

Please complete in **BLOCK LETTERS** using black or blue ink.

The Old Mutual SuperFund Pension Fund's registration number and tax approval number is 12/8/0020237. The Old Mutual SuperFund Provident Fund Registration Number and tax approval number is 12/8/0020246. These funds are collectively referred to as the Old Mutual SuperFund. Old Mutual Life Assurance Company (South Africa) Limited, an approved 13B pension fund administrator and authorised administrative financial services provider, is the Administrator.

### IMPORTANT INFORMATION

This form must be submitted by an Employer in the event that there is an employer compensation claim against an employee who is a member of the Old Mutual SuperFund (the Fund), for damages due to the employee's theft, dishonesty, fraud or misconduct, and the employee does not sign the Admission of Liability and Acknowledgment of Debt form. Please refer to the attached annexure "Employer compensation claims" for more information.

Send the following documents to: **superfundpriorclaims@oldmutual.com**

- A completed Request to Withhold Member Benefit form
- An employer letter of motivation and/or supporting documentation related to the claim

### 1. MEMBER DETAILS

Member number

Title: Mr  Mrs  Ms  Other  Initials

First name(s)

Surname

Email address

Cellphone number

### 2. EMPLOYER DETAILS

Employer name

Scheme name

Last member contribution month

Exit date

### 3. RAND VALUE OF THE CLAIM

Please provide the details of the amount owed to the employer below.

Cause of damage	Date of incident	Amount claimed
<input type="checkbox"/> Theft	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	R <input type="text"/>
<input type="checkbox"/> Dishonesty	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	R <input type="text"/>
<input type="checkbox"/> Fraud	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	R <input type="text"/>
<input type="checkbox"/> Misconduct	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	R <input type="text"/>
<b>Total rand amount</b>		<b>R</b> <input type="text"/>

### 4. ADDITIONAL INFORMATION

Please provide any further information, in addition to the letter of motivation, which the trustees should be aware of in order to consider your request to withhold all or part of the member's benefit.

## 5. EMPLOYER DECLARATION

- I am responsible for the accuracy and completeness of all answers, statements or other information provided by me or on my behalf.
- I understand and accept that my request to withhold the member benefit is subject to the rules of the Fund, relevant legislation and the discretion of the trustees.
- I understand that should my request be accepted, the withholding of the benefit will only be allowed for **30 days**, within which period I must furnish the Fund with all the supporting documents necessary to continue withholding the benefit or to process the claim, as the case may be.

Employer's representative's full name

Employer's representative's designation

Employer's representative's signature

Date

## FUND MEMBER AND BENEFICIARY PRIVACY NOTICE

This notice applies to members and beneficiaries of the Old Mutual SuperFund<sup>1</sup>.

Old Mutual SuperFund may collect, use and share personal information for the following purposes:

- To administer a member's membership of the Old Mutual SuperFund;
- To process and pay benefits from the Old Mutual SuperFund;
- To provide members with information about offerings that will support and enhance their retirement benefits;
- To provide products or services to you, to carry out the transaction you requested and to maintain our relationship;
- For underwriting purposes;
- To assess and process claims;
- To conduct credit reference searches or verification;
- To confirm and verify your identity, address or banking details;
- To verify that you are an authorised user for security purposes;
- For maintaining the accuracy of your personal information;
- For operational purposes, and where applicable, credit scoring and assessment and credit management;
- For purposes of claim checks (e.g. the Industry Life and Claims Register);
- For the detection and prevention of fraud, crime, money laundering or other malpractice;
- To trace you where you are uncontactable;
- To conduct market or customer satisfaction research or for statistical analysis;
- For audit and record keeping purposes;
- For social responsibility purposes;
- In connection with legal proceedings;
- To comply with legal and regulatory requirements or industry codes or when otherwise allowed by law;
- Sharing information with a member's employer (its intermediary/broker), your intermediary/broker (when applicable), service providers we engage to process such information on our behalf or who render services to us. These service providers may be abroad, but we will not share your information with them unless we are satisfied that they have adequate security measures in place to protect your personal information;
- Sharing information with other insurers, retirement funds and retirement annuity funds to obtain claim related information.

You agree that we may view, search and update your information and you further agree we may, where required, process your special personal information (and share this information with relevant third parties) in order to achieve a purpose set out above.

You warrant that when you give us personal information about third parties, this information is accurate and correct, and you have received their permission to share their personal information with us. You confirm that if you are giving consent for a person under 18 (a minor) you have the required authority to do so.

We may transfer your personal information to another country for processing or storage. We will ensure that anyone to whom we pass your personal information agrees to treat your information with the same level of protection as we are obliged to.

You may access the personal information that we hold about you and may also request us to correct any errors or, under certain circumstances request us to delete this information. In certain circumstances, you have the right to object to the processing of your personal information. To do this, simply contact us at the numbers/addresses listed below and specify what information you would like or if you have any questions about this Notice, please contact us at:

Old Mutual SuperFund Service Centre: 0860 20 30 40

Email: [superfund@oldmutual.com](mailto:superfund@oldmutual.com)

You have the right to complain to the Information Regulator, whose contact details are:

[info regulator.org.za](http://info regulator.org.za)

General enquiries: [enquiries@info regulator.org.za](mailto:enquiries@info regulator.org.za)

Complaints: [popiacomplaints@info regulator.org.za](mailto:popiacomplaints@info regulator.org.za)

You can also view our full Privacy Notice [here](#).

<sup>1</sup>In this Notice "Old Mutual SuperFund" refers to the Old Mutual SuperFund Pension and Provident Funds.

## EMPLOYER COMPENSATION CLAIMS

### What is employer compensation?

Section 37D(1)(b)(ii) of the Pension Funds Act provides for employers to be compensated for damages suffered as a result of theft, dishonest misconduct or fraud by an employee or former employee. A claim for compensation can be submitted to the Old Mutual SuperFund, and the Fund may deduct the amount claimed from the member's benefit.

### When will the Fund deduct compensation from a member's benefit?

The courts and the Pension Funds Adjudicator (PFA) have held that a pension or provident fund may only deduct an amount for employer compensation when the following requirements have been met:

1. There must be a benefit payable to the member by the pension or provident fund from which the compensation is claimed.
2. There must be an amount due by the member to the employer on the date on which the member retires from the Fund or ceases to be a member of the Fund.
3. The damage caused to the employer must be as a result of theft, dishonesty, fraud or misconduct by the member. It should be noted that "misconduct" has been interpreted to be an act or omission which contains an element of dishonesty and would not include simple negligence on the part of the member.
4. The member must either admit liability to the employer in writing or a judgment must be obtained against the member in a court of law. The admission of liability or court order must be in respect of the compensation related to the damages caused by the member and must set out the specific amount of compensation due.

#### • Admissions of Liability

If an admission of liability is submitted, it must have been voluntarily made by the member. The member must not have signed the admission under duress or undue influence.

#### • Court Orders

The Pension Funds Adjudicator has held that a judgment by the Labour Court and/or a criminal judgment will not be sufficient. A civil judgment must be obtained from a court of law in order to make it binding on the Fund.

### How to deal with an employer compensation claim

If an employer believes that there is a potential claim against a member, the employer should follow the steps outlined below:

1. Notify the Fund's administrator of the claim within **one (1) business day after the member's service termination date** by submitting a fully completed Request to Withhold Member Benefit form.
2. Ensure that the following documents are provided within **30 days** of submitting a 'Request to withhold member benefit' form:
  - Completed "Admission of liability and acknowledgment of debt" form, signed by the member, or
  - the record and findings of any disciplinary hearing, if applicable;
  - a comprehensive description and supporting evidence of the member's actions that caused the fraud, theft, dishonesty or dishonest misconduct;
  - the dates on which such alleged actions occurred;
  - the amount of alleged damage suffered and how it is calculated;
  - the date on which the member's employment was terminated;
  - an estimate of the legal costs that need to be included in the amount to be withheld, which must be on a letterhead from the employer's attorney;\* in respect of the civil proceedings, the case number and a copy of the summons issued against the member
3. **If the employer fails to submit the above documents within 30 days after submitting a Request to Withhold Member Benefit form, the Fund will proceed to pay the benefit in accordance with the member's instruction without considering the compensation claim.**
4. Where a valid "Employee admission of liability and acknowledgment of debt" form has been submitted, the amount claimed will be deducted from the member's benefit and paid over to the employer when the member leaves the Fund.
5. (a) Where the employer has submitted a copy of a summons issued against the member, the employer must provide the Fund with quarterly updates of the progress of litigation. This is to ensure that parties are not unnecessarily delaying the finalisation of court proceedings.  
(b) Once an order of court has been handed down in favour of the employer, a copy of the order must be submitted to the Fund's administrator. The administrator will then verify whether the order is enforceable and, if so, will act in accordance with the order.

### Is the Fund allowed to withhold a member's benefit?

- The Act does not explicitly say that the Fund can withhold a member's benefit for a period while awaiting the provision of an admission of liability signed by the member or a court order.
- However, the courts have recognised that most employers face difficulties in claiming compensation as it often takes time to obtain a judgment against the member. For this reason courts held that in order to enable the employer sufficient time to recover compensation from the member's pension benefit, the Fund may withhold the benefit pending the signing of an admission of liability by the member or the finalisation of court proceedings.
- The Fund may only withhold the benefit for a reasonable period. Old Mutual SuperFund deems 30 days to be a reasonable period for the employer to obtain the documents necessary to support its claim.
- In instances of litigation, the Fund will only withhold an amount equal to the compensation claimed by the employer. The balance of the member's benefit (if any) will be paid in accordance with the member's instruction.
- Where the claim is subject to court proceedings, the employer will be expected to provide quarterly updates as to the progress of such proceedings in order to ensure that neither party is frustrating the process.

### How much compensation will be payable to an employer and how will tax be deducted?

Wherever possible, the full compensation amount claimed will be paid to the employer.

However, the amount paid to the employer may be less than the amount claimed in the following circumstances:

- Where the member's total withdrawal benefit is less than or equal to the compensation amount claimed.
- Where the member is retiring and the member's available cash lump sum amount permitted in terms of the Income Tax Act is less than or equal to the compensation amount claimed.

In addition, it is important to remember that the Fund is liable to pay any tax due to SARS in respect of the benefit before paying any amount over to the employer or the member. An employer compensation claim is seen as a lump sum benefit payment in terms of the Income Tax Act and will be taxed accordingly. For these reasons the compensation amount paid to the employer may be less than the amount claimed.

The employer may proceed to claim directly from the member for any outstanding amounts which were not paid to it by the Fund.

\*Please note: Employer compensation claims will not be given effect to after the Fund's administrator has applied to SARS for a tax directive in relation to the member's instruction for withdrawal or retirement.

- All signatories to this document to initial all deletions, alterations and insertions.
- Should any additional documentation be attached, it is to be initialled by all signatories.

