



Conduct Standard 1 of 2019

– transfers in terms of section 14

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Agenda

- Brief background
- Conduct standard 1 of 2019
- COFI proposal on section 14
- Insurance Act
- Joint communication 1 of 2018
- PA communication 1 of 2021

Background

- Board Notice 208 of 2011 = Directive PF No. 6 re: s14 transfers
- effective date 1 January 2012
- issued i.t.o. s33A of Pension Funds Act by Registrar of Pension Funds
- THEN Twin Peaks and TCF
- Financial Sector Regulation Act, 2017
- Still to come: Conduct of Financial Institutions
(COFI draft Bills published for comment in 2018 and 2020)

Background - cont

- Draft Directive was sent out for comment on 6 December 2017
- Conduct Standard 1/2019 issued on 5 August 2019
 - By FSCA under s106(1) read with s106(2)(b) of FSR Act
- FSRA Compliance Extension Notice 1 of 2019

Differences

- Purpose: ensure that funds treat members affected by transfers i.t.o. s14 fairly (TCF)
- Includes definition of “long-term Insurer” with reference to Insurance Act (COFI will also change this in s14)
- Communication requirements (comparison benefits and costs, transfer value, opportunity to object) distinguish:
 - Unclaimed benefit members
 - Members voluntarily transferring e.g. involving RA or preservation funds
 - Other transferring members
- Application for extensions now i.t.o. s279 FSR Act – see FSCA Communication 57 of 2020 (RF) for template

Differences cont

- Funds that were exempt from section 14(1) but are no longer exempt
- Removal of some forms
- Member schedules
- Certifications
- Purchase of annuities in name of pensioners
- Transfers to or from an entity not registered by the FSCA – Namibia now treated same as other foreign
- Transfers from a trust to a beneficiary fund
- Tax directives and transfers

- Substitution of the word “*he*” with “*Authority*”
- “Retirement fund” excludes beneficiary fund and unclaimed benefit fund
- Lapsing of application within period determined by the Authority
- Removal of subsection 14(8)(aA) re: transfers between beneficiary funds
- Substitution of LTIA with Insurance Act
- Addition to s14(8)(b)
- Removal of 180 days for s14(8) transfers
- Insertion of subsection 10 for exemptions from s14(1)

COFI Proposals

- Insurance Act repealed most section of LTIA – signaled shift to Prudential Authority as licencing authority (then regulator)
- S37 (re: transfers between insurers, e.g. annuity policies) was repealed
- Directive 135 of LTIA – Standing approval s37(2) LA to LA, LA to life (but insurer to pension fund requires High Court approval s37(1) LTIA)
- Joint Communication 1 of 2018 - status of instruments under LTIA & STIA
- Regulation of LTIA & STIA under FSCA (until COFI) and Insurance Act under the Prudential Authority

Insurance Act

- Joint Communication 1 of 2018 - status of instruments under LTIA & STIA
 - Communication NOT directive/conduct standard (= not binding)
- Status of like directives, Board Notices, Insurance Notices, information letters and guidance notices issued under LTIA & STIA
- Para 4 – renders instruments connected to repealed provisions of LTIA obsolete
- This communication sets out which of the instruments –
 - remain in force;
 - are withdrawn / lapse on the effective date of the Insurance Act; and
 - are no longer relevant.
- Directive 135 applicable

Joint Communication 1 of 2018

- Communication NOT directive/conduct standard (= not binding)
- Clarity on section 50(1) and (2) of Insurance Act
- Applies to all licensed insurers (not pension funds)
- Provides clarity on Directive 135 (obsolete) and confirms PA's stance on section 50
- Section 50 replaced s 37 LTIA
- Standing approval in Directive 135 must now be approved by the PA – standing approval conferred LA to LA, LA to life

- Insurer to pension fund
 - previously s37(1) LTIA requiring High Court approval
 - S50 Insurance Act silent = no prior approval required (from High Court or PA)
 - PA intends proposing amendment to s50 (COFI draft Bills silent) to require PA approval
- Examples:
 - LA to “in fund” living annuity
 - Underwritten fund to self/s13B administered fund

- 2 Regulators
- Non-binding documents giving authority to repealed sections
- Stringent communication requirements
- Consolidation
- Standing approval in Directive 135
- Clarity is required re Directive and should be done by way of conduct standards and not communications

Conclusion



THANK YOU

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