

BUILDING INDUSTRY PENSION & PROVIDENT FUNDS

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29 January 2015

The Participating Employers Building Industry Retirement Funds

PRIVATE & CONFIDENTIAL

Dear Participating Employers,

Re: Important changes to the Pension Funds Act affecting the company

This letter is addressed to you on behalf of the Building Industry Retirement Fund.

We want to bring to your attention a recent amendment to the Pension Funds Act, 1956, ('the PFA') which imposes personal liability on certain people at the employer and potentially harsh penalties for non-compliance of the provisions of the PFA.

What are the requirements when paying contributions to the Fund?

Section 13A of the PFA deals with the payment of contributions to the Fund. The employer must pay all contributions that are due and owing to the Fund by the 7th of the month, following the month in which the contributions are due. What this means is that all contributions due for the month of February must be paid to the Fund by 7 March. This requirement applies to both employer and member contributions to the Fund. In addition the employer must submit a monthly schedule of all contributions so that the Fund can correctly allocate the contributions.

Personal liability for contributions to the Fund

With effect from 28 February 2014, the PFA states that the following persons shall be **personally liable** for compliance with section 13A and for the payment of any contributions:

- a. If an employer is a company, every director who is regularly involved in the management of the company's overall financial affairs;
- b. if an employer is a close corporation registered under the Close Corporations Act every member who controls or is regularly involved in the management of the close corporation's overall financial affairs; and
- c. in respect of any other employer of any legal status or description that has not already been referred to in paragraphs (a) and (b), every person in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer's overall financial affairs.

If an employer fails to comply with the requirements of section 13A, 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, shall be personally liable in terms of this new provision.

Penalties for non compliance

As set out above, certain persons at the employer could be held personally liable for non-compliance with section 13A of the PFA. The amendment to the PFA has made this contravention a **criminal offence**.

As required, in terms of Section 13A of the Pension Funds Act, late payment interest at the prescribed rate will be levied on outstanding contributions.

Any person who contravenes or fails to comply with section 13A may be found 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.

Trustee duties

The Trustees of the Fund must report any non-compliance to the Financial Services Board, in accordance with the new 'whistleblowing' obligations prescribed in the PFA.

As required in the PFA, the Trustees of the Fund hereby request the employer in writing to notify the Fund of the identity of any such person so personally liable as set out above, failing which the individual directors / members of close corporations etc, will be held responsible.

Please could you arrange for the names and contact details of the relevant person(s) to be provided to me. For ease of reference, please could you simply indicate these names in the section provided below. Return by email to: secretary@bipcpe.co.za or fax to: 086 514 5659.

Yours faithfully

BUILDING INDUSTRY PENSION & PROVIDENT FUNDS



T.M. VERSCHUUR
PRINCIPAL OFFICER

<u>NAME OF REGISTERED PARTICIPATING EMPLOYER:</u>	<hr/> <hr/>
<u>NAME OF RESPONSIBLE PERSON(S)</u> (Full name and ID)	<hr/> <hr/>
EMPLOYER / DIRECTOR:	<hr/>
SIGNATURE :	<hr/>
Date :	<hr/>