



Financial Sector
Conduct Authority

FSCA COMMUNICATION 16 OF 2024 (RF)

Updated Requirements for rule amendments to be submitted by retirement funds to give effect to the Two-Component System in terms of the Revenue Laws Amendment Bill, 2023 and the Pension Funds Amendment Bill, 2024

1. PURPOSE

Following the publication of FSCA Communication 3 of 2024 (RF)¹ (Communication 3) in February 2024 there have been changes to the proposed Revenue Laws Amendment Bill, 2023 and the Pension Funds Amendment Bill, 2024 and engagements with the industry, which require the withdrawal of Communication 3 and the issuing of this Communication. The purpose of this Communication is to set out the revised requirements of the Financial Sector Conduct Authority (“Authority”) regarding rule amendments to give effect to the two-component system and outlines the approach that the Authority will be taking towards applications for such amendments.

2. BACKGROUND

- 2.1 Following extensive consultation and engagement, the Revenue Laws Amendment Bill, 2023 (RLAB) has been finalised in Parliament and now merely requires the assent of the President for purposes of promulgation. The final iteration of the RLAB makes provision for the following:
- (a) The rules of the fund must make provision for the member’s interest in the retirement component, the savings component and the vested component;
 - (b) Seeding capital - a once-off amount of 10% of the member’s total fund value of the vested component as at 31 August 2024 capped at R30 000 is allocated to the savings component;
 - (c) Application of the two-component system to all funds including defined benefit funds (also public sector funds) save for certain exceptions for some members and funds, as outlined below;
 - (d) Exemption for legacy retirement annuity funds upon application to the Authority;
 - (e) Deductions (proportionately from each component) in terms of Section 37D of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PFA) are to be provided for from all components; and
 - (f) An effective commencement date of 1 September 2024.

3. REQUIREMENTS OF THE TWO-COMPONENT SYSTEM

Two-Component System (1 September 2024)

- 3.1 From 1 September 2024, all contributions paid to retirement funds (pension funds, provident funds, or retirement annuity funds) must, in terms of the proposed amendments, be allocated to two different components, a retirement component and a savings component, which components must be established in the rules of the fund.

¹ Available at on FSCA website at > Regulatory Framework > Industry Communication > Retirement Funds > FSCA Communication or by clicking on the following link:
[https://www.fsca.co.za/Regulatory%20Frameworks/Regulatory%20Frameworks%20Documents/FSCA%20Communication%203%20of%202024%20\(RF\).pdf](https://www.fsca.co.za/Regulatory%20Frameworks/Regulatory%20Frameworks%20Documents/FSCA%20Communication%203%20of%202024%20(RF).pdf)

3.2 In respect of the “retirement component”:

- (a) from 1 September 2024 two-thirds of the total net retirement fund contributions are to be allocated to the retirement component, together with fund return;
- (b) any amounts transferred on or after 1 September 2024 from a retirement component in another fund are to be allocated/credited to this component, together with fund return;
- (c) the total value of the member’s interest in the retirement component is to be paid in the form of an annuity; and
- (d) the exceptions to paying an annuity are where the member is deceased or where the member elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund and where the *de minimis* threshold (which is currently R165 000) applies.

3.3 In respect of the “savings component”:

- (a) a once-off amount of 10% of the total value of the vested component (of each contract where members may have multiple contracts) in the fund as at 31 August 2024 limited to R30 000 per contract, is to be allocated to this component on or after 1 September 2024 (the seeding capital), with the allocation backdated to 1 September 2024;
- (b) from 1 September 2024 one-third of the total net retirement contributions to a retirement fund must be allocated to this component, together with fund return;
- (c) any amounts transferred on or after 1 September 2024 from a savings component in another fund may be allocated to this component if the member’s remaining total interest in that fund is transferred in terms of the rules of the fund;
- (d) the member may elect to transfer the value of the member’s interest in this component, or a part thereof, into the member’s retirement component of the same fund; and
- (e) must allow for a “savings withdrawal benefit”, which is that portion of the member’s savings component that the member may elect to withdraw without leaving employment or terminating membership of the fund, subject to such withdrawal being limited to –
 - (i) one withdrawal per contract during a tax year, and
 - (ii) the value of each withdrawal not being less than R2 000 before taking into account any charges or transaction costs.

Provided that where a member terminates their membership in their fund within any year of assessment and such member has made a withdrawal from that fund in that tax year and the remaining value of the member’s interest in the savings component is less than R2 000, such member may be allowed a second withdrawal of the total balance in the savings component.

- (f) The savings component not paid as a lump sum on retirement, will be dealt with in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962) (Income Tax Act).

3.4 In respect of the “vested component”:

- (a) includes the value of the member’s interest in the fund that exists as at 31 August 2024 together with fund return;
- (b) the member’s interest in this component, after taking into account the deduction and allocation of the seed capital to the savings component, is subject to and must be paid in accordance with the rules of the fund that exist immediately prior to 1 September 2024;
- (c) no contributions may be made to this component on or after 1 September 2024, save for arrear contributions relating to the period before 1 September 2024 and certain exceptions provided for in paragraph 4 below and legacy retirement annuity policy members;
- (d) any amounts transferred from a vested component in another fund on or after 1 September 2024 must be allocated to this component if the member’s total retirement interest in that fund is transferred in terms of the rules of the fund;
- (e) the member may elect to transfer the value of this component, or a part thereof, into the member’s retirement component of the same fund; and

- (f) the tax regime in effect before 1 September 2024 will apply in respect of the vested component, which means that, for example, members of occupational funds will still be allowed to receive that vested benefit in cash on termination of employment before retirement.
- (g) For pension funds described in paragraph (a) and (b) of the definition of pension fund in the Income Tax Act, the value of the benefit in the vested component on 31 August 2024 will be a vested benefit for the purposes of annuitisation.

4. MEMBERS OF PROVIDENT FUNDS 55 YEARS AND OVER ON 1 MARCH 2021 AND WHO ARE STILL MEMBERS OF THE SAME PROVIDENT FUND

- 4.1 Provident fund or provident preservation fund members who were 55 years or older on 1 March 2021 and who are still members of the same provident fund or provident preservation fund are exempted from these provisions, unless such member elects to opt into the two-component system. Should this category of members not opt into the two-component system, it is further required that they remain a member of the same provident fund that they were in on 1 March 2021. Should these members subsequently be transferred to another retirement fund after 1 September 2024, then such members on transfer at any time are automatically in the two-component system.
- 4.2 This category of fund members may elect to participate in the two-component system within a period as prescribed in the Income Tax Act and the seed amount will be calculated on the date in accordance with the Income Tax Act.
- 4.3 This category of fund members, who do not opt into the two-component system, have their benefits ring-fenced and these are regarded as vested benefits. Such members retain their rights at retirement to elect to commute their full benefit in cash and/or remain as contributing members according to the pre-1 March 2021 regime.

5. LIQUIDATIONS

From 1 September 2024, on liquidation of a fund, members may only access their retirement component on their retirement date. On liquidation the retirement component needs to be transferred to an approved retirement fund. Funds are required to amend their rules to deal with liquidations.

6. OTHER MEMBERS EXEMPTED FROM THE TWO-COMPONENT SYSTEM

- (a) Unclaimed benefit members in both unclaimed benefit funds and any other approved fund;
- (b) Pensioners; and
- (c) Beneficiary fund members.

7. REQUIREMENTS FOR DEFINED BENEFIT FUNDS

- 7.1 The rules of defined benefit funds will be required to provide for the following:
 - (a) the existing rule in terms of which the fund pays a pension on a member's retirement, determined according to a defined formula stipulated in the registered rules must remain;
 - (b) a "seed capital amount" representing 10% of the value of the member's past service in the fund immediately before 1 September 2024, subject to a maximum of the past service representing a present value of R30 000;
 - (c) a clear indication that if a part of the savings component is paid to the member prior to retirement, the pensionable service of the member would need to be reduced to make this payment financially neutral to the fund at the time of payment. In this case, the valuator will be required to calculate the capital equivalent of the 10% of pensionable service prior to 1 September 2024 for seeding and one third of pensionable service after 1 September 2024, adjusted for any prior cash payments already made from the savings

- component. This will be the value of the savings component at the intended cash payment date;
- (d) once the member has decided on the amount to be paid, the valuator will be required to calculate the service given up by the member representing the value of the cash payment made and the reduced pensionable service that will be available at retirement in calculating the pension. The definition of pensionable service in the rules will also require amendment to allow for this; and
 - (e) In respect of members of defined benefit funds withdrawing from their savings component prior to retirement, the appropriate reduction of the period of service would have to be made. Should the fund wish to adopt a different methodology, this must be approved by the Authority in advance, whereafter this must be clearly set out in the registered rules in order to give effect thereto.

8. DEDUCTIONS IN TERMS OF SECTION 37D OF THE PFA

The rules will need to provide that deductions in terms of section 37D will be effected proportionately across the 3 components, i.e. the vested, retirement and savings components.

9. OTHER

- 9.1 The rules of the fund must provide how benefits will be impacted when a person ceases to be a tax resident for an uninterrupted period of 3 years or departs from South Africa at the expiry of a work or visit visa.
- 9.2 The total retirement contributions for the purposes of allocating to the respective components must be described as any amount contributed to a fund by or on behalf of a member on or after 1 September 2024 after the deduction of any charges and risk premiums.

10. MEMBER COMMUNICATION

- 10.1 All retirement funds, save for the exceptions delineated in paragraph 6 above, are expected to communicate the proposed legislative changes to members in a manner which is simple, clear, and comprehensive and such communication must be timely and on-going as may be required.
- 10.2 The communication should, *inter alia*, alert members to the impact that any withdrawal from the savings component will have on the value of the member's benefit. This can be done by way of illustration using examples.
- 10.3 Member communication must be clear that marginal tax rates are applicable to savings withdrawal benefits before retirement.
- 10.4 The Authority may request a copy of the communication issued by or on behalf of the fund to the members of the fund.

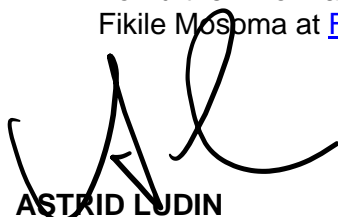
11. SUBMISSION OF TWO-COMPONENT AMENDMENTS

- 11.1 Please note that in the interest of the Authority considering application for amendments expeditiously, it is requested that all rule amendments in respect of the two-component system should be limited to the rule amendments delineated above. No other rule changes are to form part of such rule amendment submissions. This will save time on consideration of these cases.
- 11.2 Funds and/or administrators may commence submitting two-component amendments from 2 May 2024 until 15 July 2024 to enable the FSCA Retirement Fund Reviews and Authorisations department to process and approve them timeously before the 1 September 2024 deadline. These rule amendment submissions will be processed on a first-come-first-serve basis and any submissions made after 15 July 2024 will only be processed once the first batch has been completed.

- 11.3 Rule revisions and consolidations will not be accepted between 2 May 2024 and 15 July 2024. If they are submitted before 2 May 2024, they will be considered simultaneously with the fund's two-pot rule amendment.
- 11.4 Rule amendments submitted in addition to the two-pot rule amendments will be considered simultaneously with the fund's two-pot rule amendments. Funds are requested to alert the Authority in the covering letter to the other amendments.
- 11.5 Two-pot rule amendments will have a dedicated tab for submission on the FSCA retirement online system, available at www.fsca.co.za < *Regulated Entities* < *E-Services* < *Retirement Funds*.

12. ENQUIRIES

For further information regarding this Communication please contact the FSCA by emailing Ms. Fikile Mosoma at Fikile.Mosoma@fsca.co.za.



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