



FSCA CONDUCT STANDARD [-] OF 2021 (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
FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY

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SCHEDULE

CONDUCT STANDARD [-] OF 2021 (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 subparagraphs (1) and (2), 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 of the month in respect of which the contributions became due until the date of receipt by the fund;
 - (b) is prescribed to be the prime rate plus 2 percent; and
 - (c) may not exceed the principal debt due in respect of the unpaid amounts, inclusive of all costs associated with the recovery of the unpaid amounts.
- (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, 2021 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 web site.
- (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.