

1. Exemption from the use of the current section 14 transfer forms

The Financial Sector Conduct Authority (FSCA) is currently in the process of consulting on revised forms to be used for section 14 transfers. This is to make provision for the Two-pot system, which came into effect on 1 September 2024.

As the revised section 14 forms are still being consulted on, it was not possible to publish the revised forms in time for the implementation of the Two-pot system on 1 September 2024. The FSCA has accordingly, as an interim measure, published a general exemption, exempting retirement funds from the use of the section 14 application forms as currently prescribed in the section 14 Conduct Standard. This is subject thereto that funds must use the new revised forms appended to the exemption notice.

The exemption will apply pending the finalisation of the consultation process with regard to the revised section 14 transfer forms. The exemption will be withdrawn once the revised forms have been finalised and published on the FSCA's website.

2. Status of Two-pot rule registrations

The Financial Sector Conduct Authority (FSCA) on 3 September 2024 published a list of all registered two pot rule amendments. This was followed by an updated list on 25 September 2024. According to the Communication accompanying the updated list, the situation as at 25 September 2024 was as follows:

“To date, the FSCA has received 853 applications for rule amendments relating to the Two-Component System. All retirement funds that were required to submit rule amendments to give effect to the Two-Component system have done so.

The FSCA has registered 809 of these rule amendments, representing approximately 95% of the total received. Of the remaining 44 applications, 36 applications have been pending due to queries that have been raised by the FSCA. Responses to 8 of the queries that were received are under consideration.”



The FSCA also made it clear that “*retirement funds that do not have registered Two-Component rule amendments are required to communicate with the members of these impacted funds forthwith as to the reasons why the rule amendments have not yet been registered and that the funds cannot give effect to the Two-Component system until the registration of the required rule amendments*”.

3. Draft regulations relating to the processing of personal information of a data subject’s health or sex life

The Information Regulator has, in terms of the Protection of Personal Information Act (POPIA), published draft regulations relating to the processing of personal information of a data subject’s health or sex life.

The draft regulations prescribe detailed procedures and processes to be followed when responsible parties process personal information related to the health and sex life of data subjects. “Sex life information” is defined in the draft regulations as “*any information that may reveal a data subject’s gender identity, sexual orientation, or sex*”.

The draft regulations will apply to the processing of health or sex life information by, inter alia, insurance companies, medical schemes, medical scheme administrators and retirement funds. A few of the more important proposals are very briefly as follows:

- No processing of health or sex life information by insurance companies, medical schemes and medical scheme administrators may be permitted unless consent has been obtained from the data subject.
- Insurance companies, medical schemes and medical scheme administrators must process the health or sex life information of a data subject for a specific, explicitly defined, and lawful purpose of:
 - complying with an obligation imposed by law; or
 - protecting a legitimate interest of a data subject.
- A responsible party who processes health or sex life information in terms of section 11(1)(f) of POPIA may be required to conduct a Legitimate Interest Assessment to identify the legitimate interests and determine whether the identified legitimate interest is appropriate to use as a lawful basis for processing personal information. (Section 11(1)(f) refers to the processing of personal information for the purpose of pursuing the legitimate interests of a responsible party.)
- For a responsible party to rely on legitimate interest as a basis for lawful processing of health or sex life information, the following three staged assessment must be conducted:
 - a purpose test to identify the legitimate interest, as well as the benefits associated with the responsible party processing such information;



- a necessity test to determine if the processing of such personal information is necessary to achieve the goal/purpose, and whether there are no less intrusive methods that can be used to achieve the goal/purpose; and
- a balance test which requires a responsible party to balance its legitimate interest against the interests and rights of the data subject.
- A responsible party that processes health or sex life information shall be responsible for maintaining the confidentiality and integrity of such information in its possession or under its control by taking appropriate, reasonable technical and organisational measures.

4. Information Request with regard to fees relating to the Two-pot system

The Financial Sector Conduct Authority (FSCA) has published an information request in terms of which all administrators and self-administered funds must submit information of the administration fees relating to the Two-pot system on or before 30 September 2024. Inter alia, the following information must be submitted:

- estimated costs incurred in setting up to administer the Two-pot system, including the cost of adapting systems, staff training, member communication and additional call center capabilities;
- an estimate of the number of members under administration for whom the Two-pot system will be applicable;
- whether the administrator has fidelity insurance to cover the cost of a fraudulent savings component withdrawal;
- what measures have been implemented to prevent the risk of fraudulent claims being paid;
- details of increases in administration fees, including how these costs will be recouped;
- details of transactional fees, including how these costs will be recouped;
- details on capabilities implemented to submit savings withdrawal requests, for instance WhatsApp, other mobile applications, member portals, etc.

The purpose of the information request is explained as follows:

“The purpose of this Information Request is to ascertain details on the administrative fees or charges that a member withdrawing from the savings component will incur and the fees attendant to the two-component system, and how the fees will be calculated by administrators and self-administered funds. It is the FSCA’s intention to publish a report of its findings following obtaining the requested information.”



The FSCA also makes it clear in the information request that “boards of funds have a duty to take all reasonable steps to ensure that they act in the best interests of members at all times”, and that “accordingly, boards of funds must ensure that reasonable fees are charged for purposes of, inter alia, withdrawals under the two-component system”.

5. FSCA Integrated Report 2023/2024

The 2023/24 Integrated Report of the Financial Sector Conduct Authority (FSCA) has been tabled in Parliament. The report gives an overview of the FSCA’s performance, covering the period from 1 April 2023 to 31 March 2024. It outlines how the FSCA creates and preserves value over the short, medium and long term, providing detailed operational and governance information, including the FSCA’s strategic and financial performance.

In the FSCA press release about the report, Unathi Kamlana, FSCA Commissioner, says the following:

“We continue to be very intentional about protecting consumers and preserving the integrity of our sector. In this review period we imposed approximately R943 million in administrative penalties, a significant increase from the previous year’s R100 million. This increase demonstrates our commitment to credible deterrence and raising awareness of the regulatory requirements of the financial sector.”

The report inter alia confirms that 292 on-site inspections were conducted on retirement funds during the above period. In this regard, significant supervisory issues were identified in respect of the following:

- Vacancies on boards of trustees were not filled within 90 days.
- Failure by boards to monitor compliance with the provisions of the Pension Funds Act, specifically with regard to the payment of contributions.
- Failure by boards to timeously submit annual financial statements and valuation reports.
- Failure by principal officers to comply with their fiduciary duties in terms of the applicable legislation.
- Many funds do not yet have a formal TCF policy in place.
- High arrear contributions.
- Unclaimed benefits remain high.
- Delays in finalising death and withdrawal claims.



6. Clarification on matters which will be considered in an application for valuation exemption

The Financial Sector Conduct Authority (FSCA) has published FSCA Communication 37 of 2024 (RF), in which it provides clarity on some of the matters which will be considered in an application for valuation exemption. This is based on discussions with stakeholders requesting clarity.

The Communication sets out in detail the matters which will be considered in an application for valuation exemption, whereunder the following:

- The conditions which must be complied with in an application for exemption are set out in Board Notice 59 of 2014.
- To enable the FSCA to consider an exemption application, it must be provided with the registered rules of the fund and the audited annual financial statements of the fund at the effective date of the application.
- 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.

Retirement funds or other clients requiring more information should not hesitate to contact their consultant.