

PSSPF aims for highest level of industry compliance

The Private Security Sector Provident Fund (PSSPF) has embarked on a nationwide compliance campaign with the objective to achieve the highest possible level of compliance to improve quality of life for all security employees and their families.

Despite it being a statutory requirement for every security employer, and employees, to contribute to the industry provident fund, the PSSPF says that compliance still remains a challenge, as a large number of private security companies are still not making mandatory contributions to the Fund.

According to **Anesh Soonder**, of Soonder Incorporated, the PSSPF's appointed legal team, the recent amendments to the Financial Services Act will have a direct and positive impact on the PSSPF's ability to honour its legal obligation to ensure that all private security companies are participating employers with the Fund.

The PSSPF has engaged in extensive consultation with the Private Security Industry Regulatory Authority (PSIRA), the Financial Services Board (FSB), the Department of Labour (DoL) and the Unemployment Insurance Fund (UIF) in order to track down eligible employers, enforce compliance and successfully meet the Fund's legal obligations.

The PSSPF has implemented the S13A Compliance Strategy. According to Mr Soonder, the ability to pursue legal action against those employers who had serious transgressions against the Act was abolished in 2007, due to the inability at the time to properly regulate non-compliance. "However, the recent re-criminalisation of Section 13A, has allowed for far more effective regulation and law enforcement," says Mr Soonder. "Now employers are obliged to provide details of all company shareholders, directors, members in a cc, partners and trustees. These persons are personally liable for payments to the Fund and failure to do so could lead to fines of up to R10-million or even imprisonment," he added.

One of the most successful projects to recover outstanding contributions from defaulting employers has been the 20-month long Admission of Debt (AOD) campaign, where employers sign the AOD and commit to a repayment process. Failure to meet obligations will result in litigation, the attachment of assets and possible liquidation, should the employer not comply. The recovery process involves negotiation for the recovery of funds and where this is unsuccessful, it is followed by litigation.

According to Mr Soonder, the Fund has achieved relatively satisfactory success to date, including:

- Over 170 AOD's and payment arrangements signed.
- Over R120-million secured by way of AOD's.

- Over R70m has physically entered the Fund's bank account.

- Various matters in court, and being pursued to recover members' monies.

"In addition to our collaborative efforts with PSIRA, FSB, DoL and the UIF, it has been critical to get co-operation from National Treasury in order to ensure that tenders are issued only to those companies that meet their compliance requirements."

With approximately 7 000 active security companies in South Africa, Fund membership currently stands at just under 322 951 relative to the 460 000 security officers in the industry. Fund assets currently stand at just over R4-billion.

"The PSSPF is headed in the right direction," says Mr Soonder. "When you consider that the Fund was established in 2002 from a zero-base and that 12 years later, it is worth over R4 billion, it certainly has the potential to be one of the biggest and most successful Funds in the country. We still have a long way to go in achieving industry-wide compliance, but we are making good progress and our on-going engagement with relevant authorities and industry bodies is helping to expedite the process," he concluded.

SUMMARY OF THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT ACT NO. 45 OF 2013 ("THE AMENDMENT ACT")

The Financial Services Laws General Amendment Act deals with amendments to 11 financial services laws.

Purpose:

- To address urgent legislative gaps highlighted after the 2008 financial crisis.
- To align these laws with the new Companies Act, 2008 and other legislation.
- To remove inconsistencies in current legislation.
- To ensure a sound and well-regulated financial services industry.
- To promote financial market stability by strengthening the financial sector regulatory framework and enhancing the supervisory powers of the regulators, as well as the powers of the Minister of Finance in dealing with potential risks to the financial system.

Pension Funds Act, 24 of 1956

South African Reserve Bank Act, 55 of 1989

Financial Services Board Act, 97 of 1990

Long-term Insurance Act, 52 of 1998

Short-term Insurance Act, 53 of 1998

Inspection of Financial Institutions Act, 80 of 1998

Financial Institutions (Protection of Funds) Act, 28 of 2001

Financial Advisory and Intermediary Services Act, 37 of 2002

Collective Investment Schemes Control Act, 45 of 2002

Co-operative Banks Act, 40 of 2007

Financial Services Laws General Amendment Act, 22 of 2008

The Amendment Act is based on National Treasury's ("NT") broader policy framework in respect of South Africa's financial sector, which is set out in a policy document entitled "A safer financial sector to serve South Africa better" dated 23 February 2011 (the "Twin Peaks Policy Document").

The impact of the Amendment Act on pension funds

1. Definitions

The Rules of the Fund need be to be aligned to the definitions amended in the Amendment Act. Some notable definition changes are as follows:

- 1.1 "Complainant"
 - Spouses or former spouses of members and former members of a fund are now included as "complainant" and they may lodge complaints with the Office of the Pension Fund Adjudicator.
- 1.2 "Unclaimed Benefits"
 - To substitute the definition of "unclaimed benefit" to correct the erroneous exclusion of death benefits from the definition, and to include any unclaimed benefits in respect of non-member spouses in the definition; and
 - To include death benefits not paid within 24 months from date that fund became aware of death, or such longer period as may be reasonably justified by the board in writing.
- 1.3 "Unclaimed Benefit Fund"
 - To insert a definition of "unclaimed benefit fund" to recognise an unclaimed benefit fund as a pension preservation fund; and
 - Established for the receipt of unclaimed benefits.

2. Changes triggered by the impact of the new Companies Act

In terms of the Amendment Act, the following provisions in the Companies Act now apply to pension funds:

- Business rescue;
- Terminology used in the Companies Act; and
- A pension fund needs the prior approval of the Registrar before the pension fund directly or indirectly acquires or holds interests in another entity, which results in the fund exercising control over that entity.

3. Fund communication

The Amendment Act extends fund communication requirements.

- The Amendment Act extends the communication requirements to beneficiaries.
- Allows the Registrar to place official notices on the FSB official website in order for members of the public to easily access published directives.
- In some cases, the Registrar may communicate his requirements to the industry, without obtaining Ministerial approval.
- The Registrar's powers are more comprehensive in respect of:
 - Addressing queries about any fund to the administrator or a third party – as well as the fund itself;
 - Conducting onsite investigations and inspections;
 - The appointment or replacement of trustees; and
 - Declare a specific practice of a fund, administrator or person unacceptable, irregular or undesirable and instruct that they refrain from such practice after considering the interests of the members of a fund.
- Funds should be aware that the Registrar may essentially prescribe certain minimum communication requirements and the intervals during which such communication must be communicated to stakeholders.

4. The board of trustees and principal officer

The manner in which the trustees of the fund are composed must, at all times, comply with the rules of the fund.

- All trustees must obtain skills and training which are prescribed by the Registrar, within 6 months of becoming a trustee and retain the prescribed level of skills throughout office.
- Emphasis on duty of trustees to act independently.
- Trustee's owe a fiduciary duty to members and beneficiaries in respect of accrued benefits.
- Provision has been made for a deputy principal officer ('PO'). The fund rules

must allow for the appointment of a deputy PO and such deputy PO can be appointed within a prescribed period after the on-going absence or inability of the PO to discharge his/her functions.

- In addition, the PO can in writing delegate his/her functions to a deputy PO but the PO remains responsible for those delegated functions.

5. Non-payment of contributions

- The Amendment Act extends personal liability for non-payment of contributions.

Employer	Personal Liability
Company	Director regularly involved in management of the company's overall financial affairs.
Close Corporation	Members who control or regularly involved in the management of the close corporation's overall financial affairs.
Any other body	Any person: trustee, partner in accordance with whose instructions the governing body of the employer acts or who controls or is regularly involved in the management of the employer's overall financial affairs.

- The fund must request the employer to notify it, in writing, of the identity of the persons so personally liable. Failure to do so will result in all 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, being personally liable in terms of section 13A.
- The fund will have prescribed reporting requirements in respect of this new provision.
- Any person found guilty for the non-payment of contributions 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 such imprisonment.

6. Section 14 transfers

- The requirement to submit a section 14 application to the Registrar within 180 days of the effective date of the transfer has been amended to state that the section 14 must be submitted to the Registrar within a prescribed period.
- Transferring assets must be increased or decreased with fund return from the effective date of the transfer until the date of final settlement.
- The Registrar can withdraw from an

approved section 14 transfer where legislative amendments have resulted in prejudice to members.

- The Registrar has the power to exempt any transfer from section 14 on conditions prescribed by the Registrar.

7. Pension increase policy

- The Amendment Act provides that at least once every three years a pension increase shall be granted to pensioners and deferred pensioners with effect from the valuation date. The increase must not be less than the minimum pension increase starting with the first actuarial valuation following the commencement date.

8. Payment of benefits

- A fund will be allowed to direct that a member's benefit may be paid to a third party if the member or beneficiary submitted proof that he/she is unable to open a bank account.
- If a member dies and has no dependants or nominees, the benefit shall be paid into the deceased member's estate. If no estate exists, it can now also be paid into an unclaimed benefit fund. The same payment options apply to any benefit held in a beneficiary fund, when a beneficiary dies.

9. Deductions from benefits

- According to the Amendment Act, fund return will be added onto the non-member spouse's portion of the pension interest from the date the non-member spouse makes his/her payment election or, failing that, 120 days after being asked to make an election, until the date of payment or transfer.
- The Amendment Act allows for divorce payments to be deducted from deferred pensioner benefits, the capital value of a pensioner's pension after retirement and in terms of a court order dividing the assets of a marriage under Islamic law.
- Housing loans rank above divorce order deductions regardless of whether housing loan being payable or not. ■



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