

ANNEXURE C – AFFIDAVIT BY MONITORING PERSON OR PRINCIPAL OFFICER

AFFIDAVIT

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 24 of 1956 (“the PFA”), I am the principal officer of the _____ (name of fund) _____ (hereinafter referred to as “the fund”). I annex hereto marked “A___” a copy of the resolution of the board of the fund dated _____ appointing me as the fund’s principal officer.¹

4.

In terms of section 13A (6) of the PFA, I have been authorised by the board of the fund to act as the fund’s monitoring person and in this regard I annex hereto marked “A___” a copy of the resolution of the board of the fund dated _____ authorising me to act as the fund’s monitoring person.²

5.

The fund has been registered under the PFA by the Financial Sector Conduct Authority (“the Authority”) under registration number 12/8/_____. I annex hereto a certificate of registration issued by the Authority marked “A___”, as well as a copy of the rules of the fund bearing an endorsement of the date of registration marked “A___”, both issued in terms of section 4 of the PFA.

¹ delete if the principal officer is not also the monitoring person

² 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

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 annex hereto marked “A___” a copy of the fund’s Special Rules applicable to the employer.

***(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 annex hereto marked “A___” a copy of the **Participation Agreement/(or document proving the employer’s participation in the fund)**³ between the fund and the employer.

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

_____ (name of employer) _____ (hereinafter referred to as “the employer”) is the sole participating 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”).

³ Delete whichever is not applicable

9.

In terms of section 13A (1) of the PFA, 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 PFA, 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.

11.

In terms of section 13A (2) of the PFA, the employer is required to transmit certain minimum information prescribed in the Registrar's Notice No. _____ 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/monitoring person⁴ I monitored the receipt of contributions and minimum information by the fund from the employer.

13.

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

⁴ delete whichever is not applicable

14.

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

On _____, 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. _____

I annex hereto marked "A7" a copy of the letter received from the employer.

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

The employer has not responded to the fund's letter ("A__"). In the circumstances, section 13A (9)(b) 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 subsection (8). The following directors/members/persons⁵ 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 annex hereto marked "A__" supporting documents in support of same.

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

⁵ Delete whichever is not applicable

15.

The employer has contravened or failed to comply with section 13A by:

- 15.1. not paying the employer contribution and 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 “A ___” hereto;
- 15.2. not transmitting the contribution statement prescribed in the Registrar’s Notice No. _____ 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 “A___” hereto.

16.

In terms of section 37(1) of the PFA, 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.

17.

***** (if there was compliance with Registrar’s Notice No. _____)**

In accordance with Registrar’s Notice No. _____:⁶

- 17.1. On _____, within 7 (seven) days after the date on which the contribution statement was due, I reported in writing the employer’s non-compliance with the provisions of subsections (2)(b) and (3)(a) of section 13A to the board of the fund. I annex hereto marked “A___” a copy of my written report to the board of the fund.

⁶ This paragraph may be omitted or amended where appropriate. See item 3.4. of Registrar’s Notice ____: *The failure by the board of a fund, principal officer or monitoring person to comply with any of the provisions of this notice shall not be a bar to criminal prosecution against such persons identified as being personally liable in terms of section 13A(8) and (9) for a contravention or failure to comply with section 13A.*

- 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) and the board's proposed course of action to rectify the contravention. A copy of the notification is annexed hereto marked "A___".
- 17.3. On _____, within 14 (fourteen) 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 annexed hereto marked "A___".
- 17.4. On _____, and on _____ the reports to the affected members and the Authority were updated on a monthly basis. I annex hereto marked "A___" and "A___" copies of the said updates.
- 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 annex hereto marked "A___" to "A___", 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.

***** (alternatively - if there was non-compliance with Registrar's Notice No. ___)**

The Registrar's Notice No. ___ 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 section 13A(8) and (9) 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 201 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 : _____