



FSCA COMMUNICATION 37 OF 2024 (RF)

Supervisory Guidance: Clarification on relevant considerations related to an application requesting exemption from performing a valuation

1. PURPOSE

The purpose of the communication is to clarify some of the matters in the consideration of an application requesting an exemption for a particular fund from the requirements of sections 9A and 16 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (valuation exemption), based on discussions with stakeholders requesting clarity.

2. REQUIREMENTS IN TERMS OF THE PENSION FUNDS ACT, 1956

- 2.1 Section 9A of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PFA) requires every registered fund which must have its financial condition investigated and reported on by a valuator in terms of section 16 of the PFA, to appoint a valuator.
- 2.2 Section 16(1) of the PFA requires a registered fund to, once at least in every three years, cause its financial condition to be investigated and reported upon by a valuator, and submit a copy of such a report with the Financial Sector Conduct Authority (FSCA) and send a copy of such report or a summary thereof to every employer participating in the fund.
- 2.3 In terms of section 16(2) the investigation by the valuator must be made in respect of the position as at the expiration of a financial year, and valuator's report must be submitted to the FSCA within twelve months from the close of that year.

3. EXEMPTIONS FROM SECTIONS OF THE PFA

- 3.1 Section 2(5)(2) of the PFA allows the FSCA to where practicalities impede the strict application of a specific provision of the PFA, exempt any fund from, or in respect of, such provision on conditions determined by the FSCA.
- 3.2 Section 281(3) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), allows the FSCA to exempt any person from a specified provision of the financial sector law. Read with Section 281(1) it qualifies the power to grant an exemption where the FSCA considers that granting the exemption—
 - (a) will be contrary to the public interest; or
 - (b) may prejudice the achievement of the objects of a financial sector law.

4. APPLICATION FOR A VALUATION EXEMPTION

- 4.1 Should the board of a fund consider that their fund qualifies in terms of the prescripts of section 2(5)(a) of the PFA and section 281 of the FSRA, they may apply to be exempted from Section 9A and 16 of the PFA. In such case, the conditions which must be complied with are set out in Board Notice 59 of 2014¹ (the Board Notice). This Board Notice also includes the forms which the board of the fund and a valuator must complete and certify as part of their application for exemption from these sections of the PFA.
- 4.2 The FSCA will consider a fund's application, read together with the rules of the fund and the annual financial statements. Both the application and the fund's circumstances will be considered on a case by case basis at the time the application is submitted. The FSCA's decision in this regard will be formally communicated.
- 4.3 It is therefore necessary that the following are available to enable the FSCA to consider an exemption application:
- (a) the registered rules of the fund, which comply with legislative requirements (for example, there is no vesting scale applicable in a defined contribution fund); and
 - (b) the audited annual financial statements of the fund at the effective date of the exemption application.

5. RELEVANT CONSIDERATIONS IN EXEMPTION APPLICATIONS

- 5.1 Since the exemption from the requirement to submit regular reports on the financial condition of the fund results in less oversight for funds whose financial condition is not investigated and reported on regularly, only those funds where there is intrinsically a lower risk due to the manner of operation of the fund will be considered for exemption.
- 5.2 When the fund is requesting exemption, it is requesting exemption from submitting a specific statutory actuarial valuation report at a specific date. As such the following are relevant to the date:
- (a) the date must be as at the expiration of a financial year end, as defined in the rules of the fund; and
 - (b) the date cannot be more than three years after the previous statutory actuarial valuation report that was due to be submitted, representing the date at which the fund would have performed a statutory actuarial valuation (whether a valuation report was submitted or exemption from that particular report was granted).
- 5.3 The conditions set out in the Board Notice relate to the following risk areas:
- (a) At the effective date of the application, the assets of the fund must equal or exceed the liabilities of the fund. The certification in the forms in the application in this regard is considered against assets and liabilities reflected in the annual financial statements of the fund at the effective date of the application. It is, therefore, important that the annual financial statements of the fund at the effective date have been submitted to the FSCA by the fund;
 - (b) Any existing pension payments as well as any future pensions that become payable must be fully secured by an annuity policy purchased from a licensed life insurer², or be in the form of a living annuity limited to the amount available per

¹ Available on the FSCA's website www.fsca.co.za under *Regulatory Frameworks < Notices < Retirement Funds < 2014* or by clicking on the following link: <https://www.fsca.co.za/Notices/Board%20Notice%2059%20of%202014.pdf>

² Licensed as a life insurer in terms of the Insurance Act, 2017 (Act No. 18 of 2017)

member. This needs to be clearly reflected in the rules of the fund. (A reference in the exemption application to the specific rule would be helpful.)

- (c) All members belong to defined contribution categories of the fund. This similarly needs to be clear from the rules of the fund. In considering the information related to this condition, the FSCA takes the following into account:
 - (i) Exemption will only be considered for a purely defined contribution fund which allocates the full investment returns earned to the members in the period in which the returns were earned, ensuring that minimum benefits as defined in the PFA are provided.
 - (ii) Such a defined contribution fund should not have a significant surplus, since all contributions and returns are allocated to the members and hence there is no source from which surplus should arise. This is also considered with reference to the position shown in the annual financial statements.
 - (d) Where any benefit payable to a member exceeds the value of the member's individual account, the excess must be fully insured with a licensed insurer. (A reference to the particular rule that clearly sets out the limitations in respect of any insured benefits would again be helpful).
 - (e) The rules of the fund need to provide that any contingency reserve account (other than a processing error reserve account) could never have a negative balance. A negative balance in any reserve account would represent a deficit in the fund and hence would represent a risk to the fund's members.
 - (f) The fund must have completed their surplus apportionment scheme or nil scheme and this must have been approved or noted. In addition, unless the fund was valuation exempt subsequent to its surplus apportionment date, the statutory valuation following the surplus apportionment valuation must have been accepted by the FSCA.
 - (g) A fund that was in a deficit position, either at the previous effective valuation date, the current effective valuation date or any of the years in between, will not qualify to be exempted from performing a statutory actuarial valuation. A fund with a deficit would be required to submit a statutory actuarial valuation report and a scheme setting out the arrangements which have been made or which it is intended to make to eliminate the deficiency, in line with the requirements of Section 18 of the PFA.
- 5.4 While each application is considered on its own merits, detailed reconciliations and long explanations would be better included in a valuation report rather than in an application for exemption. (For example, the manner in which a significant Section 14 transfer has been treated or the reasons for significant surplus arising or amounts to be allocated reflecting in the annual financial statements.)
- 5.5 As noted, the consideration of an application for exemption from the requirement to cause a fund's financial condition to be investigated and reported upon by a valuator is based on the consideration of the risks in the fund and the manner in which the fund operates and is not based on the manner in which transfers between funds are to be considered.

6. ENQUIRIES

For further information regarding this Communication, please contact Giulia Tognon at giulia.tognon@fsca.co.za.



ASTRID LUDIN
DEPUTY COMMISSIONER

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