

FSCA COMMUNICATION 6 OF 2023 (RF)

FINAL GUIDANCE NOTICE ON THE APPLICATION OF SECTION 14(7) OF THE PENSION FUNDS ACT, 1956 PUBLISHED

1 PURPOSE

- 1.1 The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) today published FSCA Guidance Notice 1 of 2023 (RF) - Guidance notice on the application of section 14(7)(b) of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PFA”).

2 BACKGROUND AND PURPOSE

- 2.1 Section 14(7) of the PFA deals with the transfer of individual member (or non-member spouse) interests between retirement annuity funds. Section 14(7)(a) provides that a retirement annuity fund may not prohibit such transfers, while section 14(7)(b) imposes various conditions regarding the remuneration that intermediaries may receive in relation to such transfers.
- 2.2 As stated in FSCA Communication 19 of 2022¹, the FSCA acknowledges the inconsistencies between the Regulations made under section 72 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTIA Regulations) and the PFA. Following queries around the interpretation of section 14(7)(b) of the PFA, read with the limitations on the payment of commission in terms of the LTIA Regulations, the FSCA recognised the need for guidance to the industry.
- 2.3 On 05 July 2022, the FSCA published the draft Guidance Notice on the application of section 14(7) of the PFA for public consultation. The FSCA simultaneously invited interested parties to submit comments on the draft Guidance Notice by 2 August 2022.
- 2.4 The FSCA received a total of 60 comments from 8 industry stakeholders (consisting of financial institutions and representative bodies) in respect of the different sections of the draft Guidance Notice. All comments were considered and the necessary changes affected to the Guidance Notice.
- 2.5 The final Guidance Notice is aimed at alleviating uncertainty and to ensure more consistent application of section 14(7) of the PFA, pending future regulatory reforms explained in more detail in FSCA Communication 19 of 2022.

¹ Available at [https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%2019%20of%202022%20\(RF\).pdf](https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%2019%20of%202022%20(RF).pdf)

3 OBJECTIVES OF THE GUIDANCE NOTICE

- 3.1 The main objective of the Guidance Notice is to ensure a consistent understanding and application of section 14(7) of the PFA. The guidance notice provides guidance on provisions of different pieces of legislation read together, to support consistent interpretation and application of section 14(7) of the PFA and other intermediary remuneration provisions in the LTIA Regulations and the General Code of Conduct for authorised Financial Services Providers and Representatives, 2003 (FAIS General Code).²
- 3.2 The Guidance Notice, therefore, in broad terms, sets out the following:
- (a) When applying section 14(7)(b)(ii) of the PFA it must be kept in mind that subsection 3A(1)(a)(iv) and subsection 3A(1)(d) of the FAIS General Code applies together with the sections of the PFA.
 - (b) In respect of the payment of fees and commissions for financial services rendered by a financial services provider or representative after the transfer of interests, any fees and commissions over the maximum allowed for in terms of the LTIA Regulations would require that the requirements of subsection 14(7)(b)(ii)(bb) are met.
 - (c) The PFA, as primary legislation, prevails over the LTIA Regulations, in respect of the existing inconsistency that exists in relation to remuneration payable in the context of transfers from one underwritten retirement annuity fund to another.

4 AVAILABILITY OF THE GUIDANCE NOTICE AND ENQUIRIES

- 4.1 The Guidance Notice, together with this Communication and a full consultation report, is available on the FSCA's website (<https://www.fsca.co.za>) under *Regulatory Frameworks > Pages > Guidelines.aspx*
- 4.2 For more information regarding this Communication, this Guidance Notice and the contents hereof please contact the FSCA Regulatory Framework Department by emailing Johann.Vanderlith@fsca.co.za



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Date of publication: 20 February 2023

² Issued under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).