SECTION 13A: CREATIVE SOLUTIONS TO ALLEVIATING THE DIFFICULTIES SUFFERED BY EMPLOYEES WHEN EMPLOYERS DEFAULT ON CONTRIBUTIONS

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Legislative framework

The impact of arrear or unpaid contributions in defined contribution funds is that funds are unable to pay members their full benefits when exit events occur. This is an undesirable outcome for pension fund members.

The legislative framework in respect of contributions to pension funds is to be found in section 13A of the Pension Funds Act, 1956 and regulation 33. The Financial Services General Laws Amendment Bill proposes the addition of sub-section 13A(8) to the Act, to the effect that certain categories of persons will be held personally liable for compliance with the section and for the payment of contributions. This includes:

1. **Every shareholder who controls a company and director who is involved in the management of a company's financial affairs;**
2. **Every member of a close corporation who controls or is regularly involved in the management of the close corporation's financial affairs;**
3. **In the case of employers who are not companies or close corporations, every person, including trustees and partners, who controls or is regularly involved in the management of the employer's financial affairs.**

The coalface:

1. **Unpaid contributions or unregistered employees**
2. **Underpaid contributions**
3. **Delays in identifying defaulting employers**
4. **Delays in collecting and reporting arrear contributions**
5. **Approximately one-third of PFA complaints concern arrear or unpaid contributions**

IS THE CURRENT SYSTEM WORKING?

A survey of other jurisdictions – how do pensions systems in other developed and developing countries deal with arrear contributions?

Brainstorming:

1. **A greater role for trade unions, employer organisations and bargaining councils?**
2. **Sanctions - harsher penalties or re-criminalisation in the event of default?**
3. **Communicating defaults directly to members?**