

**OLD MUTUAL SUPERFUND PENSION & PROVIDENT FUNDS
(the “Fund”)**

**CONTRIBUTIONS PAYABLE TO THE FUND IN TERMS OF SECTION 13A OF THE
PENSION FUNDS ACT**

The Practice Note is issued in terms of Master Rule 3.13 and confirms the Management Board’s policy regarding the payment of contributions due to the Fund in terms of Section 13A of the Pension Funds Act 24 of 1956 (the “Act”) and Master Rule 10 of the Fund and matters ancillary thereto

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Adopted by the Management Board on a round robin basis on 22 August 2022, as good practice with effect from 1 October 2022.

This Practice Note must be read with:

- Practice Note 8.4 -The Clearing of Operational Transactional Mismatches and Residual Balances;
- Practice Note 13.4 - Financial Matters relating to contribution payments;
- Practice Note 31 -The payment of late payment interest on contributions; and
- Delegation of Functions and Powers for Internal Structures.

INTRODUCTION AND PURPOSE

A Participating Employer is required in terms of Section 13A of the Act to ensure that:

- Any contribution which is deducted from the Member’s remuneration, as well as the contributions for which the Participating Employer is liable, are paid over to the Fund in full within 7 (seven) days after the end of the month in respect of which the contributions were payable.
- Certain minimum information concerning such contribution payments is furnished to the Fund no later than 15 (fifteen) days after the end of the month in respect of which the

contribution was made.

The Management Board must:

- Take all reasonable steps to ensure that the interests of Members are always protected as envisaged in the Act¹; and
- Take all reasonable steps to ensure that contributions are paid timeously to the Fund in accordance with the Act.²

The process of collecting outstanding contributions and late payment interest must be an efficient, cost effective, fair and transparent process. The purpose of this Practice Note is to set the framework and broad requirements that the Fund requires its Monitoring Person and its Section 13B administrator (the “Administrator”) to adopt in their practices and procedures in administering matters concerning Participating Employers who are in breach of Section 13A of the Act (and any subordinate legislation), including the Fund’s process to collect outstanding contributions and interest on late payment of contributions. The further purpose of the Practice Note is to clarify Participating Employers’ duties in respect of the payment of contributions, consequences of non-compliance and the options available to Participating Employers who experience financial distress.

APPLICABLE LEGISLATION

The current legislative framework in terms of which contributions must be paid to a retirement fund, the submission of supporting data in respect of those contributions and the reporting duties and other steps to be taken upon a Participating Employer’s non-compliance and related matters are mainly contained in the following legal instruments:

- Section 13A of the Act³
- Regulation 33 issued under the Act⁴
- Circular PF No.110⁵
- Pension Funds Adjudicator’s Notice to Funds⁶

¹ Section 7C(2)(a) of the Act – see Annexure 1.

² Section 7D(1)(d) of the Act – see Annexure 1.

³ See Annexure 1.

⁴ See Annexure 2.

⁵ 8 January 2004, Financial Services Board – see Annexure 3.

⁶ Dated 26/2/2020 – see Annexure 4.

- Pension Funds Adjudicator Communication 1 of 2021⁷

It is expected that Draft Conduct Standard [-] 2021 (RF)⁸ (the “Conduct Standard”), issued under Section 106 of the Financial Sector Regulation Act⁹, will become effective at some future date and upon coming into effect will replace Regulation 33 (and possibly cause the Financial Sector Conduct Authority (the “FSCA”) to withdraw Circular PF 110).

APPLICABLE FUND RULES

Over and above the legislative framework as set out above, the following Master Rules place further obligations on Participating Employers in respect of the payment of contributions and matters ancillary thereto:

Master Rule 10 – CONTRIBUTIONS¹⁰

- 10.1 MEMBER’S CONTRIBUTIONS
- 10.2 CONTRIBUTIONS BY PARTICIPATING EMPLOYER
- 10.3 PAYMENT OF CONTRIBUTIONS
- 10.4 RECONCILIATION OF DATA AND CONTRIBUTIONS
- 10.5 FAILURE TO SUBMIT RECONCILED DATA AND CONTRIBUTIONS WITHIN THE LEGISLATED FRAMEWORK

Master Rule 15.4 - PARTICIPATING EMPLOYER’S OBLIGATIONS¹¹

DUTIES OF PARTICIPATING EMPLOYER

In terms of the applicable legislation and the applicable Master Rules, a Participating Employer must perform the following duties:

Duty	Source
Pay member and employer contributions to the Fund in full in accordance with the Fund’s rules within 7	Sections 13A(1) and 13A(3)(a) of Act. Master Rule

⁷ Orders relating to “Arrear Contributions - Section 13A of the Pension Funds Act” dated 14/10/2021 - see Annexure 5.

⁸ ‘Requirements Related to the Payment of Pension Fund Contributions, 2021 - see Annexure 6.

⁹ 9 of 2017.

¹⁰ See Annexure 7.

¹¹ See Annexure 7.

(seven) days after the end of the month in respect of which the contributions are due.	10.3
Provide the minimum information to the Fund with regard to the payment of the contributions not later than 15 (fifteen) days after the end of the month in respect of which payment was made.	Section 13A(2)(b) of the Act and Regulation 33(1) (and upon the Conduct Standard coming into effect paragraph 3 of the Conduct Standard).
Provide a declaration to the Fund that all its eligible employees are accurately reflected on the data provided.	Upon the Conduct Standard coming into effect paragraph 3(4) of the Conduct Standard.
<p>Upon request from the Fund, in writing notify the Fund of the identity (and other requested detail) of the person personally liable in terms of Section 13A(8) of the Act.</p> <p>In the event that an employer fails to comply with the requirements of Section 13A(9)(a), all the directors of a company, all the members of a close corporation, or all persons comprising the governing body of an employer shall be held personally liable.</p>	<p>Section 13A(9)(a) and (b) of the Act (and upon the Conduct Standard coming into effect also paragraphs 3.2(g) and 3.3(a) of the Conduct Standard).</p> <p>Section 13A(9)(b) of the Act.</p>
Pay interest resulting from the late payment of contributions at the prescribed rates.	Regulation 33(7) and Government Notice 397 in Government Gazette 33182 of 12 May 2010 (and upon the Conduct Standard coming into effect paragraph 5 of the Conduct Standard). Master Rule 10.5(1).

Administrative duties	Master Rule 15.4(2)(a)-(k) and (n).
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LEGAL CONSEQUENCES FOR A NON-COMPLIANT PARTICIPATING EMPLOYER

A Participating Employer's non-compliance with Section 13A of the Act (as well as the other applicable law and rules as set out above) is a very serious matter. Our courts and other judicial fora have on many occasions highlighted the peremptory nature of an employer's obligations in terms of Section 13A. Failure to strictly comply, holds serious consequences, both for the Participating Employer, as well as for the responsible persons at the business in their personal capacity and it ultimately also negatively impact the Fund's members and their beneficiaries. The following consequences could follow a Participating Employer's material non-compliance with Section 13A:

- Contraventions are reported to the FSCA who may:
 - Impose administrative penalties on the Participating Employer in terms of Section 37(2) of the Act.
 - Publish the name of the Participating Employer on its website for public notice in terms of FSCA Communication 17 of 2022 (RF) of 9 June 2022.
 - Inform the Commissioner for the South African Revenue Services for an investigation into the Participating Employer's tax affairs in terms of Regulation 33(6).
- Contraventions are reported to the Director of Public Prosecutions for appropriate steps against the Participating Employer.
- The Participating Employer becomes liable for the payment of late payment interest on outstanding contributions in terms of Section 13A(7) of the Act.
- Lodging of a criminal complaint at the South African Police Services (SAPS) against the persons personally responsible at the Participating Employer for compliance in terms of Section 13A(8) of the Act, which upon conviction may result in a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment, in accordance with Section 37(1) of the Act.
- Lodging of a complaint against the Participating Employer with the Pension Funds Adjudicator whose determinations shall be deemed to be a civil judgment of any court of law and shall be noted by the clerk of the court or registrar of the court, as the case may, whereupon a warrant or writ of execution may be obtained in terms of Section 300 of the Act.
- Civil litigation against the Participating Employer for the recovery of outstanding contributions and late payment interest, as well as for legal costs incurred, may ensue.
- Civil claims by members and their beneficiaries against the Participating Employer for loss suffered (including loss arising from the lapsing of risk benefits due to non-payment of risk premiums) may ensue.

- Ultimately the liquidation of the Participating Employer's Sub-Fund may follow.

RELIEF OPTIONS AVAILABLE TO PARTICIPATING EMPLOYERS

It is recognised that situations may arise that could cause a Participating Employer's business to come under operational pressure, which, in turn, may create financial distress for the Participating Employer and consequently result in its inability to comply with its obligations in terms Section 13A of the Act and the Fund's Rules. It is incumbent on a Participating Employer to proactively notify and engage the Fund/its Administrator as soon as it foresees circumstances may arise that could lead to its inability to honour its obligations in terms of Section 13A of the Act and the Fund's Rules. The Fund has approved and made available various options to assist Participating Employers in these circumstances. The following relief options are available to Participating Employers:

OPTION 1 Members are placed on unpaid leave or temporary absence

This option is suited to the situation where the employees no longer receive a salary or received a reduced salary.

The Participating Employer must change the status of the employees on the payroll file to reflect that the members are on temporary absence. Zero member and retirement funding contributions will be collected. Risk and admin fees will continue to be collected.

Master Rule 5.4 is applicable¹².

OPTION 2 Members work reduced hours and reduced pensionable salary

The Participating Employer must indicate the change on the contribution statement/payroll files that it submits. The Participating Employer must provide the actual earnings of the employee as the pensionable salary.

The Participating Employer and member retirement funding contributions will then be based on the reduced salary using the percentage reflected in the Special Rules. Risk and Administration fees will continue to be collected.

OPTION 3 Suspension of Participating Employer's retirement portion of contributions

In the event that a Participating Employer is unable to pay the contributions

¹² See Annexure 7.

due in terms of its Special Rules, then the part of the Participating Employer's contributions towards retirement funding may be suspended in terms of Master Rule 10.2(3) for a maximum period of 12 (twelve) months.¹³

OPTION 4 Amendment of special rules

The Participating Employer may apply to have their special rules amended in terms of Master Rule 2.6(3) to achieve a more affordable cost and benefit structure.¹⁴

It is important that a Participating Employer who is experiencing the challenges as set out in this section, immediately engages the Fund/its Administrator with a view of implementing a relief option best suited to its circumstances.

THE FUND'S RECOVERY PROCESS FOR COLLECTING OUTSTANDING CONTRIBUTIONS AND INTEREST ON LATE PAYMENT FROM PARTICIPATING EMPLOYERS

The Management Board must, in terms of Section 7D(1)(d) of the Act, take all reasonable steps to ensure that contributions are paid timeously to the Fund in accordance with the Act and must further ensure that the interest of members are protected in accordance with Section 7(C)(2)(a). Over and above these general obligations, the Fund is also obliged to communicate a Participating Employer's material non-compliance with Section 13A of the Act with affected parties and must, in terms of paragraph 4.3(c) of the Conduct Standard, report to the FSCA, the Fund's proposed course of action to remedy a Participating Employer's contravention of Section 13A of the Act.

To give effect to the Fund's duties in this regard, the following process must be followed in the event that a Participating Employer materially contravenes or materially fails to comply with Sections 13A(2)(b) (providing contribution data) and 13A(3)(a) (paying contributions to the Fund) of the Act:

¹³ See Annexure 7.

¹⁴ See Annexure 7.

RECOVERY PROCESS FOR OUTSTANDING CONTRIBUTIONS AND PAYMENT OF INTEREST

30 days letter of demand

Once a Participating Employer has failed to materially comply for a period of 30 days (1 payroll submission outstanding), the Monitoring Person must in writing communicate with the Participating Employer bringing to its attention the nature of the non-compliance and a demand for rectification of the non-compliance.

60 days letter of demand and negotiating a payment plan

Once a Participating Employer has failed to materially comply for a period of 60 days (2 payroll submissions outstanding), the Monitoring Person must again in writing communicate with the Participating Employer bringing to its attention the nature of the non-compliance and a demand for rectification of the non-compliance.

Affected members must in writing be informed of the non-compliance in accordance with the provisions of paragraphs 4(3)(a) and 4(3)(b) of the Conduct Standard, as well as about any other matters than may, in this regard, have a material effect on their membership.¹⁵

In addition, the Administrator must, through its service consultancy capacity*, engage the Participating Employer with a view to negotiate a payment plan in terms of which the Participating Employer commits to a plan and timeframe for the payment of outstanding contributions and interest on late payment.

90 days letter of demand and lodging a complaint with the Pension Funds

Adjudicator

Once a Participating Employer has failed to materially comply for a period of 90 days (3 payroll submissions outstanding), the Monitoring Person must again in writing communicate with the Participating Employer bringing to its attention the nature of the non-compliance and a demand for rectification of the non-compliance within 14 (fourteen) days.

Affected members must in writing be informed of the non-compliance in accordance with the provisions of paragraphs 4(4)(b) of the Conduct Standard, as well as about any other matters that may, in this regard, have a material effect on their membership.

¹⁵ For purposes of communication with members during the recovery process as set out in this section, it is deemed that the Conduct Standard is already in effect.

* Old Mutual Corporate Customer Services (OMCCS)

In the event that the Participating Employer has failed to enter into a payment plan, or alternatively, where the Participating Employer has materially breached the provisions of the payment plan, the Fund will, unless there exist cogent reasons not to, lodge a complaint with the Pension Funds Adjudicator seeking an order (sounding in money) for the payment of outstanding amounts. Upon the issuing of such an order, the Fund will, unless there exist cogent reasons not to, obtain a writ or warrant of execution in terms of Section 30O of the Act against the errant Participating Employer.

Where the Fund, in a particular case, deems it appropriate to not lodge a complaint with the Pension Funds Adjudicator, but to rather outsource the recovery of outstanding contributions and interest to a third-party attorney, it shall have due regard to the prescriptions contained in paragraph 6 of the Conduct Standard before proceeding on this basis.

Liquidation of Sub-Fund

Once a Participating Employer has failed to materially comply for a period of 90 days, and continues to be in default, despite the demand made in the 90 days letter, and after giving due consideration whether it will be in the best interest of the affected members, including considering whether or not the Participating Employer has entered into a payment plan and its performance in terms of such plan, the Fund may resolve to give the Participating Employer notice of the termination of its participation in the Fund in accordance with Master Rule 12.3¹⁶, whereafter, upon expiry of the notice period, the Sub-Fund will be liquidated in accordance with the Fund's rules.

Adequate and appropriate written communication must be sent to all affected members alerting them to the liquidation of the Sub-Fund and any other material matters in this regard.

Payment plan: A payment plan is a mechanism to assist a Participating Employer who owes the Fund contributions and/or late payment interest to pay these outstanding amounts to the Fund in a structured way within a specific time period. It requires that the non-compliant Participating Employer enters into a written agreement with the Fund on terms and conditions materially as set out in the template agreement.¹⁷

¹⁶ See Annexure 7.

¹⁷ See Annexure 8.

DELEGATION OF FUND'S POWERS AND DUTIES IMPOSED

Delegation of powers to the Administrator

The Management Board hereby delegates its powers pursuant to ensuring compliance with Section 13A of the Act and Master Rules 10 and 15.4 to the Administrator and directs that the powers must be exercised in accordance with the guidelines set out in this Practice Note. The delegation is subject to the Management Board retaining the power to exercise the said powers in any particular matter should the Management Board deem it desirable. It is also acknowledged that, in accordance with Section 7D(2)(b) of the Act, such delegation does not mean that the Management Board is divested or relieved of the ultimate responsibility of ensuring that these functions are performed according to the requirements of the Act.

Duties of the Administrator

The Administrator must ensure that Standard Operating Procedures are at all times in place to ensure that proper effect is given to the content of this Practice Note, and without limiting the generality, must specifically ensure that:

- Reporting is done as contemplated in Regulation 33(2) (or upon the Conduct Standard becoming effective, paragraph 4(1) of the Conduct Standard);
- Participating Employers are notified of their duties in the format and at intervals as envisaged in paragraph 2 of the Conduct Standard (once the Conduct Standard becomes effective);
- The relief options available to Participating Employers, as set out in this Practice Note, are regularly and pro-actively communicated to Participating Employers;
- The Administrator's service consultancy capability engages with a Participating Employer immediately upon such Participating Employer becoming in arrears for a period of 60 days, in order for the relief options, as set out in the Practice Note, to be discussed with a view to assist such employer to implement the appropriate relief;
- Debt recovery in respect of outstanding contributions and late payment interest are dealt with in accordance with this Practice Notice;
- Communicate with affected members as is required in terms of Regulation 33(4)(a) (and upon becoming effective paragraph 4(3) of the Conduct Standard) and in any event on a Participating Employer's non-compliance with Sections 13A(2)(b) (providing contribution data) and 13A(3)(a) (paying contributions to the Fund) of the Act and in respect of any other event that may have a material effect on members in respect of the said non-compliance;
- In respect of Participating Employers who, after 90 days of continuous default, and continuous default thereafter, despite the demand made in the 90 days letter, have

either failed to enter into a payment plan with the Fund, or have breached any material provision of the payment plan, prepare and submit liquidation notices, liquidation resolutions and fact sheets (containing information about the extent and detail of the default) to the office of the Principal Officer for consideration by the Management Board to decide whether or not it is in the best interest of members to terminate the Participating Employer's participation in the Fund and liquidate the Sub-Fund in question.

- Assist the Monitoring Person to enable her to perform her duties.

The Administrator's compliance officer is required to conduct an annual review of its Section 13A processes and must thereafter prepare and within a reasonable time submit a report to the Management Board on its findings.

Appointment of Monitoring Person

The Management Board has authorised a person to act as "Monitoring Person" as contemplated in Section 13A(6)(b) of the Act in order to perform the functions as set out in Section 13A(6)(a) of the Act and to perform other functions related to the payment of contributions and late payment interest and the submission of contributions related data by Participating Employers.

Delegation of powers and duties to Monitoring Person

The Fund will delegate its powers to the Monitoring Person¹⁸ in such a way that the Monitoring Person is empowered to:

- In respect of arrear contributions, temporarily suspend the retirement funding portion of the Participating Employer's contributions payable to the Fund, for a period not exceeding 12 months;
- Enter into payment plans with Participating Employers on terms and conditions materially the same as set out in the payment plan template (attached as Annexure 8) and to sign such agreements on behalf of the Fund;
- Monitor the performance of Participating Employers who have entered into payment plans against the provisions of the payment plan and report thereon to the Monitoring Person and the Principal Officer;

¹⁸ Contained in "Delegation of Functions and Powers for Internal Structures" document.

- Issue letters of demand to Participating Employers and letters for termination of their participation in the Fund in accordance with the direction contained under section “Recovery Process for Outstanding Contributions and Payment of Interest” of this Practice Note;
- Ensure that criminal complaints are prepared and lodged with SAPS against defaulting Participating Employers in accordance with the format and within the timeframe set out in the Conduct Standard¹⁹;
- Ensure that complaints are prepared and lodged with the Pension Funds Adjudicator against defaulting Participating Employers in the event that such a Participating Employer either neglects / refuses to enter in a payment plan with the Fund, or where a Participating Employer has entered into a payment plan with the Fund, but has breached any material provision of the payment plan. In such an event, the complaint must be prepared and lodged within the same time frame that criminal complaints with SAPS must be lodged;
- Submit reports to the categories of persons in the manner and format prescribed in Section 13A of the Act, Regulation 33(3) – 33(5) (or upon the Conduct Standard becoming effective, paragraphs 4(2) – 4(3) of the Conduct Standard).

GENERAL REQUIREMENTS IN RESPECT OF COMMUNICATION

Any party who, in terms of this Practice Note communicates with third parties in respect of any matter related to this Practice Note, shall ensure that adequate and appropriate information is communicated (as required in terms of Section 7D(1)(c) of the Act) and that all communication is clear, concise, comprehensive and in a language that is easily understood by the intended recipient of the communication (as required in terms of paragraph 2 of the Conduct Standard).²⁰

TECHNICAL & ADMINISTRATIVE ISSUES

The Administrator will deal with the operational transactional mismatches and residual balances as a result of the Section 13A process in accordance with Practice Note 8.4.

The Administrator will deal with financial matters relating to contribution payments in accordance with Practice Note 13.4.

¹⁹ For the purpose of this duty it is deemed that the Conduct Standard is already in effect.

²⁰ For purposes of this requirement it is deemed that the Conduct Standard is already in effect.

The Administrator will deal with the Payment of late payment interest (LPI) on contributions in accordance with Practice Note 31.

This practice note will be kept under review by the Management Board, and in no way restricts the ability of the Management Board to make decisions as allowed under the Fund Rules. It will remain in force until such time as it is rescinded or altered by the Management Board.

ANNEXURES

The following Annexures to be added to this Practice Note:

Annexure 1 – copy of Section 13A of the Act [alternatively a link to the section]

Annexure 2 – copy of Regulation 33 of the Act [alternatively a link to the Regulation]

Annexure 3 – copy of PF Circular 110 [alternatively a link to the Circular]

Annexure 4 – Copy of Adjudicator Notice to Funds [alternatively a link to the Notice]

Annexure 5 – Copy of Adjudicator's Communication 1 of 2021 [alternatively a link to the Communication]

Annexure 6 – Copy of Conduct Standard

Annexure 7 – Copy of specific Master Rules referred to

ANNEXURE 1

SECTION 13A OF THE PFA

13A. Payment of contributions and certain benefits to pension funds.—(1) Notwithstanding any provision in the rules of a registered fund to the contrary, the employer of any member of such a fund shall pay the following to the fund in full, namely—

- (a) any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and
- (b) any contribution for which the employer is liable in terms of those rules.

(2) (a) The minimum information to be furnished to the fund by every employer with regard to payments of contributions made by the employer in terms of subsection (1), shall be as prescribed.

(b) If that information does not accompany the payment of a contribution, the information shall be transmitted to the fund concerned not later than 15 days after the end of the month in respect of which the payment was made.

(3) (a) Any contribution to a fund in terms of its rules, whether it be a contribution contemplated in subsection (1), a contribution for the payment of which a member of the fund is responsible personally, or a contribution to be paid on a member's behalf—

- (i) shall be transmitted directly into the fund's account with a bank finally registered as such under the Banks Act, 1990 (Act No. 94 of 1990), not later than seven days after the end of the month for which such a contribution is payable; or
- (ii) shall be forwarded directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month; or
- (iii) in the case of a fund contemplated in section 15 (4) that has been exempted from the provisions of sections 5 (2) and 9 because, in operating as a fund, its assets consist exclusively of one or more policies of insurance with an insurer carrying on long-term insurance business as contemplated in the Insurance Act, 1943, shall be forwarded to the insurer concerned in such manner as to have the insurer receive the contribution not later than seven days after the end of that month.

(b) Any contribution forwarded to and received by a fund in the circumstances contemplated in paragraph (a) (ii), shall be deposited in the fund's bank account on the first business day following the day of receipt.

(4) An amendment of the rules of a fund relating to the reduction of contributions or the suspension or discontinuation of the payment of contributions shall not affect any liability to pay any contribution which became payable at any time before the date of the resolution whereby the amendment was effected, irrespective of the date on which the amendment may take effect.

(5) When a person who, for any reason except a reason contemplated in section 14, 28 or 29, has ceased to be a member of a fund (in this subsection called the first fund), is in terms of the rules of another fund admitted as a member of the other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person had become entitled in terms of the rules of the first fund, the first fund shall, within 60 days of the date of such person's written request to it, or, if applicable, within any longer period determined by the registrar on application by the first fund, transfer that benefit or right to the other fund in full. The transfer shall be subject to deductions in terms of section 37D and to the rules of the first fund.

(6) (a) For the purpose of monitoring and ensuring compliance with this section, the principal officer of the fund or any authorized person shall, at the times and in the manner and format prescribed, submit reports to the categories of persons, to be specified in that notice, who have an interest in such compliance.

[Para. (a) substituted by s. 7 of Act No. 22 of 2008.]

(b) In applying paragraph (a), "authorized person" means any person who has been authorized by the relevant board to perform the function contemplated in that paragraph and of whom the registrar has been advised in writing.

(7) Interest at a rate as prescribed shall be payable from the first day following the expiration of the period in respect of which such amounts were payable on—

- (a) the amount of any contribution not transmitted into a fund's bank account before the expiration of the period prescribed therefor by subsection (3) (a) (i);
- (b) the amount of any contribution not received—
 - (i) by a fund before the expiration of the period prescribed therefor by subsection (3) (a) (ii); or
 - (ii) in the circumstances contemplated in subsection (3) (a) (iii), by the insurer concerned before the expiration of the period prescribed therefor by that subsection;
- (c) the value of any benefit, or right to any benefit, not transferred by the first fund to the other fund before the expiration of the period prescribed therefor by subsection (5).

[Sub-s. (7) amended by s. 6 of Act No. 11 of 2007.]

(8) For the purposes of this section, the following persons shall be personally liable for compliance with this section and for the payment of any contributions referred to in subsection (1):

- (a) If an employer is a company, every director who is regularly involved in the management of the company's overall financial affairs;
- (b) if an employer is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), every member who controls or is regularly involved in the management of the close corporation's overall financial affairs; and
- (c) In respect of any other employer of any legal status or description that has not already been referred to in paragraphs (a) and (b), every person in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer's overall financial affairs.

[Sub-s. (8) added by s. 17 of Act No. 45 of 2013.]

 (9) (a) A fund to which the provisions of subsection (8) apply, must request the employer in writing to notify it of the identity of any such person so personally liable in terms of subsection (8).

(b) In the event that an employer fails to comply with the requirements of this provision, all the directors (in respect of a company), all the members regularly involved in the management of the closed corporation (in respect of a closed corporation), or all the persons comprising the governing body of the employer, as the case may be, shall be personally liable in terms of subsection (8).

[Sub-s. (9) added by s. 17 of Act No. 45 of 2013.]

 (10) A board of a fund must report any non-compliance with the provisions of this section, in accordance with such conditions and in the format as may be prescribed.

[S. 13A inserted by s. 15 of Act No. 86 of 1984, amended by s. 6 of Act No. 22 of 1996 and substituted by s. 1 of Act No. 94 of 1997. Sub-s. (10) added by s. 17 of Act No. 45 of 2013.]

ANNEXURE 2

REGULATION 33

33. Requirements in terms of section 13A of Act.—

- (1) Minimum information to be furnished by every employer to the fund with regard to payments of contributions in terms of section 13A (2) of the Act, shall consist of at least the following:
 - (a) Initial Contribution Statement:
 - (i) Name of the fund; identification of the fund (e.g. registration number); period in respect of which the contribution is payable;
 - (ii) name and address of the employer or pay-point which made the deduction; responsible person to contact at the employer or pay-point;
 - (iii) full name, date of birth, ID number or employer pay number, or other means of identification, date of membership, pensionable emoluments of member and percentage or amount of contributions, split between member and employer as well as an indication of any additional voluntary contributions paid.
 - (b) Subsequent Contribution Statement:

In respect of each contribution period either—

 - (i) the information required in paragraph (a) (i) and (ii) above and part or all of the information contained in paragraph (a) (iii) above; or
 - (ii) a reconciliation with the contribution statement for the previous period showing any differences in the data such as additions as a result of new members, reductions as a result of membership terminations, adjustments as a result of changes in pensionable emoluments or the payment of additional voluntary contributions or other information and corrections due to error.
- (2) The person—
 - (a) responsible for checking the receipt of electronic transfers into the fund's bank account indicated in section 13A (3) (a) (i) of the Act; or
 - (b) responsible for receiving contributions in terms of section 13A (3) (a) (ii); or
 - (c) authorized by the insurer to account for contributions received by funds envisaged in section 13A (3) (a) (iii), shall report—
 - (i) not later than a further fifteen days of the end of the period set out in section 13A (2) (b) to the principal officer or authorized person (as the case may be) (in these regulations referred to as the monitoring person) mentioned in section 13A (6) of the Act—
 - (aa) whether any of the matters previously reported on were not resolved;
 - (bb) if the data envisaged in section 13A (2) (a) of the Act was not transmitted as prescribed in section 13A (2) (b); or
 - (cc) where the payment made in terms of section 13A (3) (a) and the data envisaged in subregulation (1) above cannot be reconciled with each other,

other than where a discrepancy is less than 2,5% of the total contribution payable for the relevant period, in which event such discrepancy shall be deemed not to constitute a contravention of this regulation; and

- (ii) within a further fifteen days of the end of the period set out in section 13A (3) (a) to the monitoring person indicated in section 13A (6) if the contributions payable in terms of section 13A (1) have not been received as provided in section 13A (3) (a): Provided that a discrepancy as envisaged in subparagraph (i) (cc) above shall not be regarded as a failure to pay contributions for the purposes of this regulation.
- (3) The monitoring person indicated in section 13A (6) of the Act shall then in writing report the said failure to comply with the provisions of subsections (2) (b) and (3) (a) of section 13A to the board within 7 days after receipt of the report mentioned in subregulation (2) above.
- (4) The board of the fund may, for reasons acceptable to it other than the failure to pay contributions in terms of section 13A (3) (a) of the Act, delay any action until the report of the following month has been received: Provided that where no acceptable reasons were furnished or there was a failure to pay contributions in terms of section 13A (3) (a), the board shall ensure that—
 - (a) the monitoring person indicated in section 13A (6) of the Act brings the infringement of section 13A (2) (b) or section 13A (3) (a) to the attention of the members of the fund in respect of whom the contributions are payable; and
 - (b) the registrar is advised of the action taken, within such period and in such manner as determined by the board.
- (5) If any failure to transmit contributions referred to in section 13A (1) of the Act in the manner prescribed in section 13A (3), continues for 90 days the monitoring person indicated in section 13A (6), shall report the matter in detail within 14 days of the expiration of such 90 days period to the Attorney General and inform the registrar accordingly.
- (6) The registrar may, at his discretion, inform the Commissioner for South African Revenue Services of any failure to comply with section 13A of the Act for whatever action the Commissioner for South African Revenue Services deems necessary to take against the participating employers and/or the board of the fund.
- (7) Compound interest on late payments or unpaid amounts and values shall be calculated for the period from the first day of the month following the expiration of the period in respect of which the relevant amounts or values are payable or transferable until the date of receipt by the fund at the rate prescribed from time to time by the Minister under section 13A (7) of the Act by notice in the Gazette. Such interest shall constitute investment income for the fund and shall be payable to the fund by no later than the end of the second month following the month in respect of which the amount is received or the value transferred, as the case may be.
- (8) The initial contribution statement shall be furnished by not later than 90 days after the commencement of these regulations indicated in paragraph 4 (1) in respect of each fund established on or before 31 August 2001, and within fifteen days of the end of the period for which the first contribution is payable for every fund established thereafter. A subsequent contribution statement shall be furnished within fifteen days after the end of the month in respect of which the contribution is payable.

ANNEXURE 3



FINANCIAL SERVICES BOARD

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CIRCULAR PF NO. 110

(To all self-administered funds, all fund administrators, and the administering insurers of funds exempted in terms of section 2(3)(a) of the Pension Funds Act, 1956)

PENSION FUNDS ACT, 1956, SECTION 13A, REGULATION 33 AND NOTICES BY THE MINISTER AND THE REGISTRAR

PURPOSE OF CIRCULAR

This circular supplements Circular PF No 108, issued in May 2001, with more detail about the practical application of section 13A.

This Circular explains the practical application of section 13A and Regulation 33 in more detail.

The Pension Funds Amendment Act, 1997 (Act No. 94 of 1997) came into effect on 2 April 2001. This inter alia amended section 13A dealing with contribution payments to pension funds.

The conditions referred to in section 13A(2)(a) were gazetted as Regulation 33 on 6 April 2001 (Govt Notice 337).

Calculation of Interest

Section 13A(7) and Regulation 33(7)

1. Interest on late payments of contributions as well as unpaid contributions is payable if payment is not received by the fund within 7 days after the end of the month for which the contribution was payable in terms of section 13A(3)(a). The interest payable is calculated from the first day of the month following that period for which the contribution was payable. The amount of the late payment and unpaid amount is determined per employer. Each participating employer, including subsidiary companies participating in the fund would be regarded as a separate employer. Interest thereon is calculated separately per period.

All references to days will be to calendar days, which include weekends. Should any of the due days fall on a weekend or a public holiday, the following working day will be regarded as the day specified in the Act and Regulations.

“Month” means a month which commences with an arbitrary date and expires on the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts [*Interpretation of Statutes by Professor GE Devenish, Juta & Co. Ltd first edition*].

EXAMPLE

Contribution month or period commences on the 6th in terms of the fund rules.

Contributions due for the month 6 January to 5 February must be paid by 12 of February.

If the contributions are paid to the fund on 19 February.

Interest must be calculated from 6 to 18 February, both days included.

2. Interest at the prescribed annual rate, compounded daily must be paid to the fund on all late payments and unpaid amounts (Regulation 33(7)). The interest is regarded as an unpaid amount attracting further interest until date of payment as set out above. This interest is due and payable not later than two months after the month in respect of which the late payment was due. This means that in the previous example, interest for the period 6 to 18 February would be payable not later than two months after 5 February, being 5 April. If, as in the previous example, the interest on the unpaid contribution amounts to say R5 000, this interest of R5 000 will then attract further interest thereon from 19 February until the day preceding the day on which it is paid to the fund which must be by no later than two months after 5 February, namely 5 April.

Where the outstanding amount of contribution or transfer benefit is not paid within the time allowed, penalties other than late payment interest could, in terms of the rules of a particular fund, be applied (see below).

The interest on late payment of contributions constitutes investment income for the fund (Reg. 33(7)). The trustees must attempt to restore the position of the affected members to that which it would have been had the contributions been paid timeously. The rules of a fund should state clearly how the interest will be applied. If necessary, the rules of a fund should be amended to clarify the application of interest. Late payment of contributions in respect of new entrants or salary adjustments is regarded as an outstanding contribution from the date when the salary adjustment is made. If a retrospective salary adjustment is made contributions will be due from the date of the decision of the adjusted salary and not the effective date of the salary adjustment. Interest will therefore be attracted as illustrated in the following example:

EXAMPLE

August contribution paid 6 September
Amount of contribution paid R15 000
Contribution per contribution statement R15 000

AND

September contribution paid 6 October
Amount of contribution paid R25 000
Contribution per contribution statement R25 000

Even though the amount of the contribution and the amount paid is equal, the September contribution statement reveals that there were salary increases and new entrants from 1 August and that the correct contribution for August should have been R20 000 and the September contribution R20 000. This constitutes a contribution underpayment of R5 000 for August (being R20 000 minus R15 000) on which interest must be paid to the fund for the period 1 September until 5 October. The interest will then be payable on or before 6 December.

3. Regulation 33 (2)(i)(cc) deems a discrepancy of less than 2.5 % not to constitute a contravention of the regulation (see below). For purposes of calculating the 2.5%, the amount of the contribution received relative to the expected contribution must be calculated per pay point or participating employer (where contributions are received from the participating employer which does not have any other pay points).

In terms of section 33 the registrar may at the request of the fund, extend certain periods set out in section 13A.

EXAMPLE

One participating employer has three pay points relating to branches. The monthly contribution from pay point "A" is 5% short in terms of the (correct) data supplied. Overall the employer's contribution is only 1% short. There is a duty to report to members, related to pay point "A".

There are two employers contributing monthly to the fund. Employer A is 5% short for one month, relative to (correct) data supplied. It is not possible to isolate the particular employees in respect of whom contributions may have been short paid. Employer B overpays by 2%. Overall for both employers the discrepancy on total contribution is only 1%. The board must instruct the monitoring person to inform members employed by employer A of the shortfall in contribution payments for the month.

4. The Minister prescribes the interest rate on late/underpayments by Notice in the *Gazette*. The current rate (Notice 1099 of 9 November 2001) is the same as the maximum annual finance charge rate under section 2 (1) of the Usury Act. This is presently 23 % per annum in respect of amounts not exceeding R10 000 and 20 % per annum in respect of amounts exceeding R10 000.

These prescribed maximum finance charges are amended from time to time and it is the responsibility of the fund to establish when these rates are amended.

EXAMPLE

Fund has two participating employers.

Employer A: Contribution due = R8 000 (i.e. less than R10 000).
Paid late.
Interest charged at 22% (prescribed rate at 8 January 2004)

Employer B: Contribution due = R12 000 (i.e. exceeds R10 000).
Paid late.
Interest charged at 19% (prescribed rate at 8 January 2004)

5. The provision for interest on late payments and outstanding amounts became effective on 2 November 2001. Interest will therefore accrue from 2 November 2001 in respect of any unpaid amount due to the fund as contemplated by section 13A(7) and regulation 33(7).

EXAMPLES

- **Contribution for September 2001.**
Contributions must be paid to the fund not later than 7 October 2001.
Contribution paid 10 November 2001.
Interest calculated from 2 November 2001 until 9 November 2001.
Other penalties set out in the rules of a fund may also apply.
Interest payable by no later than 30 November 2001.
- **Contribution for October 2001** as well as contributions outstanding from March 2001.
October contributions must be paid to the fund not later than 7 November 2001.
Contributions for March 2001 to September 2001 still outstanding.
All outstanding contributions paid on 10 November 2001.
Interest on the total of the outstanding contributions will be calculated from 2 to 9 November 2001 (both dates included).
The interest calculated above will be payable by no later than:
 - 31 December 2001 for October 2001 contributions;
 - 30 November 2001 for September 2001 contributions; and
 - the interest on the total of the outstanding contributions from March to August 2001 will be payable immediately.

6. REPORTING

Sections 13A (2) and (6), Regulations 33 (1) to (6) and (8).

- 6.1 The initial contribution statement had to be furnished by 3 October 2001 for funds established on or before 31 August 2001 (Regulation 33(8)). For every fund established thereafter, such initial contribution statements have to be furnished within 15 days after the end of the period in respect of which the first contribution is paid (section 13A(2)).

Subsequent contribution statements shall be furnished to the fund within fifteen days after the end of the month or period in respect of which contributions are payable.

EXAMPLE

Fund commenced 1 January 2001.
Contribution periods run from 1st of month to end (30th/31st) of the month.
Initial statement due 3 October in respect of August contributions,
Subsequent statement due 15 October for September contributions.
Thereafter monthly by the 15th

- 6.2 The responsible person should report to the monitoring person:
- outstanding contributions - within 22 days ; and
 - non-transmission of data or irreconcilability of contributions with data - within 30 days
- from the end of the month or period in respect of which the contributions and data were due (Regulation 33(2)).
- 6.3 The monitoring person shall within 7 days after the receipt of the report set out in paragraph 6.2 above, report the failure to comply with section 13A(2)(b) and (3)(a) to the board.
- 6.4 The board must instruct the monitoring person to inform those members of the fund in respect of whom the contributions are outstanding (section 13A(3) and regulation 33(4)). The board has the discretion as to when this report must be made. However, the board members have a fiduciary duty to ensure that such report is made within a reasonable period.

If the non-compliance reported to the board concerned, a matter other than the failure to pay the full contribution to the fund as required in terms of section 13A(3) of the Act and where a good reason exists, the board may delay the reporting of the matter to the affected members until the following month. If, at the end of that month, the non-compliance has not been rectified, the board must instruct the monitoring person to bring such failure to the attention of the members.

The monitoring person's report on non-compliance need only be sent to the affected members, provided that these members can be identified failing which the report must be sent to all the member.

Thus, if there are several pay points making contributions to a fund, but only one pay point defaults, the monitoring person need only advise the members affected by the defaulting pay point.

7. Regulation 33 (5) requires that where failure to transmit contributions by the deadline has continued for 90 days, the monitoring person must report the matter to the Directorate of Public Prosecutions within a further 14 days after the end of the 90 day period. The monitoring person must advise the Registrar accordingly.

The 90 day period applies to "any failure" to transmit contributions within the seven day deadline period.

The 90-day period commences on the expiry of the seven day period. Therefore, if the full contribution due in respect of a particular month has not been paid within 97 days of the end

of that month, the monitoring person must report the matter to the Directorate of Public Prosecutions within a further 14 days. The proposed procedure for such reporting is outlined below. Note that the Registrar only has to be advised of such report and does not, unless he specifically requests, require a copy thereof.

8. **The proposed procedure for reporting the matter to the Directorate of Public Prosecutions**

- 8.1 The monitoring person must report the matter to the Director of Public Prosecutions. It is further recommended that the monitoring person of the fund also report the contravention of section 13A, with specific reference to the employer in default, to the South African Police Service at the commercial branch nearest to the fund's registered address. A docket will be opened and a case number issued.
- 8.2 The investigative officer will also report the matter to the Director of Public Prosecutions in the specific area for investigation. This process will be investigated and monitored by the office of the Director of Public Prosecutions.
- 8.3 The following information has to be submitted when the case is reported:
 - ◆ An affidavit by the monitoring person of the fund. (See **Attachment A or B**, whichever is applicable);
 - ◆ Certificate from the Registrar of Companies providing details of the directors of the company in default. This is required in terms of section 212 of the Criminal Procedure Act, Act No. 51 of 1977.

9. **Transfer of Benefits**

Section 13 A(5) and Regulation 33 (7)

- 9.1 Section 13A (5) requires a fund to transfer a benefit (on termination of membership) in respect of a member to another fund in which the member is eligible to participate within 60 days of the member's written request to the fund. The transferor fund may apply to the Registrar to extend this period for a longer period if it is likely that the 60 day period will be exceeded.
The Registrar will consider such applications on a case-by-case basis. Should he find the reasons to be valid, the period will be extended for such a period as approved by the Registrar.

The 60 day period commences on the date of receipt by the fund of the member's written instruction to transfer his/her benefit.
- 9.2 Section 13A(7) states that interest is payable on the value of any withdrawal benefit where a transfer benefit (withdrawal benefit) has not been transferred within 60 days. The Minister prescribes the interest rate on late transfer of benefits by Notice in the *Gazette* (refer paragraph 4 above). The current rate (Notice 1099 of 9 November 2001) is the same as the maximum annual finance charge rate under section 2 (1) of the Usury Act (section 13A(5)). Interest on late payment of transfer benefits is payable on all transfers, except for benefits transferred or paid in terms of section 14, 28 and 29 of the Pension Funds Act.
- 9.3 Depending on the rules of a fund, penalties may be determined in addition to late payment interest.

9.4 The interest payable forms part of the investment income of the transferee fund (Regulation 33(7)). On transfer of the benefit, the interest added to the benefit will be subject to Retirement Fund Tax in the hands of the transferee fund, and should form part of the member's transfer value.

The Board of Management of the Fund should consider possible rule amendments to deal with situations where both penalty and late payment interest may apply in respect of transfers of benefits to other funds.

10. Other Penalties

The following penalties will apply in addition to interest on late payment:


- Anyone found guilty of contravening or failing to comply with section 13A, will be liable upon conviction to a maximum fine of R2000 per offence (section 37).
- Employers have a duty to pay contributions and supply information to a fund within the specified periods;
- Responsible persons and monitoring persons must make certain reports; and
- Boards of management have to take certain decisions and issue instructions.
- Any failure could constitute an offence in terms of section 37.
- A penalty of R50 per day may be imposed for failure to make returns, or transmit reports, statements or other documents within the prescribed periods (section 37(2) and regulation 26). The employer, responsible person, monitoring person and board members could incur such penalty for failure to submit data or reports, as the case may be.

11. Prosecutions

A number of company directors have recently been prosecuted successfully for failing to comply with the provisions of section 13A and the rules of a fund. More cases are pending.

The employer, responsible person, monitoring person and board members should ensure full compliance with section 13A.

Yours faithfully

A handwritten signature in black ink, reading "J.P. ISHIDI". The signature is written in a cursive style with a horizontal line above it.

REGISTRAR OF PENSION FUNDS

AFFIDAVIT

I, the undersigned

..... (ID

do hereby state under oath as follows:

- 1 I am the monitoring person of the Fund (the "Fund") situated at (postal address PO Box) and my telephone number at this address is
- 2 The contents of this affidavit is both true and correct, and unless otherwise indicated fall within my personal knowledge and belief.
- 3 I became monitoring person of the above mentioned Fund on As part of my functions I monitored the receipt of contributions to the Fund from various participating employers.
- 4 In terms of of the rules of the Fund, the employees listed in **Annexure 1** ("Employees") were obliged to join the Fund. Rule of the Fund provides that the employees must contribute% of their salary per month to the Fund and their employer,, must contribute at% per month for each of these members.
- 5 In terms of rule of the rules of the Fund, is bound to pay contributions over to the Fund within 7 days after the end of each month. This is in accordance with the provisions of section 13A of the Pension Funds Act, Act No 24 of 1956 ("Act").
- 6 In terms of rule, the aforementioned employees of may not withdraw from the Fund whilst being employed by In terms of section 13 of the Pension Funds Act the rules of the Fund are binding on the Fund and it's members.
- 7 has failed to pay over the contributions deducted from the Employees from to in accordance with the provisions of section 13A of the Act. In order to protect the interest of the Employees, I reported to the Registrar of Pension Funds, and the Employees on an ongoing basis. Extensive proof of correspondence with the above-mentioned entities is on record at my office and has been handed to of the Financial Services Board.
- 8 Apart from the above, the officers of the Fund have also instituted civil action against for the recovery of the arrear contributions due to the Fund by the Employees and Thus far the Fund has recovered the outstanding contributions for the period to

9 According to the Fund's records, is still in arrear with contributions due to the Fund for the months of (refer **Annexure**).
..... has been notified of the illegal nature of its actions but has failed to respond.

I know and understand the contents of this affidavit. I have no objection to taking the prescribed oath and consider the oath to be binding on my conscience.

Signed at on this the day of 2.....

MONITORING PERSON

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at on

COMMISSIONER OF OATHS (ex officio)

AFFIDAVIT

I, the undersigned

.....

do hereby state under oath as follows:

- 1 I am the monitoring person of the Fund, situated at and my telephone number at this address is
- 2 The contents of this affidavit is both true and correct, and unless otherwise indicated fall within my personal knowledge and belief.
- 3 As part of my functions I monitor the receipt of contributions to the Fund from various participating employers into this umbrella fund. I am obliged to see that the provisions of section 13A of the Pension Funds Act is adhered to as well as regulation 33 of the Pension Funds Act.
- 4 The Fund is called Fund. The participating employer, started participating in the Fund on the is situated at and their postal address is Their telephone number is:
- 5 The employees listed in **Annexure 1** were obliged to join the Fund and contribute at% of their salary per month to the Fund. The employer had to contribute at% per month for each of these members. In terms of the rules of the Fund the aforementioned employees may not withdraw from the Fund whilst being employed by the employer. A copy of the special rules of the Fund is attached as **Annexure 2**. In terms of section 13A of the Pension Funds Act the rules of the Fund is binding on the Fund and it's members.
- 6 In terms of the rules of the Fund and section 13A of the Pension Funds Act the employer is bound to pay contributions over to the Fund within 7 days after the end of each month. This is in accordance with the provisions of section 13A of the Pension Funds Act, Act No 24 of 1956.
- 7 contravened section 13A of the Pension Funds Act by failing to pay contributions due to the Fund for the month of Their contributions for were due on the Attached as **Annexure 3** a copy of the Fund statement as on

8 is the responsible person at in her
in her capacity as of the company. I request further investigation
into this matter.

I know and understand the contents of this affidavit. I have no objection to taking the
prescribed oath and consider the oath to be binding on my conscience.

Signed at on this the Day of
20.....

I certify that the deponent has acknowledged that he knows and understands the contents of
this affidavit, which was sworn to before me and the deponent's signature was placed thereon
in my presence at on 20.....

MONITORING PERSON

COMMISSIONER OF OATHS (ex officio)

ANNEXURE 4



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25 February 2020

NOTICE TO FUNDS

- 1. The Office of the Pension Funds Adjudicator (“the OPFA”) hereby notifies boards of pension funds that complaints lodged by funds against employers for non-payment of contributions in terms of section 13A of the Pension Funds Act No 24 1956 (“the Act”) must comply with prescribed requirements. The number of complaints lodged with this Tribunal has exponentially increased in the last 5 years and has had the adverse effect of placing a strain on our already stretched capacity. In the interest of utilising our scarce resources efficiently and disposing of complaints in an expeditious manner, this Tribunal has taken a policy decision to apply strict requirements to complaints lodged by boards of funds in relation to section 13A cases.**
- 2. With immediate effect, a fund or its board that wishes to lodge a complaint against an employer for non-payment of contributions must demonstrate that it has complied with the statutory duties imposed in terms of the Act and Regulation 33(1) to the Act. This includes the duty to take all reasonable steps to ensure that the interests of members are protected at all times (section 7C (2)(a)) and to take all reasonable steps to ensure that contributions are paid timeously to the fund (Section 7D(1)(d)). Most importantly a fund or its board has a duty to request an employer in writing to notify it of the identity of persons personally liable for payment of contributions in terms of section 13A(8) of the Act and to report any non-compliance with the provisions of**


The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

section 13A in accordance with such conditions and the format as may be prescribed.

3. In most of the complaints lodged by funds, there is no evidence that a fund has complied with its statutory duties as outlined above. Further, members are neither aware nor informed about an employer's non-compliance in terms of section 13A in order to exercise and protect their rights. This Tribunal should be used as the forum of last resort in the process for the recovery of arrear contributions from an employer and even then only in clear cases of compliance with the prescribed duties in terms of the Act. Although this Tribunal will consider such complaints, a fund or its board must show that it has taken all reasonable steps to ensure that contributions are paid timeously. This includes demonstrating that the fund rules applicable to the failure of the employer to remit contributions have been applied or/and an explanation is provided for not applying the rules in such a situation.
4. In light of the above, the OPFA requires a fund or its board to provide evidence that shows compliance with certain statutory duties when it lodges a complaint in terms of section 13A against an employer. The failure to satisfactorily provide the requisite information will result in the complaint not being accepted or dismissed. In order to assist the fund or its board to satisfy the requirements of the OPFA to investigate the complaint, the following information must be submitted with the complaint:
 - 4.1 The period of arrear contributions;
 - 4.2 Amount of normal arrear contributions and amount of late payment interest as stated by section 13A(7) read with Regulation 33(1);
 - 4.3 The steps that were taken by a fund to ensure that contributions and schedule are paid and submitted timeously (Section 7D(1)(d));
 - 4.4 The steps that were taken to inform members of any non-compliance by an employer in terms of payment of contributions (Regulation 33(4)(a));
 - 4.5 Indicate the identity of persons in the employer who are personally liable for payment of contributions (Section 13A(9));
 - 4.6 The steps that the fund took to report non-compliance with section 13A in the prescribed format (Section 13A(10) and Regulation 33(4)(b)).

- 5 The OPFA remains committed in ensuring a fair, economical and expeditious resolution of complaints as per its mandate. It is also committed to ensuring that the fund or its board achieves compliance with the Act and other relevant laws. To this end the co-operation of boards of funds in relation to section 13A compliance and enforcement will go a long way in ensuring an economical and expeditious resolution of complaints.



MP THULARE

DEPUTY PENSION FUNDS ADJUDICATOR

ANNEXURE 5



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OPFA COMMUNICATION 1 OF 2021

ORDERS RELATING TO ARREAR CONTRIBUTIONS – SECTION 13A OF THE PENSION FUNDS ACT

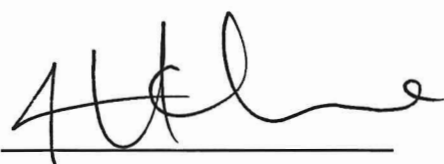
1. The Office of the Pension Funds Adjudicator (“OPFA”) receives a large proportion of complaints pertaining to the non-payment of contributions by defaulting employers that are non-compliant with section 13A of the Pension Funds Act, 1956 (“Act”).
2. The practice of the OPFA in such complaints has been to order an exchange of information between the employer and the fund and to order that subsequent to such exchange, the employer must pay the fund an amount calculated based on the information exchanged. The complainant is thereafter paid the benefit that is due by the fund.
3. A determination made by the Adjudicator is deemed to be a civil judgment of any court of law had the matter in question been heard by such court and may be enforced in the same manner. Notwithstanding, it has come to the attention of the OPFA that such orders as mentioned hereinbefore are sometimes not given effect to by the relevant parties in the result that complainants are not provided with the intended relief unless they approach the court to compel compliance with Adjudicator’s orders together with contempt of court proceedings.
4. The OPFA deems it undesirable for complainants to be placed in a position whereby they are required to expend further time and legal costs in obtaining relief. In the circumstances, the OPFA will commence conducting investigations pertaining to arrear contributions in a manner that enables the Adjudicator to make orders

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

sounding in money with effect from 1 December 2021. This is intended to make it easier for a fund and a member to enforce such an order by obtaining a writ of execution from the relevant court in the event of non-compliance with the order by the employer or fund.

5. Funds who are responding to complaints pertaining to arrear contributions should provide the OPFA with the following information:
 - 5.1. The periods for which the employer is in arrears;
 - 5.2. A reconstruction the complainant's contribution schedule based on the information already in the fund's possession, for the periods referred to in 5.1. above;
 - 5.3. A computation of the arrear contributions owed by the employer based on the aforementioned reconstructed schedules, referred to in 5.2. above;
 - 5.4. The value of the member's fund credit in the fund to date; and
 - 5.5. A calculation of the benefit due if payment of all contributions are up to date.
6. If the information is not provided in the initial responses, same will be requested from the fund.
7. It should, however, be noted that it may not always be possible for the Adjudicator to make an order sounding in money especially in instances where the non-compliance is ongoing and in such instances the Adjudicator may make an order as set out in paragraph 2 above.



MA Lukhaimane

Pension Funds Adjudicator

Date: 14 October 2021

ANNEXURE 6



FSCA CONDUCT STANDARD 1 OF 2022 (RF)
REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND
CONTRIBUTIONS

FINANCIAL SECTOR REGULATION ACT, 2017

PENSION FUNDS ACT, 1956

The Financial Sector Conduct Authority (the Authority) hereby, under section 106(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) and section 13A(2)(a), (6)(a), 7(a), 7(b) and (10) of the Pensions Fund Act, 1956 (Act No. 24 of 1956), prescribes requirements related to the payment of pension fund contributions.

UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: 19 August 2022

SCHEDULE

CONDUCT STANDARD 1 OF 2022 (RF)

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1. Definitions

In this Schedule, “**the Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, unless the context otherwise indicates and –

“**contribution statement**” means a statement containing the minimum information that must be furnished, as referred to in section 13A(2) of the Act, to a fund by an employer with regard to payment of contributions by the employer to the fund in terms of section 13A(1) of the Act;

“**initial contribution statement**” means the first contribution statement to be provided to a fund by an employer after the employer started participating in the fund;

“**monitoring person**” means an authorised person referred to in section 13A(6)(b) of the Act;

“**subsequent contribution statement**” means any contribution statement provided to a fund by an employer subsequent to the initial contribution statement; and

“**writing**” includes any communication by any appropriate electronic medium that is accurately and readily reducible to written or printed form; and “written” has a corresponding meaning. The communication must be clear, concise, comprehensive and in a language that is easily understood.

2. Employer establishing or participating in a fund

- (1) A fund must notify every employer prior to the commencement of such employer’s participation in the fund, and on an annual basis thereafter, of the employer’s duties, obligations and liability under section 13A of the Act and this Conduct Standard.
- (2) A notification referred to in subparagraph (1), together with a request referred to in section 13A(9) of the Act by a fund to an employer, must be made in the format determined by the Authority.

3. Minimum Information to be contained in a contribution statement

- (1) For purposes of section 13A(2)(a) of the Act, the minimum information to be furnished to a fund by an employer with regard to payments of contributions made by the employer in terms of section 13A(1) of the Act must contain the information set out in subparagraphs (2) and (3) below.
- (2) The minimum information to be furnished to a fund by an employer in an initial contribution statement must include –
 - (a) the name of the fund;
 - (b) the fund registration number;
 - (c) the period in respect of which the contribution is payable;
 - (d) the name and address of the employer;

- (e) where an employer has multiple pay-points, the pay-point which made the deduction;
 - (f) the contact person responsible at the employer or pay-point dealing with enquiries relating to contribution statements and payment of contributions;
 - (g) the identity of the person envisaged in section 13A(8) of the Act, as requested from the employer by the fund in terms of section 13A(9)(a) of the Act;
 - (h) in respect of each member, the following
 - (i) full name;
 - (ii) date of membership;
 - (iii) date of birth;
 - (iv) South African identity number or passport number;
 - (v) employer pay or industry number;
 - (vi) income tax number;
 - (vii) contact number, including (where available) cellular phone number;
 - (viii) e-mail address (where available);
 - (ix) postal address;
 - (x) residential address;
 - (xi) annual pensionable emoluments;
 - (xii) percentage and amount of contributions;
 - (xiii) split between member and employer contribution; and
 - (xiv) details of any additional voluntary contributions paid.
- (3) The minimum information to be furnished to a fund by an employer in a subsequent contribution statement must include –
- (a) the information referred to in subparagraph (2), provided that the information in subparagraph (2)(g) must only be provided if the identify of such person has changed compared to the identity of the person reflected in the previous subsequent contribution statement;
 - (b) the membership number allocated to each member by the fund; and
 - (c) an indication of any changes as compared to the contribution statement for the previous period showing any differences in the data, including additions as a result of new members, reductions as a result of membership terminations, adjustments as a result of changes in pensionable emoluments, the payment of additional voluntary contributions, corrections due to error or any other information that may be relevant.
- (4) All information to be provided under paragraph (2) and (3) must be accompanied by a declaration by the employer that all employees eligible to be members of the fund are accurately reflected in the minimum information.

4. Reporting

- (1) The person -
 - (a) responsible for checking the receipt of electronic transfers into the fund's bank account indicated in section 13(3)(a)(i) of the Act;
 - (b) responsible for receiving contributions in terms of section 13A(3)(a)(ii);

- (c) authorised by the insurer to account for contributions received by funds envisaged in section 13A(3)(a)(iii),

must report not later than a further fifteen days after the end of the period set out in section 13A(2)(b) to the principal officer or monitoring person, as the case may be -

- (i) whether any of the matters previously reported on were not resolved;
 - (ii) if the data envisaged in section 13A(2)(a) of the Act and paragraph 3 was not transmitted as required;
 - (iii) where the payment made in terms of section 13A(3)(a) and the data envisaged in paragraph 3 cannot be reconciled with each other, other than where a discrepancy is less than 2,5% of the total contribution payable for the relevant period, in which event such discrepancy shall be deemed not to constitute a contravention for purposes of this conduct standard; and
 - (iv) if any contributions payable in terms of section 13A(1) have not been received as provided in section 13A(3)(a): Provided that a discrepancy as envisaged in item (cc) shall not be regarded as a failure to pay contributions for the purposes of this conduct standard.
- (2) For purposes of section 13A(6)(a) of the Act, the principal officer of a fund or any monitoring person must, within 7 days after the receipt of a report referred to in subparagraph (1), submit a written report to the board in respect of every relevant employer if non-compliance with the provisions of sections 13A(2)(b) and 13A(3)(a) of the Act occurred or if previous non-compliance is still unresolved, which report must also include details of –
- (a) whether any of the matters previously reported on were not resolved; and
 - (b) any instance where a payment made in terms of section 13A(3)(a) and the relevant contribution statement cannot be reconciled with each other, excluding where the discrepancy is less than 2.5% of the total contribution payable for the relevant period.
- (3) The board must ensure that any material contravention of, or material failure to comply with, sections 13A(2)(b) or 13A(3)(a) of the Act is –
- (a) brought to the attention of each affected member, in an appropriate manner, within 30 days of the board being informed of such failure to comply by the monitoring person, in writing;
 - (b) where the affected members referred to in item (a) cannot be identified, brought to the attention of all the members of the fund or all the members of the fund in respect of that participating employer, within 30 days of the board being informed of such failure to comply by the monitoring person; and
 - (c) reported to the Authority, in the format determined by the Authority, with the proposed course of action taken by the fund to remedy the contravention or failure, within 30 days of the board being informed of such contravention or failure by the monitoring person.

- (4) Any material contravention of or material failure to comply with sections 13A(2)(b) or 13A(3)(a) of the Act that continues for a period of 90 days –
 - (a) must be reported in sufficient detail by the board to the South African Police Service, in the format determined by the Authority, within 14 days after the expiration of the 90 day period; and
 - (b) must, in writing, be brought to the attention of the affected members or, where the affected members cannot be identified, the attention of all the members of the fund or all the members of the fund in respect of that participating employer, by the board within 14 days after the expiration of the 90 day period.

5. Interest on late payments

- (1) For purposes of section 13A(7) of the Act, compound interest on late payments or unpaid amounts –
 - (a) must be calculated from the first day following the expiration of the period in respect of which such amounts were payable until the date of receipt by the fund; and
 - (b) is prescribed to be the prime rate plus 2 percent.
- (2) Interest referred to in subparagraph (1) shall constitute investment income for the fund and must be payable to the fund by no later than the end of the second month following the month in respect of which the amount is payable, or the amount is transferable, as the case may be.

6. Outsourcing of the recovery of arrear contributions

- (1) Where a board resolves to outsource the recovery of arrear contributions to an attorney, the board must –
 - (a) have regard to –
 - (i) any actual or potential conflict of interest that may exist in the selection and appointment of the collecting attorney; and
 - (ii) any board approved policies of the fund relating to conflict of interest and outsourcing;and ensure that any conflict of interest is avoided;
 - (b) ensure that fees payable to the attorney for collection of arrear contributions –
 - (i) are reasonable and commensurate to the service provided; and
 - (ii) do not impede the delivery of fair outcomes to members and the fund;
 - (c) enter into an agreement with the collecting attorney which provides for at least the following –

- (i) a requirement that any amount recovered by an attorney in respect of arrear contributions must be transmitted into the fund's bank account within seven business days of receipt of such amount received;
- (ii) specific reference must be made on the fee structure;
- (iii) specific instructions relating to the steps the attorney must take in the event that the employer fails to pay the arrear contributions on demand;
- (iv) anticipated time-lines in recovering all arrear contributions; and
- (v) frequency of reporting by the attorney to the fund on the status of payments made by the employer.

7. Short title, commencement date and repeal

- (1) This Conduct Standard is called Requirements related to the payment of pension fund contributions, 2022 and comes into operation -
 - (a) six months (6) after the date of publication; or
 - (b) on a later date as determined by the Authority, by notice on its website.
- (2) For purposes of subparagraph (1)(b), the Authority may determine different dates for the coming into effect of different provisions in this Conduct Standard.
- (3) Government Notice 397 in *Government Gazette* 33182 of 12 May 2010 is hereby repealed.

ANNEXURE 7

MASTER RULE 10

RULE 10: CONTRIBUTIONS

The provisions of this MASTER RULE 10 do not apply to a PRESERVER MEMBER or a DEFERRED RETIREE or a MEMBER due an UNCLAIMED BENEFIT.

10.1 MEMBER'S CONTRIBUTIONS

- (1) Each MEMBER must contribute in respect of each calendar month of membership of the FUND at the rate or amount specified in the SPECIAL RULES. The contribution payable by the MEMBER is calculated, as the context demands, either at the specified rate multiplied by the MEMBER'S PENSIONABLE SALARY or as per the amount specified. The contribution must be credited to the MEMBER ACCOUNT when it is received by the FUND.
- (2) A MEMBER may contribute such additional voluntary amounts as he may decide to be applied towards retirement funding.
- (3) Provided that it is specified in the SPECIAL RULES,
 - (a) a MEMBER or group of MEMBERS' contribution rate to the FUND may be 0% (zero per cent);
 - (b) a MEMBER may be allowed to increase or decrease the current contribution rate at such intervals and in such a manner as the MANAGEMENT BOARD may determine.
- (4) At the request of the MEMBER and with the consent of the PARTICIPATING EMPLOYER, the MEMBER'S contribution as specified in the SPECIAL RULES shall be limited to the annual contribution amount to any APPROVED PENSION FUND, APPROVED PROVIDENT FUND or APPROVED RETIREMENT ANNUITY as contemplated in the Income Tax Act.

10.2 CONTRIBUTIONS BY PARTICIPATING EMPLOYER

- (1) Unless MASTER RULE 5.1(3) applies or it is specified in the SPECIAL RULES that a PARTICIPATING EMPLOYER'S contribution rate to the FUND is 0% (zero per cent), the PARTICIPATING EMPLOYER must contribute to the FUND in respect of each month of membership of each MEMBER at the rates or amounts specified in the SPECIAL RULES and, if applicable, any amount paid in respect of administering the SUB-FUND and any premium for any RISK BENEFITS, where such amounts are payable in addition to the rates or amount specified in the SPECIAL RULES. The total contribution payable by the PARTICIPATING EMPLOYER in respect of each MEMBER is calculated, as the context demands, either at the specified rate multiplied by the MEMBER'S PENSIONABLE SALARY and/or the RISK SALARY or as per the amount specified.
- (2) Unless the SPECIAL RULES provide otherwise, the total contribution referred to in MASTER RULE 10.2(1) must be credited to the MEMBER ACCOUNT when it is received by the FUND.
- (3) Notwithstanding the SPECIAL RULES, the MANAGEMENT BOARD may, as part of an investigation into a failure by or inability of a PARTICIPATING EMPLOYER to pay the said contributions and for reasons it considers appropriate under the circumstances, temporarily suspend the retirement funding portion of the PARTICIPATING EMPLOYER'S contributions payable to the FUND by that PARTICIPATING EMPLOYER. Such suspension will be subject to such conditions and for such period as is agreed to by the MANAGEMENT BOARD.
- (4) The FUND may from time to time lay down a minimum contribution rate to be applied to retirement funding in respect of MEMBERS. If at any time the PARTICIPATING EMPLOYER'S contribution rate is insufficient to provide the minimum contribution rate, the shortfall will be dealt with by the ADMINISTRATOR in terms of a policy approved by the MANAGEMENT BOARD.
- (5) If there is a PARTICIPATING EMPLOYER SURPLUS ACCOUNT, then the PARTICIPATING EMPLOYER may request the MANAGEMENT BOARD to debit the PARTICIPATING EMPLOYER SURPLUS ACCOUNT in respect of any amount which the PARTICIPATING EMPLOYER is in terms of this MASTER RULE 10.2 required to pay to the FUND as a contribution or otherwise, for any period of time fixed by the PARTICIPATING EMPLOYER or, if earlier, until the amount to the credit of such PARTICIPATING EMPLOYER SURPLUS ACCOUNT has been exhausted, subject to section 15E of the ACT. Such amount must be credited to the relevant MEMBER ACCOUNTS.

- (6) A PARTICIPATING EMPLOYER may make any additional contributions to be credited to the PARTICIPATING EMPLOYER SURPLUS ACCOUNT on the understanding that this may or may not be tax deductible in its hands depending on any requirement of the REVENUE AUTHORITY.
- (7) Any contribution made in terms of MASTER RULE 10.2(6) above may be made with the express purpose of augmenting the benefits payable in terms of MASTER RULES 6, 7, and 8 to a particular MEMBER or group of MEMBERS, subject to the approval of the REVENUE AUTHORITY before such augmentation takes place.
- (8) A PARTICIPATING EMPLOYER may make any additional contribution to be credited to the MEMBER ACCOUNT of the MEMBER on the understanding that this may or may not be tax deductible in the hands of the PARTICIPATING EMPLOYER depending on any requirement of the REVENUE AUTHORITY.
- (9) It is specifically provided that the terms and conditions relating to the premiums and the payment of benefits provided in terms of the DISABILITY INCOME PLAN and any unapproved risk benefits (not FUND RISK BENEFITS but benefits which are promised to each MEMBER by the PARTICIPATING EMPLOYER), are set out in the policy issued by the INSURER with whom such benefits have been insured. Accordingly the FUND is not liable for the premiums or the payment of any unapproved risk benefits or benefits provided by the DISABILITY INCOME PLAN.

10.3 PAYMENT OF CONTRIBUTIONS

The PARTICIPATING EMPLOYER must pay contributions to the FUND within a period of 7 (seven) days from the end of the calendar month to which such contributions relate.

10.4 RECONCILIATION OF DATA AND CONTRIBUTIONS

The actual contributions received from the MEMBER and the PARTICIPATING EMPLOYER will be credited to the relevant account when they are received by the FUND provided the data submitted by the PARTICIPATING EMPLOYER and the contributions can be reconciled. Subject to the provision of the ACT, where the data cannot be reconciled with the contributions as required by the ACT, the discrepancy will be dealt with by the ADMINISTRATOR in terms of a policy approved by the MANAGEMENT BOARD.

10.5 FAILURE TO SUBMIT RECONCILED DATA AND CONTRIBUTIONS WITHIN THE LEGISLATED TIMEFRAME

- (1) If a PARTICIPATING EMPLOYER fails to meet its obligation to pay any required contribution timeously, the PARTICIPATING EMPLOYER shall in addition to meeting such obligation, be liable to pay such interest or penalties, or both, to the FUND in accordance with the ACT. For the avoidance of any doubt, such liability shall also apply to any additional interest levied by the FUND in respect of contributions pre-funded in respect of exiting MEMBERS.
- (2) The RISK BENEFIT cover will be terminated in accordance with the provisions of the RISK POLICY.
- (3) Where correct membership data is not submitted within the timeline specified in the ACT, the contributions cannot be credited to the MEMBER ACCOUNT and therefore invested in the INVESTMENT PORTFOLIO. The contributions will be invested in the FUND'S BANK ACCOUNT and managed in terms of the Cash Management Policy referred to in MASTER RULE 3.13 until such time as the correct membership data is received by the FUND whereafter the contributions are credited to the MEMBER ACCOUNT.

ANNEXURE 7

MASTER RULE 15.4

15.4 PARTICIPATING EMPLOYER'S OBLIGATIONS

- (1) The RULES are not conditions of service. They do not govern the rights of employees of a PARTICIPATING EMPLOYER or the rights of a PARTICIPATING EMPLOYER in regard to the employment of employees. The PARTICIPATING EMPLOYER is required to communicate to its MEMBERS any changes to the conditions of service that require a change to the SPECIAL RULES and to submit such communication to the FUND in support of the application to the AUTHORITY to register the amendment to the SPECIAL RULES.
- (2) A PARTICIPATING EMPLOYER shall comply with the following obligations:
 - (a) to capture and supply all data and information within the timelines required by the ADMINISTRATOR, RISK PROVIDERS and INVESTMENT PROVIDERS;
 - (b) to adhere to the requirements for contributions as set out in the ACT by authorising the monthly contributions and by means of electronic funds transfer, transfer the correct contributions timeously into the FUND'S BANK ACCOUNT and by submitting the correct membership data;
 - (c) to provide the FUND with such information as required by the FUND from time to time including in respect of contributions and RISK BENEFITS and to submit such documents as may be required by the ADMINISTRATOR;
 - (d) to ensure the accuracy of all data and information supplied to the ADMINISTRATOR or the RISK PROVIDER except for data and information supplied by the MEMBER, or, if applicable, the person entitled to the benefit, in which case the MEMBER or such person is responsible;
 - (e) to be legally responsible for any errors in the payroll data and other information provided to the ADMINISTRATOR or the FUND, and that the FUND will not be legally responsible for any claim by a MEMBER, or the person entitled to the benefit, as a result of any mistakes in the data or other information;
 - (f) to use the electronic transaction systems and processes determined by the FUND from time to time for the payment of contributions;

- (g) to inform the ADMINISTRATOR in writing of the persons who on its behalf have the right to
- (i) access and amend the membership data, including the persons who are accountable to ensure that the membership data is correct, and
 - (ii) authorise the withdrawal of contributions from the PARTICIPATING EMPLOYER'S bank account
- where required for the ADMINISTRATOR'S procedures;
- (h) to control the access to and the use of the electronic transaction systems of the ADMINISTRATOR. The ADMINISTRATOR is not liable for any claims if such controls are not being properly applied;
- (i) where its MEMBERS are covered for RISK BENEFITS-
- (i) to ensure that it is fully familiar with the terms and conditions of the RISK POLICY,
 - (ii) to comply with all the obligations and conditions of the RISK POLICY,
 - (iii) to provide all the information and documentation required by the RISK PROVIDER regarding the MEMBERS covered by the RISK POLICY,
 - (iv) to ensure that MEMBERS comply with the eligibility requirements of the RISK POLICY,
 - (v) to ensure that MEMBERS are informed of -
 - the evidence of health limits set by the RISK PROVIDER;
 - the RISK PROVIDER'S requirements when their RISK SALARIES exceed the evidence of health limit;
 - any restrictions placed on their RISK BENEFITS by the RISK PROVIDER or as a result of their failure to submit the required evidence of health to the RISK PROVIDER or to satisfy the RISK PROVIDER'S requirements;
- (j) to provide the MANAGEMENT BOARD with all the details required from time to time and any changes thereto of the authorised person in terms of Section 13A of the ACT;
- (k) to ensure that a person who becomes an ELIGIBLE EMPLOYEE after the PARTICIPATION DATE is enrolled as a MEMBER by giving written notice to the FUND as required under the ACT and in the manner prescribed by the FUND from time to time.
- (l) where the PARTICIPATING EMPLOYER requires additional services, in relation to its or its MEMBERS' participation in the SUB-FUND and as agreed to between the FUND and the PARTICIPATING EMPLOYER, that are not covered by that portion of the contribution relating to the cost of administering the SUB-FUND or if the PARTICIPATING EMPLOYER wishes

to perform services that are included in the cost of administering the SUB-FUND, the PARTICIPATING EMPLOYER will be obliged to pay the cost of such services. If there is a PARTICIPATING EMPLOYER SURPLUS ACCOUNT or a SUB-FUND EXPENSE RESERVE ACCOUNT, the MANAGEMENT BOARD may be instructed to debit the applicable account in terms of MASTER RULE 11.2(2)(a)(i) or MASTER RULE 3.13 in respect of such cost.

- (m) where a benefit is required to be paid to a third party, to provide sufficient proof to the ADMINISTRATOR that a BENEFICIARY is not able to open a bank account.
 - (n) act as a conduit for purposes of communication between the MEMBERS and the FUND, including, but not limited to distributing MEMBER benefit statements and, information pertaining to fees and premiums in respect of RISK BENEFITS and any subsequent changes thereto.
 - (o) ensure continued compliance to the 35% (thirty five percent) share stake requirement as cited in the definition of ASSOCIATED PARTICIPATING EMPLOYERS and are obliged to provide satisfactory evidence of such compliance, upon request. In the event of the holding company falling below the 35% (thirty five percent) share stake, the PARTICIPATING EMPLOYER must notify OLD MUTUAL within a reasonable time. Upon such notification, the provisions as contemplated in MASTER RULE 4.1(3) shall no longer apply and each PARTICIPATING EMPLOYER in the related group of companies will then be required to constitute their own MANAGEMENT COMMITTEE as contemplated in MASTER RULE 4.1(2).
- (3) If a PARTICIPATING EMPLOYER fails to meet its obligation to pay any required contribution timeously, the PARTICIPATING EMPLOYER shall in addition to meeting such obligation, be liable to pay such interest or penalties, or both, to the FUND in accordance with the ACT, which will be credited to the MEMBER ACCOUNT. If the FUND is unable to pay any premium for the RISK BENEFITS to the RISK PROVIDER as a result of the failure by the PARTICIPATING EMPLOYER to meet its obligations, the RISK BENEFIT cover will be terminated in accordance with the provisions of the RISK POLICY in which event the FUND will not be liable for the non-payment of any RISK BENEFITS.
- (4) Where correct membership data is not submitted within the timeline specified in the ACT, the contributions cannot be credited to the MEMBER ACCOUNT and therefore invested in the INVESTMENT PORTFOLIO. The FUND shall not be liable for any resultant losses suffered by any of the MEMBERS.

- (5) The PARTICIPATING EMPLOYER and the MEMBER, or the deceased MEMBER'S dependants or nominees concerned, must take all reasonable steps to get the EXIT NOTIFICATION, all documents, data and information as may be required by the ADMINISTRATOR to pay the benefit. All of these requirements must be submitted to the ADMINISTRATOR within the timeframe specified in the RISK POLICY to enable the FUND to claim the RISK BENEFIT. In the event that the FUND is unable to claim the RISK BENEFIT within the stipulated timeframe and the claim is repudiated by the RISK PROVIDER, the FUND shall not be liable for the payment of the RISK BENEFIT.
- (6) The PARTICIPATING EMPLOYER must take all reasonable steps to assist the FUND to trace BENEFICIARIES and inform the FUND of all such steps taken.
- (7) The PARTICIPATING EMPLOYER and the BENEFICIARY are jointly and severally obliged to provide the details of bank accounts to the FUND for the payment of benefits.
- (8) The PARTICIPATING EMPLOYER must within a reasonable period of receiving any communication from the FUND for MEMBERS distribute such communication to those MEMBERS who are in its employment. If the PARTICIPATING EMPLOYER appoints an intermediary as an agent to receive communication on its behalf, the PARTICIPATING EMPLOYER remains responsible to ensure that such agent sends the communication within a reasonable period of receiving the communication from the FUND, to the PARTICIPATING EMPLOYER.
- (9) The PARTICIPATING EMPLOYER or the MANAGEMENT COMMITTEE, whichever is applicable, if the PARTICIPATING EMPLOYER has delegated this function to MANAGEMENT COMMITTEE, must inform the MEMBERS of the INVESTMENT PORTFOLIOS available to them and ensure that the information and access to the information relating to the INVESTMENT PORTFOLIOS, and any changes thereto are made available to them.