



**FSRA CONDUCT STANDARD 1 OF 2019 (PFA)**

**FINANCIAL SECTOR REGULATION ACT NO 9 OF 2017**

**CONDITIONS FOR AMALGAMATIONS AND TRANSFERS IN TERMS OF SECTION 14 OF  
THE PENSION FUNDS ACT**

The Financial Sector Conduct Authority, hereby, under sections 106(1), read with 106(2)(b) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), prescribe requirements relating to conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act, 1956, (Act No. 24 of 1956).

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**For THE FINANCIAL SECTOR CONDUCT AUTHORITY**

**Date of publication:**

## SCHEDULE

### 1 Definition –

In this Schedule, “the Act” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); and “the Pension Funds Act” means the Pension Funds Act, 1956 (Act No. 24 of 1956), and any word or expression to which a meaning is assigned in the Act or the Pension Funds Act bears the meaning so assigned to it, and unless the context indicates otherwise-

“**Authority**” means the Financial Sector Conduct Authority established under section 56 of the Act;

“**long-term insurer**” means a long-term insurer as defined in the Insurance Act;

“**prospective transfer**” means a transfer where the number of members who intend to transfer or the amounts to be transferred are not known at the time of the section 14(1) application;

“**Regulations**” means the Regulations made under section 36 of the Pension Funds Act;

“**retrospective transfer**” means a transfer where the number of members and the amounts are known at the effective date of the section 14(1) application; and

“**section 14**” means section 14 of the Pension Funds Act.

### 2 Purpose

The purpose of this draft Conduct Standard is to set out the requirements of the Authority in respect of the different types of amalgamations and transfers in terms of section 14, to provide conditions in terms of section 14 in respect of section 14 transfers in order to ensure that funds treat members affected by transfers in terms of section 14 fairly

### 3 Format and submission

(1) An application for the approval of a transaction involving the amalgamation of any business carried on by a registered fund with any business carried on by any other person (irrespective of whether that other person is or is not a registered fund), or the transfer of any business from a registered fund to any other person, or the transfer of any business from any other person to a registered fund must be made in the specified format which consists of the following:

- (a) The prescribed fees<sup>1</sup> applicable to a section 14(1) application as set out in Schedule L, made in terms of Regulation 24(c);

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<sup>1</sup> The applicable fee must be paid by the transferee fund or other person taking transfer, unless otherwise agreed with the transferor fund.

(b) the relevant applicable forms referred to in this Conduct Standard and as determined by the Authority, duly completed, ~~as set out in the Appendices to this draft Conduct Standard~~; and

(c) any other documentation to substantiate the application for the amalgamation or transfer contemplated in terms of section 14(1) as may be required or determined by the Authority.

(2) ~~The submission to the Authority must be made electronically on the official web site in portable document format (PDF) as a single application.~~

(3) The transferee fund is responsible for submitting the section 14 application for approval, provided that, in cases where the transferee is not a registered fund, the transferor fund will be responsible for the submission of the application.

(4) The scheme for the proposed transaction, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, must be submitted to the Authority within the time period as provided by Notice<sup>2</sup>.

(5) The boards of both the transferor and the transferee funds must take reasonable steps to ensure that the interests of members are protected at all times (both with regards to the rules of the fund and the provisions of the Pension Funds Act) and may not merely rely on a statement to this effect by the valuers.

#### **4 Actuarial surplus / reserve accounts**

(1) The Authority requires information about, inter alia, actuarial surplus and reserve accounts in the transferor fund in order for it to consider whether a proposed transfer is reasonable and equitable and whether it meets the rights and reasonable benefit expectations of the transferring members as they relate to service before the date of transfer.

(2) For a fund that commenced prior to 7 March 2002, an actuarial surplus may not be included as part of the proposed transaction until the transferor fund has complied with section 15B of the Pension Funds Act (i.e. a surplus apportionment scheme has been approved or nil return has been noted by the Authority).

(3) ~~The attached forms as set out in the Appendices require the applicants~~A pension fund seeking approval under section 14 of the Pension Funds Act to must, in its application, indicate the impact of any unapportioned actuarial surplus included or excluded from the transaction.

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<sup>2</sup> Notice 4 of 2016 as at date of publication of this Standard.

## **5 Member communication**

(1) As part of any transaction contemplated in terms of section 14(1), the transferor fund must provide affected members with adequate communication in order to enable them to make an informed choice about whether or not to object to the scheme of transfer.

(2) Adequate communication entails providing enough information about the particulars of the transfer, including -

- (a) explaining the risks as a result of the transfer;
- (b) explaining how the members' past service benefits will be impacted by the transfer; and
- (c) whether there could be any prejudice upon transfer.

(3) (a) As part of the communication material to members, a comparison showing, at the very least, the benefits and costs of both funds involved in the transfer must be issued or presented; provided that the comparison is not required for transfers of unclaimed benefits or where members voluntarily transfer as is the case with transfers involving retirement annuity funds or preservation funds.

(b) A fund must provide such information promptly and accurately and must not attempt to delay any transfer application by not providing, or delaying in providing, the requisite information for such comparisons.

(4) Transferring members, with the exception of unclaimed benefit members, must be provided with their transfer value or a reasonable estimate thereof, as at the effective date of transfer.

(5) In all cases other than for voluntary individual transfers and the transfer of unclaimed benefits, members must be given at least 30 days in which to lodge an objection to the scheme of transfer.

(6) Objections must be included in the submission to the Authority where the objection has not been resolved, together with the fund's response and comments.

## **6. Transfer of assets and liabilities to comply with the Pension Funds Act**

To minimise possible prejudice to the members transferring-

- (a) member transfer schedules must be forwarded to the transferee fund within 60 days of the date of the certificate issued by the Authority in terms of section 14(1)(e); and
- (b) the transferee fund must reconcile the schedules with the amount actually received within five days of receiving the schedule.

## **7. Certifications regarding amounts to be transferred**

(1) The board of the transferor fund and the valuator, where applicable, must express an opinion on whether the transfer –

- (a) is reasonable and equitable;
- (b) accords full recognition to the rights and reasonable benefit expectations of all the transferring members as they relate to service prior to the date of transfer;
- (c) accords full recognition to any additional benefits in respect of service prior to the date of transfer, the payment of which has become established practice;
- (d) accords full recognition to the payment of minimum benefits in terms of section 14A of the Pension Funds Act ;
- (e) will not detrimentally impact the rights of the remaining members of the transferor fund; and
- (f) will not render the fund unable to meet the requirements of the Pension Funds Act or to remain in a sound financial condition or in cases where the fund is not in a sound financial condition, to attain such a condition within a time period the Authority considers satisfactory.

(2) The board of the transferee fund and the valuator, where applicable, must express an opinion on whether the transfer –

- (a) is reasonable and equitable;
- (b) accords full recognition to the rights and reasonable benefit expectations of all the transferring members as they relate to service prior to the date of transfer, considering the manner in which the transfer value will be applied for the benefit of the member in the transferee fund;
- (c) will not detrimentally impact the rights of the existing members in the transferee fund; and
- (d) will not render the fund unable to meet the requirements of the Pension Funds Act or to remain in a sound financial condition or in cases where the fund is not in a sound financial condition, to attain such a condition within a time period the Authority considers satisfactory.

(3) (a) The certifications must be made in the forms which are to be completed.

(b) The Authority will not accept modifications to the opinion provided in the forms since it negates the fiduciary responsibility of the board of the fund and the valuator to the stakeholders in a fund, unless such modification is highlighted and adequately motivated.

(4) Where a person has concerns about whether the rights and reasonable benefit expectations of members are satisfied (e.g. the board of the transferee fund are concerned about the transfer values to be transferred), such concerns must be addressed to the Authority in a separate letter.

(5) It is specifically noted that, while it is expected of the parties to express their opinions as required above, the final decision as regards the requirements in section 14(1)(c) is for the Authority to make.

## **8. Types of transfers**

### **8.1 Retrospective transfers**

(1) Retrospective transfers are transfers where the number of members and the amounts are known at the effective date of the section 14(1) application.

(2) For a retrospective transfer, ~~the A Forms in Appendix 1 must be completed a pension fund must complete the relevant forms for such transfer as determined by the Authority.~~

### **8.2 Prospective transfers**

(1) Prospective transfers are transfers where the number of members who intend to transfer and/or the amounts to be transferred, are not known at the time of the section 14(1) application.

(2) Approval may be applied for in respect of a prospective transfer at a particular date or for blanket transfers between two specific funds for a maximum period of 12 months from the effective date of the scheme of transfer.

(3) For an authorised prospective transfer scheme, all transfers must be effected within 60 days of the later of the date of approval from the Authority and the effective date of transfer.

(4) For a prospective transfer, ~~the B Forms in Appendix 2 must be completed a pension fund must complete the relevant forms for such transfer as determined by the Authority.~~

(5) In the case of a prospective transfer, it is imperative that the transferor fund complete ~~Form B3~~the relevant form, as determined by the Authority, pertaining to members transferred between the two funds as prospectively approved by the Authority, and submit it to the Authority within two months of the earlier of the effective date of the particular transfer and in the case of a blanket transfer, the expiry of the prospective period as approved.

### **8.3 Purchase of annuities in the name of pensioners**

(1) For applications in respect of groups of pensioners for whom annuities are to be purchased from a long-term insurer or whose annuity policies are to be transferred to their names, ~~the C Forms in Appendix 3 must be completed,~~ a pension fund must submit the relevant forms for such transfer as determined by the Authority.

(2) In the case of a prospective transfer, the transferor fund must complete ~~Form C2~~ the relevant forms, as determined by the Authority, pertaining to the purchase of annuity policies in the name of the pensioners as was prospectively approved by the Authority, and submit it to the Authority within two months of the particular date or the expiry of the prospective period as approved.

(3) The board must certify that the reasonable benefit expectations of the pensioners are no worse in the purchased policy, to what they would have been in the transferor fund, including consideration of expected future increases and contingent benefits.

(4) In the case where the outsourcing of the pensioners was done prior to the application to transfer the annuity policies to the pensioners' names, the board of the fund must consider the treatment of the pensioners in the outsourcing exercise. In particular, the board must consider-

- (a) the manner in which the pensioners' reasonable benefit expectations were met;
- (b) the manner in which minimum pension increases were taken into account; and
- (c) the financial impact of the transaction on the financial position of the fund at the date of outsourcing.

#### **8.4 Unclaimed benefit transfers**

(1) In respect of the transfer of unclaimed benefits, a fund is not required to communicate with and allow for objections from members with unclaimed benefits.

(2) (a) Where transfers are in respect of unclaimed section 15B surplus benefits, both the transferor fund and transferee fund must ensure that the requirements of Regulation 35(4) have been complied with.

(b) The transferee fund must ensure that compliance with Regulation 35(4) will continue after transfer.

(3) Where unclaimed surplus benefits are being transferred, these must be shown separately in the forms, as well as in the transfer schedules.

#### **8.5 'Agterskot' transfers**

(1) An 'agterskot' refers to any additional benefit that a member becomes entitled to as a result of that member's current or past membership of a fund.

(2) The Authority will permit a further transfer of assets in respect of a previously approved transfer where the valuator or the board determines that, with the benefit of hindsight, a revised quantum of assets should have been transferred.

(3) The transfer of an 'agterskot' must only be in respect of some or all of the members in the original transfer that was previously approved.

(4) For an application for the transfer of an 'agterskot', ~~Form E in Appendix 4 must be completed~~ a pension fund must complete the relevant forms for such transfer as determined by the Authority.

(5) The adjustment to the quantum of assets transferred must be accumulated with fund return from the effective date until the date of actual payment.

## **9. Transfers to or from an entity not registered by the Authority**

(1) When considering transfers to or from an entity not registered by the Authority, a pension fund must complete the relevant forms for such transfer as determined by the Authority ~~Forms A or C in the Appendices to this draft Conduct Standard, with the necessary changes, must also be used.~~

(2) A fund must provide proof of the acknowledgement of the transfer between a registered fund and a foreign fund or entity by the South African Revenue Services with an application to the Authority for approval of the transfer.

- (3) The following information must be submitted in support of the application -
- (a) proof of registration of the foreign entity in the foreign country;
  - (b) a letter confirming that the foreign fund or entity is in a sound financial condition; and
  - (c) where the transfer has already been approved by the foreign regulator, confirmation of such approval.

## **10. Lapsing of section 14(1) applications**

(1) In terms of section 14(5) of the Pension Funds Act, an application shall lapse if the Authority requests further information and no satisfactory response is received from either the transferor or transferee fund within a period of 180 days from the date of such a request.

(2) In the event that an application lapses, the applicant will be informed of the lapse of the application and a new application, with the applicable fee, will have to be submitted. The fee previously paid will be forfeited.

## **11. Errors and adjustments to section 14(1) applications**



(1) Where the board requests the Authority to amend or withdraw a certificate issued in terms of section 14(1)(e) of the Pension Funds Act, a letter signed by the principal officer or authorised members of the board must be submitted to the Authority detailing that request.

(2) Where the circumstances described in section 12(1) have not been met to the satisfaction of the Authority, the certificate will not be withdrawn or amended. The following are examples of cases that will not be regarded as corrections of errors and in respect of which new section 14(1) applications would be required:

- (a) Members and their corresponding transfer values were omitted from the initial application.
- (b) Members, assets or liabilities have already been transferred incorrectly (i.e. when they should not have been included in the original transfer application). In this case, a reversal section 14 application will be required.

## **12. Replacement pages**

(1) Replacement pages will only be considered if they are submitted and the Authority is notified of these, prior to the issuing of a certificate in terms of section 14(1)(e) of the Pension Funds Act.

(2) Any replacement pages must be duly completed and signed by the responsible parties as provided in the forms.

## **13. Benefits payable in the period between the effective date and the final date of settlement**

(1) (a) In cases where benefits as a result of death, disability or any other form of withdrawal have to be paid before the transfer is approved, the Authority will consider as best practice that

- (i) the transferor fund pays the relevant benefit in their fund and
- (ii) the transferee fund also pays the relevant benefit as per the rules of the transferee fund on the basis that the accrual event occurs on the member's current membership of that fund.

(b) Where there is a difference between the transfer benefit and the benefit paid to the member by the transferor fund, the balance of the transfer amount must also be paid to the member by the transferee fund following the transfer, together with fund return.

(2) In cases where benefits as a result of death, disability or any other form of withdrawal have to be paid after the transfer has been approved, the transferee fund should pay the entire benefit, since they are the party in whom the liability now resides.

- (3) (a) Any payments made from the assets to be transferred, must be reconciled by the transferor fund as set out in ~~Form G~~ [the form determined by the Authority](#), certified by duly authorised officials of both the transferor and transferee funds.
- (b) Such reconciliation must be retained by both funds and be available to the Authority on request.
- (c) ~~The Form G~~ [form referred to in item \(a\)](#) must be finalised within 60 days of the date of the approval certificate being issued.

#### **14. Transfers resulting in no members remaining**

Where the approval of a transfer will result in the transferor fund having no remaining members, the transfer may unintentionally result in the transferor fund not having a properly constituted board, which must be avoided. Where the rules require that the board be comprised members of the fund, the rules of the fund should be amended to state that the board does not have to be comprised members of the fund and, if necessary, to extend the term of office of the existing board for a reasonable period.

#### **15. Transfers from a trust to a beneficiary fund**

(1) A transfer from a trust to a beneficiary fund is a transfer as contemplated in section 14(1) and the beneficiary fund must submit a scheme for the proposed transfer to the Authority for approval.

(2) Where the trustees of a trust wish to transfer the benefits of a beneficiary to a beneficiary fund, the trustees of the trust and the board of the beneficiary fund must ensure that communication with beneficiaries takes place in line with the communication requirements for a section 14(1) transfer. The trustees of the trust must complete the same certifications as required from a pension fund.

(3) The transferor trust deed and the rules of the beneficiary fund must permit the transfer.

#### **16. Amalgamations and transfers of business in terms of section 14(8)**

(1) In the case of an amalgamation or transfer contemplated in section 14(8) of the Pension Funds Act, a scheme for the proposed transaction does not need to be submitted to the Authority for approval. However, the records of any transaction effected in terms of section 14(8) must be maintained by both funds and be made available to the Authority if requested.

(2) The proposed transaction may only be effected in terms of the rules of the relevant funds and the provisions of such rules must be complied with.

(3) No proposed transaction in terms of section 14(8) will be of any force or effect unless [Forms H and J in Appendix 5](#) the relevant forms, as determined by the Authority, have been completed and certified and the requirements set out in section 14(8) of the Pension Funds Act have been complied with.

(4) In addition ~~to signed copies of Forms H and J~~, the following documents must be kept on file in respect of the transfer:

- (a) Proof that the proposed transaction has been communicated and that any objections have been addressed;
- (b) proof of valuation exemption; and
- (c) proof that the Authority is satisfied that the requirements for surplus schemes in terms of section 15B of the Pension Funds Act have been complied with (where applicable).

## **17. Service fees**

(1) In terms of Regulation 24(c), issued in terms of section 36 of the Pension Funds Act, the applicable fees set out in Schedule L of the Pension Funds Act are payable by the transferee fund or the other person taking transfer, as the case may be.

(2) The Authority will not process an application unless the fee has been paid and the application is duly completed.

(3) Applications for prospective transfers where the number of members is not known will be charged on the same basis as a multiple transfer as set out in Schedule L.

## **18. Transactions that do not fall within the ambit of section 14**

The transactions listed below are not considered to be a 'transfer of business' as contemplated in section 14(1):

- (a) A transfer of pension interest awarded in terms of section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), to a non-member spouse.
- (b) A transaction entailing a member who, on leaving the service of an employer or upon liquidation of the fund, is entitled to receive a benefit in cash or is entitled to elect to translocate the benefit to another fund, including a preservation fund.
- (c) A transaction entailing a member who makes an election in terms of Regulation 38(1)(b)(i) to transfer to another fund.
- (d) A transaction entailing the purchase of an annuity policy from a long-term insurer on the retirement of a member.
- (e) The purchase of one or more annuity policies on behalf of a deceased member's beneficiaries on the death of a member, where the rules of the fund allow this.

## **19. Transfers and tax directives**

(1) Boards of funds and administrators must ensure compliance with the requirements of the Income Tax Act, 1962 (Act No. 58 of 1962) at all times.

(2) Funds and administrators must ensure that members are not prejudiced especially if a fund or administrator fails to comply with the applicable provisions of the Income Tax Act 1962 (Act No. 58 of 1962).

### **19A. Determinations**

(1) For purposes of determining an application form or any other matter that can be determined for purposes of this Conduct Standard, the Authority may determine –

(a) the manner of submission;

(b) the format and content of the application form or other relevant document; and

(c) who must sign off on the respective application forms or other relevant document.

(2) Any determination made by the Authority in terms of this Conduct Standard must be published on the website of the Authority.

## **20. Transitional arrangements**

Applications submitted in terms of section 14(1) of the Pension Funds Act before 31 January 2019 and based on the conditions and the forms as contained in Directive No. 6 will be considered.

## **21. Short title, commencement and repeal**

(1) This draft Conduct Standard is called Conduct Standard: Section 14 Transfers, 2018 and comes into effect on date of publication.

(2) Directive PF No. 6 made in terms of section 33A of the Pension Funds Act as contained in Board Notice 208 of 2011, published in the *Government Gazette* 34900 of 28 December 2011, is withdrawn from the effective date of this draft Conduct Standard, subject to section 2(2) of this draft Conduct Standard.