P O Box 427 Pretoria 0001 South Africa
370 Helen Joseph Street Pretoria 0002
+27 12 313 3911 / 0861 12 7272
www.resbank.co.za

SOUTH AFRICAN RESERVE BANK
Prudential Authority

SARB 100 YEARS 1921–2021
A purposeful journey

Prudential Communication 1 of 2021

Insurance Act, 2017

Transfer of assets and liabilities relating to insurance business.

Objective of this Prudential Communication

This communication provides clarity on the application of section 50(1) and (2) of the Insurance Act, 2017 (Act No.18 of 2017) (Insurance Act) within the context of the transfer of assets and liabilities relating to the insurance business of an insurer and related matters.

1. Application

1.1 This Prudential Communication is applicable to all licensed insurers.

2. Purpose

2.1. The purpose of this Prudential Communication is to:-

a) provide further clarity on the regulatory status of Directive 135 of 2001 (Directive 135) published in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998)(LTIA) with further reference to Joint Communication 1 of 2018 (Joint Communication); and

b) confirm the Prudential Authority's (PA) stance on the application of section 50(1) and (2) of the Insurance Act in relation to the status of transfers of all or any part of an insurer's assets and liabilities, relating to its insurance business, to a pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956).

3. Transfer of a compulsory linked annuity policy issued by one insurer to a compulsory linked annuity policy or compulsory conventional annuity policy issued by another insurer

3.1. Section 37(2) of the LTIA , read as follows:

Any arrangement entered into between two or more insurers whereby a liability of any long-term insurer towards policyholders is to be substituted for a liability of any other insurer towards such policyholders (whether or not the liability of the long-term insurer is expressed in or created by existing policies or by new policies, or the terms of such new policies are the same as or different from the terms of the original policies), shall be deemed for the purposes of this section to be a scheme for the transfer of the insurance business concerned, unless the Registrar is satisfied that the said policyholders have been or will be made aware of the nature of such substitution and have signified or will signify their consent thereto in writing.

3.2. Directive 135 provided for certain standing approvals in terms of section 37(2) of the LTIA. The aim of Directive 135 was to inform insurers of the legal requirements of section 37(2) of the LTIA and further, to advise on the circumstances when a transfer of business should be dealt with in terms of the LTIA or in terms of the Pension Funds Act. The Directive ensured the viability of the administrative process in dealing with applications under the respective sections.

3.3. Subject to certain pre-determined conditions, standing approval was granted in Directive 135 for the replacement of:

a) a compulsory linked annuity policy issued by one insurer with a compulsory linked annuity policy issued by another insurer; and

b) a compulsory linked annuity policy issued by one insurer with a compulsory conventional annuity policy issued by another insurer.

3.4. In 2018, the PA and the Financial Sector Conduct Authority (FSCA) published the Joint Communication, which set out the status of all instruments issued under the LTIA. Paragraph 4 of the Joint Communication referenced the fact that instruments connected to repealed provisions in the LTIA must be interpreted as being obsolete.

3.5. Section 37 of the LTIA was repealed in terms of the Insurance Act and replaced by section 50 of the Insurance Act. In the circumstances, and in accordance with the Joint Communication, instruments referencing repealed provisions in the LTIA must be interpreted as being obsolete.

3.6. The PA confirms that the repeal of section 37 of the LTIA read with paragraph 4 of the Joint Communication renders the standing approval that was granted in terms of Directive 135 as obsolete. Consequently, transfers contemplated in terms of the standing approval in Directive 135 must be approved by the PA in terms of section 50(1) of the Insurance Act.

3.7. The PA hereby confers standing approval in terms of section 50 (1) of the Insurance Act (subject to the conditions specified in Appendix 1 read with the definitions specified in Appendix 2 of this Prudential Communication) in respect of the replacement of:

a) a compulsory linked annuity policy issued by one insurer with a compulsory linked annuity policy issued by another insurer; and

b) a compulsory linked annuity policy issued by one insurer with a compulsory conventional annuity policy issued by another insurer.

3.8. The standing approval shall apply retrospectively to the aforementioned replacements that were executed on or after the 1 July 2018 and date of this Prudential Communication on the proviso that:

3.8.1. the aforementioned replacements have satisfied the conditions specified in Appendix 1 read with Appendix 2 of this Prudential Communication, and

3.8.2. any of the aforementioned replacements that were effected without satisfying the conditions specified in Appendix 1 read with Appendix 2 will be deemed void.

3.9. Notwithstanding the provisos to the retrospective application of the standing approval set out in paragraph 3.8 to this Prudential Communication, insurers that have effected replacements contemplated in paragraph 3.7 of this Prudential Communication will be granted a period of 6 (six) months from date of this Prudential Communication to enable regulatory compliance with the respective provisos as applicable. The PA will solicit confirmation of regulatory compliance in this regard from the Head of the Compliance Control Function of respective insurers and in a format to be prescribed at the end of this six month period.

4. The Insurance Act and transfers of insurance business to pension funds

4.1. Prior to the promulgation of the Insurance Act, transfers of insurance business from a long-term insurer to another person such as a pension fund were dealt under section 37(1) of the LTIA.

4.2. As highlighted above, section 37 of the LTIA was repealed in its entirety and replaced by section 50 of the Insurance Act.

4.3. Section 50 of the Insurance Act reads as follows:

"(1) An insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) may not, without the approval of the Prudential Authority, transfer all or any part of its assets and liabilities relating to its insurance business to another insurer."

"(2) A branch of a foreign reinsurer or a Lloyd's underwriter may not, without the approval of the Prudential Authority, transfer all or any part of its assets and liabilities relating to its insurance business conducted in the Republic to another insurer."

4.4. Section 50 thus compels an insurer to seek the approval of the PA when assets and liabilities associated with insurance business are transferred to another insurer. However, it is silent on the transfer of assets and liabilities associated with insurance business from an insurer to a pension fund or any other persons or entities. Stated differently, the PA acknowledges that section 50 of the Insurance Act in its current formulation does not specifically require the prior approval of the PA for the transfer of assets and liabilities associated with insurance business from insurers to pension funds.

4.5. The PA is of the view that the lack of an express provision in section 50 of the Insurance Act to deal with the transfer of assets and liabilities associated with insurance business from insurers to pension funds creates uncertainty. In order to clarify the position and remove any uncertainty, the PA intends to propose an amendment to the Insurance Act to specify that transfers of assets and liabilities associated with insurance business from an insurer to a pension fund or any other persons or entities will require the approval of the PA in accordance with section 50 of the Insurance Act.

4.6. In the interim and pending the necessary amendments to the Insurance Act, the PA and the FSCA intend to engage insurers through the Authorites' on-going supervisory engagements regarding information relating to the transfers of all or any part of an insurer's assets and liabilities relating to its insurance business to a pension fund or any other persons or entities. The PA and the FSCA may issue further communication in this regard as the Authorities deem necessary.

Kuben Naidoo
Deputy Governor and CEO: Prudential Authority

Date: 17 February 2021

Appendix 1

APPROVAL IN TERMS OF SECTION 50(1) OF THE INSURANCE ACT, 2017 (Act 18 of 2017).

1. Standing approval in terms of section 50(1) of the Insurance Act is hereby granted for the replacement of-

1.1. a compulsory linked annuity policy issued by one insurer with a compulsory linked annuity policy issued by another insurer; or

1.2. a compulsory linked annuity policy issued by one insurer with a compulsory conventional annuity policy issued by another insurer,

subject to the following conditions:-

1.2.1. a written agreement must be entered into between the two insurers concerned, which agreement must contain at least the information required in **Annexure 1** to this Prudential Communication;

1.2.2. the policyholder of the compulsory annuity policy must be given a written statement with details of the value, the terms and the conditions applicable to the policy prior to the inception of the replacement policy with another insurer. This statement must be in the format required in **Annexure 2** to this Prudential Communication;

1.2.3. the policyholder of the compulsory annuity policy must give prior written consent to the replacement of the policy by another insurer in the format required in **Annexure 3** to this Prudential Communication;

1.2.4. the new policy shall have conditions that are essentially the same as the conditions imposed by the pension fund that incepted the compulsory annuity policy in the first instance;

1.2.5. annual reporting by the chief executive officer of each insurer to the Prudential Authority must be done in the format required in **Annexure 4** to this Prudential Communication;

1.2.6. the remuneration of any fees charged by the transferor, transferee or any intermediary for the replacement of a compulsory annuity policy may not have the effect that the replacement value of the policy be reduced; and

1.2.7. the applicable guidelines set out in this Prudential Communication must at all times be adhered to.

NB. Therefore, please note that a compulsory conventional annuity policy may not be replaced by a compulsory linked annuity policy and that any kind of fees charged for the replacement of such a policy may not be set off against the transfer value of the policy.

2. The Prudential Authority may at any time-

2.1. revoke this standing approval, or amend any conditions subject to which it was granted, or impose new conditions; or

2.2. require from insurers to furnish the Prudential Authority with information concerning any matter regarding any replacement of such a policy.

3. If the Prudential Authority revokes an approval, or amends or adds conditions of approval, as contemplated in 2.1, this will not affect replacements already completed under this standing approval.

Appendix 2

Definitions

1. For the purposes of this Prudential Communication

1.1. **Insurance Act** means the Insurance Act, 2017 (Act 18 of 2017);

1.2. **Compulsory annuity policy** means an annuity policy that conforms to the requirements of the Pension Funds Act , which is taken out by or on behalf of an individual with an insurer, as part of the benefits due to a member of a pension fund in terms of the rules of the pension fund, which rules specify that such annuity policies may not be commuted for cash and may not be assigned to any other person, as contemplated by the Pension Funds Act;

1.3. **Compulsory linked annuity policy** means a compulsory annuity policy in respect of which:

a) the liability of the insurer is limited to the value of an investment account which is credited with an initial amount, nett of initial expenses, and subsequent nett investment return earned, and which is debited with annuity payments and ongoing expenses; and

b) the annuitant may vary the size of the annuity payments within limits determined by Practice Note RF 1/96 or Practice Notes which may replace it, issued by the South African Revenue Service.

1.4. **Compulsory conventional annuity policy** means a compulsory annuity policy in respect of which the liability of the insurer is the payment of a contractual periodic payment (i.e. the annuity with or without profit) for the remainder of the life of the annuitant or to one or more dependants or nominees after the death of the annuitant.

1.5. **Insurer** means a person licensed to conduct life insurance business in terms of the Insurance Act;

1.6. **Pension fund** means a pension fund defined in section 1 of the Pension Funds Act;

1.7. **Pension Funds Act** means the Pension Funds Act, 1956 (Act 24 of 1956).

Annexure 1

MASTER AGREEMENT

Between

First insurer:..

Domicilium of first insurer:

and

Second insurer:...

Domicilium of second insurer:

for the replacement for compulsory linked annuity policies in terms of section 50 of the Insurance Act, 2017 (Act 18 of 2017), as contemplated in Prudential Communication 1 of 2021, issued by the Prudential Authority.

Effective date of this agreement:

The insurer who has issued the policy in the first place will be referred to as the transferor.

The insurer who accepts the obligation for issuing a new policy will be referred to as the transferee.

The first and second insurers hereby agree that from the effective date of this agreement replacement of one insurer by the other insurer in terms of section 50 of the Insurance Act, 2017 (Act 18 of 2017), will be done only in terms of the conditional approval granted by the Prudential Authority in terms of Prudential Communication 1 of 2021.

It is agreed that:

1. Only compulsory linked annuity policies issued to a person by an insurer will be affected by this agreement.
2. Such compulsory linked annuity policy can only be replaced by another compulsory linked annuity policy or a compulsory conventional annuity policy issued in the name of the same person.
3. The new policy shall have conditions that are essentially the same as the conditions imposed by the pension fund that incepted the compulsory annuity policy in the first instance. In particular, the compulsory annuity policy shall be non-commutable and non-assignable and will comply with the constraints attached to approvals granted in terms of the Pension Funds Act.
4. The full name of the pension fund which took out the original compulsory annuity policy shall be noted with the replacement of such a policy.
5. All statutory requirements regarding disclosure of information to a new policyholder will apply to a new policy that is issued in terms of this replacement.

6. No cash amount shall be payable to the policyholder as a result of the replacement.
7. The policyholder shall be informed, in writing, prior to the replacement of the policy in order to be able to make an informed decision. The format of the statement of information will comply with **Annexure 2** to Prudential Communication 1 of 2021.
8. No replacement shall be effected unless the policyholder consents in writing to the replacement. The format of the written consent shall comply with **Annexure 3** to Prudential Communication 1 of 2021.
9. The date on which the investment will be realised by the transferor insurer as well as the date on which the investment will be effected by the transferee insurer must clearly be defined and disclosed to the policyholder.
10. The transferor will forward all the necessary documentation regarding the replacement for the policy to the transferee within an agreed time period. The documentation shall include a copy of the statement of information as supplied to the policyholder, as well as a copy of the consent of the policyholder for the replacement of the policy.
11. The transferee shall issue a policy to the policyholder. (Refer to clause 3 above)
12. Both the transferor and the transferee shall retain copies of the information supplied by them and the consent given by the policyholder, which shall be available to the Prudential Authority and the Ombudsman for Long-term Insurance, on request.
13. The chief executive officers of the transferor and transferee must issue a certificate in the format of **Annexure 4**, together with each annual statutory return stating that replacements have been conducted in terms of the conditional standing approval granted by the Prudential Authority in terms of Prudential Communication 1 of 2021 and that all policyholders that substituted their policies received transfer values which accord full recognition to their rights and reasonable benefit expectations.

SIGNED:

On behalf of the first insurer:......................................Capacity:................................

Print name:...Date:...................................

On behalf of the second insurer:................................Capacity:................................

Print name: ....Date:...................................

(Authorisation of signatures must be attached to agreement i.e. copy of Resolution passed at a Board meeting)

Annexure 2

Format of written information to be given to a policyholder by the transferor and transferee insurers in terms of section 50(5)(a) of the Insurance Act, 2017 (Act No.18 of 2017) , prior to the replacement of the policy taking place.

1 The transferor insurer must give the policyholder the following details-

1.1. Name of transferor insurer and the policy number(s) of the nominated policy/ies to be substituted.

1.2. The anniversary date of the original policy issued by the transferor.

1.3. The amount of the annuity last paid by the transferor prior to the application being received, the date of the payment and the percentage opted as annuity payment of the capital invested at the time. (Refer to limits determined by Practice Note RF 1/96 or Practice Notes which may replace it, issued by the South African Revenue Service).

1.4. The actual Rand amount of the full benefit in the investment account or unit values of the compulsory linked annuity policy prior to the replacement. State the date on which the value is so determined.

1.5. The date on which the investment will be realised as well as the date on which the transfer of the money will be effected must be defined. Should the realisation of the investments take place after the consent from the policyholder was received, the policyholder must be informed that the transfer values will be re-calculated as at that other date. The risks involved, namely that the values calculated on the two dates, can differ, must be explained.

1.6. The actual Rand amount of any fees or penalties levied by the transferor in connection with the replacement. Indicate who will be responsible to pay these expenses.

Please take note that any kind of fees charged for the replacement of such a policy may not be set off against the transfer value of the policy.

1.7. Where assets are transferred rather than an amount in cash, the assets should be identified to the member as well as the fair value and market value of such assets. Indicate the date on which the values of the assets to be transferred are calculated. Also see par.1.4.

1.8. Mention that the compulsory annuity policy may not be commuted for cash and that the full amount of the investment account should be invested by the transferee insurer.

1.9. Provide the name of the pension fund of which the policyholder was a member.

1.10. Any terms and conditions attached to the nominated compulsory annuity policy issued by the transferor which will be carried across to the transferee. (Such terms and conditions could have been mandated by the rules of the pension fund)

1.11. Provide information on the arrangements between insurers regarding the payment of any annuity payments made after the policyholder consented to the replacement, but prior to the replacement actually taking place. Also address the arrangements regarding the investment return earned over the corresponding period.

1.12. Explain tax implication for policyholder with regard to the transfer.

SIGNED:

On behalf of the transferor insurer:................................Capacity:................................

Print name:.. Date:.....................................

(**Authorisation of signatures must be attached to this document i.e. copy of Resolution passed at a Board meeting**)

CONFIRMATION BY POLICYHOLDER:

I, ...[name and surname of policyholder / person authorised by a pension fund (name pension fund)] have received the above information from the transferor insurer and I have noted the contents of this document.

Signature...Date:..........................

2 The transferee insurer must give the policyholder the following details-

2.1. Name of transferor and policy number of policy issued by transferor.
2.2. Provide the name of the pension fund of which the policyholder was a member. Also state that the anniversary date of the substituted policy shall remain the same as the original policy issued by the transferor insurer.
2.3. Any terms and conditions attached to the nominated compulsory annuity policy to be transferred from the transferor which will be carried across to the new policy to be issued by transferee. (Such terms and conditions could have been mandated by the rules of the pension fund)
2.4. The estimated amount of the transfer value and the date on which it is expected to be paid over by the transferor.
2.5. The type of annuity purchased from transferee e.g. a compulsory linked annuity policy or a compulsory conventional annuity policy. Explain the nature of the type of policy.
2.6. The estimated amount of the annuity payable and the date from which it will be paid.
2.7. Mention the portfolio of investment in the case of the new policy being a compulsory linked annuity policy or the prospects for future growth in the case of the new policy being a compulsory conventional annuity policy.
2.8. Explain the risks involved, namely that if the actual amount received by the transferee differ from the estimated transfer value, the final amount of the annuity may also differ.
2.9. The Rand amount of any commission or other remuneration payable to the intermediary who advises the transferring policyholder, if any. Mention who will be responsible for the payment of these expenses.

Please take note that any kind of fees charged for the replacement of such a policy may not be set off against the transfer value of the policy.

2.10. Provide information on the arrangements between insurers regarding the payment of any annuity payments made after the policyholder consented to the replacement, but prior to the replacement actually taking place. Also address the arrangements regarding the investment return earned over the corresponding period.

2.11. Explain tax implication for policyholder with regard to the replacement.

SIGNED:

On behalf of the transferee insurer:...............................Capacity:...............................

Print name:... Date:....................................

(**Authorisation of signatures must be attached to this document i.e. copy of Resolution passed at a Board meeting**)

CONFIRMATION BY POLICYHOLDER:

I, ...[name and surname of policyholder / person authorised by a pension fund (name pension fund)] have received the above information from the transferee insurer and I have noted the contents of this document.

Signature...Date:........................

Annexure 3

Format of written consent to be given by the policyholder in terms of section 50(5)(a) of the Insurance Act, 2017 (Act 18 of 2017)

I..(policyholder/s name and surname / person authorised by pension fund - mention pension funds name) hereby confirm that I have received written particulars on all relevant information in order to satisfy the Prudential Authority that I, the policyholder has been made aware of the replacement of the policy and I am aware of the nature and the terms of the replacement of the compulsory annuity policy, issued by .... (transferor insurers name) by the compulsory annuity policy to be issued by ....(transferee insurers name) and I consent to such replacement.

I have taken note that the final value of the investments of my policy to be replaced, may differ from the amounts quoted.

However, I want to qualify the above statement as follows-

....
....
....

Signed: .... (Policyholder)

Print name ....

Date : ....

Annexure 4

Annual Certificate issued by the Chief Executive Officers of the Transferee and Transferor Insurers

(To be completed in duplicate and addressed to the CEO: Prudential Authority, P O BOX 427, Pretoria, 0001)

Insurance Act, 2017 (Act 18 of 2017): Section 50(1) standing approval granted in Prudential Communication 1 of 2021

Annual certificate of compliance by the Chief Executive Officer in terms of the conditional approval granted by the Prudential Authority to substitute certain compulsory annuity policies.

Name of Licensed Life Insurer:..

Financial year end (Period under review): ....

I, , **Chief Executive Officer** of the abovementioned insurer certify that all replacements of compulsory annuity policies from this company by any other insurer, and from other insurance companies to this company, have been conducted in accordance with the conditions attached to the standing approval granted by the Prudential Authority in terms of section 50(1) of the Insurance Act, 2017 and issued in terms of Prudential Communication 1 of 2021.

All policyholders of the abovementioned insurer whose compulsory annuity policies were transferred, received replacement values which accord full recognition to their rights and reasonable benefit expectations.

All policyholders of substituted policies gave their written consent after receiving written disclosure in accordance with the conditions attached to the standing approval granted.

The abovementioned insurer has retained copies of the policyholders consent documents.

Signed: .... (Chief Executive Officer)

Print name: ....

Date: ....