Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): THE CONSOLIDATED BENEFIT PROVIDENT FUND (“complainant”) v AMANZINGWE HOLDINGS (PTY) LTD (“respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the payment of contributions to a provident fund and the submission of contribution schedules.

1.2 The complaint was received by this Tribunal on 5 March 2014. A letter acknowledging receipt thereof was sent to the complainant on 11 March 2014. On the same date, a letter was forwarded to the respondent giving it until 7 April 2014 to file a response to the complaint. On 16 April 2014, a follow-up response letter was forwarded to the respondent requesting a response by 6 May 2014. On 6 May 2014, a response was received from the respondent. On the same date, this response was forwarded to the respondent to file a response by 21 May 2014. No further submissions were received from the parties.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)
1.3 After reviewing the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant is a pension fund organisation as defined in section 1 of the Act. The respondent is a participating employer in the complainant and is tasked with making provident fund deductions from its employees’ salaries and to effect payment of such contributions to the complainant.

[3] COMPLAINT

3.1 The complainant submits that the respondent, a participating employer in it, is in arrears with the payment of contributions and has not submitted contribution schedules.

3.2 The complainant attached a letter dated 28 February 2014 addressed to the respondent wherein it informs the respondent that contributions for the period August 2013, October 2013, November 2013, December 2013 and January 2014 are outstanding. The complainant further states in the said letter that the respondent was non-compliant with section 13A of the Act.

[4] RESPONSE

4.1 The respondent submitted that it does not dispute that it is in arrears with respect to the payment of contributions. It avers that the strike in the mining sector in the North-West Province has negatively affected its business. It further states that it is owed some money by the Provincial Department of Education and due to system failures, payments have
been delayed and it is anticipated that the situation will be rectified by 15 May 2014.

4.2 It further submits that it has paid some arrear contributions and undertakes to bring the outstanding contributions up to date as soon as it receives money it is owed by the external parties.

[5] DETERMINATION AND REASON THEREFOR

5.1 The issue that falls for determination is whether or not the respondent failed to pay provident fund contributions and submit contribution schedules to the complainant in terms of section 13A of the Act.

5.2 The respondent has a duty placed on it by the provisions of section 13A(1)(a) of the Act and the rules of the complainant to pay contributions and submit schedules to the complainant. Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund’s account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contributions not later than seven days after the end of that month for which such contributions are payable.

5.3 Rule 5 of the complainant’s rules deals with the payment of contributions by the employers and provides as follows:

“5.2 Participating Employer Contributions

5.2.1 Each PARTICIPATING EMPLOYER shall contribute to the FUND for retirement benefits in respect of MEMBERS in its employ in accordance with the categories and contribution rates set out in the SPECIAL RULES.”
In the present matter, the complainant submitted that the respondent
has failed to pay contributions and submit all contribution schedules to
it. The respondent does not dispute that it is in arrears with respect to
the payment of contributions to the complainant. It presented this
Tribunal with reasons why it has failed to pay contributions as required
in terms of section 13A of the Act and the complainant's rules namely
that, the mining sector strike in the North-West Province has negatively
affected its business and that it is owed money by the Provincial
Department of Education.

This Tribunal takes note of the respondent's submissions, however, its
failure to pay contributions will have a devastating effect on its
employees who are members of the complainant and their beneficiaries
and therefore, an order must be made against the respondent to pay all
the outstanding contributions in light of its undertaking that it is
expecting payments from its debtors. This Tribunal cannot condone a
situation where contributions go unpaid for extended periods of time,
and in that respect, the actions of the complainant to protect its
members and ensure that its rules are adhered to are to be
commended.

ORDER

In the result, the order of this Tribunal is as follows:

The respondent is ordered to submit all outstanding contribution
schedules to the complainant in order to facilitate the
computation of arrear contributions, within three weeks of this
determination;

Should the respondent fail to comply with paragraph 6.1.1, the
complainant is ordered to reconstruct the contribution
schedules based on the information already in its possession,
within two weeks of the respondent’s failure to submit the schedules;

6.1.3 The complainant is ordered to compute the arrear contributions together with late payment interest owed by the respondent in terms of section 13A(7) of the Act from date of default until date of payment, within one week of receipt of the schedules referred to in paragraph 6.1.1 or 6.1.2 (whichever is applicable);

6.1.4 The complainant is ordered to transmit to the respondent its computations in paragraph 6.1.3, within three days of completing them; and

6.1.5 The respondent is ordered to pay the outstanding arrear contributions to the complainant together with late payment interest as computed in paragraph 6.1.3, within one week of receiving the computations from the complainant.

DATED AT PRETORIA ON THIS 28TH DAY OF MAY 2014

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MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR
Section 30M filing: High Court

Parties: Unrepresented