Dashboard

Legal Updates

Edition 1 | January | 2023

Contributions and prescribed reporting – an update on *Dashboard* 12 of 2022

In 2022, we published ***Dashboard* 12 of 2022** about the Financial Sector Conduct Authority's (FSCA) Conduct Standard[1] about contributions. Please read that *Dashboard* as a refresher of the new requirements.

Subsequent to the *Dashboard*, the FSCA published[2] the prescribed reporting required under the Conduct Standard. The prescribed reports can be downloaded from the FSCA website:
https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Notices.aspx

Finalisation of the Conduct Standard

The Conduct Standard has now been published and is law. The effective date set for the Conduct Standard is 20 February 2023. Parliament still needs to repeal the existing Regulations to the Pension Funds Act (the Act) about contributions and will need to do this before the Conduct Standard becomes effective. The FSCA has the power to set a later effective date (or dates) if necessary.

The contributions Conduct Standard is law and becomes effective on 20 February 2023

Publication of the prescribed reporting

There are three prescribed reports or notices:

- Notification to and request by a fund to an employer;
- Reporting by a fund of contraventions to the FSCA; and
- Reporting by a fund of contraventions to the South African Police Services (SAPS).

More detail about the above three reports or notices is set out below.

As the prescribed reports and notices are a compulsory format, the format and wording may not be changed. However, if a fund wanted to add to the format, for example below the prescribed wording, this is acceptable.

Notification to and request by a fund to an employer

A fund must notify every participating employer before the employer starts participating in the fund, and every year, of the employer's duties, obligations, and liability under section 13A of the Act and the Conduct Standard. This notification to the employer is the first of the prescribed standards. This notification (and request) is directed by the fund to the Managing Director (or equivalent) at the employer.

[1] FSCA CONDUCT STANDARD 1 OF 2022 (RF): REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS
[2] FSCA RF NOTICE 14 OF 2022: DETERMINATION OF FORMAT OF DOCUMENTS IN RESPECT OF REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS, AND
FSCA COMMUNICATION 27 OF 2022 (RF): PUBLICATION OF DETERMINATION OF FORMAT OF DOCUMENTS IN RESPECT OF REQUIREMENTS RELATED TO THE PAYMENT OF PENSION FUND CONTRIBUTIONS

Where NMG is the administrator of a fund, we will ensure that this notification is sent out to the participating employers of the fund on an annual basis starting in 2023. In addition, Where NMG is the administrator of a fund, any new employers to a fund will receive the prescribed notice before they become participating employers.

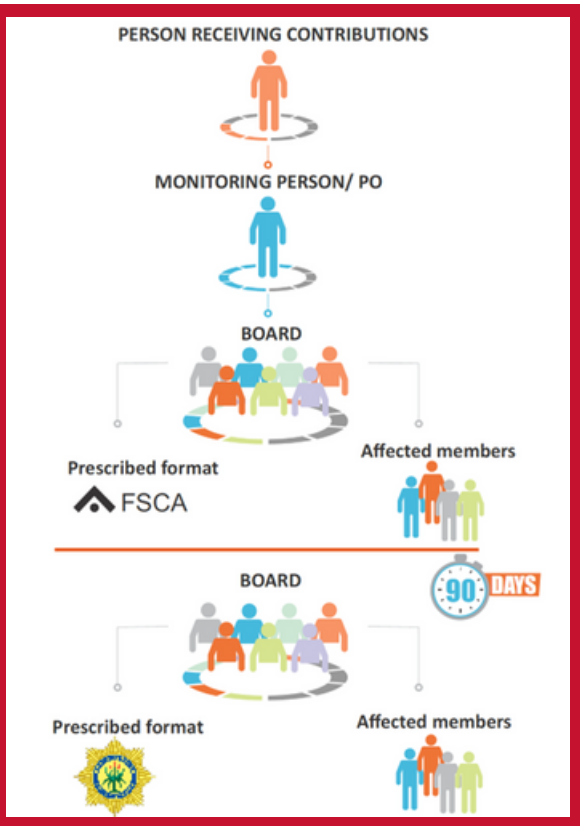
An additional requirement of this prescribed notice is that (both upfront and on an ongoing basis) a **request** is made by the fund to the employer to notify the fund who the *persons at the employer are who are personally liable for compliance with section 13A of the Act* (which provides for contributions) and the payment of contributions. This may be more than one person. The requirement is that the "identity" and "particulars" of the persons must be notified to the fund. While this would certainly include the name of the person, it may also be prudent to provide the title (e.g. Financial Director) and contact details of the persons (e.g. work telephone number and email address).

For different types of employer entities, these persons to be notified by the employer to the fund (as required by the Act) may be different. For a company it is "every director who is regularly involved in the management of the company's financial affairs".

The prescribed notice requires that the employer is to give the requested information to the fund within 14 days. This means that the fund (or its administrator or consultant on its behalf) will need to follow up with the employer where this is not received or not received within the required period. For those funds that NMG administers, we will follow up with employers where this is not received on time or not received at all and will report back to funds where it is not received.

Prescribed reporting by a fund of contraventions to the FSCA and SAPS

The other two prescribed reports are the report by the fund to the FSCA and the report by the fund to SAPS. As a reminder, the following is a summary of the reporting required:



The prescribed reporting by a fund to the FSCA

When a fund is required to report contraventions relating to contributions to the FSCA, there is a prescribed format to do so.

This report requires:

- The date the contravention was reported to the board;
- The nature of the contravention;
- A description of the action the board will take to remedy the contravention;
- That this course of action is set out in the monthly arrear contribution report uploaded to the FSCA's online system; and
- Further updates are provided to the FSCA on the contraventions and actions taken on a monthly basis.

Thus, the prescribed report is just one of the reports to the FSCA, with possibly two monthly reports also being required until such time as the contravention has been resolved.

Please note that the reports to the FSCA are required for all contraventions of 13A (e.g. about contribution schedules not received) and not just arrear contributions.

The prescribed reporting by a fund to the SAPS

The prescribed report to the SAPS is a fairly lengthy sworn affidavit and includes multiple annexures to be attached.

The sworn affidavit is completed by the persons specified in section 13A(6) of the Act. This section refers to both the Principal Officer as well as the person authorised by the fund to monitor contributions (often called “the monitoring person” or the “authorised person”). Thus, the affidavit may be deposed to by either the Principal Officer or the monitoring person.

The report requires the provision of the following information to SAPS, amongst other:

- The reports, as required by the Act, that the fund has made so far in relation to the contraventions e.g. to the Principal Officer/monitoring person, the board of the fund, the FSCA and members;
- The details of the contributions e.g. the rules requiring contributions by the employer;
- The requirement of the employer to deduct contributions and pay them to the fund;
- The employer’s information;
- The persons at the employer personally liable for contributions contraventions (as notified to the fund) or director’s names (if liable persons were not notified to the fund); and
- Information and documents about action previously taken by the fund

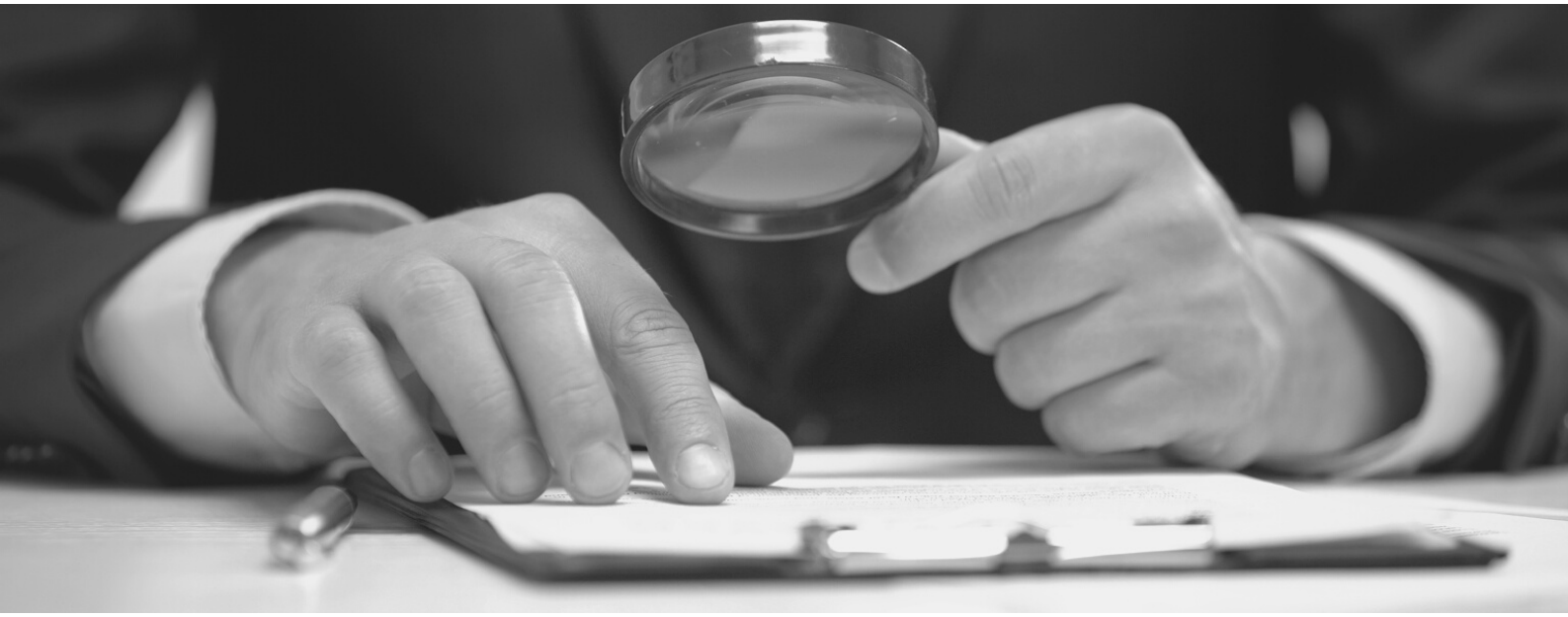
Annexures required: resolution appointing monitoring person or Principal Officer, fund’s registration certificate, the rules and special rules (if applicable), the proof of the employer’s participation in the fund; prescribed requests from fund and notifications from employer about persons liable at the employer.

Reports that are not prescribed

The format of the reports to the monitoring person/Principal Officer, the board and to members is not prescribed.

Reporting by the fund’s administrator to the FSCA

The administrator of the fund is required, in certain circumstances to report to the FSCA material matters relating to the fund where in its opinion the matter may prejudice the fund or its members[3]. This may include contribution contraventions. This reporting requirement is not included in the Conduct Standard but remains a requirement of the Act. This format is not prescribed.



[3]Section 13B(10) of the Pension Funds Act

Finding a better way

Talk to us today!

011 509 3000

info@nmg.co.za

www.nmg.co.za

Healthcare | Retirement | Investment Consulting | Financial Planning | Actuarial | Short-term Insurance