who only employ security employees on a permanent basic but still targeted as non-complying. **We request the honourable members of parliament to investigate the activities of a company called Ubuntu and associated companies on issues of labour brokers**.

We make this request with no intention to accuse any one. A big chunk of employees who are employed under these activities are not even covered on funeral scheme exposing them and their families to unbearable situation at the time of difficulty. These employees will be found in the uniform of these employers but when there are issues of dispute they are told that they are not employed by them and only renting out the uniform. Clients are charged for the provision of the provident fund although not paid over to the fund as these employees are never registered with the fund and PSSPF is fully aware of this inhumane practice but look on the other side. There have been numerous Labour Court judgment on this matter but it continues to be perpetuated as they know that PSIRA and Department of Labour cannot be everywhere. The agenda to register a bargaining council seems to be mostly informed by these activities and thus the reason to target the soft target as to divert the attention from them, hence our opposition to such registration and establishment. It is our humble request that parliament should focus some resources in this regard as the situation is becoming untrainable.

Even although there has been number of amendments to the labour laws and judgements from the Labour Court, the use of labour brokers or independent contractors is rife in this sector. Some of the people calling for establishment of the bargaining council are using labour brokers such and so-called independent contractors to outsmart competitors although exploiting the poor employees. Some of these companies in their attempt to out manoeuvre the emerging companies, they use car guards in the parking areas where they provide services to clients as a benefit to the clients to appoint them for inner centre of mall security. The car guards are depended on the tips they receive through parking, watching and guarding cars although they still required to pay for the deployment fees to the same employer and pay for uniform and equipment. These employees some of them struggle to get the tips but remain indebted to the employer. **It is for these reasons and others that we call for the strengthening of the regulation and closing of loopholes instead of focusing on the establishment of the to be misused council.**

 **Internship/Youth Development fund**

1. From the outset TAPSOS support the upskilling of the previously and still disadvantage individuals and the transfer of skills. We are often met with disbelief when we express our concern about the chances of success of this system and hoping the honourable members of parliament will zoom into our presentation and put it to heart. We will be judged by our children should this system fail or collapse due to insufficient policing of this system. From all we know, this is a serious area of generating higher profit margins of course again the intended beneficiaries being at the receiving end. Some of these so-called captains of the industry use this as a mean to generate other means of income while out-manavuoring their competitors through undercutting prices to clients but remain flouting high in the competition. Fully trained security officers are replaced with the Interns and youth employment as to make profit while paying the interns and youth and only pay them the stamped payable by the Seta but clients being charged the full rate. **During the proceeding of the internship or youth employment term or the unlawful extended terms, provident fund and other statutory obligations are not met and PSSPF just turning a blind eye**. **Skills development and transfer of skills is an area that need to be understood and have a buy-in by all stakeholders and more education is needed in this regard.** Some of the emerging companies sees this as an enemy to business development due to its abuse by the experience and well-established entities.
2. Due to the SASSETA requirements of interns to be used for 12 months only, these employees are moved to the category of youth development which appear not to have timeframe. Unless these employees join a union and begin fighting for their rights they remain on the unfortunate side of getting paid less than 40% of the applicable salaries for many years. This disadvantage the emerging companies from competing fairly and the playing field remain not levelled.
3. SASSETA keep supporting internship projects and funding for the already wealthy companies and ignore the emerging entities in relation to the sector projects. We are informed that more than 43% of the funds allocated to projects for the sector are given to one major company.
4. We welcome the introduction of interns and youth development fund to boost the transfer of skills but to the extent that is used to out play competitors in the market and abuse employees, using these framework is not business as usual. There are trends in the market to use the interns to accumulate high profit margins and out play the emerging businesses.

**SASSETA Grants**

All employers are required to pay an equal amount for skills development levy even though the payment of grants and funding of projects is not equal. Some of the major companies use their training academy to generate profit and still compete with the companies that do not have these facilities. The false sense of free security training is premised on high profit margins. The poor security employees always air their discomfort with the exploitation that occurs in these training establishments but never get protection. These employees in preparation for job opportunities are required to have training qualification and forced to pay excessive amount of money to these establishment. The argument that is always advance that employees come on their own free will is disable of the truth. In the event that that employees are left without a choice but to pay such amounts if they want to be employed, that constitute a forced will and unprotected for which it need to be address urgently. In addition, these establishment submit the same training reports to SASSETA for reimbursement and are key beneficiaries to grants and projects funded by SASSETA.

 **We are living in extraordinary times-even in as far as the exploitation is concern and the policing and enforcement capacity of the regulatory authority need to be prioritise by parliament.**

**The parliament is further requested to investigate on how the funding is distributed to security businesses.**

**Guarantee fund**

For a long time, the discussion on the guarantee fund has been around but without conclusion. The establishment of this fund will come in handy to assist emerging businesses in meeting their legal obligation in the circumstances that clients do not pay on time.

Due to budgetary constrain in some government departments, some businesses their invoices stay for months without being settled. These are the same businesses expected to honour the payment of salaries of their employees hence without resources and thus forced to sell their businesses to the healthy elite and the transformation project not yielding the desired result. Some of the reasons advanced by the departments when not honouring the settling of invoices, are that they have acceded the budget due to ad hoc security services and therefore cannot pay outstanding invoices and that these employers should wait for the approval of new budgets.

PSSPF uses these weaknesses to denied emerging business fair opportunity to obtain tenders. PSSPF require that tender boards should require that businesses in submitting their tender bids should produce PSSPF compliance certificates knowing very well that the emerging businesses will not be able to submit such as they do not pay the provident fund contributions when the clients do not pay them.

This fund can also be used to fund the orientation of emerging businesses as to enhance their skills and knowledge of the statutory obligations.

**We, in these circumstances appeal to the parliament to direct the regulatory authority to prioritise the establishment of this fund. The parliament is further requested to commit the authority into a timeframe so that harmonious trading ability prevail.**

**We request that government tender should not put as a prerequisite the submission of PSSPF certificates instead, rather an effective mechanism in monitoring compliance should be developed.**

**Research by Private Security Industry Regulatory**

The regulatory authority together with a delegation of the employers visited many overseas, Asian and African countries to conduct research on the regulation framework. Considering these visit the regulatory authority incurred excessive expenses to fly, transport, accommodate and refreshment for the whole delegation. The intention to register a bargaining council seems not to appreciate that huge expenses were incurred for this research in which the establishment of the council will be a mirror of this regulation.

**It is for these reasons and others that we oppose the registration and establishment of the bargaining council. The government is accused of wasteful expenditure and the registration of the council will not fall short of such accusation given the mentioned already spent expenses.**

**The regulatory authority should be directed by parliament to release the finding of the research and open robust dialogue on the new intended regulation mechanism.**

**Foreign ownership**

There has been a lot of misrepresentation of the industry in relation as to whether there must be a limitation to the foreign ownership in the industry. Apparently, a pocket of the wealthy grouping informed by their global business interest, are oppose to such limitation. Their calculation appears to intend to defend and retain the status quo.

The scenario continues to be presented on the threats to investment appear to distort the transformation project and the fact that a security industry that is control by foreign private interest can be a treat to state security. We are aware of reports from other countries where security businesses were accused of participating on illegal activities.

Although the findings of the research being conducted by the authority are not released yet, our understanding is that all countries visited and researched, the ownership of businesses is dominated by local interest.

Our members are of the view that the retention of the foreign ownership control is not only damaging the reputation of the country on its transformation project but it portrays South Africa of retaining status quo of the apartheid era.

**We appeal to the President of the republic of South Africa to sign into law the limitation on foreign ownership. Roadshows were held by the regulatory authority and unwavering support for the limitation was over whelming.**

**Spares**

The concept of spares in the sector need to be abolished as is left to abuse. We are aware that there was a good intention in ensuring that all employees were protected from abuse but to this day, that has not been achieved but rather the loopholes in the law is now used to justify the abuse as legal. Some of the prominent security companies make the employees who are so-called spares to report on duty for 12 hours without payment. All they do is to make these employees to sign an attendance register as if they are on duty but instead these registers are used as a record of work attendance just to dismissed regulatory inspection. What comes after that is that these employees do not get paid at the end of the month for the days they reported as spare except for the days reported on side. Most of the time employees who get affected the most is women who go on maternity leave and find themselves falling in the spare pool when returning from maternity leave. On return these employees will be told that the client is comfortable with the replacement deployed during maternity leave and do not want changes. Secondly, this practice is used as a replacement of the obligation of employers to apply fair labour practice on issues of discipline and avoid payment of several payment for retrenchments. All they do is to remove employees on sites who are suspected of misconduct without fallowing due processes and place them on the spare list as a punitive measure. Thirdly, these employees are made to report in hundreds so that they are used as scab labour when unions embarked on strikes.

The argument always used in exploiting these employees is that the phrase of the sectoral determination refers “as required by the employer” which they argue to imply it should be the employer who require these employees to report for duty. It is argued that the employee should be specifically required by the employer which exclude employees report on duty as normal.

**RECOMMENDATION**

1. Based on the aforesaid backgrounds facts above, particular having regard to the abuse of powers and functions including misuse of the resources of the fund, we request the disbandment of the PSSPF board and FSB appoint an interim board to implement the act in relation to the right to vote by all members and participating employers. We want to point out that all our attempts to cooperate and hold meetings with the representatives of trustees, we never enjoy any fruitful engagement instead we were always being mistreated. These trustees are not able to execute their fiducial duties and preoccupied by agenda of exclusion. Parliament is requested to direct FSB and the National Treasury to recall all trustees and replace the current board of trustees with a democratically elected board.
2. The Principal Officer is not able to separate between his role and the needs of individual trustees that seek to protect big white companies. He must be replaced with a capable and fit and proper candidate.
3. The Minister of Labour is requested to allow democratic instruments in this sector by allowing a fair competition in relation to the number of competing funds. We believe that there must be more than one provident fund. This will not only improve speedy payment of claims but also ensure focus on the collection and allocation of contributions, maximise compliance that is free of manipulation and feeling aggrieved, allow the marginalise voice to have a say on issues that affect their businesses and well-being of their employees and guarantee of service delivery.
4. The parliament is requested to conduct investigation on the running of the board affairs and the fund. This including looting of resources and to investigate the manipulation of the fund to target certain companies and the fund being used to interfere in the awarding of tenders.
5. Abolish the provision on spare employees and replace it with a provision that protect employees characterise in this fashion and be treated as equal employees. We request the parliament to conduct an unannounced investigation into some of the companies moreover the top 5 companies on the condition of spare employees. To visit some of the major shopping malls to investigate as to whether security employees employed in the parking areas are permanently employed or are deployed as car guards who depend on the tip hence still expected to pay the security companies fees for deployment and the equipment they use.
6. The parliament is requested to call the SASSETA into order and distribute its resources equally
7. PSIRA and the Department of Labour are requested to focus their resources in tackling the use of labour brokers and independent contractors.
8. The parliament is requested to direct the Ministry of Labour to scrap the magisterial district in the sectoral determination and have one minimum wage across the sector.
9. An effective regulatory mechanism need to be found between PSIRA and SASSETA to ensure that training academies are not used to populate high profits margins while receiving funding from SASSETA.
10. The Minister of Labour, should reject the registration of the national bargaining council but rather together with the Minister of Police and the Minister of High Education provide a platform for robust dialogue on the regulation and the overlapping of powers and functions between PSIRA, SASSETA and the Department of Labour and develop cooperation platform that include stakeholders.
11. PSIRA to finalise its research on the regulation framework and circulate its findings for engagement with stakeholders.