

## Legal update 7 of 2023: FSCA Guidance Notice 1 of 2023 on section 14(7)

### A. Summary

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On 20 February 2023, the Financial Sector Conduct Authority (FSCA) published FSCA Communication 6 of 2023 (RF) and Guidance Notice 1 of 2023 (RF) – Guidance notice on the application of section 14(7)(b) of the Pension Funds Act, 1956 (Act No. 24 of 1956) (the Notice) which relates to the regulation of fees and commissions for financial services after a section 14(7) transfer between retirement annuity funds.

### B. Background

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Section 14(7) of the Pension Funds Act provides as follows:

- (a) Notwithstanding anything to the contrary in the rules of a fund, a retirement annuity fund shall not prohibit the transfer of business that relates to a member's interest or non-member spouse's interest, at the request of such a member or non-member spouse from one retirement annuity fund to another.*
- (b) No fees or commissions of any nature are payable by any party or by any agent, mandatory or representative of such party –*
  - (i) in return for the facilitation, intermediation, or recommendation of the transfer; or*
  - (ii) for financial services rendered by a financial services provider or representative after the transfer in respect of the transferred interest of the transferring member or non-member spouse which exceeds the fees or maximum commission that would have been permissible for such services in terms of the Long-term Insurance Act, 1998 or any regulations made thereunder had the transfer not been done other than fees –*
    - (aa) payable to the registrar;*
    - (bb) negotiated and agreed to in writing by the transferring member or non-member spouse annually, which fees are –*
      - (A) payable by the transferring member or non-member spouse personally; or*
      - (B) authorised by the transferring member or non-member spouse to be paid by the fund or administrator.*

The FSCA published the Notice to clarify the interpretation and application of section 14(7). The Notice makes it clear that the requirement for an annual fee review only applies to transfers from underwritten retirement annuity funds and only to the transfer amount.

The section 14(7) restriction will apply in the following instances:

- transfers from an underwritten retirement annuity fund to a non-underwritten retirement annuity fund;
- transfers from an underwritten retirement annuity fund to another underwritten retirement annuity fund;
- only on the transfer amount, and
- only those fees in excess of what is prescribed under the Long-term Insurance Act, 1998.

## C. Underwritten RAs

An underwritten fund is a fund that complies with the requirements set out in Regulation 1 of the Pension Fund Regulations. These conditions can be summarised as follows:

- (a) The assets of the fund consist only of claims against an insurer, ie are underwritten by the insurer.
- (b) The benefits of the fund are paid by an insurer.
- (c) The contributions (premiums) payable to the fund must be paid into the insurer's bank account. The fund therefore does not have its own bank account.
- (d) The underwriting insurer is also the administrator of the fund.

The following retirement annuity funds are listed on the FSCA's website as normal active underwritten retirement annuity funds:

Fund name	FSCA reg. no.	Administrator name
Carefree Life Retirement Annuity Fund	12/8/00036651	Assupol Life
Central Retirement Annuity Fund	12/8/00004038	Sanlam Life Insurance Ltd
Discovery Retirement Annuity Fund	12/8/00037469	Discovery Life Limited
Gro-rand Retirement Annuity Fund	12/8/00007734	Sanlam Developing Markets Limited
Hollard Life Retirement Annuity Fund	12/8/00014819	Hollard Life Assurance Company Ltd
Lifestyle Retirement Annuity Fund	12/8/00006776	Liberty Group Limited
Metropolitan Life Retirement Annuity Fund	12/8/00017781	Momentum Metropolitan Life Limited
Momentum Retirement Annuity Fund	12/8/00037434	Momentum Metropolitan Life Limited
MS Life Retirement Annuity Fund	12/8/00037491	Old Mutual Life Assurance Company (South Africa) Limited
New Life Retirement Annuity Fund	12/8/00020697	Sanlam Developing Markets Limited
Permanent Retirement Annuity Fund	12/8/00010179	Sanlam Developing Markets Limited
PSG Wealth Retirement Annuity Fund	12/8/00023601	PSG Life Ltd
Regent Life Retirement Annuity Fund	12/8/00036230	Hollard Specialist Life Ltd
South African Retirement Annuity Fund	12/8/00003904	Old Mutual Life Assurance Company (South Africa) Limited

## D. Summary of the Notice

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1. Section 14(7)(b)(i) provides that no fees or commissions for any services relating to the **transfer itself** between retirement annuity funds are allowed, irrespective of whether either the transferring fund or the receiving fund is underwritten.
2. Section 14(7)(b)(ii) imposes certain restrictions on the payment of fees or commission in excess of the maximum commission permissible under the Long-term Insurance Act on retirement annuity fund transfer amounts.
  - 2.1 The restrictions: the higher fee must be **negotiated and agreed to in writing** by the member annually.
  - 2.2 Any authorisation by the transferring member for the fees to be paid by the fund or administrator must be **confirmed annually**. This must be done by the **member personally** and cannot be done by his financial services provider or representative to whom the fees are to be paid.
  - 2.3 The restrictions only apply where the **transferring** retirement annuity fund is an underwritten retirement annuity fund.
  - 2.4 The restrictions only apply to the **transfer amount**, not to new on-going or additional lump sum contributions after the transfer, or to any investment growth after the transfer.
  - 2.5 The fees prescribed on a transfer amount under the Long-term Insurance Act for a transfer from a retirement annuity fund is nil. Accordingly, **all fees and commission** payable on a transfer from an underwritten retirement annuity fund will be subject to the restrictions.
  - 2.6 Fees may be negotiated and agreed to regardless of whether or not the maximum commission provided for in the regulations of the Long-term Insurance Act had been paid before the transfer was effected. The maximum commission applying to fund member policies entered into before 1 January 2009 is prescribed in item 2.1.1 of Table 1 of the regulations, and for fund member policies entered into on or after 1 January 2009, in Regulations 3.12(1) and 3.12(2)(a).

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**Momentum Investments**