

## CIRCULAR 2 OF 2022

21 September 2022

To: All Clothing Industry Pension Fund Members

**Ref: PENSIONS AND PROVIDENT FUNDS ACT [CHAPTER 24:32] Section IV-  
Payments to the Fund**

Reference is hereby made to the new pensions regulations (Pensions and Provident Funds Act [Chapter 24:32]) regarding the issue of Pension Contribution remittances to the Fund as follows....

(1) Notwithstanding anything to the contrary in the rules of a fund, every participating employer shall pay the following amounts to the fund in full— (a) any contribution which, in terms of the rules of the fund, the employer is required to deduct from the remuneration of a member; and (b) any contribution which the employer is liable to pay in terms of the rules of the fund; and in connection with those payments the employer shall provide the fund, either at the time of payment or within fourteen days after the end of the month in respect of which the contributions were payable, with such information as may be prescribed.

(2) Notwithstanding any collective bargaining agreement or any arrangement to the contrary, all contributions to the fund shall be paid directly to the fund unless an alternative has been approved by the Commission.

(3) Every participating employer shall, not later than fourteen days after the end of the month in respect of which the contribution is payable, remit all contributions that are payable to a fund in terms of its rules.

(4) Any participating employer who fails to remit contributions within the period referred to in subsection (3) shall be guilty of an offence and liable to a category 1 civil penalty.

(5) Where a participating employer fails to remit contributions in terms of subsection (3), the Principal Officer shall report to the Commission, within seven days after the expiration of the fourteen days referred to in subsection (3).

(6) Where a participating employer fails to remit pension contributions for a period of three months, the Commissioner shall direct the employer to remit such contributions to the fund within such period as the Commissioner may specify: Provided that before giving the direction to the participating employer, the Commissioner shall invite representations from such employer, to give reasons for the non-remittance of contributions.

(7) For purposes of subsection (6), every inspector appointed in terms of this Act shall have powers to demand information from the participating employer in relation to pension contributions, including— (a) banking details of the employer; (b) where the employer alleges that the contributions were remitted, proof of payment of such contributions; (c) where contributions were not paid, reasons for non-payment of contributions; (d) names of employees who or ought to have benefited from the contributions; (e) any other information the inspector may consider necessary and relevant.

(8) Where a participating employer fails to comply with a direction made by the Commissioner in terms of subsection (6), the Commissioner shall direct the bank of such employer to remit outstanding pension contributions to the fund, either by way of a single instalment or such number of instalments as the Commissioner may specify.”; and the subsequent sub-clauses shall be renumbered accordingly.

(9) On the conviction of a participating employer for an offence which consists of a failure to pay any contribution in terms of this section; the court convicting such participating employer shall, in addition to any penalty which it may impose, give summary judgment in favour of the fund for the amount which the participating employer failed to pay together with interest at the prescribed rate on the amount due with effect from the last day of the month in respect of which the contribution was payable.

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(10) Without derogation from section 385 of the Criminal Procedure and Evidence Act [Chapter 9:07], where a participating employer contravenes this section, the following persons shall be personally liable for the contravention— (a) every director or executive officer who is regularly involved in the management of the participating employer's overall financial affairs; (b) every person in accordance with whose directions or instructions the governing body or structure of the participating employer acts or who controls or who is regularly involved in the management of the participating employer's overall financial affairs; unless it is proved that he or she took no part in the commission of the offence.

NB: Take note of the highlighted points and be guided accordingly.

Thank you



L. MLILO

PRINCIPAL OFFICER

