

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

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LEGISLATIVE FRAMEWORK

- ✘ s13A of the Pension Funds Act, 24 of 1956
- ✘ (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 in full*:
 - ✘
 - ✘ (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.
- ✘ Board Duties - s7D(d) - take all reasonable steps to ensure contributions paid timeously
- ✘ Regulation 33
- ✘ Financial Services General Laws Amendment Bill

CHRONOLOGY

- ✘ Employer to pay contributions within 7 days after the end of the month for which it is due (s13A(3)(a))
- ✘ Payment schedules due within 15 days of month end (s13A(2)(b))
- ✘ The collecting person must report to monitoring person:
 - not later than 15 days of a s13A(2)(b) non-compliance (i.e. 15 days + 15 days)
 - not later than 15 days of a s13A(3)(a) non-compliance (i.e. 7 days + 15 days)
- ✘ Monitoring person must report in writing to the board within 7 days of receiving collecting person's report
- ✘ If failure to pay contributions continues for 90 days monitoring person must report it to NDPP within 14 days and inform the Registrar accordingly
- ✘ Board must ensure that monitoring person brings infringement to attention of affected members and that the registrar is advised of the action taken. Referral to enforcement committee.
- ✘ Registrar may inform SARS of any failure to comply with s13A for any action SARS deems necessary to take against the board or employer

THE COALFACE

- ✘ Unpaid/underpaid contributions and unregistered employees
- ✘ Approx one-third of PFA complaints are about arrear contributions
- ✘ Delays in identifying defaulting employers
- ✘ Delays in reporting arrear contributions

IS THE CURRENT SYSTEM WORKING?

CREATIVE IDEAS

- ✘ Greater role for trade unions, employer organisations and bargaining councils
- ✘ Harsher sanctions?
- ✘ Communicating defaults directly to members (emails, smses, etc.)?
- ✘ Insurance for unpaid contributions/PPF - Fraud Compensation Fund?