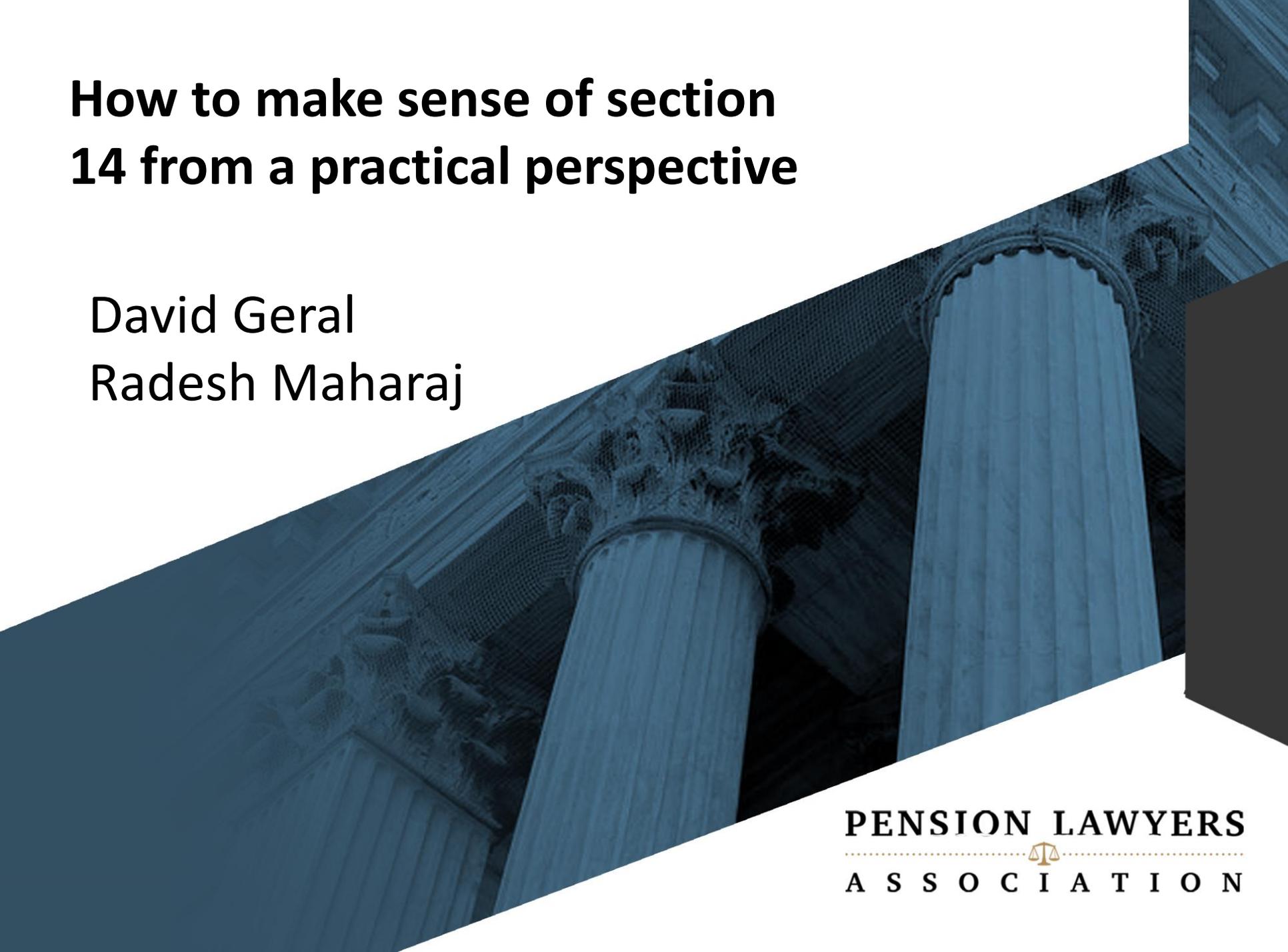


How to make sense of section 14 from a practical perspective

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S 14 - Amalgamations and transfers

(1) Subject to subsection (8), 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—

S 14(1) (cont.)

- (a) the scheme for the proposed transaction, ..., has been submitted to the registrar within a prescribed period of the effective date of the transaction;
- (b) the registrar has been furnished with such additional particulars or such a special report by a valuator, as he may deem necessary for the purposes of this subsection;

S 14(1) (cont.)

(c) the registrar is satisfied that the scheme ... is reasonable and equitable and accords full recognition-

(i) to the rights and reasonable benefit expectations of the members transferring in terms of the rules of a fund where such rights and reasonable benefit expectations relate to service prior to the date of transfer;

(ii) to any additional benefits in respect of service prior to the date of transfer, the payment of which has become established practice; and

(iii) to the payment of minimum benefits referred to in section 14A,

S 14(1) (cont.)

and that the proposed transactions would not render any fund which is a party thereto and which will continue to exist if the proposed transaction is completed, unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund which is not in a sound financial condition, to attain such a condition within a period of time deemed by the registrar to be satisfactory;

S 14(1) (cont.)

(d) The registrar has been furnished with such evidence as he may require that the provisions of the said scheme and the provisions, in so far as they are applicable, of the rules of every registered fund which is a party to the transaction, have been carried out or that adequate arrangements have been made to carry out such provisions at such times as may be required by the said scheme;

S 14(1) (cont.)

(e)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.

S 14(2)

(2) (a) Whenever a scheme for any transaction referred to in subsection (1) has come into force in accordance with the provisions of this section, the relevant assets and liabilities of the bodies so amalgamated shall respectively vest in and become binding upon the resultant body, or as the case may be, the relevant assets and liabilities of the body transferring its assets and liabilities or any portion thereof shall respectively vest in and become binding upon the body to which they are to be transferred.

S 14(2) (cont.)

(b) Any transfer contemplated in paragraph *(a)* must be effected within 60 days of the date of the certificate issued by the registrar in terms of paragraph *(e)* of subsection (1).

(c) Any assets transferred in accordance with paragraph *(b)* must be increased or decreased with fund return from the effective date of transfer until the date of final settlement.

S 14(2) (cont.)

(3) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset which is transferred in accordance with the provisions of subsection (2), shall, upon production to him by the person concerned of such deed or other document and of the certificate referred to in paragraph (e) of subsection (1), without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of the amalgamation or transfer.

S 14(3)

(3) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset which is transferred in accordance with the provisions of subsection (2), shall, upon production to him by the person concerned of such deed or other document and of the certificate referred to in paragraph (e) of subsection (1), without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of the amalgamation or transfer.

§ 14(4)

(4) A transaction effected in terms of this section shall not deprive any creditor of a party thereto (other than in his capacity as a member or a shareholder of such party) of any right or remedy which he had immediately prior to that date against any party to the transaction or against any member or shareholder or officer of such party.

S 14(5)

(5) Any application for approval of a scheme lodged with the registrar in terms of subsection (1) (a) shall lapse if the registrar requests further information and no satisfactory response is received from either the transferor or the transferee fund, as the case may be, within a period of 180 days from the date of such request.

S 14(6)

(6) The registrar may withdraw or amend a certificate issued in terms of subsection (1) (e), in circumstances where the registrar is satisfied that—

- (a) the scheme or information provided in terms of subsection (1) was so inaccurate that the registrar would not have granted such certificate had the registrar been aware of the actual facts;
- (b) the certificate contains a *bona fide* error; or
- (c) as a result of amendments to legislation, the implementation of the scheme in terms of subsection (1) would prejudice members.

S 14(8)

- (8) With effect from the commencement of the Pension Funds Amendment Act, 2007, subsection (1) does 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 of the fund concerned, and—
- (a) both transferor and transferee funds are valuation exempt;
 - (aA) both transferor and transferee funds are beneficiary funds; or

§ 14(8) (cont.)

(b) the transferor or transferee fund is neither registered nor required to register under this Act and the other fund is valuation exempt, and, furthermore, that—

(i) such registered funds keep proper records of all such transactions;

(ii) such registered funds comply with any further requirements as the registrar may prescribe;

(iii) the assets and liabilities are transferred within 180 days of the effective date of transfer; and

(iv) any assets transferred must be increased or decreased with fund return from the effective date until the date of final settlement.

§ 14(9)

(9) Notwithstanding subsections (1) and (8), the registrar may exempt a transaction contemplated in subsection (1) from the provisions of this section, subject to such requirements or conditions as may be prescribed.

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