



FSCA RF NOTICE 8 OF 2023

PENSION FUNDS ACT, 1956

DETERMINATION OF FORMAT OF DOCUMENTS IN RESPECT OF REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS

The Financial Sector Conduct Authority hereby determines the format of documents required in terms of various paragraphs contained in FSCA Conduct Standard 1 of 2022 (RF) – Requirements related to the Payment of Pension Fund Contributions, 2022, as set out in the Schedule.

**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

Date of publication: 17 February 2023

SCHEDULE

DETERMINATION OF FORMAT OF DOCUMENTS IN RESPECT OF REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS

1. Interpretation

In this Schedule “**the Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956) and “**the Conduct Standard**” means the Requirements related to the payment of pension fund contributions, 2022, published in FSCA Conduct Standard 1 of 2022 (RF) on 19 August 2022, and any word or expression to which a meaning has been assigned in the Act or Conduct Standard bears, subject to context, that meaning.

2. Determination of formats

- (1) In terms of paragraph 2(2) of the Conduct Standard, the Authority hereby determines the format of a notification referred to in paragraph 2(1) of the Conduct Standard as Annexure A to this Schedule.
- (2) In terms of paragraph 4(3)(c) of the Conduct Standard, the Authority hereby determines the format of a report referred to in that paragraph as Annexure B to this Schedule.
- (3) In terms of paragraph 4(4)(a) of the Conduct Standard, the Authority hereby determines the format of a report referred to in that paragraph as Annexure C to this Schedule.

3. Amendment, and withdrawal of Determination

This Determination is subject to—

- (a) amendment thereof published by the Authority by notice on its website; and
- (b) withdrawal in a like manner.

4. Repeal, short title and commencement

This Determination—

- (1) repeals the Notice on the Determination of Format of Documents in respect of Requirements related to the Payment of Pension Fund Contributions, as published in FSCA RF Notice 14 of 2022 on 30 September 2022; and
- (2) is called the Determination of Format of Documents relating to Payment of Pension Fund Contributions, 2023, and comes into effect on 19 February 2023.

SUMMARY OF FORMATS

Paragraph of Conduct Standard	Annexure	Form
Paragraph 2(2)	Annexure A	Notification to and request from employer by pension fund
Paragraph 4(3)(c)	Annexure B	Report to the Financial Sector Conduct Authority
Paragraph 4(4)(a)	Annexure C	Report to the South African Police Service

ANNEXURE A

**NOTIFICATION TO AND REQUEST FOR INFORMATION FROM THE EMPLOYER BY
PENSION FUND**

Date: _____

The Managing Director

.....

.....

.....

.....

Dear Sir/Madam

_____ **Fund ('the Fund')**

1. *(Name of employer)('employer')* is an employer that participates in the Fund.
2. Section 13A of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the Act") and Conduct Standard 1 of 2022 - Requirements related to the Payment of Pension Fund Contributions, 2022 ("the Conduct Standard"), places various duties, obligations and liabilities on employers, funds and principal officers of funds related to the payment of pension fund contributions.
3. *(Name of employer)* is-
 - (a) in terms of section 13A(1) of the Act, obliged to pay to the fund in full any contributions deducted from the members' remuneration and the employers' contributions on behalf of members;

- (b) in terms of section 13A(2)(b) of the Act, obliged to submit to the fund the minimum information as prescribed in paragraph 3 of the Conduct Standard no later than 15 (fifteen) days after the end of the month in respect of which the payment was made; and
 - (c) in terms of section 13A(3) of the Act, obliged to pay such contributions into the funds' bank account not later than 7 (seven) days after the end of the month for which the contribution is payable.

- 4. The Act requires that, should (*Name of employer*) fail to comply with any of the requirements set out in paragraphs 3(a) to (c) above, the-
 - (1) the monitoring person must, in accordance with paragraph 4(2) of the Conduct Standard, report the non-compliance to the board of the fund within 7 (seven) days of such failure;
 - (2) board of the fund must, in accordance with paragraph 4(3) and (4) of the Conduct Standard, inform the members of the fund in respect of whom the contributions are payable, the Financial Sector Conduct Authority and the South African Police Service of such failure to pay the contributions.

- 5. In terms of section 13A(8) of the Act, persons who are in control of or regularly involved in the management of the employer's overall financial affairs shall be personally liable for any non-compliance with section 13A of the Act.

- 6. In terms of section 37(1) of the Act, any person who contravenes or fails to comply with the provisions of section 13A of the Act is guilty of an offence and may be liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

- 7. (*Name of employer*) is hereby requested to provide the fund with the identity and particulars of the person(s) who will be personally liable for compliance with the requirements mentioned above within 14 (fourteen) days of the notification as prescribed in section 13A(9)(a) of the Act.

8. Section 13A(9)(b) of the Act provides that, where an employer fails to comply with the requirements of section 13A(9)(a) of the Act, all the directors (in the case of a company), all the members regularly involved in the management of the closed corporation (in respect of a closed corporation), or all the persons comprising the governing body of the employer, as the case may be, shall be personally liable for the in terms of section 13A(8) of the Act.

Kind Regards,

.....(Name of designated signatory)

.....(capacity in fund)

.....(Signature)

Chairperson of the(Name of the fund)

E-mail address:.....

ANNEXURE B

REPORT TO THE FINANCIAL SECTOR CONDUCT AUTHORITY

Date: _____

The Financial Sector Conduct Authority
P.O. Box 35655
Menlo Park
0102

Dear Sir / Madam

NOTIFICATION IN TERMS OF SECTION 13A(10) OF THE PENSION FUNDS ACT, 1956 (ACT NO. 24 OF 1956) AND PARAGRAPH 4(3)(c) OF CONDUCT STANDARD 1 OF 2022 – REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS

1. The board of the (*Name of fund*) has been notified by its monitoring person, (*Name of monitoring person*), that a contravention of the provisions of section 13A of the Pension Funds Act, 1956 (Act No. 25 of 1956) ("the Act") has occurred.
2. A list of the participating employers that failed to timeously submit the information referred to in section 13A(2)(b) of the Act, read with paragraph 3 of Conduct Standard 1 of 2022 – Requirements related to the Payment of Pension Fund Contributions, 2022, was provided to the Financial Sector Conduct Authority ('the Authority') electronically via the Pensions Online System under case number on (insert date) / is herewith submitted to the Authority as an attachment to this Annexure (delete whichever is not applicable).¹
3. A list of the participating employers that failed to provide complete and/or accurate data referred to in section 13A(2)(b) of the Act read with paragraph 3 of Conduct Standard 1 of 2022 – Requirements related to the Payment of Pension Fund Contributions, 2022, was provided to the Financial Sector Conduct Authority ('the Authority') electronically via the Pensions Online System under case number on (insert date) / is

¹ This paragraph is applicable when a participating employer has failed to timeously submit the required information, or to submit it at all. Delete if not applicable.

herewith submitted to the Authority as an attachment to this Annexure (delete whichever is not applicable).²

4. A list of the participating employers that failed to transmit, or forward or pay, as the case may be, contributions referred to in section 13A(3)(a) of the Act read with paragraph 3 of Conduct Standard 1 of 2022 – Requirements related to the Payment of Pension Fund Contributions, 2022 was provided to the Financial Sector Conduct Authority ('the Authority') electronically via the Pensions Online System under case number on.....(date) / is herewith submitted to the Authority as an attachment to this Annexure (delete whichever is not applicable).
5. In light of the above contravention(s), the board of the fund has proposed that the course of action, set out in the table below / attached to this Annexure (delete whichever is not applicable), be taken in order to recover the arrear contributions or obtain an updated schedule from the employer(s), as the case may be. This course of action has also been provided in the monthly arrear contribution reports submitted to the Authority electronically via the Pensions Online System under case number.....on..... (insert date):

Action to be taken	Responsible Person as per section 13A(9) and contact details of the responsible person	Due Date
1.		
2.		
3.		
...		

² This paragraph is applicable when a participating employer has submitted the information, but the information is incomplete or inaccurate. Delete if not applicable.

6. Further updates on the abovementioned contravention(s) and proposed course of action will be provided to the Authority on a monthly basis.

Yours faithfully

.....[Name of Designated Signatory]
.....[Capacity in the Fund]

ANNEXURE C

REPORT TO THE SOUTH AFRICAN POLICE SERVICE

**AFFIDAVIT BY PERSON AUTHORISED IN TERMS OF SECTION 13A(6) ON BEHALF OF
THE BOARD OF THE PENSION FUND**

I, the undersigned,

..... (Full name)

..... (Identity number)

state under oath:

1.

The facts deposed to herein fall within my personal knowledge and belief unless otherwise indicated and are to the best of my knowledge and belief true and correct.

2.

My contact details are as follows:

Work address:

Work telephone:

Fax number:

Email address:

Cell phone:

Home telephone:

Residential address:

3.

As contemplated in section 8 of the Pension Funds Act, 1956 (Act No. 24 of 1956) ("the Act"), I am the principal officer of the _____ (name of fund) (hereinafter referred to as "the fund"). I attach a copy of the resolution of the board of the fund dated _____ (date) appointing me as the fund's principal officer as Annexure "____".³

4.

In terms of section 13A(6) of the Act, I have been authorised by the board of the fund to act as the fund's monitoring person and in this regard I attach a copy of the resolution of the board of the fund dated _____ (date) authorising me to act as the fund's monitoring person as Annexure "____".⁴

5.

The fund has been registered under the Act by the Financial Sector Conduct Authority ("the Authority") under registration number 12/8/ _____ (registration number). I attach a certificate of registration issued by the Authority as Annexure "____", as well as a copy of the rules of the fund bearing an endorsement of the date of registration marked Annexure "____", both issued in terms of section 4 of the Act.

6.

***(for umbrella type A)**

_____ (name of employer) (hereinafter referred to as "the employer") is a participating employer in the fund. In this regard, I attach a copy of the fund's Special Rules applicable to the employer as Annexure "____".

***(alternatively - for umbrella type B)**

_____ (name of employer) (hereinafter referred to as "the employer") is a participating employer in the fund. In this regard, I attach a copy

³ Delete if the principal officer is not also the monitoring person.

⁴ If the board has not specifically authorised a monitoring person then the principal officer is the monitoring person by default – this paragraph can then be omitted.

of the Participation Agreement (or document proving the employer's participation in the fund)⁵ between the fund and the employer as Annexure "____".

***(alternatively – for standalone fund)**

____ (name of employer) (hereinafter referred to as "the employer") is an employer in the fund. In this regard, I refer to Rule ____ of the fund's rules which specifically states so.

****delete whichever is not applicable***

7.

In terms of Rule ____, eligible employees of the employer are obliged to contribute ____ % of their pensionable salary to the fund ("the member's contribution").

8.

In terms of Rule ____, the employer is obliged to contribute ____ % of the eligible employee's pensionable salary to the fund ("the employer's contribution").

9.

In terms of section 13A(1) of the Act, the employer is required to deduct the employee's contribution from the eligible employee's remuneration and pay same to the fund together with the employer's contribution.

10.

In terms of section 13A(3) of the Act, the member's contribution and the employer's contribution must be paid to the fund not later than seven days after the end of the month for which such contribution is payable.

⁵ Delete whichever is not applicable.

11.

In terms of section 13A(2) of the Act, the employer is required to transmit certain minimum information prescribed by the Authority in paragraph 3 of the Conduct Standard 1 of 2022 - Requirements related to the Payment of Pension Fund Contributions, to the fund not later than 15 days after the end of the month in respect of which the payment was made ("the contribution statement").

12.

As part of my functions as principal officer/authorised person⁶, I monitored the receipt of contributions and minimum information by the fund from the employer.

13.

In terms of section 13A(8) of the Act, certain persons from the employer may be held personally liable for the non-compliance with section 13A of the Act. On _____ (date), in compliance with section 13A(9)(a) of the Act, the fund wrote to the employer requesting the employer to notify the fund by _____ (date) of the identity of any such person so personally liable in terms of subsection (8). I attach a copy of the said letter as Annexure "_____".

14.

**** (if a response was received)**

On _____ (date), the employer wrote to the fund and identified the following persons as being personally liable in terms of subsection (8) for the non-payment of contributions or the non-transmission of the contribution statement:

14.1 _____

14.2 _____

14.3 _____

A copy of the letter received from the employer is attached as Annexure "_____".

**** (alternatively – if no response received)**

⁶ Delete whichever is not applicable.

The employer has not responded to the fund's letter (Annexure "____"). In the circumstances, section 13A(9)(b) of the Act applies and all the directors (in respect of a company), all the members regularly involved in the management of the closed corporation (in respect of a closed corporation), or all the persons comprising the governing body of the employer, as the case may be, are personally liable in terms of section 13A(8) of the Act. The following directors/members/persons⁷ are therefore personally liable for the non-payment of contributions or the non-transmission of the contribution statement:

- 14.1 _____
- 14.2 _____
- 14.3 _____

I attach supporting documents in respect of the above as Annexure "____").

*****delete whichever is not applicable***

15.

The employer has contravened or failed to comply with section 13A of the Act by -

- 15.1 not paying the employer contribution and/or the member contribution to the fund not later than seven days after the end of the month for which such contribution was payable for the period _____ to _____ and is currently in arrears in the amount of R _____ as more fully set out in Annexure "____"; and/or
- 15.2 not transmitting the 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 to the fund not later than 15 days after the end of the month in respect of which the payment was made, as more fully set out in Annexure "____".

16.

In terms of section 37(1) of the Act, any person who contravenes or fails to comply with section 13A is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment. Further, such conduct could constitute common law theft or fraud.

⁷ Delete whichever is not applicable.

*****(if there was compliance with the Conduct Standard)**

In accordance with the Conduct Standard:⁸

- 17.1 On _____, within 7 (seven) days after the date on which I received a report from the person referred to in paragraph 4(1) of the Conduct Standard, I reported in writing the employer's non-compliance with the provisions of subsections (2)(b) and (3)(a) of section 13A of the Act to the board of the fund. I attach a copy of my written report to the board of the fund as Annexure "_____".
- 17.2 On _____, within 30 (thirty) days of the board being informed by me of the employer's contravention or failure to comply, the board of the fund took steps ensure that all members employed by the employer were personally notified of the aforesaid contravention or failure to comply with section 13A(2)(b) or section 13A(3)(a) of the Act and the board's proposed course of action to rectify the contravention. A copy of the notification is attached as Annexure "_____".
- 17.3 On _____, within 30 (thirty) days of the board of the fund receiving the report from me, the Authority was notified of the contravention or the failure to comply by the employer and the proposed course of action by the board of the fund to recover the arrear contributions or obtain an updated contribution schedule from the employer. A copy of the notification is attached as Annexure "_____".
- 17.4 On _____, and on _____, the reports to the affected members and the Authority were updated on a monthly basis. I attach copies of the said updates as Annexures "_____" and "_____" respectively.
- 17.5 This report is made to the South African Police Service no later than the expiration of 90 (ninety) days of the contravention or failure to comply by the employer.
- 17.6 The proposed course of action by the board has failed to rectify the contravention or failure to comply by the employer. In this regard, I attach the documents detailing the board's attempt to rectify the contravention or failure to comply in accordance with the board's proposed course of action as Annexures "_____" to "_____".

*****(alternatively - if there was non-compliance with the Conduct Standard)**

⁸ This paragraph may be omitted or amended where appropriate.

The Conduct Standard has not been complied with, however, such non-compliance is not a bar to criminal prosecution against such persons identified as being personally liable in terms of sections 13A(8) and (9) of the Act for a contravention or failure to comply with section 13A.

*****delete whichever is not applicable**

18.

I have the necessary authority from the board to report this matter to the South African Police Service.

19.

The board of the fund requests further investigation and/or criminal prosecution in this matter.

DEPONENT

I certify that this affidavit was signed and sworn to before me in my capacity as Commissioner of Oaths at on this the day of 20..... by the deponent who confirmed as follows:

Do you know and understand the contents of this affidavit?

Answer: _____

Do you have any objection in taking the prescribed oath?

Answer: _____

Do you consider the prescribed oath as binding on your conscience?

Answer: _____

The deponent uttered the words "So help me God".

Commissioner of Oaths

Full names : _____

Full address : _____

Area : _____

Capacity : _____



FSCA COMMUNICATION 5 OF 2023 (RF)

PUBLICATION OF DETERMINATION OF FORMAT OF DOCUMENTS IN RESPECT OF REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS

1. PURPOSE

The purpose of this Communication is to inform stakeholders that today the Financial Sector Conduct Authority (FSCA) published FSCA RF Notice 8 of 2023: Determination of format of documents in respect of requirements related to the payment of pension fund contributions (Determination).

2. BACKGROUND

- 2.1 On 19 August 2022, the FSCA published Conduct Standard 1 of 2022 (RF): Requirements related to the payment of pension fund contributions (Conduct Standard).
- 2.2 The Conduct Standard empowers the FSCA to determine the format in respect of certain notifications and reports required in terms of the Conduct Standard. These include:
 - Notification to and request from employer by pension fund (paragraph 2(2) of the Conduct Standard);
 - Reporting of contraventions to the Financial Sector Conduct (paragraph 4(3)(c) of the Conduct Standard); and
 - Reporting contraventions to the South African Police Services (paragraph 4(4)(a) of the Conduct Standard).
- 2.3 On 30 September 2022, the FSCA published FSCA RF Notice 14 of 2022 (Notice 14 of 2022), the purpose of which was to determine the formats for the abovementioned notifications and reports.
- 2.4 It has subsequently come to the attention of the FSCA that the formats determined in terms of Notice 14 of 2022, specifically the format relating to paragraph 4(3)(c) of the Conduct Standard (Annexure B), is not conducive to the reporting of contraventions by funds with multiple participating employers.
- 2.5 The FSCA has subsequently amended the wording of Annexure B to allow for the submission of bulk information, as well as electronic submission via the FSCA's Pensions Online System.

2.6 The purpose of the Determination is therefore to repeal Notice 14 of 2022 and to determine the updated formats for the notifications and reports referred to in paragraph 2.2 above.

3. ENQUIRIES

3.1 The documents referred to in paragraph 1 is available on the FSCA's website at www.fsca.co.za.

3.2 For more information regarding the Determination and/or this Communication please contact the FSCA's Regulatory Framework Department at marianne.vanrooyen@fsca.co.za.



**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

Date of publication: 17 February 2023