FINANCIAL SERVICES BOARD

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TRANSFERS CONTEMPLATED IN TERMS OF SECTION 14 OF THE PENSION FUNDS ACT, 1956 ("THE PFA") AND THE REQUIREMENT TO OBTAIN TAX DIRECTIVES WHERE INDIVIDUAL VOLUNTARY TRANSFERS OF BENEFITS ARE CONCERNED

1. Background

This information circular aims to clarify whether or not the transfer of an individual member who voluntarily elects to transfer his or her benefit from one retirement fund (including preservation funds and RA funds) to another is regarded as a transfer of business as contemplated in section 14 of the PFA, as well as whether this will be considered to be a transfer of an accrued benefit which will require an application for a tax directive.

Furthermore, this circular aims to reaffirm the registrar's view on what constitutes "excluded" or "exempted" transactions as provided in Directive PF No. 6 and that, if a transaction is neither "exempted" nor "excluded" in Directive PF No. 6, then such a transaction will be subject to the relevant provisions of section 14 of the PFA.

2. Directive PF No 6

The registrar issued Directive PF No 6 on 28 December 2011, which provides as follows, amongst others:-

2.1 Section IV - determines the various types of transactions that represent the payment of a benefit to the member or the member's beneficiaries and therefore fall outside the ambit of "transfer of business" as contemplated in section 14(1) of the Act. The types of transactions included in that section are:

2.1.1 A transfer of a pension interest awarded in terms of section 7(8) of the Divorce Act, 1979, to a non-member spouse.

2.1.2 A member who, on resignation, retrenchment, dismissal or upon leaving the service of an employer for some other reason, or on liquidation of the fund, is entitled to receive a benefit in cash or is entitled to elect to translocate the benefit to another fund.

2.1.3 On retirement of a member, the rules of a fund allow the retiring member to request the board of the fund to purchase an annuity policy from an insurer registered in terms of the Long-term Insurance Act, 1998. For a fund to give effect to such a request, the rules of the fund must provide that-

2.1.3.1 the requesting member's membership of the fund shall cease as soon as the purchase of the annuity, or annuities, is concluded and the balance of any benefit payable in terms of the rules is paid in full;

2.1.3.2 the fund will have no obligation towards the member once the purchase is concluded;

2.1.3.3 the annuity policy must be structured in such a way that the member and any other beneficiaries who are entitled to an annuity on the member's death after retirement, become the owners of the policy; and

2.1.3.4 the capital amount after commutation, if applicable, must be used to purchase the policy.

2.1.4 On the death of a member, the rules of the fund may allow the board of the fund to purchase one or more annuity policy on behalf of the deceased member's beneficiaries on such basis that these beneficiaries become the owners of the annuity policies and the fund ceases to have any obligation towards the deceased member's beneficiaries once the purchase is concluded.

2.2 Section VI – lists the various transactions that the registrar has exempted from the provisions of section 14(1):

2.2.1 transfers of unclaimed benefits from a registered fund to an unclaimed benefit fund;

2.2.2 transfers between unclaimed benefit funds;

2.2.3 transfers between retirement annuity funds; and

2.2.4 transfers between preservation funds.

2.3 Funds must comply with the requirements in respect of section 14 submissions and exemptions as set out in Directive PF No 6 as well as the exclusions determined in section 14(8) of the PFA and those listed in Directive PF No. 6.

3. Tax Directives

In terms of the Income Tax Act, a tax directive must be obtained where a member voluntarily makes an election on an individual basis to transfer his or her benefit from one fund to another and for any transfers from a pension fund to a provident fund under section 14 of the PFA. This requirement is independent of the section 14 requirements as prescribed in Directive PF No 6.

Boards of funds and administrators are required to ensure compliance with the requirements of the Income Tax Act by obtaining the necessary tax directives from SARS where such a directive is required on transfer. Funds and administrators must ensure that members are not prejudiced where a fund or administrator fails to comply with the applicable provisions of the Income Tax Act.

Yours sincerely

DP TSHIDI

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REGISTRAR OF PENSION FUNDS