

FINANCIAL SERVICES BOARD

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DATE:	25 March 2010	E-MAIL:	christiaana@fsb.co.za

Ms R Kassim
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By E-mail: ruwaida@irf.org.za

Dear Ruwaida

IRF LEGAL & TECHNICAL COMMITTEE – QUERIES

1. I refer to various issues raised by the IRF Legal & Technical Committee during recent meetings. The Registrar of Pension Funds has been requested to provide clarity on some of these issues.
2. The feedback on these issues is as follows:

Transfers to an unclaimed benefit fund

Question: Is a transfer from a pension fund to an unclaimed benefit fund regarded as a section 14 transfer?

3. The Registrar does not regard this to be a transfer as contemplated in section 14 of the Pension Funds Act, 1956, as amended (“the Act”), as accrual has already taken place in relation to the benefit being transferred.
4. Therefore, a Recognition of Transfer (“ROT”) is required to transfer unclaimed benefits from a pension fund to an unclaimed benefits fund.
5. In the past there was general consensus in Industry that once the period for claiming the unclaimed benefits prescribed, the benefits were transferred to the Guardians Fund without the need to submit a section 14 application.

Transfers between preservation funds

Question: Why is a transfer between preservation funds regarded as a section 14 transfer?

6. The initial translocation or payment of a benefit from a pension fund to a preservation pension fund, or from a provident fund to a preservation provident fund, can only occur once accrual has taken place and a benefit becomes due and payable to a member, as in the case of, *inter alia*, resignation, dismissal, retrenchment or liquidation. Kindly refer to SARS' Practice Note RF1/98 for further information.
7. Once such a benefit is paid to the preservation fund, it constitutes a liability of such fund, which benefit must be administered or held in terms of the rules of that fund and in compliance with the Act.
8. Accrual does not take place when a liability is transferred from one preservation fund to another preservation fund. The transfer between preservation funds of such liability constitutes the transfer of the "business" and therefore section 14 approval is required.
9. Accrual is only deemed to take place in preservation funds when the 'once-off withdrawal' is made, or when the benefit reaches maturity. In such cases a section 14 application is not required.
10. However, where both funds are valuation exempt, the provisions of section 14(8) of the Act may apply.

Divorce orders

Question: Are awards due to non-member spouses as a result of divorce settlements regarded as section 14 transfers where such amounts have to be transferred to the fund of the non-member spouse?

11. Awards granted to a non-member spouse as a result of divorce constitute a payment of a benefit to a non-member spouse. Therefore it cannot be regarded as a transfer of business as contemplated in section 14 of the Act. An ROT must be made if the non-member spouse requests that the benefits be paid over to another fund.

Transfers to Foreign Funds

Question: Why does the FSB insist on some kind of approval from SARS before approving a section 14 application from or to a foreign country?

12. The Registrar does not regard himself as the only authority to sanction transfers from or to retirement funds registered and/or approved in foreign countries within the SADC Region.
13. Such transfers may have tax implications for the individuals transferring, or there may be foreign exchange issues or regulations which SARS or the South African Reserve Bank may need to consider.
14. Furthermore, there are various Memoranda of Understanding between countries in the SADC region which may have a direct impact on transfers between retirement funds situated in those countries.
15. In all these matters, even though accrual may not have taken place, SARS is better placed to consider the issues and provide some form of 'clearance' for the transfer to proceed. This clearance is not a 'tax directive' or some form of 'clearance certificate'. It would suffice to obtain a letter from SARS acknowledging that the transfer can proceed.
16. I trust that this letter provides clarity on the above-mentioned issues.
17. Should there be further queries, please contact me.

Yours sincerely



CC Ahlers
Head: Actuarial (Pensions)

For REGISTRAR OF PENSION FUNDS