



**NOTICE ... OF 2015**

**FINANCIAL SERVICES BOARD**

**PENSION FUNDS ACT, NO. 24 OF 1956**

**WITHDRAWAL OF EXEMPTION FROM COMPLIANCE WITH SECTION 14(1) OF  
THE PENSION FUNDS ACT, 1956, FOR TRANSFERS OF LIABILITIES IN  
RESPECT OF UNCLAIMED BENEFITS**

1. The registrar is empowered in terms of section 2(5) of the PFA to exempt a fund from compliance with a provision of the PFA *'where practicalities impede the strict application of [the provision]'*.
2. The registrar is also empowered in terms of section 33A of the Pension Funds Act, 1956 ('the PFA') to issue directives *'to ensure compliance with or to prevent a contravention of this Act'*.
3. Paragraphs 9 and 30 of Section VI of Directive 6 of December 2011 ('Amalgamations and Transfers') say the following:

**29. INTRODUCTION**

29.1 In terms of section 2(5) of the Act, the Registrar exempts the following amalgamations or transfers from the provisions of section 14(1).

29.1.1 transfers of unclaimed benefits from a registered fund to an unclaimed benefit fund;

29.1.2 transfers between unclaimed benefit funds;

29.1.3 transfers between retirement annuity funds;

29.1.4 transfers between preservation funds.

**30. REGISTRAR'S REQUIREMENTS**

30.1 For a transfer application exempted under paragraph 29, Forms H and J, with the relevant adjustments, must be completed.

30.2 The process prescribed in Section III of this Directive must be followed.

4. The 'process prescribed in Section III' of the Directive incorporates notice to affected members of any proposed scheme for the transfer of assets and/or liabilities from one fund to another entity and an opportunity for those members to object to the proposed scheme before it is adopted by the board of the fund to which the affected members belong.

5. Paragraph 23.2.2 of the Directive says:

'Where a proposed transaction might cause prejudice to any of the affected members upon transfer, the explicit approval of the proposed transaction by at least 75% of the affected members must be obtained, **provided that where such transaction involves the transfer of unclaimed benefits, this requirement is replaced by the relevant board disclosing such prejudice in the forms [H and J]**'.

[Emphasis added]

6. However, forms H and J are only required to be submitted to the registrar after the transaction has taken place and if, as a result of the transaction, the fund will have no assets and liabilities and the registrar will be asked to cancel its registration in terms of section 27.

7. The registrar is the guardian of the interests of members of pension funds.<sup>1</sup> After careful consideration, he has formed the view that he cannot properly fulfil his duties as such to members in respect of whose unclaimed benefits assets and liabilities are to be transferred from one fund to another unless the transfer is made subject to his prior approval in terms of section 14(1) of the PFA.

8. By this Notice issued in terms of section 2(5)(b), the exemption granted in paragraph 29 of Directive 6 of 2011 is accordingly withdrawn with effect from [date TBA].

9. From that date, any transfer of a fund's liability in respect of an unclaimed benefit to another entity will be of no force or effect unless and until it the requirements of section 14(1) of the PFA have been fulfilled.

**Rosemary Hunter**  
**Deputy Registrar of Pension Funds**

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<sup>1</sup> See the judgment of the High Court of the Western Cape (per Rogers AJ) in *Financial Services Board & another v De Wet (in his capacity as liquidator of the Pepkor Pension Fund) & others* [2002] 4 BPLR 3259 (C) or [2002] JOL 9319 (C) at paragraphs [176 and [177]]. See also *Executive Officer of the Financial Services Board v Dynamic Wealth Ltd & others* [2012] 1 All SA 135 (SCA).