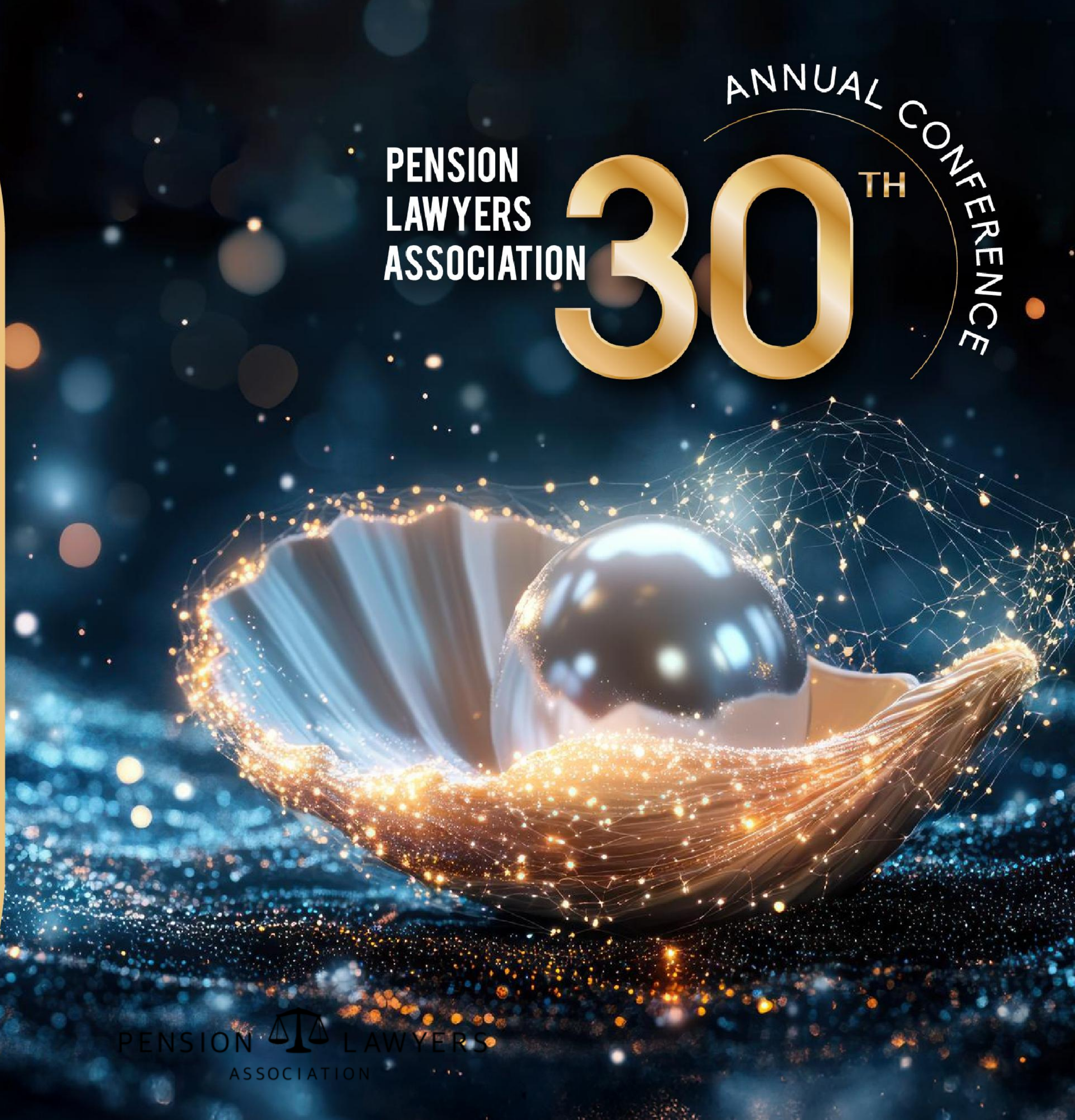
MAKING A DIFFERENCE
SINCE 1996



Board Actions for Arrear Contributions

Presented by:
Nicci van Vuuren – Webber Wentzel
Tshepo Mokoana - Bowmans

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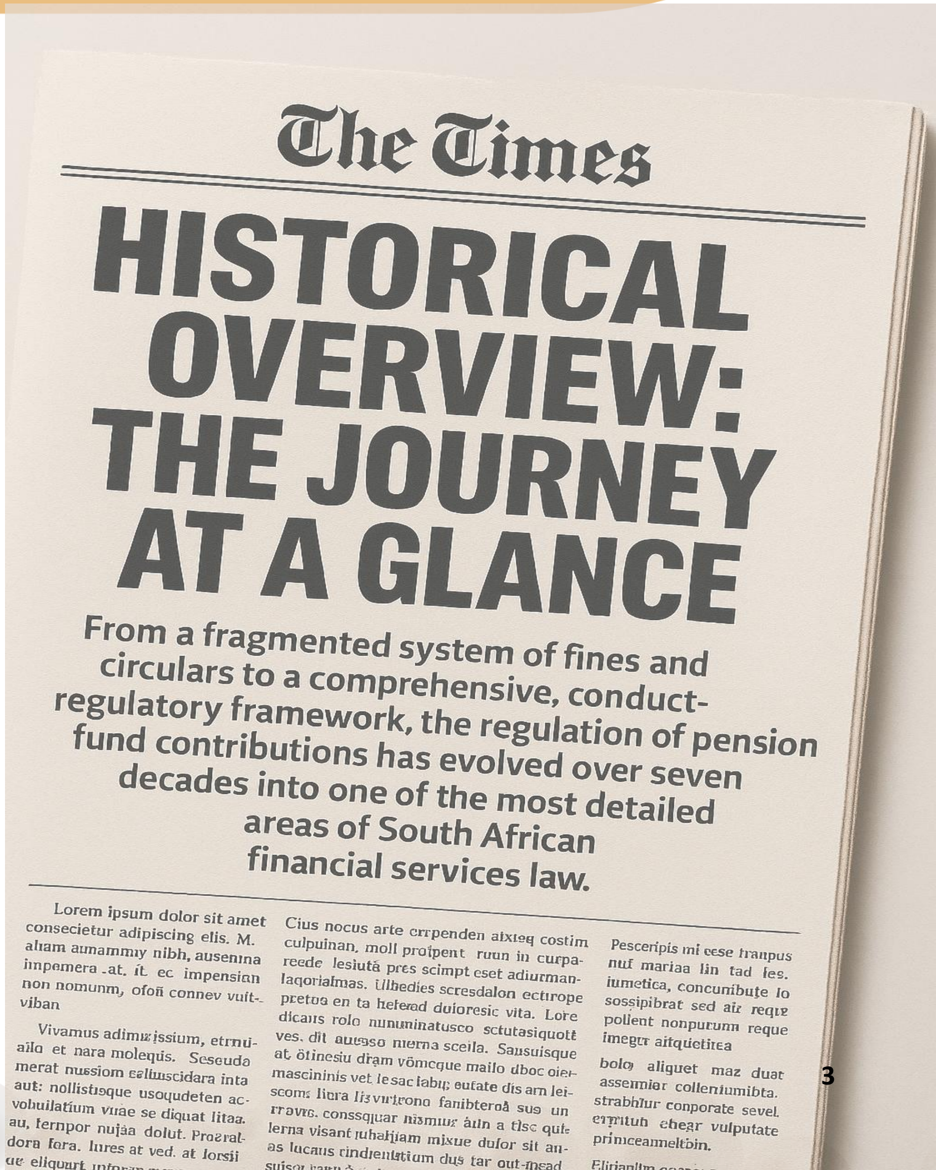
Historical overview: the journey at a glance

Across **SEVEN** decades and various legislative and regulatory interventions 5 themes recur:

1.	Strengthening employer accountability
2.	Imposing personal liability on management
3.	Formalising board governance and fiduciary duties
4.	Standardising reporting formats
5.	Responding to economic crises



Historical overview: the journey thus far

Year	Theme	Instrument
1956	The foundation	The Pension Funds Act 24 of 1956 (assented to on 28 April 1956 & commenced on 1 January 1958)
1962	Early enforcement mechanism	Reg 26 GG R.98 (26 January 1962)
1976 & 1992	Regulatory reminders	PF Circular 28 (30 June 1976) & PF Circular 77 (March 1992)
1996	Board governance introduced	Board governance introduced – Pension Funds Amendment Act 22 of 1996
1997	Regulation tightens	Pension Funds Amendment Act 94 of 1997 PF Circular 91 of 1997 PF Circular 92
2007	Monitoring & reporting formalised	Pension Funds Amendment Act 11 of 2007 & PF 130
2008	Further refinement	Financial Services Laws General Amendment Act 22 of 2008
2010	Contribution info & arrears framework	Regulation 33 Later repealed by conduct standard 1 of 2022
2014	Personal liability	Financial Services Laws General Amendment Act 45 of 2014 (key provisions effective 28 Feb 2014; 20 May 2014 & 29 August 2014
2018	Twin peaks A new regulatory architecture	Financial Sector Regulation Act 9 of 2017
2020	Covid 19 Regulatory response	FSCA communication 11 of 2020 & NEDLAC best practice guide
2022	The Conduct Standard	Conduct standard 1 of 2022 (RF) (published 19 August 2022 – operative 6 months thereafter)
2023	Prescribed formats	FSCA RF notice 8 of 2023 (effective 19 February 2023)
2024	Two-pot	Pension Funds Amendment Act 31 of 2024 (effective 1 September 2024)

FSCA Comm 15 of 2023 – LPI calculation

PFA Comm 1 of 2024 – interest on arrear contributions

70 YEARS

Where the industry stands and where it is going – a system under pressure?

Three forces reshaping the landscape:

Two-pot system	• Members trying to access their savings component have and continue to expose employer non-payment. • Approximately 7 770 employers had defaulted as of December 2023, a position further exposed by the Installair judgment.
Dual enforcement	• Labour Inspectors can now enforce BCEA section 34A compliance [with proposed Labour Court, CCMA and bargaining councils]; • FSCA's existing enforcement powers under the Pension Funds Act.
CoFI	The CoFI Bill is positioned as a major transformation of the entire regulatory landscape, shifting the framework from traditional oversight toward a conduct-focused outcomes-based regime emphasising member protection, governance and transparency.

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The two-pot system: contribution failures laid bare

Pension Funds Amendment Act 31 of 2024 (Effective: 1 September 2024)

What the two-pot system revealed:

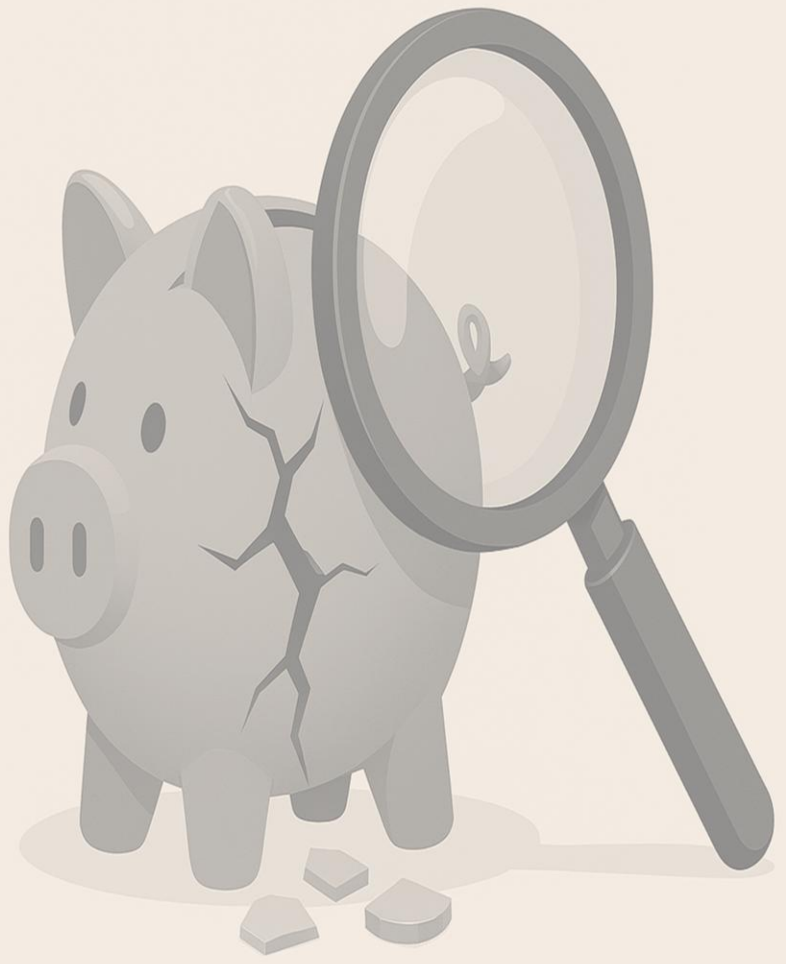
R35 billion in savings withdrawals paid out in under 3 months

- 7 770 defaulting employers affecting 310 000 members (December 2023)
- Members discovered missing contributions (total approx. R5.2 billion)
- Municipalities are biggest culprit - 149 of the 257 municipalities owe collectively R1.4 billion

Conduct – criminal
Section 37(1)(a) of the PFA

Why this matters:

- Members who attempted to access their savings component discovered that contributions had not been paid - their accessible benefit was lower than expected, or absent entirely;
- The scale of default has prompted both the FSCA and the Department of Employment and Labour to take decisive, concurrent regulatory action



The Installair judgment

Engineering Industries Pension Fund & Metal Industries Provident Fund v Installair (in liquidation) and others, Western Cape High Court Case No 1633/2023

Facts:

- The matter was heard in the High Court (Western Cape Division) under case no 1633/2023, brought by the Engineering Industries Pension Fund and the Metal Industries Provident Fund against Installair (in liquidation) and its directors.
- Because the employer was under liquidation, no order was sought against the employer itself due to the moratorium on legal proceedings under section 133 of the Companies Act.
- The directors sought to resist personal liability on grounds including COVID-19 and alleged non-involvement in financial management.

Key findings

Issue	Finding
Statutory liability of directors	Section 13A(8)(a) permits funds to hold directors personally liable for the employer's contribution debts **without the need to pierce the corporate veil** — a standalone statutory liability distinct from ordinary directors' fiduciary duties
Submission of schedules	An employer and its directors cannot unilaterally decide not to submit contribution schedules — submission and payment are peremptory statutory obligations under the PFA framework.
Covid-19 as a defence	Rejected - contributions for that period remained due and owing.
Non-involvement as a defence	Rejected — directorship carries responsibilities and the defences were not bona fide on the papers; a director cannot shelter behind claimed non-involvement.
Order granted	Directors ordered jointly and severally to provide outstanding contribution schedules for the period and pay the outstanding contributions, to pay all further outstanding contributions plus prescribed interest once quantified, and to pay punitive costs on the attorney-and-own-client scale.

Practical significance: Sections 13A(8) and (9) hold persons controlling or regularly involved in an employer's overall financial affairs personally liable for section 13A non-compliance and unpaid or short-paid contributions. Funds can pursue directors and financial controllers personally — not merely insolvent corporate shells.

The Mafube judgment

Municipal Workers' Retirement Fund v Mafube Local Municipality and Others, Free State High Court Case No 1653/2024

Facts:

- The matter was heard in the High Court (Free State Division) under case no 1653/2024, brought by the Fund against the Municipality, the Municipal Manager, the CFO, Mayor and the government appointed Administrator for arrear contributions R14 723 639.52, plus interest thereon from 1 February 2024.
- Litigation followed years of the municipality defaulting on its contributions.
- Court very critical of the municipal officers and their conduct.

> *"[56] The law is clear and unambiguous. Section 13A of the PFA might raise some eyebrows and be described as draconic and unfair, but it emphasises the fact that organs of state and specifically municipalities and its office bearers must protect the constitutional ethos and democracy diligently. It is at the core of their designation. Neither the Municipal Officers nor the Administrator can claim ignorance of the provisions of s 13A and the fact that they shall be personally liable for not paying the retirement contributions and the injury it causes. They accepted the responsibility when they took office.*
>
> *[57] The date of appointment and resignation is irrelevant to the liability. What is significant is that the respondents were in office at the time the claim was lodged. The claim that is based in the period May 2021 to January 2024 constitutes one claim and cannot be segmented into the timeframes wherein Municipal Officers and the Administrator held office or divided between them. It will cause total anarchy in the management of municipalities. It is not required that Mr. Mkaza must be the employer, accounting officer or administrator himself. This was well-justified in the replying affidavit with facts and law stated by the applicant that were well known to Mr. Mkaza. The litigation was embarked upon on 25 March 2024. The respondents are liable for the debt as a whole."*

Key court findings:

- Section 13A is strict and uncompromising;
- Personal liability applies regardless of appointment dates.

Dual enforcement: enter the labour inspector

Withdrawal of the 2003 BCEA Section 34A Exemption (13 January 2025)

WHAT HAPPENED:
On 13 January 2025, the Minister of Employment and Labour withdrew the 2003 determination that exempted employers from section 34A of the BCEA for benefit fund contributions (including pension, provident, retirement, medical aid and similar funds), meaning labour law enforcement now applies to these payment deadlines.

RESULT: Labour Inspectors can now enforce BCEA section 34A compliance alongside the FSCA's existing enforcement powers under the Pension Funds Act — creating a dual-enforcement regime – Labour inspectors have certain enforcement tools available to them in terms of section 69 of the BCEA.

Section 34A of the BCEA – payment deadlines

Employee deductions	Within 7 days of date of **deduction**	PFA – 7 days after the end of the month for which such a contribution is payable
Employer contributions	Within 7 days of the **end of the relevant period**	

Concurrent enforcement exposure for employers

Enforcement avenue	Consequences
FSCA/ Pension Funds Act	• Criminal liability (fine up to R10 million and/or up to 10 years' imprisonment) • Potential personal liability for directors and senior management under section 13A(8)
Labour inspectors /BCEA	• Compliance orders • Criminal liability and penalties – section 93
Fund litigation	Personal civil claims against directors without veil-piercing (Installair)

Proposed changes S62B & 77B BCEA

The CoFI Bill — the architecture of the future

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The CoFI Bill represents a major transformation of the regulatory landscape for retirement funds, shifting the framework from traditional prudential and registration-based oversight to a conduct-focused regime that emphasises member protection, governance and transparency.

Key provisions relating to retirement funds:

01 Licensing and the new gateway to operating

No licence, no business

Every fund must apply for a licence and must be provisionally or finally licensed before commencing retirement fund operations.

COFI LICENCE

Activity	Sub-activity
Providing a financial product	Providing retirement benefits

02 Governance, culture & fit & proper

Conduct governance

Funds must conduct business to promote fair treatment of customers, market integrity, trust and confidence and do so honestly, fairly and with skill, care and diligence with transparency.

- Section 7C fiduciary duties overlaid with CoFI's outcome focused governance obligations
- Trustees must demonstrate active culture leadership – not just procedural compliance
- Governing body accountability for contribution monitoring and member outcomes assessed as a conduct matter not only a fiduciary matter

03 Member protection: central objective

Retirement fund members as retail financial customers

- Includes limiting unreasonable post-sale barriers & applies retail customer requirements to members where a FI provides services to a retirement fund
- Fair treatment of members = regulated conduct outcome;
- Commercial sponsor – FSCA may prescribe standards

04 Employers as supervised entities

Expansion of regulatory reach

- Employers no longer obligors under s13A
- Employers become regulated entities for purposes of their conduct in relation to benefits
- FSCA's supervisory mandate expressly reaches employers in the context of retirement fund contribution compliance

Five pillars of the regulatory framework

1. Registration to licencing

From administrative registration to a licensed, conduct supervised model under CoFI

2. Compliance to conduct

From statutory tick-box compliance to outcome-based member protection

3. Single to dual enforcement

From fund-driven civil claims only to concurrent FSCA and labour inspector enforcement

4. Corporate to personal liability

Employer liability to director and management personal liability without veil-piercing

5. Sector-specific to sector-wide governance

From pension fund industry regulation to sector-wide conduct governance reaching employers directly

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Board obligations and available actions

ACTIONS BOARDS MUST/CAN TAKE

ACTION	TRIGGER / TIMEFRAME	STATUTORY SOURCE
Annual employer notification	Prior to commencement of participation and annually thereafter	Section 13A(2) of the Pension Funds Act 24 of 1956; Paragraph 2(1) and 2(2) of Conduct Standard 1 of 2022 (RF)
Monitor contribution receipts	Ongoing – monthly	Section 7C(2)(b) read with section 13A of the Pension Funds Act 24 of 1956; Paragraph 4(1) of Conduct Standard 1 of 2022 (RF)
Written request to identify liable person	On default or at commencement	Section 13A(9) of the Pension Funds Act 24 of 1956; Paragraph 2(2) and Paragraph 3(2)(g) of Conduct Standard 1 of 2022 (RF)
Notify affected members	Within 30 days of becoming aware of non-compliance	Section 13A(4)(a) of the Pension Funds Act 24 of 1956; Paragraph 4(3)(a) and 4(3)(b) of Conduct Standard 1 of 2022 (RF)
Report to FSCA	Within 30 days in prescribed format with proposed course of action	Section 13A(4)(b) of the Pension Funds Act 24 of 1956; Paragraph 4(3)(c) of Conduct Standard 1 of 2022 (RF)
Report to SAPS	Within 14 days after the 90-day period of persistent non-compliance – triggers criminal referral	Section 13A(5) read with section 13A(6) of the Pension Funds Act 24 of 1956; Paragraph 4(4)(a) and 4(4)(b) of Conduct Standard 1 of 2022 (RF)
Outsource recovery to collecting attorney	Board resolution required, detailed written agreement with attorney mandatory	Section 13A(4)(c) of the Pension Funds Act 24 of 1956; Paragraph 6 of Conduct Standard 1 of 2022 (RF)
Civil litigation against directors personally	At any stage – standalone statutory liability under section 13A(8) Prescription periods apply – prescription challenge	Section 13A(8) of the Pension Funds Act 24 of 1956
Enforce prescribed interest	Automatically	Section 13A(7) of the Pension Funds Act 24 of 1956; Paragraph 5(1) and 5(2) of Conduct Standard 1 of 2022 (RF)

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The question:

Is the era of contribution non-compliance as a manageable administrative risk over?

FOR EMPLOYERS

RISK	REALITY
Dual enforcement	Failures may trigger concurrent action by Labour Inspectors and the FSCA – simultaneously
Payroll alignment	Employers must urgently review payroll & remittance processes to meet the applicable 7-day triggers – with different trigger dates applying under the two regimes
Personal consequences	Individuals who manage an employer's financial affairs are personally liable under s13A(8) – a litigated and court-confirmed reality

FOR BOARDS OF FUNDS

OBLIGATION	KEY MESSAGE
Timeous payment	Boards must take all reasonable steps to ensure that contributions are paid timeously – this is a fiduciary and statutory duty, not discretionary function
Future governance obligations under CoFI	The sector is moving towards a CoFI-driven licensing and conduct framework with heightened governance and fit and proper expectations and stronger member-protection outcomes
Accountability for outsourcing	Outsourcing recovery to attorneys does not extinguish the board's own accountability – the board remains responsible for the outcome.

FOR THE SECTOR

	KEY MESSAGE
Licensing prohibition	No licence, no business
Single licence	Single licence per institution tied to authorization scope, conduct standards and licence conditions
Personal accountability	Member as retail customer protections and expanded regulatory reach to employers and commercial funds

The unresolved challenge:
the prescription problem

Despite the strengthened enforcement regime, the three-year prescription period remains a critical weakness. Until this gap is addressed, the system cannot operate with full integrity.

Core structural problem

- Each monthly unpaid contribution prescribes independently after 3 years;
- Members typically discover non-payment at exit;
- Defaulting employers are often the beneficiaries; and
- Even diligent boards cannot prevent prescribed debt,

Extended prescription period

Automatic suspension of prescription

Regulatory Action = interruption of prescription

Month 1 → Month 2 → Month 3 → Month 12 → Month 24 → Month 36 → Month 48 → Month 60 → Month 72 → Month 84

Members only discover arrears at exit – often 5 to 10 years later

Members lose lifetime retirement savings they never knew were missing

Why this matters

- **Undermines public confidence in funds**
- **Neutralises strengthened framework**
- **Encourages strategic delay by non-compliant employers.**

Until prescription is fixed, the enforcement framework cannot achieve its purpose

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Conclusion: PROTECTING RETIREMENT SECURITY IS FUNDAMENTAL

SUMMARY

- Seven decades of legislative evolution;
- Five recurring themes;
- Framework that has been built layer by layer in response to failures in the system.

THE PROBLEM

- Prescription – 3 years;
- Members discover non-payment too late;
- Employer frequently benefits

THE IMPACT

- Loss of lifetime savings;
- Neutralises strengthened enforcement ecosystem;
- Weakens public trust in funds .

THE IMPERATIVE

- Legislative reform is imperative
- CoFI must be supported by the prescription reform

Pension fund money forms the cornerstone of most people's retirement security. The era of contribution non-compliance as a manageable administrative risk may be over. The only question that remains is whether everyone in this system has absorbed that reality — and acted on it.

THANK YOU