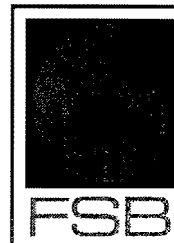


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## BOARD NOTICE

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### BOARD NOTICE 134 OF 2008

**DIRECTIVE PF No. 2****Date issued: 20 November 2008****FINANCIAL SERVICES BOARD  
REPUBLIC OF SOUTH AFRICA****PENSION FUNDS ACT (ACT 24 OF 1956)****SECTION 14 – AMALGAMATIONS AND TRANSFERS**

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## **INTRODUCTION**

### **1. PURPOSE**

- 1.1 This Directive is issued in terms of section 33A of the Pension Funds Act, No. 24 of 1956, as amended ("the Act").
- 1.2 It sets out the conditions of the Registrar of Pension Funds ("the Registrar") in respect of the different types of transfers in terms of section 14 of the Act and attempts to clarify other issues in respect of transfers.
- 1.3 This Directive takes effect on the date that it is issued.

### **2. PREJUDICE TO MEMBERS**

- 2.1 Where transfers could result in members being worse off on resignation immediately after the transfer than they were before, the board of the fund must ensure that this is investigated and confirmed prior to the submission of an application to the Registrar.
- 2.2 The principal officers of the funds concerned must disclose to the Registrar any such prejudice. Proof must be submitted that explicit approval for the transfer by all of the transferring members has been obtained, after a clear and comprehensive communication exercise advising the members of any prejudice they may suffer.
- 2.3 The boards of both the transferor and the transferee funds must be satisfied that a transfer is reasonable and equitable and accords full recognition to the rights and reasonable expectations of the members. Boards should not merely rely on a statement to this effect by the valuers.

### **3. PRESCRIBED FEES**

- 3.1 In terms of Regulation 24(c) issued in terms of section 36 of the Act, on the submission of a scheme for the amalgamation or transfer contemplated in terms of section 14(1) of the Act, the applicable fees set out in Schedule L shall be payable by the transferee fund or other person taking transfer. However, the transferor fund and transferee fund can agree that the transferor fund will pay the necessary fee. The Registrar will not process the application unless the fee is paid and the application is complete.
- 3.2 All applications for prospective transfers in terms of paragraph 12 of this Directive will be charged on the same basis as a multiple transfer.

- 3.3 All "agterskot" applications in terms of paragraph 14 of this Directive will be charged at the maximum rate for a single transfer.

#### **4. ACTUARIAL SURPLUS**

- 4.1 The section 14 application forms set out the impact on the fund of any actuarial surplus included or excluded from the transfer.
- 4.2 No actuarial surplus may be included as part of a scheme of transfer until the transferor fund's surplus apportionment scheme has been approved or nil return has been noted by the Registrar in terms of section 15B of the Act, or unless surplus has arisen after the surplus apportionment date and is dealt with in terms of section 15C of the Act.
- 4.3 Section 15G of the Act allows the board of a fund to pay a proportionate share of the member surplus accounts, the investment reserve account and the contingency reserve accounts.
- 4.4 However, in the case of the contingency reserve accounts, this proportionate share does not need to be paid if the board of the fund deems this to be inappropriate and such decision has been motivated to the satisfaction of the Registrar.
- 4.5 The rules of the Fund must be amended to allow for the establishment and maintenance of the contingency reserve accounts, as well as the subsequent transfer thereof in terms of section 15G of the Act.

#### **5. TRANSFERS TO OR FROM PERSONS OTHER THAN A REGISTERED FUND**

- 5.1 Section 14 specifically includes transfers to or from persons other than a registered pension fund.
- 5.2 Forms A or B may be used, with appropriate amendment, where the transfer occurs between a person other than a registered fund and a registered fund. If either the transferor or transferee fund is a retirement annuity fund, the Registrar will also accept the application if the special reports are completed by the statutory actuary of a registered insurer.
- 5.3 Form C sets out the documentation required when the transfer occurs from a registered fund to an insurer on the purchase of annuity policies in circumstances other than those described in paragraph 6 of this Directive. This documentation can be adjusted to suit other circumstances where an insurer or some other entity is the transferee fund, such as the transfer to an insurer of the assets and liabilities in respect of death and disability benefits previously paid from within a fund.

**6. TRANSACTIONS WHICH DO NOT REPRESENT A TRANSFER IN TERMS OF SECTION 14**

- 6.1 A member who, on resignation, retrenchment, dismissal or upon leaving the service of an employer for some other reason, or on liquidation of the fund, is entitled to receive a benefit in cash or is entitled to elect to translocate the benefit to another fund.
- 6.2 On retirement, the rules of a fund allow the retiring member to request the board of the fund to purchase an annuity policy from an insurer registered in terms of the Long-term Insurance Act.
- 6.3 For a fund to give effect to such benefit request, the rules of the fund must provide for the following:
- 6.3.1 That membership of the fund shall cease as soon as the purchase of the annuity, or annuities, is concluded and the balance of any benefit payable in terms of the rules is paid in full.
- 6.3.2 The fund will have no obligation towards the member once the purchase is concluded.
- 6.3.3 The annuity policy must be purchased from a registered long-term insurer in such a way that the member and any other beneficiaries who are entitled to an annuity on the member's death after retirement, become the owners of the policy.
- 6.3.4 The capital amount after commutation, if applicable, must be used to purchase the policy.
- 6.3.5 If the fund is a defined benefit fund, this capital amount after commutation should be either:
- (i) The actuarial reserve corresponding to the benefit defined in the rules, as calculated by the valuator, using the assumptions adopted in the immediately preceding statutory actuarial valuation of the fund submitted in terms of section 16 of the Act with augmentation, if any, from contingency reserve accounts in terms of section 15G;
- OR
- (ii) The purchase price of an annuity policy from a registered long-term insurer, which policy shall provide a stream of income equivalent to the pension which the member could reasonably have expected from the fund.

6.3.6 If the fund is a defined contribution fund, this capital amount after commutation should be the full individual member reserve as defined in the Act with augmentation, if any, from contingency reserve accounts in terms of section 15G.

- 6.4 On the death of a member, the rules of the fund allow the board of the fund to purchase one or more annuity policies on behalf of the deceased member's beneficiaries on such basis that these beneficiaries become the owners of the annuity policies and the fund ceases to have any obligation towards the deceased member's beneficiaries once the purchase is concluded.
- 6.5 The above-mentioned transactions represent the payment of a benefit to the member or the member's beneficiaries and therefore fall outside the ambit of "transfer of any business" contemplated in section 14(1) of the Act.
- 6.6 Transfers between employer surplus accounts in terms of section 15E(1)(e) of the Act will not be regarded as a transfer of business as contemplated in section 14(1).

## **7. TIME PERIOD FOR THE TRANSFER OF ASSETS, LIABILITIES AND MEMBERS**

- 7.1 Sections 14(2)(b) stipulates the time periods within which any transfer must be effected.
- 7.2 If the Registrar establishes that transfers have been effected without approval in terms of section 14(1) of the Act, the Registrar will require such illegal transfers to be reversed. Furthermore, penalties in terms of section 37 of the Act, as well as other administrative sanctions allowed under the Act, may be imposed.

The Registrar will also consider possible action under sections 25 and 26 of the Act in such circumstances.

- 7.3 As such transfers cannot take place without the complicity of the administrators of both transferor and transferee funds, the Registrar may consider revoking the approval in terms of section 13B of the Act of any administrator who effects a transfer without due approval having been obtained.
- 7.4 If any benefits have been paid by the transferor fund during the period between the effective date and the date of approval of the section 14(1) application, then the provisions of paragraph 17.3 will apply.

## **8. FINANCIAL STATEMENTS**

- 8.1 In the case of a full transfer, financial statements must still be compiled for the period from the start of the previous financial year until the date of the actual transfer of the assets. The final financial statements for the fund should reflect no assets, liabilities and members.

- 8.2 If the final financial statements may be extended after the 12 month but not exceeding an 18 month period.
- 8.3 Provision should be made to cover any fees payable by the transferor fund for the period from the effective date of transfer to the closure of the fund.
- 8.4 Upon the finalisation of a transfer contemplated in paragraph 8.1 above, as well as the submission of final financial statements, funds must duly complete Forms F and F1 to apply to the Registrar for the cancellation of the registration of the Fund.

## **9. TRANSFERS BETWEEN RETIREMENT ANNUITY FUNDS**

- 9.1 In terms of section 14(7) of the Act:

- (a) "Notwithstanding anything to the contrary in the rules of a fund, a retirement annuity fund shall not prohibit the transfer of business that relates to a member's interest or non-member spouse's interest, at the request of such a member or non-member spouse from one retirement annuity fund to another.
- (b) No fees or commissions of any nature are payable by any party or by any agent or mandatary of such party –
- (i) in return for the facilitation, intermediation or recommendation of the transfer; or
- (ii) for financial services rendered by a financial services provider or representative after the transfer in respect of the transferred interest of the transferring member or non-member spouse which exceeds the fees or maximum commission that would have been permissible for such services in terms of the Long Term Insurance Act, 1998 or any regulations made thereunder had the transfer not been done other than fees –
- (aa) payable to the registrar;
- (bb) negotiated and agreed to in writing by the transferring member or non-member spouse annually, which fees are–
- (A) payable by the transferring member or non-member spouse personally; or
- (B) authorised by the transferring member or non-member spouse to be paid by the fund or administrator."

## **SECTION I**

### **AMALGAMATIONS AND TRANSFERS OF BUSINESS IN TERMS OF SECTION 14(1) OF THE ACT**

#### **10. TYPES OF TRANSFERS AND RELATED MATTERS**

- 10.1 There are various types of transfers in terms of section 14(1) of the Act. The forms to cover such events are contained in the Annexure to this Directive.
- 10.2 The prescribed forms must be duly completed, submitted and the application approved by the Registrar before any transfers in terms of section 14(1) can be effected.

#### **11. RETROSPECTIVE TRANSFERS**

- 11.1 Retrospective transfers constitute transfers where the number of members and the amounts are known at the effective date of the section 14(1) application.
- 11.2 Forms A, A1 and A2 must be completed, as well as the following:
- 11.2.1 In the case of the transferor fund:
- If not valuation exempt, Form A3 must be completed; or
  - If valuation exempt, Form A5 must be completed.
- 11.2.2 In the case of the transferee fund:
- If not valuation exempt, Form A4 must be completed; or
  - If valuation exempt, Form A6 must be completed.
- 11.3 If the transferor fund is not a registered fund in terms of the Act, Form A must be completed by the transferee fund and *vice versa*.

## **12. PROSPECTIVE TRANSFERS**

12.1 Prospective transfers constitute blanket transfers where the number of members and amounts are not known at the effective date of the section 14(1) application.

12.2 Forms B, B1 and B2 must be completed, as well as the following:

12.2.1 In the case of the transferor fund:

- If not valuation exempt, Form B3 must be completed; or
- If valuation exempt, Form B5 must be completed.

12.2.2 In the case of the transferee fund:

- If not valuation exempt, Form B4 must be completed; or
- If valuation exempt, Form B6 must be completed.

12.3 The forms provide that approval may be applied for in respect of blanket transfers between two specific funds. Approval for a blanket transfer may be granted prospectively for a maximum period of 12 months from the effective date of the scheme.

12.4 In case of a blanket section 14(1) application, the fund must within two months of the expiry of the 12-month period, complete Form B7 and submit it to the Registrar.

12.5 Where the option to transfer is not given effect to within the 12-month period, a new section 14(1) application must be submitted to the Registrar for approval.

## **13. PURCHASE OF PENSIONS IN THE NAME OF PENSIONERS**

13.1 Groups:

- Forms C, C1 and C2 must be completed.

Where a blanket section 14(1) application is applicable, the fund must within two months of the expiry of the 12-month period, complete Form C3 and submit it to the Registrar.

13.2 Individual Annuity Policies:

- Form D is to be completed and retained by the fund.

13.3 Where a pensioner will be outsourced by means of an individual annuity policy in the name of the pensioner and the rules do not provide for the conditions set out in paragraph 6.3, the purchase of such policy will be subject to the provisions of section 14(1) of the Act.

- 13.4 Many funds have in the past purchased annuity policies with the fund as the owner of the policies. Conversion of such fund policies to individual policies (where the member, or a beneficiary who is entitled to an annuity following the member's death after retirement, becomes the owner of the policy) represents a transfer of business in terms of section 14(1) of the Act and therefore requires the Registrar's approval.
- 13.5 Where the individual annuity is purchased from a long-term insurer, the board of the fund must ensure that any conditions or restrictions contained in the rules of the fund be contained in the compulsory annuity policy document. However, there may be no restriction on the transferability of an annuity policy in terms of Directive 135 issued by the Registrar of Long-term Insurance.
- 13.6 These conditions or restrictions must be worded in such a way that they will be retained in any subsequent replacement policies issued.
- 13.7 In addition, the following must be incorporated as part of these conditions:
- 13.7.1 Name of the fund;
  - 13.7.2 Type of fund (e.g. pension fund, provident fund, retirement annuity fund or preservation fund);
  - 13.7.3 An appropriate policy must be purchased as required in terms of the rules of the fund;
  - 13.7.4 The policy must not be capable of being surrendered;
  - 13.7.5 Any explicit guarantees contained in the rules of the fund must be retained;
  - 13.7.6 The provision to be included in the annuity for subsequent increases in annuity payments; and
  - 13.7.7 The policy or benefits which become payable in terms of the annuity policy shall not be capable of being ceded, pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of the Magistrates' Courts Act, 1944. Ownership of a compulsory annuity may not be transferred to another entity or person.

#### *Disclosure Requirements*

- 13.8 Any costs, ongoing fees and expenses ("expenses"), which are incurred as a result of the purchase of the annuity policy from an insurer in terms of section 37 of the Long-term Insurance Act, must be fully disclosed by the long-term insurer or the

intermediary concerned. The impact of these expenses on the policy value and how these expenses will be paid must be fully disclosed.

- 13.9 All commissions payable on the purchase of an annuity must be disclosed to the member and are subject to the provisions of the regulations made under section 49 of the Long-term Insurance Act.
- 13.10 The board of the fund must ensure that the declaration as set out in Form D to this Circular has been completed by the member and should retain such certificate for its own records.

#### 14. "AGTERSKOT" ADJUSTMENTS

- 14.1 "Agterskot" means any additional benefit that a member becomes entitled to as a result of that member's current or past membership of a fund.
- 14.2 The Registrar will permit adjustment to the quantum of assets of a previously approved transfer where the valuator determines that, with the benefit of hindsight, a revised quantum of assets should be transferred. Such adjustments may also include amongst others, the payment of proceeds resulting from bulking practices, benefits arising from the Statement of Intent, and where applicable, surplus payments as a result of an approved surplus apportionment scheme.
- 14.3 The application for an "agterskot" adjustment must refer back to one or more previous transfer applications that were approved by the Registrar and must exclusively address the quantum of assets transferred.
- 14.4 Applications for 'agterskot' adjustments must be completed on **Form E**.
- 14.5 Exactly the same members should be affected by the "agterskot" adjustment and the additional assets must be applied in the same manner as was the case in the original transfer.
- 14.6 The boards of both the transferor and transferee funds must have agreed to the "agterskot" adjustment.
- 14.7 The adjustment to the quantum of assets transferred should be accumulated with fund return or by other agreed arrangements, from the effective date of when the entitlement to the "agterskot" arose to the actual date of payment of the "agterskot" adjustment.
- 14.8 In terms of recent amendments to the Income Tax Act, *inter alia*, the once-off payments of surplus benefits can be made tax free once the Registrar has approved a fund's surplus apportionment scheme. So, transferring such benefits may not necessarily guarantee this tax concession. In approving a transfer, the Registrar must be satisfied that the transfer is fair and equitable and that it meets

the reasonable benefit expectations of the members. As a result, the Registrar will like to see that this information is communicated to the members and that they have made informed choices to transfer.

- 14.9 Where members are transferred from the transferor fund to the transferee fund after the transferor fund's surplus apportionment date and the fund has submitted an application in terms of section 14(1) of the Act to the Registrar, but where the surplus apportionment scheme is approved before the section 14(1) application is approved, then the approval of the surplus apportionment scheme will lead to those members being treated as active members in the transferor fund as at the date of approval of the surplus apportionment scheme. In that case, members should not be paid out in cash. Their fund credits need only be enhanced with the surplus payments. In that case no further section 14(1) application is necessary.

## **15. CAUSES OF DELAYS IN THE PROCESSING OF SECTION 14(1) APPLICATIONS**

- 15.1 Delays in the approval of section 14(1) transfer applications or delays in the consideration of responses to queries raised by the Registrar's office are often caused by administrative errors such as:

15.1.1 incomplete forms;

15.1.2 forms that have been amended (other than for the reasons discussed in paragraph 5.2 of this Directive);

15.1.3 a participating employer in an A-type umbrella fund whose special rules have not been registered.

- 15.2 As a result the Registrar has to raise queries, the responses to which are sometimes not received timeously, which leads to even further delays in the process.

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

- 15.4 The applicant will be informed of the lapse of the period and a new application, with new fees as prescribed, will have to be submitted. The fee already paid will be forfeited.

## 16. ERRORS AND ADJUSTMENTS TO APPLICATIONS FOR TRANSFERS

16.1 In terms of section 14(6) of the Act, the Registrar may withdraw or amend a certificate issued in terms of section 14(1)(e), in circumstances where the Registrar is satisfied that—:

- (a) the scheme or information provided in terms of section 14(1) was so inaccurate that he would not have granted such certificate had he been aware of the actual facts; or
- (b) the certificate contains a *bona fide* error.

### *Replacement pages*

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

16.3 Any replacement pages must be duly completed and signed.

### *Correction of errors (other than "agterskot" adjustments) to previously approved schemes*

16.4 If errors are discovered in a section 14(1) application that has previously been approved by the Registrar, the fund may apply to the Registrar for consideration of the correction of such errors within a reasonable period.

16.5 An amended section 14(1) application, indicating the errors contained in the previous application and duly signed and submitted by the parties responsible for the previous application, must be submitted to the Registrar for approval.

16.6 The following are examples of cases that will not be regarded as a correction of errors and in respect of which a new section 14(1) application will be required:

- 16.6.1 Members and their corresponding transfer values were omitted from the initial "erroneous" application.
- 16.6.2 Members were transferred incorrectly (i.e. when they should not have been transferred).

## **17. ACTUAL TRANSFERS TO CORRESPOND WITH THE APPROVED SCHEME**

### *Actual transfer different from approved transfer*

- 17.1 Where the assets and / or liabilities actually transferred differ from those approved in terms of the scheme, the funds should, without delay, correct the actual transfer to be in accordance with the approved scheme.
- 17.2 No further approval is required, as the corrective action will result in conformance with a scheme already approved in terms of section 14(1) of the Act.

### *Payment of benefits between the effective date of a retrospective transfer application and the date of approval by the Registrar*

- 17.3 Any withdrawal, death or pension payments made from the assets to be transferred, must be reconciled by the transferor fund as set out in Form G, certified by duly authorised officials of both the transferor and transferee funds and such reconciliation must be retained by both funds and be available to the Registrar on request.

## **18. FUND RETURN PAYABLE FROM THE EFFECTIVE DATE TO THE DATE OF FINAL SETTLEMENT**

- 18.1 The transferor fund must compensate the transferee fund (or the members transferring) for investment earnings over the period from the effective date to the actual date of transfer.
- 18.2 The transfer scheme must set out the fund return that will accrue in respect of the transfer value determined as at the effective date of transfer. This must be disclosed in the various forms attached hereto.
- 18.3 If, after submission but before approval of the transfer by the Registrar, it appears that:
- 18.3.1 the transferor fund has contracted to pay a specified rate of interest over the period from the effective date to the date of transfer; and
  - 18.3.2 the transferor fund did not take adequate steps to protect itself against the risk that the fund might not earn this specified rate on the transfer value;

the scheme must be amended prior to approval by the Registrar to avoid such prejudice. When exercising his discretion, the Registrar shall seek to ensure that the scheme is reasonable and equitable, not only in respect of the transferring members, but also in respect of the remaining members.

**19. SATISFACTION OF RIGHTS AND REASONABLE BENEFIT EXPECTATIONS**

- 19.1 In terms of the prescribed forms attached hereto, both the board of the fund and the valuator are required to express an opinion on whether the transfer satisfies the rights and reasonable benefit expectations of members.
- 19.2 The Registrar will not accept modifications to the opinion prescribed 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 adequately motivated.

**20. PRACTICE IN RESPECT OF BENEFITS PAYABLE IN THE PERIOD BETWEEN THE EFFECTIVE DATE OF TRANSFER AND THE ACTUAL TRANSFER**

- 20.1 Subject to the rules of the fund, when the effective date of the transfer is in the past, members to be transferred have rights in both the transferor and transferee funds until such time as the transfer has been concluded. When delays are anticipated between the effective date of a transfer and approval of the transfer, it is strongly recommended that the problems associated with this dual membership are avoided by limiting the rights of the transferring members in the transferee fund to benefits arising from service after the effective date of the transfer (in terms of the rules) and amending the rules of the transferor fund to ensure that the transferring members are treated as "paid up" members with no rights to death and disability benefits after the effective date of the transfer. When the transfer application is approved and the transfer value is received by the transferee fund, the transferee fund should recognise prior service or grant benefits in respect of the transfer value received.
- 20.2 If death, disability, resignation, dismissal, retrenchment or retirement occurs after the effective date of transfer but before the section 14(1) application has been approved by the Registrar, two possible situations can arise depending on the type of application:
- 20.2.1 Where the retrospective method is used, the funds should reach agreement as part of the transfer negotiation as to whether the member (or his beneficiaries) will receive benefits in respect of past service from the transferor fund or the transferee fund. Once the agreement is concluded, the funds should amend their rules accordingly, which rules should be applied consistently across all transferring members. If benefits in respect of past service are payable from the transferee fund, benefits can only be paid once the application is approved and the member has been included in the transfer. If benefits in respect of past service are payable from the transferor fund, the benefits should be paid immediately in terms of the rules of the transferor fund. In either case, benefits in respect of service after the effective date of transfer will be paid from the transferee fund; or
- 20.2.2 Where the prospective method is used, the member (or his beneficiaries) will receive benefits from both funds. The rules of both funds should

therefore be explicit as to the benefits they will receive. Form B7 or C3 (as appropriate) must be completed by the transferor fund and submitted within 2 months after the expiry of the 12-month period.

- 20.3 As a member remains a member of the transferor fund until the section 14(1)(e) certificate has been issued, there is a legal obligation on the transferor fund to meet any benefit payments that fall due prior to the approval of the transfer application, in respect of members who have transferred.
- 20.4 A particular problem occurs where the transferor fund's withdrawal benefit is lower than the transferee fund's withdrawal benefit. In such a case, where a member withdraws before the section 14(1) application has been approved, the transferor fund will pay out a lower benefit than the transferee fund would have paid had the transferee fund received the transfer value. A surplus may then be passed across to the transferee fund, which in turn will be obliged to make a second adjusting payment to the member to increase the withdrawal benefit to the higher value. This is an unavoidable consequence of the practice whereby both funds are required to meet the benefit payment in terms of their rules.

## **SECTION II**

### **FULL TRANSFERS, SURPLUS AND CANCELLATION OF A FUND'S REGISTRATION**

#### **21. APPLICATION TO CANCEL THE REGISTRATION OF A FUND AS A RESULT OF A FULL TRANSFER IN TERMS OF SECTION 14(1)**

- 21.1 "Full transfer" means where the approval of a transfer will result in the transferor fund having no remaining members, zero assets and zero liabilities.
- 21.2 In the case of a full transfer, the following forms must be completed in addition to the other requirements listed throughout section II of this Directive:
- Forms F and F1.
- 21.3 The Registrar's office remains concerned about approved full transfers that are effected without the Registrar having approved a surplus apportionment scheme or noted a nil return in terms of section 15B of the Act, in respect of the transferor fund.
- 21.4 Such transfers generally have the effect of leaving the fund without a board of management to fulfil the fund's duties up to the time when the registration of the fund is cancelled.

#### *Requirements to ensure continuity of a fund following a full transfer*

- 21.5 With regard to funds that satisfy the requirements of a nil return, the Registrar must note the nil return before a full transfer application will be considered;
- 21.6 With regard to all other funds, including those funds that have not yet had their surplus apportionment schemes approved or nil returns noted by the Registrar, the following must be complied with:
- 21.6.1 An application may be submitted for the members' accrued liabilities and associated assets to be transferred; and
- 21.6.2 In addition, the rules of the transferor fund should allow for the following:
- That the board of the fund's term of office will be extended for a period of at least 3 years from the effective date of the full transfer; or
  - Where the board of the fund is no longer properly constituted, that the Registrar may appoint one or more independent persons to the board.

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- 21.7 The rule requirements are necessary to ensure, *inter alia*, that the fund completes and submits a surplus apportionment scheme or nil return, as the case may be, and to ensure that the fund applies for cancellation of registration in terms of section 27 of the Act.
- 21.8 The reasonable cost of any intervention by the Registrar in the management of the fund and / or remuneration of independent board members will be payable from the assets of the fund.
- 21.9 If the rules of the transferor fund do not allow for the conditions outlined above, the existing board of the fund should duly amend the rules before their term of office expires.
- 21.10 Once the Registrar has approved a transfer of all accrued liabilities, the balance of the assets remaining in the transferor fund must either be apportioned in terms of an approved surplus apportionment scheme (refer to section 15B of the Act) or, where the Registrar noted a nil return, transferred in terms of a subsequent section 14(1) application.
- 21.11 The principal officer, valuator or auditor must within 60 days after approval of the transfer by the Registrar, apply for the cancellation of registration of the fund.

### **SECTION III**

#### **AMALGAMATIONS AND TRANSFERS OF BUSINESS IN TERMS OF SECTION 14(8) OF THE ACT**

##### **22. BACKGROUND**

- 22.1 This section provides guidance on the process that should be followed when effecting amalgamations and transfers in terms of section 14(8) of the Act.
- 22.2 In such cases the scheme for the proposed transaction need not be submitted to the Registrar and the Registrar is not required to issue a certificate to the effect that all the requirements of section 14(1) of the Act have been satisfied.
- 22.3 In terms of section 14(8) of the Act, the provisions of section 14(1) do not apply where the affected members were duly informed of a proposed transaction and any objection the members may have has been resolved to the satisfaction of the board concerned, and -
  - 22.3.1 Both the transferor and transferee funds are valuation exempt; or
  - 22.3.2 The transferor or transferee fund is neither registered nor required to register under the Act and the other fund is valuation exempt.
- 22.4 Furthermore:—
  - 22.4.1 Such registered funds must keep proper records of all such transactions;
  - 22.4.2 The assets and liabilities must be transferred within 180 days of the effective date of the transfer; and
  - 22.4.3 Any assets transferred must be increased or decreased with fund return from the effective date until the final date of settlement.
- 22.5 The records of any transaction effected in terms of section 14(8) of the Act must be maintained by both funds and be made available to the Registrar upon request or inspection.
- 22.6 Any proposed transaction in terms of section 14(8) of the Act shall not be of any force or effect if, in the Registrar's view, the transaction effected does not comply with the provisions of the Act or the conditions prescribed in this Directive.

## 23. REGISTRAR'S REQUIREMENTS

- 23.1 Registered funds are required to maintain the following documents as the minimum records that are required for any transaction contemplated in terms of section 14(8) of the Act:
- 23.1.1 Form H – Scheme for the proposed transfer of business, duly completed and signed;
  - 23.1.2 Form J – Recognition of transfer of business, duly completed and signed;
  - 23.1.3 Proof that the proposed transaction has been communicated and any objection the affected members may have has been resolved to the satisfaction of the fund concerned (this provision will not apply to voluntary transfers at the request of a member transferring from one retirement annuity fund to another);
  - 23.1.4 Proof of valuation exemption; and
  - 23.1.5 Proof that the Registrar is satisfied that the requirements for surplus schemes in terms of section 15B of the Act have been complied with (where applicable).
- 23.2 In terms of section 14(8)(ii) of the Act, the Registrar prescribes the following conditions:
- 23.2.1 The proposed transaction can only be effected in terms of the rules of the relevant fund and the provisions of such rules must be complied with unless the provisions of section 14(7) of the Act, relating to the transfer of business from one retirement annuity fund to another, apply.
  - 23.2.2 Where a proposed transaction might have the effect of causing prejudice to any of the affected members upon transfer, the explicit approval of the proposed transaction by all of the transferring members must be obtained.
- 23.3 Furthermore, any proposed transaction in terms of section 14(8) of the Act shall not be of any force or effect unless:–
- 23.3.1 Both funds have agreed to the proposed transaction by duly completing and signing Form H.
  - 23.3.2 The date of payment has been recorded on Form H.

23.3.3 The transferor fund completes and signs Form J once the transfer is effected and makes available a copy to the transferee fund within 14 business days of the date of payment. Likewise, the transferee fund must within 14 business days complete and sign Form J and provide a copy to the transferor fund.

23.3.4 In the event that the transferee fund is an entity that is not required to register under the Act, such entity is not required to complete Form H. However, Form J must be completed by a duly authorised person of that entity.

## 24. FULL TRANSFERS

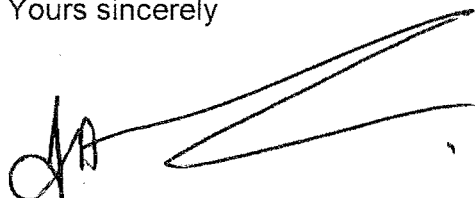
24.1 Where a transfer will result in the transferor fund having no remaining members, zero assets and zero liabilities ("full transfer"), all the requirements set out in the preceding paragraphs 22 and 23, as well as the requirements set out in paragraph 5 of PF Circular 126, must be complied with in addition to the following:

24.1.1 The transferor fund must provide proof to the transferee fund that the Registrar has either approved the fund's surplus apportionment scheme or noted its nil return in terms of section 15B of the Act; and

24.1.2 The transferor fund must complete Forms F & F1 of this Directive in order to apply for cancellation of its registration.

24.2 The transferor fund must submit to the Registrar copies of the records of the transaction, as set out in paragraph 24.1 above, within 180 days of the effective date of the transfer to ensure that the registration of the transferor fund is cancelled.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JA BOYD', with a long, sweeping horizontal stroke extending to the right.

JA BOYD

For: REGISTRAR OF PENSION FUNDS