

FSCA COMMUNICATION 21 OF 2024 (RF)

Matters relating to transfers in terms of Section 14 of the Pension Funds Act, 1956:

- **Public consultation on the Draft Forms to be determined in terms of FSRA Conduct Standard 1 of 2019 (PFA); and**
- **Clarification on the treatment of section 14 transfers with the implementation of the Two-Pot system**

1. PURPOSE

The purpose of this communication is –

- (a) to inform stakeholders that the Financial Sector Conduct Authority (FSCA) today published the draft forms to be determined in terms of various paragraphs contained in FSRA Conduct Standard 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PFA);
- (b) to invite comments on the draft determination and the forms attached thereto from interested stakeholders and the public by **31 July 2024**; and
- (c) to provide clarity to Retirement Funds (Funds) and Retirement Fund Benefit Administrators (Administrators) on how to treat the transfer of business from one fund to another in terms of section 14 of the PFA during the transition to the Two-Pot system (Section 14 transfers).

2. DRAFT FORMS TO BE DETERMINED IN TERMS OF FSRA CONDUCT STANDARD 1 OF 2019 (PFA) – FOR PUBLIC COMMENT

Background

- 2.1 On 5 August 2019, the FSCA published FSRA Conduct Standard 1 of 2019 (PFA) - *Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act* (S14 Conduct Standard). The S14 Conduct Standard prescribes conditions for amalgamations and transfers, as well as the various forms that pension funds must complete when applying, in terms of section 14.
- 2.2 The Minister of Finance is in the process of finalising amendments to Regulations under the PFA to give effect to the so-called Two-Pot system. These amendments will result in misalignment between the current prescribed section 14 application forms and the Two Pot Regulations, as the current section 14 application forms do not provide allowance for the transfer value in relation to the two-pot system. The section 14 application forms only allow for a single transfer value, whereas the implementation of the Two Pot Regulations will require the transfer value to be differentiated in two parts in the forms. As such the section 14 application forms will have to be revised.
- 2.3 This prompted the FSCA to on 8 May 2024 publish draft amendments to FSRA Conduct Standard 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section

14 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (Draft Amendments) for public comment, with comments due on 19 June 2024¹.

2.4 The Draft Amendments propose to:

- (a) Remove the Section 14 application forms from the S14 Conduct Standard itself.
- (b) Enable the FSCA to determine the manner of submission, content and format of the section 14 application forms (in line with section 108(2) of the FSR Act).

2.5 The intention is to, once the Draft Amendments to the S14 Conduct Standard take effect, determine the section 14 application forms separately by notice on the FSCA's website. As explained in paragraph 3.4 of FSCA Communication 18 of 2024(RF)², the amendments to the revised section 14 application forms will be consulted on separately to the necessary legislative amendment and as a parallel process, to avoid any delays in consultation on the proposed legislative change. The aim of the documents published herewith is to consult with stakeholders on the proposed changes to the section 14 application forms.

Proposed Amendments to the Forms related to Applications in respect of amalgamations and transfers in terms of section 14 of the PFA

2.6 In support of the proposed Draft Amendments which includes enabling the FSCA to determine the manner of submission, content and format of the section 14 application forms, the FSCA proposes to amend the forms that were previously prescribed through S14 Conduct Standard. Attached to this communication is a summary of the proposed changes to the forms, marked as **Annexure A**. **Annexure B** sets out marked-up versions of the previous forms, which shows the proposed changes as tracked changes. Both these Annexures are supporting documents published with this communication to assist stakeholders with easily identifying the changes.

3. INVITATION TO COMMENT ON THE DRAFT DETERMINATION AND FORMS

3.1 The following documents are published as **Annexure C** alongside this Communication, for public consultation:

- (a) Draft Determination of forms to be completed for amalgamations and transfers in terms of section 14 of the Pension Funds Act;
- (b) Appendix 1: Forms for a retrospective transfer;
- (c) Appendix 2: Forms for a prospective transfer;
- (d) Appendix 3: Forms for the purchase of annuities in the name of pensioners;
- (e) Appendix 4: Forms for an 'agterskot' transfer;
- (f) Appendix 5: Forms for a section 14(8) transfer; and
- (g) Appendix 6: Transfer schedule.

3.2 These would require completion in support of an application for 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, or 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.

¹ Available on the FSCA website at : www.fsca.co.za < Regulatory Frameworks < Documents for Consultation < Retirement Funds < 2024, or at the following link:

[https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Notice%20%20-%20Draft%20amendments%20to%20FSRA%20Conduct%20Standard%201%20of%202019%20\(PFA\).zip](https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Notice%20%20-%20Draft%20amendments%20to%20FSRA%20Conduct%20Standard%201%20of%202019%20(PFA).zip)

² Available on the FSCA website at : www.fsca.co.za < Regulatory Frameworks < Industry Communication < Retirement Funds < FSCA Communications, or at the following link:

[https://www.fsca.co.za/Regulatory%20Frameworks/Regulatory%20Frameworks%20Documents/FSCA%20Communication%2018%20of%202024%20\(RF\).pdf](https://www.fsca.co.za/Regulatory%20Frameworks/Regulatory%20Frameworks%20Documents/FSCA%20Communication%2018%20of%202024%20(RF).pdf)

Interested parties are invited to submit comments using the comments template set out in **Annexure D** published with the draft determination and forms and submit same in Word format to the FSCA via email to FSCA.RFDstandards@fsc.co.za by **31 July 2024**.

4. CLARIFICATION ON THE TREATMENT OF SECTION 14 TRANSFERS WITH THE IMPLEMENTATION OF THE TWO-POT SYSTEM

- 4.1 With the implementation of the Two-Pot system, as of 1 September 2024 the members of funds retirement savings will comprise of three components, that is, a 'vested component', a 'savings component' and the 'retirement component'. Effectively the vested component will contain the members' current savings (as at 31 August 2024). Future contributions after that date will be split between the other two components. The contributions to the retirement component will be kept until retirement, and the savings and vested components will be accessible before retirement (subject to certain limitations), while allowing the members to gain limited access to future savings while still employed.
- 4.2 The issue for clarity is how Funds and Administrators must treat section 14 transfers over the period of transitioning to the Two-Pot system in instances where a transfer is still in process on 1 September 2024, and for new transfers as of 1 September 2024. In particular clarification is required in relation to:
- (a) seed capital allocation;
 - (b) payment of savings withdrawal benefits; and
 - (c) allocation of transfer values across the various components.
- 4.3 The relevant changes are important to understand so as to ensure consistent treatment across the retirement fund industry while ensuring clear communication to members to manage their expectations.
- 4.4 Any fund that has member assets as 1 September 2024 must calculate the seed capital for all members, irrespective of the status of the transfer³. As set out in more detail in the table below (**refer "Table 1: Treatment of Seeding Capital and Withdrawals from Savings Component"**), the transferor fund will not in all circumstances have to pay savings withdrawal benefits. However, the membership schedules provided to the transferee fund on transfer of the assets must show the value in the transferor fund as at 1 September 2024 and the calculation of the seed capital.
- 4.5 To ensure consistency across funds and administrators and in order to streamline the application process, the format of the transfer schedule containing the necessary membership details in a standardised format will be determined as set out in Appendix 6. (see paragraph 3.1(g) above)
- 4.6 When the two pot system comes in to effect on 1 September 2024, there may be instances where a Section14 transfer is not yet finalized. Below is a table of scenarios on how funds and administrators must give effect to the requirements in the Two-Pot system before the transfer is finalized.

³ The transfer value must be split across all the 3 components. 10% of the vested component as at 31 August 2024 must be the opening balance known as "seed capital" but may not be more than R30 000. One-third (1/3) of the members contributions from 1 September 2024 must be allocated to the savings pot.

Table 1: Treatment of Seeding Capital and Withdrawals from Savings Component

Retrospective Transfers				
	Status of S14 (1) Application	Seed Capital	Savings Component	Withdrawal from Savings Component
Scenario 1	Not approved on 1 September 2024.	Calculated from transfer value by transferor fund as at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by transferor fund.
Scenario 2	Approved before 1 September 2024, and transfer value not yet transferred on 1 September 2024.	Calculated from transfer value by transferor fund as at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by the transferee fund only .
Scenario 3	Approved after 1 September 2024, and transfer value not yet transferred.	Calculated from transfer value by transferor fund as at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by the transferee fund only .

Section 14(8) Transfers				
	Status of S14 (8) Application	Seed Capital	Savings Component	Withdrawal from Savings Component
Scenario 1	Transfer value is transferred before 1 September 2024	Not calculated for transfer value transferred before 1 September 2024.	Not established for transfer value transferred before 1 September 2024.	Not applicable
Scenario 2	Transfer value is not yet transferred on 1 September 2024.	Calculated from transfer value by transferor fund at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by transferor fund.

Prospective Transfers					
	Blanket Period	Status of S14 Application	Seed Capital	Savings Component	Withdrawal from Savings Component
Scenario 1	Full blanket period is before 1 September 2024.	Preliminary approval is granted before 1 September 2024.	Not calculated for transfer values transferred before 1 September 2024.	Not established for transfer values transferred before 1 September 2024.	Not applicable
Scenario 2	First part of the period is before to 1 September 2024.	Preliminary approval is granted before 1 September 2024.	Not calculated for transfer values transferred before 1 September 2024.	Not established for transfer values transferred before 1 September 2024.	Not applicable
	Second part of the period is after 1 September 2024.	Preliminary approval is granted before 1 September 2024.	Calculated from transfer value by transferor fund at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by transferor fund.
Scenario 3	First part of the period is before to 1 September 2024.	Preliminary approval is granted after 1 September 2024.	Calculated from transfer value by transferor fund at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by transferor fund.
	Second part of the period is after 1 September 2024.	Preliminary approval is granted after 1 September 2024.	Calculated from transfer value by transferor fund at 1 September 2024.	Established from transfer value by transferor fund at 1 September 2024.	Withdrawal is payable by transferor fund.

5. AVAILABILITY OF INFORMATION AND ENQUIRIES

- 5.1 The documents referred to in paragraph 3 of this Communication are available on the FSCA website at www.fsca.co.za.
- 5.2 For further information regarding paragraph 3 of this Communication, the draft Determination, the related Appendices or the submission of comments thereon, please contact Roslynn van Wyk at Roslynn.VanWyk@fsca.co.za in the Regulatory Frameworks Department of the FSCA.
- 5.3 For more information regarding this rest of the Communication please contact the Retirement Funds Conduct Supervision Division of the FSCA at Mamiki.Motale@fsca.co.za and Cynthia.Skhosana@fsca.co.za



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