

FSCA COMMUNICATION 18 OF 2024 (RF)

Amendments to FSRA Conduct Standard 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act

1. PURPOSE

The purpose of this communication is –

- (a) to inform stakeholders that the Financial Sector Conduct Authority (FSCA) today published the 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); and
- (b) to invite comments on the Draft Amendments from interested stakeholders and the public by **19 June 2024**.

2. 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 have to complete when submitting an application, 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. The aforementioned 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 As the prescribed section 14 application forms are contained in the S14 Conduct Standard itself, changing the forms will have to be subject to the process reflected in Chapter 7 of the FSR Act. The Chapter 7 process is onerous and time consuming.
- 2.4 If the section 14 application forms are not amended by the time that the Two Pot Regulations take effect, it will mean that any transfer taking place as from 1 September 2024 will still have to be based on the current prescribed forms which, as explained above, is misaligned to the Two Pot Regulations. It is therefore critical that amendments to the section 14 application forms be given effect before the end of 2024.
- 2.5 The FSCA is further of the view that the current approach, where amendments to the section 14 application forms are subject to the FSR Act Chapter 7 process, is overly burdensome and counterproductive, especially given the fact that the format of section 14 application forms is largely administrative in nature. Section 108 of the FSR Act allows for a standard to provide for the FSCA to make determinations for the purposes of the standard (see section 108(2)(a)). Typically, the FSCA would provide for such determinations in a Conduct Standard

where it relates to determining the content and format of applications, notifications and the like i.e. matters of an administrative nature. As such, the section 14 application forms are well suited to being subject to determination as opposed to formal legislative amendments, as will be enabled through these amendments. Full details surrounding the need for and expected impact of the draft Conduct Standard is set out in the accompanying Statement of need, expected impact, and intended operation of the draft Amendments.

3. SUMMARY OF PROPOSED AMENDMENTS

3.1 Removal of application forms from the S14 Conduct Standard:

The draft amendments propose to remove the section 14 application forms from the Conduct Standard itself. Going forward the application forms will be determined separately by notice on the FSCA's website.

3.2 Enabling the determination of application forms:

The draft amendments propose to insert provisions that 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). As such, all references to the previous forms that were contained in the S14 Conduct Standard have also been removed.

3.3 The documents that are published for public consultation are:

- (a) The Notice setting out the proposed amendments to FSRA Conduct Standard 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act;
- (b) Statement of need, expected impact, and intended operation of the draft Amendments; and
- (c) A marked-up version of the Conduct Standard showing proposed amendments in track (as supporting document).

3.4 It is important to note that 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.

4. INVITATION TO COMMENT ON THE DRAFT AMENDMENTS

Interested parties are invited to submit written comments using the comments template published with the Draft Amendments and submit same in Word format to the FSCA via email to FSCA.RFDstandards@fsc.co.za by **19 June 2024**.

5. AVAILABILITY OF INFORMATION AND ENQUIRIES

5.1 The documents referred to in paragraph 3.3 are available on the FSCA website at www.fsc.co.za.

5.2 For further information regarding the draft Amendments or this Communication, please contact Roslynne van Wyk at Roslynne.VanWyk@fsc.co.za in the Regulatory Frameworks Department of the FSCA.



**UNATHI KAMLANA
COMMISSIONER**

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