

## **Section 14 Transfers – Guidelines for Trustees**

Section 14 transfers can result in much frustration for the affected members as a result of delays in the transferral of their benefits which are often caused by the number of different parties involved in the transfer application namely, the companies involved, the transferring (or transferor) fund, the receiving (or transferee) fund, their respective service providers, the affected members and the Financial Services Board.

Much of this could be avoided by changing the manner in which such transfers are approached. If all parties understand the legislative requirements of a section 14-transfer and take ownership of their allocated duties, many of the problems caused by the delays could be avoided. Additionally, there is often confusion around when and why section 14 transfers are required, as well as which type of transfer is required.

Although the consultant will facilitate the process, this document contains basic guidelines and suggestions, important points and timelines that you as Trustees need to be aware of.

### *1. Confirmation of the requirement for a section 14 transfer*

Whenever there is a transfer of assets and/or liabilities between two registered funds, the consultants of the two funds must liaise in order to establish whether or not a section 14 transfer is required. In the event that it is, the transfer date needs to be confirmed.

In this regard, special cognisance should be taken of the additional duties required of the Trustees and the Companies involved when a section 14 transfer is required as part of a section 197-transfer in terms of the Labour Relations Act.

In a section 197-scenario, the Trustees should ensure that as a general rule, the appropriate people at the Company are made aware that when there is a transfer of business, a section 14 transfer may be required. It is not always the case; however, it is safest to request the Company to notify the Fund as soon as there is potential for such a transaction.

The Company should arrange for the following information to be circulated at the outset:

- A contact involved in the transaction (preferably HR) from both companies should be identified and contact details provided
- The service providers (consultants' details) of both the transferor and transferee funds should be identified and contact details provided
- A request that all parties be kept updated of progress through the process.

### *2. Communication*

Members must be informed of the scheme and have at least 12 weeks to raise any objections. It is accordingly vital that the communication is distributed in order to accommodate the objection period. As trustees, you sign off on this aspect as part of the section 14 application. The transferor fund is generally responsible for the communication, however, would require input from the companies and the transferee fund's consultant.

The communication should consist at least of a comparison between the two funds (e.g. db/ dc/ pension/ provident and implications; benefit structures; contribution rates etc. – your consultant will assist in this regard). There may be additional communication necessary (e.g. treatment of housing loans, investment of fund credit during the interim period) as well. Both transferor and transferee fund trustees have to sign off that the members were properly informed of the impact of the transfer on their rights and benefits – the consultant should request that you sign off on any communication prior to distribution.

### 3. *Objections*

The Trustees are required to consider the basis of transfer with reference to any objections received and to respond thereafter.

### 4. *Application Documentation*

The consultant generally prepares the application; however, the Trustees should go through the application carefully, ensure that they understand each point and are comfortable. Additionally, it is important to ensure that the application is completed in full. A major problem encountered is that incomplete applications are submitted. If for example the application requires a certified copy of the sale agreement, ensure that the same is made available via the company for submission. The application should only be signed thereafter.

### 5. *Timelines*

Very importantly, the application ***must be submitted within 180 days of the effective date of transfer***. If it is not, the fund will have to apply for an extension and may only submit the actual section 14 application once the extension is approved. This results in unnecessary delays and the FSB may impose penalties.

### 6. *Ongoing Updates*

One of the biggest frustrations for a member is not knowing what is going on. In the event that there are delays, communicate to the affected members regularly – you would be surprised at what a difference this can make.

#### *Summary of key points:*

- \* Ensure early notification to all parties
- \* Ensure relevant parties are put in touch
- \* Distribute communication *as soon as is possible*
- \* Carefully consider the application and ensure the submission is accurate and complete
- \* Adhere to the FSB's timelines at a minimum; submit application as quickly as possible following effective date
- \* Overall, a team approach should be adopted between the parties involved!

