



# OLD MUTUAL SUPERFUND

## Section 13A

**Implementation date:** 19 February 2023

**Volume:** 2

In [Volume 1](#) of our communication series on Section 13A, we told you about what the legal requirements are and what you have to do to ensure that you're compliant from 19 February 2023. In this communication, we will be telling you all about the data you need to make available to SuperFund from 19 February 2023. The Financial Sector Conduct Authority (FSCA) published [Conduct Standard 1 of 2022](#) in August. It is very clear on what data is required and what the consequences of non-compliance are should this data not be available, and processes not be followed accordingly.

### What data will be mandatory from 19 February 2023?

The retirement fund trustees are obliged to report employers who don't comply with Section 13A to the FSCA and to the South African Police Services (SAPS). Compliance covers both the payment of contributions by the due date (7th of the following month) and the submission of the required minimum information.

We understand that Employers may experience financial challenges that make it difficult to pay contributions. It is critically important that they reach out to SuperFund immediately to explore their options.

**! All information 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.**

#### INITIAL CONTRIBUTION STATEMENT DATA AND MEMBER DATA MANDATORY FROM 19 FEBRUARY 2023

Mandatory data required	Do you currently give this data to us?
the name of the fund;	✓
the fund registration number;	✗
the period in respect of which the contribution is payable;	✓
the name and address of the employer;	✗
where an employer has multiple pay-points, the pay-point which made the deduction;	✓
the contact person responsible at the employer or pay-point dealing with enquiries relating to contribution statements and payment of contributions;	✗
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 Pension Funds Act;	✗
member's full name;	✓
member's date of membership;	✓
member's date of birth;	✓
member's South African identity number or passport number;	✓
member's employer pay number;	✓
member's income tax number;	!
member's contact number, including (where available) cellular phone number;	!
member's e-mail address (where available);	!
member's postal address;	✗
member's residential address;	!
member's annual pensionable emoluments;	✓
member's percentage and amount of contributions;	✓
member's split between member and employer contribution; and	✓
member's details of any additional voluntary contributions paid.	✓



YES



CURRENTLY  
OPTIONAL, WILL  
BE MANDATORY  
FROM 19 FEB 2023



NO

#### Why is it now mandatory?

The "FSCA" is very clear on compliance measures and fair treatment of financial service customers. They have made it compulsory for employers to collect and share this employee data effective 19 February 2023. Conduct Standard 1 of 2022 goes into greater detail about these requirements.

#### What happens if I don't supply you with this data?

If this data is not received from 19 February 2023, and consistently after this date, not only will it be a legal breach but it'll mean that SuperFund can't guarantee that communication will reach employers and employees as intended.

This is a huge risk because it may compromise future processes such as delays in processing an exit benefit due to outstanding information.

Employers who don't comply will be identified, reported and be assigned the appropriate consequence as a result of non-compliance.

## What are the consequences of not being compliant?

Employers need to understand that failure to comply with SuperFund's Rules, Section 13A of the Pension Funds Act and related legislation is in fact a criminal offense with serious consequences. It is therefore critically important that Employers ensure strict compliance. The following are some of the consequences that employers may be liable for in the event of non-compliance:

- Penalties can amount to R1 000 per non-compliant item, per day of non-compliance.
- The fund is obligated to directly inform members, in writing, if the employer is not compliant with any of the requirements.
- Lodging of a criminal complaint at the SAPS against the persons personally responsible at the Participating Employer for compliance. Any person who fails to comply is guilty of an offense and may be liable, on conviction, to a fine not exceeding R10 million or imprisonment not exceeding 10 years, or both.
- Interest on late payments will be charged at prime rate plus 2 percent.
- Publishing 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.

More information on the consequences of non-compliance can be found in the [SuperFund Practice Note 34](#) document as well as [Conduct Standard 1 of 2022](#).

### Who can be held liable for non-compliance?

- If the employer is a company, every director who is regularly involved in the management of the company's overall financial affairs.
- If the employer is a Close Corporation registered under the Close Corporation Act, 1984 (Act No. 69 of 1984) every member who controls or is regularly involved in the management of the company's overall financial affairs.
- Every person on whose directions or instructions the governing body of the employer acts or who is in control of or is regularly involved in the management of the employer's financial affairs.

### What happens next?

We'll keep you posted via our communication series leading up to the implementation date: 19 February 2023. In the meantime, if you have any questions, please speak to your Old Mutual Corporate Client Services Consultant.

