

# Liberty Corporate

The roles and duties of a Monitoring Person



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*In the book of life,  
the answers aren't in  
the back.  
Charlie Brown.*

# The roles and duties of a Monitoring Person

## Late investment of contributions

Members of retirement funds expect that their contributions and those of their employers will be received and invested within a reasonable time. Unfortunately, there is evidence that this hope is not always fulfilled.

From time to time, media articles highlight the devastating financial consequences drawn down upon former employees and their dependants directly resulting from their employer not making these contributions as they should. The Registrar of Pension Funds has expressed concern on this point on more than one occasion and it complicates (and increases the cost of) retirement fund administration.

## Legislative requirements

The Pension Funds Act contains provisions designed to protect members against an employer's oversight or fraudulent action aimed at identification of non-payment of retirement fund contributions within a reasonable period of time. It also sets out the action to be taken to correct the situation and/or prevent it from getting worse.

## The Monitoring Person

Section 13A, together with Regulation 33 of the Pension Funds Act; contain the framework for regular monitoring of contributions payable by employers to retirement funds. The role is performed by the monitoring person who is appointed to oversee the process and who is required to report any transgressions.

Responsibility for appointing the monitoring person lies with the board of management (i.e. the trustees) of the retirement fund. For practical reasons, in most instances the most suitable person will be an authorised signatory of the employer. This person already has to sign various specific documents on behalf of such employer in terms of the Pension Funds Act.

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*Where payments fall 90 or more days into arrears, the monitoring person must advise the board of management.*

## Key duties of the Monitoring Person

In terms of the Pension Funds Act, the monitoring person must ensure that the employer:

- Pays contributions into the banking account of the retirement fund administrator within 7 days of the end of the month to which the contributions relate;
- Provides the retirement fund administrator with minimum information (explained later) relating to the contributions payable.

Where payments fall 90 or more days into arrears, the monitoring person must advise the board of management that they are legally obliged to:

- Institute legal action against the employer;
- Advise the Registrar of Pension Funds of the position; and
- Alert the fund members.

## Additional duties of the Monitoring Person

Although these are not statutory requirements, the monitoring person can greatly assist with the smooth operation of the retirement fund by:

- Taking responsibility for ensuring the regular distribution of member benefit statements;
- Ensuring that an authorised person signed all new entrant data and member movement advices;
- Assisting and following up with general member queries;
- Vetting all claim documentation prior to submission to Liberty Corporate and assisting with information/documentation required to resolve a claim;
- Checking the schedules provided by Liberty Corporate for correctness;
- Signing off investment election/switch forms.
- Specific requirements of Section 13A and Regulation 33

In the following paragraphs we have put the specific requirements of the Pension Funds Act into the context of an employer whose fund is administered by Liberty Corporate.

# The roles and duties of a Monitoring Person

Payment has to be made to our bank account within 7 days

An employer must pay any contribution deducted from a member's salary and/ or paid by the employer on behalf of the member within 7 days from the end of the month for which payment was due. Payment must be made directly into Liberty Corporate's bank account.

## Accompanying documentation

Every payment has to be accompanied by sufficient information to enable proper identification of the:

- Retirement fund to which the payment relates;
- Members themselves;
- Period in respect of which payment is being made;
- Name and address of the employer or pay-point;
- Contact person at the employer or pay-point.

Supplementary information has to be provided so that changes to previous statements can be reconciled. Included here would be:

- New members;
- Payment of additional voluntary contributions;
- Changes to pensionable emoluments;
- Corrections due to previous errors.

Specifically, in the case of new members, additional information has to be given:

- Full name;
- Date of birth;
- ID number or employer pay number;
- Date of commencement of membership;
- Pensionable emoluments;
- Percentage or amount of contributions (split between the member and employer);
- Any additional voluntary contributions.



# The roles and duties of a Monitoring Person

If the required information does not accompany the payment, it has to be submitted to Liberty Corporate within 15 days from the end of the month for which payment was due

## Monitoring the payment of contributions

### After 22 days

Liberty Corporate's accounting person is required to inform the fund's monitoring person within 22 days from the end of the month for which payment was due should any payment not have been made.

### After 30 days

Thereafter, Liberty Corporate's accounting person must inform the monitoring person within 30 days from the end of the month for which payment was due if:

- Any issue previously reported remains unresolved;
- The minimum information required has not been received;
- The payment and data cannot be reconciled (except where the payment discrepancy is less than 2,5% of the total contribution payable);
- Any outstanding payments have not been received within the 15 days allowed.

### After 37 days

Unless all these issues are resolved within the ensuing 7 days, the monitoring person has to inform the board of management in writing of any non-payment or of issues that remain unresolved.

Should the board of management fail in its attempts to rectify matters, it is bound to direct the monitoring person to inform the members of the position and simultaneously advise the Registrar of Pension Funds.

*Liberty Corporate's  
accounting person is  
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# The roles and duties of a Monitoring Person

After 90 days

If the position persists for 90 days in arrears, the monitoring person has to report the matter in detail to the Attorney General, which means that the non-payment has become a criminal matter.

The report must comprise of:

- An affidavit from the monitoring person;
- A certificate from the Registrar of Companies providing details of directors of the company in default.

The report must also be submitted to the Commercial Branch of the South African Police Services, who will allocate a case number, possibly take further statements from the fund administrator or other parties involved and then forward the case file to the Public Prosecutor for assessment. At this stage the Registrar will be informed of the action taken.

## Consequences of non-payment

There are considerable downsides to the non-payment of contributions and/or failure to generally comply with the requirements imposed by legislation:

- Notification to the Registrar may result in the matter being reported to the Commissioner for the South African Revenue Service, who may take such action against the employer as is deemed fitting, including the removal of tax approval for the employer and inspection of the employer's records and premises;

- Compound interest accrues to any amount not paid into the retirement fund within 7 days from the end of the month for which payment is due. As per the Usury Act 73 of 1968, effective 17 September 2004, such a rate varies between 17% and 20%. The interest rate charged changes from time to time in accordance with the changes in the interest rate reflected in the Usury Act.
- Except for transfers under sections 14, 28 and 29 of the Act, interest as described in the previous bullet point will be due on payments made after 660 days after a member's request to transfer a termination benefit to another approved fund.
- Conviction of an employer may result in a fine (R2000 per offence) or imprisonment.

A penalty of R50 per day could be incurred by a monitoring person, employer, board members and responsible person for failure to submit data or reports, as the case may be.

## The monitoring person plays a key role

So in summary, it is evident that the appointment of a monitoring person could mean timely avoidance of many pitfalls surrounding the ongoing administration of a retirement fund. If you have a retirement fund administered by Liberty Corporate, check to ensure that you have a monitoring person in place.

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# Disclaimer

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