

ADMISSION OF GUILT AND ACKNOWLEDGEMENT OF LIABILITY FOR PURPOSES OF S37D OF THE PENSION FUNDS ACT 24 OF 1956

NOTES TO THE EMPLOYER:

NB: Please study these notes and the disclaimer before requesting the employee to complete the admission of guilt and acknowledgement of liability form

Notes:

1. Only use this form for claiming compensation for damages caused to the employer by an employee's theft, dishonesty, fraud or dishonest misconduct (s37D Claims).
2. Please do not use this form:
 - 2.1 for settlement of outstanding housing loans by the employer or outstanding housing loans guaranteed by the employer;
 - 2.2 for s37D Claims:
 - 2.2.1 unless the employee's employment has been terminated;
 - 2.2.2 unless the employer has suffered monetary loss because of the employee's theft, dishonesty, fraud or dishonest misconduct;
 - 2.2.3 if the employee was not personally involved in the wrongdoing;
 - 2.2.4 for contractual disputes and damages suffered by an employer as a result of an employee's breach of contract;
 - 2.2.5 if the employee's misconduct was due to negligence.
3. In its sole discretion, the retirement fund's board of trustees can refuse to pay s37D Claims. This form is merely a request to the fund to pay such claims.
4. In theft cases, the property may have been stolen from a third party: provided that the theft caused loss to the employer.
5. The employer may claim any damages claimed from the employer by a third party for vicarious liability in respect of the employee's dishonesty, fraud or dishonest misconduct perpetrated against such third party.
6. Competing claims will be prioritised for payment as follows:
 - 6.1 income tax
 - 6.2 maintenance claims
 - 6.3 outstanding housing loan claims by the fund
 - 6.4 outstanding housing loan guarantee claims by the fund
 - 6.5 outstanding housing loan claims by the employer where secured by a pledge of fund benefits
 - 6.6 outstanding housing loan guarantee claims third party loans secured by a pledge of fund benefits
 - 6.7 s37D Claims.

Disclaimer:

Retirement Fund Solutions Namibia (Pty) Ltd (RFS) has prepared this form as a template for its own internal use. RFS makes this form available to its clients as a suggested template for their voluntary use in order to streamline and standardise RFS' administration operations. RFS has prepared this form based on its understanding of the applicable law at the time. RFS does not accept liability for such understanding being incorrect or incomplete, nor does RFS assume responsibility for any errors or omissions in preparing this form. RFS does not assume liability for any consequences of this form being used other than as intended. RFS assumes no liability for any loss or damages whatsoever and howsoever suffered by any party arising from the use or signature of this form. In no way does this form constitute legal advice. In no way does this form indemnify any party from any legal action that may arise from the use of this form.

- All signatories to this document must initial all deletions, insertions and alterations and any additional documentation attached hereto.
- The information disclosed in this document will be treated as confidential and will only be used for the purpose for which it is intended in terms of the Pension Funds Act 24 of 1956.

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Section 37D(b)(ii) of the Pension Funds Act 24 of 1956 (the Act) stipulates, "A registered fund may deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of compensation in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which the member has in writing admitted liability to the employer, from any benefit payable in respect of the member or a beneficiary in terms of the rules of the fund, and pay such amount to the employer concerned;" .

1. EMPLOYER WARRANTY

I, the undersigned, _____ (the Employer Representative),
(full names)
having been duly authorised thereto, hereby warrant that:

- I have fully explained the contents of this Admission of Guilt and Acknowledgement of Liability to the Member;
- I have fully explained to the Member the implications and consequences of making this Admission of Guilt and Acknowledgement of Liability;
- I have not coerced the Member into making this Admission of Guilt and Acknowledgement of Liability;
- To the best of my knowledge and belief no other person has coerced the Member into making this Admission of Guilt and Acknowledgement of Liability.

2. MEMBER ADMISSION AND CONSENT TO DEDUCTION FROM BENEFIT

2.1 I, the undersigned, _____ (the Member),
(full names)

ID _____, employee no. _____, member no. _____, employed
as _____ by _____ (the Employer)

(job title) (registered employer name and reg. no.)
at _____ for the period from ___/___/___ to ___/___/___ and a
(office address)

member of _____ (the Fund) hereby admit and acknowledge that I am
(fund name)

truly and lawfully liable and indebted to the Employer in the amount of N\$ _____ (the Principal Debt), in respect of compensation for damages caused to the Employer by my

theft dishonesty fraud dishonest misconduct committed as follows:

(Explain how, when and where. Please attach a separate sheet if insufficient space)

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- 2.2 I understand and agree that this Admission of Guilt and Acknowledgement of Liability constitutes a written admission of liability in terms of s37D (b) (ii) (aa) of the Act.
- 2.3 I further consent to the deduction of the Principal Debt from the benefit due to me from the Fund in terms of its rules and the payment thereof directly to the Employer in terms of the stipulations of s37D (b) (ii) (aa) of the Act.
- 2.4 I understand that should the benefit due to me from the Fund be insufficient to fully settle the Principal Debt, any shortfall remains a debt owing to the Employer that the Employer may recover from me.
- 2.5 I renounce the benefits of the legal exceptions of:
 - *non numeratae pecuniae* (I understand that if legal proceedings are instituted, I will not be able to claim that the Principal Debt was not paid to me, or received by me or on my behalf);
 - *non causa debiti* (I understand that if legal proceedings are instituted, I will have to prove that no cause of debt exists);
 - *errore calculi* (I understand that if legal proceedings are instituted, I will not be able to claim that the Principal Debt was incorrectly calculated).
- 2.6 I accept that a certificate signed by the Employer or its agent reflecting the Principal Debt at any time is conclusive proof of the Principal Debt for the purposes of judgement by a court.
- 2.7 I declare that I understand this Admission of Guilt and Acknowledgement of Liability and confirm that I have made it freely and willingly without being coerced.

Done and signed at _____ on this ____ day of _____ 20____,
in the presence of the undersigned witnesses:

Employer Representative

Witness

Initials & surname of witness

Member

Witness

Initials & surname of witness

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