

## **FSCA COMMUNICATION 11 OF 2020 (RF)**

### **COVID-19: SECTION 13A OF THE PENSION FUNDS ACT, 1956 AND FINANCIALLY DISTRESSED EMPLOYERS AND EMPLOYEES – SUBMISSION OF URGENT RULE AMENDMENTS**

**26 MARCH 2020**

#### **1. Purpose**

- 1.1 The Financial Sector Conduct Authority (“Conduct Authority”) is mindful of employers and employees who are financially distressed in light of the unprecedented financial challenges that Covid-19 presents<sup>1</sup>, which may impact employers’ and employees’ ability to comply with the full and/or any payment of contributions in terms of section 13A of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PF Act”).
- 1.2 In light hereof, the Authority wishes to draw boards of funds’ attention to apply the relevant rule/s to employers and members in order to alleviate the challenges that they are currently facing. In the event that funds<sup>2</sup> do not have relevant rules which make provision for financially distressed employers and/or employees, such funds are requested to submit such rule amendments urgently. This Communication on financially distressed employers and employees and the requirements of Section 13A requiring submission of urgent rule amendments is available to download from the Authority’s website: [www.fsca.co.za](http://www.fsca.co.za).

#### **2. Background**

- 2.1 On 15 March 2020, a National State of Disaster was declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002) amid the spread of Covid-19 in South Africa. On 23 March 2020, President Ramaphosa announced a nationwide lockdown from 26 March 2020 to 16 April 2020, which will have an impact on many businesses, and consequently on employees.
- 2.2 The Conduct Authority is aware of the financial challenges that this Pandemic brings and certain employers’ and employees’ inability to pay and contribute their full or any section 13A contributions to their respective retirement funds as communicated by retirement fund industry bodies and administrators.
- 2.3 In order to address these concerns, the Authority has taken the decision to issue this Communication. This Communication therefore serves as guidance to funds to

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<sup>1</sup> **Covid-19**” means the Novel Coronavirus (2019-nCov) which is an infectious disease caused by a virus, which emerged during 2019 and was declared a global pandemic by the World Health Organisation during the year 2020 that has previously not been scientifically identified in humans

<sup>2</sup> **“fund”** means a pension fund or provident fund, in each case as defined in the Income Tax Act, 1962 (Act No 58 of 1962).

assist employers who are unable to pay the full or any contributions on behalf of their employees to their retirement funds pursuant to section 13A of the PF Act.

### **3. Rules**

- 3.1 Section 13A(3) provides that the full contributions payable to the fund in terms of the rules are payable by no later than seven days after the end of the month for which such contributions are due and payable.
- 3.2 Notwithstanding the provisions of section 13A of the Act, which obliges employers participating in funds to pay full contributions in respect of their employees/members of the fund within the stipulated time-frame, most funds have rules which make provision for temporary absence from work (with or without pay) or a break in service (in instances where employees are not working) and/or postponement of contribution payments and/or reduction of pensionable service (in respect of employees who are working reduced hours).
- 3.3 Following formal requests by employers for the suspension or reduction of contributions, the Boards of funds are required to consider such requests and apply the relevant rule/s given the particular circumstances of the employer.
- 3.4 Funds must attempt to ensure that full risk benefit premiums continue to be paid in full in respect of the affected employees/members in order to ensure that the fund risk benefits will continue to be provided.
- 3.5 In the event that funds do not have the rules outlined in paragraph 3.2 above, then funds should urgently submit relevant rule amendments to the Conduct Authority, following engagements with the employer to that effect.
- 3.6 To assist with the efficient registration of the rule, such rule amendment should also specify the effective date based on the agreement between the employer and fund. Given the current circumstances, funds will only receive a letter and an unstamped version of the rule amendment from the Conduct Authority. Funds will receive the stamped version of the rule amendment once business resumes as usual.
- 3.7 Please note that the rule amendments submitted should be limited to the rule amendments delineated above. No other rule amendments are to form part of this rule amendment submission. Such rules are to be submitted to the Conduct Authority as a matter of urgency.
- 3.8 Funds are required to keep a proper record of affected members of the fund, which they will be required to produce upon request by the Conduct Authority.

### **4. Member Communication**

Funds are required to inform affected members of employers' requests to reduce or suspend contributions, and of proposed rule amendments pursuant thereto within 30 days of receipt of such request/decision.

## 5. Tax implications

The Conduct Authority has consulted with the South African Revenue Service (SARS) in respect of the tax implications for retirement funds in the event of the reduction or cessation of employer and member contributions by an employer or participating employer. SARS has advised that it will not jeopardise the income tax approval status of the retirement fund concerned.

## 6. Enquiries

For more information regarding this Communication contact the Retirement Funds Supervision Division of the Conduct Authority at [fikile.mosoma@fsca.co.za](mailto:fikile.mosoma@fsca.co.za).



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