

The FSCA publishes list of employers in arrears for Retirement Fund contributions

The Financial Sector Conduct Authority (“FSCA”) has published FSCA Communication 21 of 2023 (RF) – Publication of names of employers with arrear contributions. The communication provides the names of 3262 employers that contravened section 13A of the Pension Funds Act, 1956 (“PFA”) which prescribes the manner in which the payment of contributions and other benefits should be made to a retirement fund. The intent of the communication is to inform members belonging to those retirement funds and relevant stakeholders. The FSCA has on 9 June 2022 issued a communication to the industry of its intention to issue such a publication and requested retirement funds to inform participating employers of the FSCA’s intention.

The FSCA received a total of 5430 employers that contravened section 13A of the PFA as at 30 April 2023. 28% of the employers had contributions outstanding for 1 month, 24% for 2 to 12 months, 23% for 13 to 60 months and 25% for 5 or more years. The publication at this stage reflects only those employers who have outstanding contributions for a period of 4 and more months.

The PFA states that employers have 7 days after the expiration of the period in respect of which contributions are due, to pay the contributions prescribed in terms of the retirement fund rules to a retirement fund. Failure to pay over contributions as required is not only a contravention of the PFA but leads to prejudice and unfair outcomes for members. Whilst the retirement benefits of the members are compromised due to such a contravention by an employer, other benefits such as risk benefits payable to the members (where applicable) are also impacted. , If the employer does not pay over contributions for a period of 3 months, the insurer will repudiate the claim on the basis of outstanding premiums and the dependents, in the case of a death benefit, will not be paid the insured portion of the death benefit payable from the fund.

The FSCA’s preliminary statistics indicated that municipalities and private sector companies have approximately R1 billion and R6 billion arrear contributions, respectively. Whilst financial difficulties faced by municipalities and the effects of Covid-19 on the

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economy are public knowledge, employers still have an obligation to their employees to pay over deducted contributions and employers to the retirement fund as per the PFA.

It must be noted that the Boards of retirement funds have the duty to recover outstanding contributions from employers by making use of the various avenues available to them. In terms of Conduct Standard 1 of 2022 – Requirements for related to the payment of pension fund contributions, Boards of retirement funds are required to report material contraventions to the affected members, and to the FSCA. Importantly where the contravention persists for a period of 90 days, the Boards are required to approach the South African Police Service (“SAPS”) to lay a charge against the employer. The FSCA is continuing to engage with the relevant authorities to ensure that the criminal element of this contravention is effective.

The FSCA will continue to engage with Boards and where possible the affected employers in this regard. We encourage affected members to approach their employers first before approaching the relevant retirement fund.

The publication is available on the FSCA website on the link below:

[FSCA Communication 21 of 2023 \(RF\)](#)

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