RAAD OP FINANSIËLE DIENSTE
FINANCIAL SERVICES BOARD

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Navrae/Enq.:

Verw./Ref.:

June 1991

CIRCULAR P.F. NO. 74
(TO ALL SELF-ADMINISTERED PENSION FUNDS
AND INSURERS WHO UNDERWRITE PENSION FUNDS)

PENSION FUNDS ACT, 1956 ("THE ACT") - SECTION 13A : ARREAR CONTRIBUTIONS

1. It has been brought to the attention of this Board that in some instances contributions payable in respect of members of a fund are not paid to the fund, or in the case of an underwritten fund, to the underwriting insurer within the period of 7 days prescribed by section 13A of the Act.

2. In terms of section 37(1)(a) of the Act any person who contravenes or fails to comply with the provisions of, inter alia, section 13A of the Act, shall be guilty of an offence and liable on conviction, in terms of subsection (f)(i) of the Act, to a fine not exceeding R200.

3. When a fund is registered in terms of the Act, attention is drawn to the provisions of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), and in particular sections 2(a) and (3) thereof. Trust property is defined in the aforegoing Act and includes the contributions mentioned in paragraph 1 above.

4. The Board views any contravention of the provisions of these acts in a serious light and has proposed amending legislation to increase the penalty from R200 to R2 000. In addition the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), provides in section 9(1) for a fine of R10 000 or to imprisonment for a period not exceeding 10 years or to both that fine and that imprisonment on conviction.

5. Inspections by inspectors of the Board are already in progress and any contraventions will be referred to the Attorney-General for such action he may deem necessary. These inspections have been ordered by the Executive Officer of the Board in terms of section 25 of the Act, read with section 3 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984).

6. Underwriting insurers and principal officers must, with immediate effect, report to the registrar -

   (a) Any contravention of section 13A of the Act not later than two months from the date that the contributions fell in arrear in the case of:

      (i) a pension fund exempted in terms of section 2(3)(a)(ii) of the Act by the underwriting insurer; and

      (ii) a self-administered pension fund, by the principal officer;

   (b) The discontinuance of contributions by the employer for any reason forthwith in respect of:

      (i) a pension fund exempted in terms of section 2(3)(a)(ii) of the Act, by the underwriting insurer; or

(ii) a self-administered pension fund, by the principal officer of the fund.

7. Underwriting insurers must take cognisance of the fact that they could be liable for contributions not paid over timeously by an intermediary/administrator.

8. The situation is being investigated with the full support of the LOA and the Institute of Retirement Funds (of Southern Africa) to ensure that all insurers co-operate and will not allow funds where contributions are in arrear to switch from one insurer to another. Further action is being considered pending the outcome of this investigation.

9. It should also be noted that the pension fund's auditors, as part of their report on the annual financial statements, will be required to specifically report failures to comply with the provisions of section 13A of the Act should these not have been reported in terms of paragraph 6 above.

10. Kindly acknowledge receipt of this circular and confirm that a copy thereof was handed to the fund's auditor and valuator (where applicable) by signing and returning the attached acknowledgement form to this Office.

REGISTRAR OF PENSION FUNDS

(Circular P.F. No. 73 was addressed to self-administered pension funds and insurers who underwrite pension funds)

MH/1122D

(Afrikaans agterop)