

FSCA COMMUNICATION 21 OF 2023 (RF)

PUBLICATION OF NAMES OF RETIREMENT FUNDS AND EMPLOYERS WITH ARREAR CONTRIBUTIONS

1. PURPOSE

The purpose of this Communication is to inform members of retirement funds and relevant stakeholders of the names of retirement funds and employers with arrear contributions in direct contravention of section 13A(3)(a) of the Pension Funds Act, 1956 ("PFA").

2. BACKGROUND AND CONTEXT

- 2.1 The issue of arrear contributions has a long history within the industry and leads to prejudice and unfair outcomes for retirement fund members. The Financial Sector Conduct Authority ("Authority") published FSCA Communication 17 of 2022 (RF) ("Communication") on 9 June 2022, informing the industry of its intention to publish the names of retirement funds and employers with arrear contributions. In terms of the Communication, boards of retirement funds were requested to share the Communication with their participating employers.
- 2.2 The Conduct Standard 1 of 2022: *Requirements related to the payment of pension fund contributions* (Conduct Standard), published in 19 August 2022, became effective on 19 February 2023. The Conduct Standard places notification and reporting obligations on the board of a fund, principal officer or other authorised person, when there is a contravention of or non-compliance with sections 13A(2)(b) or 13A(3)(a) of the PFA by an employer.

3. APPLICABLE LEGAL PROVISIONS

- 3.1 Section 13A (1) of the PFA requires that the employer of any member of a retirement fund must pay any contribution which is to be deducted from the member's remuneration in terms of the rules of the retirement fund; and any contribution for which the employer is liable in terms of the rules of the retirement fund.
- 3.2 Section 13A(3)(a) of the PFA determines that any contribution to a retirement fund in terms of its rules, whether it be a contribution in section 13A(1) of the PFA, a contribution for the payment of which a member of the retirement fund is responsible personally, or a contribution to be paid on a member's behalf, must be paid directly into the bank account not later than seven days after the end of the month for which such a contribution is payable; or directly to the retirement fund in such a manner such that the retirement fund receives the contribution not later than seven days after the end of that month; or in the case of an underwritten retirement fund, must be forwarded to the insurer concerned in a manner that ensures that the insurer receives the contribution not later than seven days after the end of that month.
- 3.3 Section 37(1)(a) of the PFA states that any person who contravenes or fails to comply with section 13A of the PFA is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

- 3.4 Paragraph 4(1)(a) of the Conduct Standard provides that the person responsible for receiving contributions in terms of section 13A(3)(a)(ii) of the PFA must report not later than the stipulated period if any contributions payable in terms of section 13A(1) have not been received as provided in section 13A(3)(a) of the PFA.
- 3.5 Section 251(2)(a) of the Financial Sector Regulation Act No. 9, 2017 (“FSR Act”) provides that a financial sector regulator must disclose information gathered in terms of section 251(1)(a) of the FSR Act if the financial sector regulator determines it is necessary to comply with its obligations –
- to perform functions in terms of, or as enabled by, a financial sector law;
 - to warn financial customers against conducting business with a financial institution or other person conducting activities in contravention of a financial sector law;
 - to alert financial customers to activities carried out by a financial institution that a financial sector regulator believes to constitute a risk to financial customers;
 - to protect the public interest; and
 - to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial products or financial services.

4. EMPLOYERS IN CONTRAVENTION OF SECTION 13A(3)(a) OF THE PFA

- 4.1 Pursuant to the Authority’s obligations under section 251(2)(a) of the FSR Act, as outlined in paragraph 3.5 above, the names of the employers listed in **Annexure A** are disclosed for contravening section 13A(3)(a) of the PFA.
- 4.2 The information in **Annexure A** was provided to the Authority by various retirement funds in which the respective non-compliant employers participate.
- 4.3 The Authority intends to publish a list of non-compliant employers on a quarterly basis in a similar manner to **Annexure A**.
- 4.4 Retirement funds must ensure that proper records of the reports relating to arrear contributions are kept as required in terms of the PFA, and that reports to the Authority in this regard are accurate and submitted in a timely manner.
- 4.5 It should be noted that due to the delay between the reporting date of arrear contributions and the date of publication of the names of affected funds and employers, there may be instances where certain employers have paid over their outstanding contributions.

5. ENQUIRIES

For more information regarding this Communication, please contact the Retirement Funds Supervision Division of the Authority by emailing Ms. Takalani Lukhaimane at Takalani.Lukhaimane@fsca.co.za or FSCAQueries13Anotices@fsca.co.za.



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