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(To all approved administrators, privately administered funds and insurers who underwrite pension funds)

CIRCULAR PF NO. 120

SECTION 14 OF THE PENSION FUNDS ACT (ACT 24 OF 1956)

AMALGAMATIONS AND TRANSFERS

CIRCULARS PF 78, 97, 100 AND 101 ARE HEREBY WITHDRAWN AND REPLACED BY THIS CIRCULAR

1. INTRODUCTION

This Circular sets out the conditions of the Registrar in respect of the different types of transfers in terms of section 14 of the Pension Funds Act, Act no. 24 of 1956 ("the Act") and attempts to clarify other issues in respect of transfers.

This Circular takes effect on the date that it is issued. However, applications submitted before 1 September 2005 in terms of Circular PF78 will be accepted. Thereafter, all applications in terms of section 14 of the Act must be submitted in terms of this Circular and the accompanying forms.

All applications must be submitted to the Registrar within 180 days of the effective date of transfer (or the first date of transfer in the case of a blanket transfer).

2. PREJUDICE TO MEMBERS

Where transfers can cause members to be worse off on resignation immediately after the transfer than they were before, the board of the fund must ensure that this is checked before submission to the Registrar. The principal officers of the funds concerned must disclose to the Registrar any such prejudice. Proof must be submitted that explicit approval by at least 75% of the transferring members has been obtained, after a clear and comprehensive communication exercise advising the members of the prejudice they will suffer.

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 rely only on a statement by the valuers / actuaries.

3. TYPES OF TRANSFERS AND RELATED MATTERS

There are various types of section 14 transfers. The forms to cover all possible events are contained in the forms attached to this Circular. The prescribed forms must be duly completed, submitted and approved by the Registrar before any transfers in terms of section 14 can be effected.

3.1 Transfers where the number of members and the amounts are known

Forms A, A1 and A2 must be completed, as well as the following:

3.1.1 In the case of the transferor fund:

- If not exempt from actuarial valuation, Form A3 must be completed; or
- If exempt from actuarial valuation, Form A5 must be completed.

3.1.2 In the case of the transferee fund:

- If not exempt from actuarial valuation, Form A4 must be completed; or
- If exempt from actuarial valuation, Form A6 must be completed.

3.2 Blanket Transfers or Transfers where the number of members and amounts are NOT known

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

3.2.1 In the case of the transferor fund:

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

3.2.2 In the case of the transferee fund:

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

The forms provide that approval may be applied for in the case of blanket transfers between two specific funds. Approval for a blanket transfer may be prospectively granted for a period of 12 months from the effective date of the scheme as approved by the Registrar.

Where a blanket section 14 is concerned, the fund must within two months of the expiry of the 12-month period, complete Form B7 and submit it to the Registrar.

Where the option to transfer exceeds a 12-month period, a new section 14 application must be submitted to the Registrar for approval.

3.3 Purchase of pensions in the name of the pensioners

3.3.1 Groups

- Forms C, C1 and C2 must be completed.

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

3.3.2 Individual Annuity Policies

- Form D is to be completed and retained by the fund (see paragraph 11 for details).

3.4 Transfer of all or part of an employer surplus account

Section 15E creates the right to transfer moneys between the employer surplus accounts of two funds in which the same employer participates. If a transfer is to be effected in terms of section 15E(2), the following must be completed:

- Forms E, E1, E2 and E3.

3.5 Application to deregister a fund

Where there is a transfer of all members of the fund and on conclusion of such transfer, the fund will have no assets, liabilities and members:

- Forms F and F1 must be completed.

The following should be noted:

3.5.1 Where the fund has not yet submitted a surplus apportionment scheme or nil scheme, a surplus scheme must be submitted before the Registrar will be able to consider any transfer that will cause a fund to have no assets, liabilities and members; and

3.5.2 The principal officer, valuator or auditor must within 60 days after approval of the transfer by the Registrar, submit a letter to the Registrar confirming that the transfer has been effected and that the fund has no assets, liabilities and members, whereafter a certificate will be issued by the Registrar cancelling the registration of the fund.

4. ERRORS AND ADJUSTMENTS TO APPLICATIONS FOR TRANSFERS

Once a section 14 scheme has been approved, the Registrar has no power to amend or cancel any certificate issued in terms of section 14(1)(e) unless the information contained in the application was misleading and caused the Registrar to make a wrong decision. (See paragraph 4.2 below.)

4.1 Replacement pages

Replacement pages will only be accepted where they are both submitted and the Registrar notified of these prior to the issuing of a certificate in terms of section 14(1)(e). Such replacement pages will only be accepted if properly signed by all signatories.

4.2 Correction of errors (other than “agterskot” adjustments) to previously approved schemes

If an error is discovered in a scheme that has previously been approved, the fund may apply to the Registrar for consideration of the correction of such error within a reasonable period. An amended section 14 application, indicating the error contained therein and duly signed and submitted by the parties responsible for the previous application must be submitted for approval.

The following cases will not be regarded as a correction of an error and a new section 14 application will be required:

4.2.1 Members and their corresponding transfer values were omitted from the initial “erroneous” application.

4.2.2 Members were transferred incorrectly (i.e. when they should not have been transferred).

4.3 Adjustment by means of “agterskot” adjustments

Under certain circumstances, the Registrar will permit adjustment to the transfer value of a scheme that has already been approved, applied for in a subsequent section 14 application as an “agterskot” payment.

4.4 Conditions for the approval of “agterskot” adjustments

4.4.1 The application for an “agterskot” adjustment must refer back to one or more previous transfer applications which were approved by the Registrar, noting at least the transferor and transferee fund names and the corresponding Registrar's reference numbers, the number/s of members, the amount/s transferred and the effective date/s of the previous transfer/s.

4.4.2 Exactly the same numbers of members should be affected by the “agterskot” adjustment and the additional assets must be applied in the same manner as the original transfer was applied. This is necessary because the “agterskot” payment simply varies the quantum of assets and/or liabilities transferred. If the number of members is not consistent with the original transfer, reasons for the difference must be justified.

4.4.3 The boards of the transferor and transferee funds must have agreed to the “agterskot” adjustment and must be empowered to authorise it in terms of the rules of their respective funds.

- 4.4.4 The valuator to the transferor fund must motivate the “agterskot” adjustment. Such motivation must relate to the circumstances of the transferor fund at the effective date of the original transfer. Essentially the valuator will be justifying why, with the benefit of hindsight, a revised quantum of assets and/or liabilities should have been transferred.

Particular care must be exercised now that the Pension Funds Second Amendment Act has come into operation. The “agterskot” adjustment forms one of the transactions that may be used to correct historic inequity (such as the transfer of too much actuarial surplus to the transferee fund as part of a historic transfer). The Registrar will disallow such adjustments except if they are a result of and are consistent with, an approved scheme in terms of section 15B of the Act.

- 4.4.5 The adjustment to the quantum of assets transferred should be accumulated from the effective date of the original transfer to the actual date of the original transfer using the net investment return earned in the fund from which the original transfer was made and should then be accumulated from the original date of transfer to the date of the “agterskot” transfer using the investment return earned in the fund from which the “agterskot” payment will be made.

There is no prescribed format for an application for the transfer of an “agterskot”. The valuator of the transferor fund may use his or her discretion as to such format, provided the information required is supplied and the transfer is justified.

5. ACTUAL TRANSFERS TO CORRESPOND WITH THE APPROVED SCHEME

5.1 Actual transfer different from approved transfer

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. No further approval is required, as the corrective action will result in conformance with a scheme already approved in terms of section 14 of the Act.

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

Any withdrawal, death or pension payments made from the benefits 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.

6. INVESTMENT RETURN OR INTEREST PAYABLE FROM THE EFFECTIVE DATE TO THE ACTUAL DATE OF TRANSFER

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.

The transfer scheme must set out the gross investment return (positive or negative) net of such expenses as the board of the transferor fund deems reasonable (such as retirement fund tax and investment management costs) 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.

If, before the certificate of approval of the transfer has been issued, it appears that:

- 6.1 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
- 6.2 the transferor fund did not take adequate steps to protect itself against the risk that the fund does not earn this specified rate on the transfer value;

then 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.

7. ACTUARIAL SURPLUS

The section 14 application forms set out the impact on the fund of any actuarial surplus included in the transfer or excluded from the transfer.

No actuarial surplus may be included in the transfer application until the transferor fund's surplus scheme has been approved in terms of section 15B of the Act or a nil scheme has been recorded by the Registrar or unless surplus has arisen after the surplus apportionment date and is dealt with in terms of section 15C of the Act.

Section 15G of the Act requires the board of the fund to pay a proportionate share of the member surplus accounts, the investment reserve account and the contingency reserve accounts. 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.

8. SUBMISSION OF APPLICATIONS

Delays in the approval of section 14 transfer applications are often caused by administration errors such as:

- 8.1 incomplete forms; and
- 8.2 forms that have been amended (other than for the reasons discussed in paragraph 13 of this Circular); and
- 8.3 a participating employer in an A-type umbrella fund whose special rules have not been registered.

This causes the Registrar to raise queries that sometimes do not receive responses leading to further delays in the process.

In order to reduce the list of such cases, if no response is received within a period of 6 months after the date of the query, the application will become null and void and a new application must be submitted. The applicant will be informed of the lapse of the period. A further fee will have to be paid on re-application.

9. SATISFACTION OF RIGHTS AND REASONABLE BENEFIT EXPECTATIONS

As per 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.

The Registrar will not normally accept modifications of the form of the opinion since it denies the responsibility of the board of the fund and the valuator towards the stakeholders in a fund. If the board of the fund or the valuator are not able to sign the form in the required format, they must qualify the form and justify such qualification.

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

Section 14 does not apply to the following transactions:

- 10.1 A member who, on resignation, retrenchment, dismissal or leaving service of the 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.
- 10.2 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.

For a fund to transfer such benefits, the rules of the fund must provide for the following:

- 10.2.1 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.
- 10.2.2 The fund will have no obligation towards the member once the purchase is concluded.
- 10.2.3 The annuity policy must be purchased from a registered 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.
- 10.2.4 The determination of the capital amount to be used to purchase the policy.
- 10.2.5 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 actuarial valuation of the fund submitted in terms of section 16 of the Act with augmentation, if any, from any reserve accounts in terms of section 15G of the Act;
OR
 - (ii) The purchase price of an annuity policy from a registered insurer, which policy shall provide a stream of income equivalent to the pension expected by the member from the fund.
- 10.2.6 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 any reserve accounts in terms of section 15G of the Act.
- 10.3 On the death of a member, the rules of a fund allow the board of the fund to purchase one or more annuity policies on behalf of the former 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 former member beneficiaries once the purchase is concluded.

These transactions represent the payment of a benefit to the member or the member's beneficiaries and therefore fall outside the definition of "transfer of business".

11. PURCHASE OF AN INDIVIDUAL ANNUITY POLICY SUBJECT TO A SECTION 14 TRANSFER

- 11.1 Where a pensioner will be outsourced to an individual annuity policy and the rules do not provide for the conditions set out in paragraph 10 above, the purchase of the annuity policy will be subject to the provisions of section 14 of the Act.

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, owns the policy) represents the transfer of business in terms of section 14 of the Act.

Where the purchase of 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 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.

The wording of such conditions and restrictions must be made in such a way to ensure that these conditions and restrictions will form part of any subsequent replacement policies issued. In addition to these, the following must be incorporated as part of these conditions:

- (a) Name of the fund.
- (b) Type of fund (e.g. pension fund, provident fund, retirement annuity fund or preservation fund).
- (c) An appropriate policy must be purchased as required in terms of the rules of the fund.
- (d) The policy may not be capable of being surrendered.
- (e) Any explicit guarantees as contained in the rules of the fund that should be retained.
- (f) The provision to be included in the annuity for subsequent increases in annuity payments.
- (g) The policy or benefits which become payable in terms of the annuity policy shall not be able to be 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.

11.2 Disclosure requirements in the purchase of an annuity policy

Where a fund's rules makes provision for the purchase of an annuity on retirement, the board of the fund must ensure that, prior to entering into the annuity policy, the following are properly disclosed to the member in a manner that is understandable and the effect thereof has been clearly explained to and understood by the member:

11.2.1 Costs, fees and expenses (hereinafter referred to as "expenses")

Any expenses and on-going fees, which are incurred in the purchase of the annuity policy purchased from a long-term 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.

11.2.2 Commissions

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.

11.2.3 Declaration

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.

12. PHYSICAL TRANSFER OF ASSETS, LIABILITIES AND MEMBERS

12.1 Where section 14 approval has not been granted

In terms of section 14(1) of the Act, "No 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 shall be of any force or effect unless the Registrar has forwarded a certificate to the principal officer of every such fund to the effect that all the requirements of this subsection have been satisfied".

If the Registrar establishes that transfers have been effected without approval in terms of section 14 of the Act, the Registrar will require such illegal transfers to be reversed. Furthermore, penalties in terms of section 37 of the Act may be imposed.

As such transfers cannot take place without the complicity of the administrators of both transferor and transferee funds, the Registrar will 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.

12.2 Where section 14 approval has been granted

Once section 14 approval has been granted, the transferor fund must transfer the assets within 60 days. If for any reason this time cannot be met, the transferor fund must seek approval for this delay from the Registrar.

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 application, then the provisions of paragraph 5.2 will apply.

13. TRANSFERS TO OR FROM PERSONS OTHER THAN A REGISTERED FUND

Section 14 specifically includes transfers to or from persons other than a registered pension fund.

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. In the event where the transferor or transferee fund may be a retirement annuity fund, the Registrar will also accept the application if the special reports are completed by the statutory actuary of a registered life insurance company.

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 section 10 above. 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.

14. PRESCRIBED FEES

14.1 Fees payable

The fees payable are as prescribed in Schedule L of the Act. All applications in terms of paragraph 3.2 of this Circular will be charged on the same basis as a multiple transfer.

14.2 Party responsible for the fee

Regulation 24(c) determines that the fees 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.

15. ACCOUNTING PRACTICE IN RESPECT OF BENEFITS PAYABLE IN THE PERIOD BETWEEN THE EFFECTIVE DATE OF TRANSFER AND THE ACTUAL TRANSFER

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 insured 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.

It also recognises the dual membership and dual rights that such employees have until the transfer has been approved.

If death, disability, resignation, dismissal, retrenchment or retirement occurs after the effective date of transfer but before the section 14 application has been approved, two possible situations can arise depending upon the type of application:

- 15.1 Where the prospective method is used, the funds should reach agreement as part of the transfer negotiation and should amend their rules accordingly, which rules should be applied consistently across all transferring members, as to whether the member (or his beneficiaries) will receive benefits in respect of past service from the transferor fund or the transferee fund. 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.
- 15.2 Where the retrospective 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.

As a member remains a member of the transferor fund until the section 14 certificate has been issued, there is a legal obligation on the transferor fund to meet any benefit payments that fall due prior to approval of the transfer application, in respect of members who have transferred.

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 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 that will be obliged to make a second adjusting payment to the member to increase the member to the higher withdrawal benefit. This is an unavoidable consequence of the practice of making both funds meet the benefit payment in terms of their rules.

16. “FULL TRANSFER”

16.1 Financial statements

When a transfer has the effect that after the transfer has been effected that the fund will have no more assets, liabilities and members, 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.

If the final financial statements will exceed the period of 12 but not 18 months, the rules of the fund could be amended to extend the financial year to a maximum of 18 months.

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.

16.2 Deregistration

On finalisation of the transfer and submission of final financial statements as stated in paragraph 3.5 above, funds must apply to the Registrar in Forms F and F1 to deregister the fund.



FOR REGISTRAR OF PENSION FUNDS