

1. Amendments to conduct standard on section 14 transfers

The Two-pot system necessitated certain amendments to the section 14 transfer forms. The Financial Sector Conduct Authority (FSCA) accordingly during May 2024 published, for public comment, draft amendments to the conduct standard on section 14 transfers, FSRA Conduct Standard 1 of 2019 (PFA). The amendments entail that all the various section 14 transfer forms are removed from the conduct standard, and that the FSCA is empowered to determine the content and format of the forms by way of publication on its website.

The amendments have now been finalised and the final draft of the amendments was submitted to Parliament on 7 November 2024. This is a requirement in terms of the Financial Sector Regulation Act, which requires that, before issuing a regulatory instrument, it must be submitted to Parliament for a period of at least 30 days while Parliament is in session.

The revised section 14 transfer forms have not yet been published and are still being consulted on. The FSCA has earlier, 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 The exemption will be withdrawn once the revised forms have been finalised and published on the FSCA's website.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. Failure to pay retirement fund contributions

The Financial Sector Conduct Authority (FSCA) has from 1 September 2023 on a periodic basis published a list of employers whose retirement fund contributions are in arrears. The FSCA has, pursuant hereto, on 20 November 2024 published a list of retirement funds and employers with arrear contributions as at 31 December 2023.

The list contains the names of 2 336 employers whose contributions are in arrears, made up as follows:

- 2 003 employers who have outstanding contributions of more than R50 000 and which have been outstanding for a period of more than 5 months;
- 200 employers who have outstanding contributions of more than R50 000, but the last contribution date has not been provided;
- 113 employers whose outstanding contributions are less than R50 000, but the outstanding late payment interest is more than R50 000 and has been outstanding for more than 5 months; and
- 20 employers who have not contributed since commencement of participation in the relevant fund.

During a recent lecture by the FSCA Commissioner, Mr Unathi Kamlana, he said the following in this regard:

“By publishing lists of employers who fail to meet their obligations under Section 13A, the FSCA aims to create a deterrent effect, using the power of public accountability to encourage better compliance. This measure is designed to bring greater transparency to the industry, allowing employees, trustees, and other stakeholders to be aware of which employers are not meeting their pension contribution responsibilities. It serves as a form of reputational pressure, where employers face public scrutiny for their failure to remit contributions on time, potentially affecting their business relationships and standing in the community.”

This public naming and shaming approach has proven to be an effective tool for driving compliance. As a result, following the publication, almost 1000 employers took swift action to clear their arrears, recognising the potential reputational damage and legal consequences of their non-compliance. In addition, many retirement funds have used the visibility provided by these publications as leverage to enter into settlement arrangements with defaulting employers, ensuring that outstanding contributions are paid over time.”

Mr Kamlana also, inter alia, made the following noteworthy comments:

- The non-payment of contributions is a criminal offence in terms of the Pension Funds Act. So as to ensure that employers are prosecuted, the FSCA is actively engaging with the senior leadership of the South African Police Service and the National Prosecuting Authority to enhance the understanding of the relevant retirement fund legislative framework and to streamline the process for handling reports of non-compliance. These efforts are aimed at ensuring that cases of arrear contributions are treated with the seriousness they deserve, enabling law enforcement to take appropriate action swiftly and effectively.



- One of the FSCA's key responsibilities is monitoring that funds and their boards of trustees comply with their obligations in managing contributions. However, the FSCA does not currently have direct powers to regulate employers or ensure that they comply with their obligation to pay contributions. The FSCA relies on the boards of retirement funds to take the necessary steps to recover arrear contributions and to ensure that payments are made in accordance with the law. While the FSCA can provide oversight to ensure that boards act in the best interest of their members and report cases of non-compliance, it can therefore not directly compel employers to make payment of outstanding contributions. The FSCA is accordingly considering taking greater enforcement action against boards and/or administrators which do not act, or do not take timely action, in the best interest of their members with regard to arrear contributions.
- Plans are underway to address the fact that the FSCA does not have jurisdiction over employers, particularly through the anticipated promulgation of the Conduct of Financial Institutions (COFI) Bill, which is still to be tabled in Parliament. Upon enactment, the COFI Bill will broaden the regulatory reach of the FSCA, bringing participating employers under its supervision as regulated entities, in addition to those currently under its oversight. This expanded mandate will enable the FSCA to directly engage with employers participating in retirement funds, enhancing compliance and accountability.
- The extended regulatory scope under the COFI Bill presents an opportunity to collaborate with other oversight bodies to address persistent challenges in ensuring compliance. For example, together with the Office of the Auditor-General of South Africa, the FSCA is exploring the potential application of the material irregularity findings process in terms of which the audits of public entities which reveal significant violations of the Pension Funds Act would be referred to the FSCA or other relevant public bodies for investigation and enforcement action.
- To address the issue of the non-payment of contributions, the FSCA is looking at enhanced collaboration with key stakeholders, such as the South African Police Service, the National Prosecuting Authority, the Office of the Auditor General, National Treasury, the South African Revenue Service and others. The need is for a holistic approach. In the meantime, the primary responsibility for the governance outcomes of retirement funds, including ensuring compliance with the provisions of the Pension Funds Act, resides primarily, and in the first instance, with the board of the fund. Enhancing the powers of the FSCA over employers will not, and should not, shift the nexus of responsibility away from those entrusted with the day-to-day duty to protect the hard-earned savings of members of retirement funds. This appreciation will inform the focus of the FSCA's future enforcement actions in this area.



3. Tax directives with regard to savings withdrawal benefits

The South African Revenue Service (SARS) on 19 November 2024 provided an update on the number of tax directive applications received with regard to savings withdrawal benefits under the Two-pot system. As at 18 November 2024, 2 153 942 tax directive applications were received and a total of 1 914 306 directives issued with a total gross value of R35 052 572 876.62.

The difference between tax directive applications and directives issued is accounted for in the following manner:

- 169 509 applications were declined for a myriad of reasons, ranging from systems failures from the fund management entities to wrong identification numbers, wrong tax numbers etc;
- 41 523 directives were declined because of insufficient funds, wrong codes etc;
- 28 525 directives were cancelled by taxpayers who changed their minds.

SARS also thanked fund administrators for their co-operation. SARS in this regard said the following:

“The work that has been accomplished so far by SARS is in large measure because of good cooperation with retirement fund management entities. SARS wishes to thank these institutions who play a critical role in the tax ecosystem for their professionalism that has allowed SARS to play its part in efficiently and speedily issuing required tax directives.”

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