



Annexure A: CONSULTATION MATRIX

**DRAFT DETERMINATION OF CONDITIONS FOR PURPOSES OF THE DEFINITION OF
LEGACY RETIREMENT ANNUITY POLICY**

August 2024

SECTION A - List of Commentators

No	Name of Organisation	Acronym
1	Association for Savings and Investment South Africa	ASISA
2	Momentum Group Limited	Momentum

SECTION B - PUBLIC COMMENTS RECEIVED ON COMMENTS ON THE DETERMINATION OF CONDITIONS FOR PURPOSES OF THE DEFINITION OF LEGACY RETIREMENT ANNUITY POLICY AND RESPONSES FROM THE FSCA

	Commentator or	Paragraph in draft Determination	Issue / Comment	Recommendation by commentator	FSCA Response
1. DEFINITIONS					
			No comments received		
2. CONDITIONS FOR A LEGACY RETIREMENT ANNUITY POLICY					
1.	ASISA	2(2) The retirement annuity fund must – (a) have entered into the policy before 1 September 2024; (b) be closed to new members on legacy retirement annuity policies;	It is important to know whether both conditions should be complied with or only one of the conditions. Small change to condition (b) suggested to remove any ambiguity.	Proposed wording: “The retirement annuity fund must – (a) have entered into the policy before 1 September 2024; and (b) be closed to new members on in respect of legacy retirement annuity	Agreed. Recommendation accepted. No need to add “with effect from 1 September 2024” again though, as the definition of “legacy retirement annuity policy” in the Income Tax Act, 1962 already defines this.

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				policies <u>with effect from 1 September 2024;</u> "	
2.	Momentum	2(2) The retirement annuity fund must – (a) have entered into the policy before 1 September 2024; (b) be closed to new members on legacy retirement annuity policies;	Small change to condition (b) suggested to remove any ambiguity	The retirement annuity fund must – (a) have entered into the policy before 1 September 2024; <u>(b) cease to issue any new legacy retirement annuity policies from 1 September 2024;</u>	Suggestion noted, however there is no need to specifically mention 1 September again as the definition of “legacy retirement annuity policy” in the Income Tax Act, 1962 already defines it to, by nature, be entered into before that date.
3.	ASISA	2(3) The policy needs to have been established in the form of a binding contract no part of which can be changed by either the fund, the insurer or the member, without the agreement of the other parties.	It is not clear what the purpose of this condition is. Any contract entered into would be binding on all parties and changes would be subject to mutual consent. However, it is important to note that the contract may confer rights on the insurer or the member to	Delete par 2(3) The policy needs to have been established in the form of a binding contract no part of which can be changed by either the fund, the insurer or the member, without the agreement of the other parties. <u>Alternatively:</u> Proposed wording -	Proposed deletion not accepted. The alternative proposed wording from Momentum below accepted with some alternative drafting, as the intention is to ensure that no unilateral changes are allowed that are not specifically catered for in the policy document / initial policy agreement, making it impossible to implement the two component system without all

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			<p>make permissible policy changes such as voluntary premium growth, fee reviews etc. that would not require mutual consent. This has been common practice and remains the construct of the legacy retirement annuity policy. It also accords with the legal principles of contract that permit unilateral changes by one of the parties applying their discretion provided the contract expressly permits this - for instance contracts by product providers have provisions enabling the provider to increase fees under specified circumstances (such as annually). This type of contractual term is agreed between the parties at the onset of the contract / policy.</p>	<p>“The policy needs to have been established in the form of a binding contract no part of which can be changed by either the fund, the insurer or the member, without the agreement of the other parties. <u>The retirement annuity policy constitutes a binding agreement between the parties. This does not preclude the policy terms allowing for certain changes to be effected by the insurer or fund member, such as, but not limited to, voluntary premium increases and fee reviews by the insurer as described in the policy. Any other material changes to the policy not expressly permitted by the policy may only be made subject to agreement between all of the parties”.</u></p>	<p>parties agreement to the change in the policy document.</p>

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			<p>If there is no clear reason for this condition, it should be removed.</p> <p>If, however, there is a concern that a legacy retirement annuity policy may be unilaterally changed so that it no longer complies with these conditions, then wording is proposed to cater for that.</p>	<p><u>Alternatively:</u></p> <p>“The policy needs to have been established in the form of a binding contract <u>and these conditions must continue to be applicable to that contract in order for the policy to continue to qualify as exempted for purposes of the definitions of “retirement component” and “savings component” in section 1 of the Act. no part of which can be changed by either the fund, the insurer or the member, without the agreement of the other parties.”</u></p>	<p>The below alternative proposed is accepted, with a some alternative drafting, to reflect the intention behind the condition.</p>
4.	Momentum	2(3) The policy needs to have been established in the form of a binding contract no part of which can be changed by	Any contract entered into would be binding on all parties and changes would be subject to mutual consent. However, it is important to note that the	We propose that this clause is removed, alternatively reworded - “The Retirement Annuity Policy constitutes a binding agreement between the Parties. The construct of the	Proposed alternative wording accepted with some alternative drafting..

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		<p>either the fund, the insurer or the member, without the agreement of the other parties.</p>	<p>contract may confer rights on the insurer or the client to make permissible policy changes such as voluntary premium growth, fee reviews etc.) that would not require mutual consent. This has been common practice and remains the construct of the legacy retirement annuity policy. It also accords with the legal principles of contract that permit unilateral changes by one of the parties apply their discretion provided the contract expressly permits this - for instance contracts by product providers have provisions enabling the provider to increase fees under specified circumstances (such as annually). This type of contractual term is agreed</p>	<p>policy is such that certain permissible changes may be effected by the insurer or policyholder such as, but not limited to, voluntary premium growth and fee reviews effected by the insurer as described in the policy. Any other material changes to the policy not expressly permissible in the policy may only be made subject to agreement between the parties."</p>	

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			between the parties at the onset of the contract / policy.		
5.	ASISA	<p>2(4)(a) The benefit offered by the retirement annuity fund, and insured by the fund with the insurer through a retirement annuity policy, must constitute:</p> <p>(a) A sum insured at either death or retirement, increased with bonuses declared on a regular basis through the lifetime of the policy, with no cash benefit available on early withdrawal; or</p>	<p>A few changes to the wording are suggested. The reference to “no cash benefit available” is incorrect as there may be a defined surrender basis. However, there may not be a fund value upon which a seeding amount can be calculated.</p>	<p>Proposed wording:</p> <p>The benefit offered by the retirement annuity fund, and insured by the fund with the insurer through a retirement annuity policy, must constitute:</p> <p>(a) A <u>sum insured benefit payable</u> at either death or retirement, increased with bonuses declared on a regular basis throughout the lifetime of the policy, with no cash benefit available on early withdrawal with no defined fund value or no partial withdrawal benefit available according to the actuarial basis or policy contract;</p>	<p>If there is a defined surrender basis, the seeding amount can be calculated based on the surrender basis.</p> <p>The understood concern is that a part of the policy cannot be taken as a savings component withdrawal, without invalidating the remaining promised benefits.</p> <p>Wording partially amended.</p>

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6.	Momentum	<p>2(4)(a) The benefit offered by the retirement annuity fund, and insured by the fund with the insurer through a retirement annuity policy, must constitute:</p> <p>(a) A sum insured at either death or retirement, increased with bonuses declared on a regular basis throughout the lifetime of the policy, with no cash benefit available on early withdrawal; or</p>	<p>A few changes to the wording are suggested. The reference to “no cash benefit available” is incorrect as there may be a defined surrender basis. However, there may not be a fund value upon which a seeding amount can be calculated.</p>	<p>2(4)(a) is proposed to be reworded as follows: “A <u>benefit payable</u> at either death or retirement, increased with bonuses declared on a regular basis throughout the lifetime of the policy, <u>with no defined fund value or no partial withdrawal benefit available according to the actuarial basis or policy contract;</u></p>	<p>Please see comments above.</p>

7.	ASISA	<p>2(4)(b)</p> <p>The benefit offered by the retirement annuity fund, and insured by the fund with the insurer through a retirement annuity policy, must constitute:</p> <p>(b) a benefit on death relating to the accumulation of contributions towards retirement, subject to a minimum of a sum insured (to be chosen by the member between a minimum and maximum value), structured in such a way that the premiums for the sum at risk (sum assured less accumulation of retirement contributions) are deducted from regular contributions as well as from the previously accumulated contributions to retirement over time, depending on the</p>	<p>Not all fund members with universal life policies selected a sum insured (i.e. the sum insured could be zero for many members with universal life policies). The policies of those members who did not select a sum insured should also be exempted from two-component compliance.</p> <p>It should also be noted that policies with a universal life construct were designed on very old and inflexible systems, and those policies where no sum insured was selected are administered on the same systems as the ones where the policies with a sum insured are administered. It would be extremely risky and probably not possible to attempt to introduce two-component functionality on to those very old systems.</p>	<p>Proposed wording:</p> <p>The benefit offered by the retirement annuity fund, and insured by the fund with the insurer through a retirement annuity policy, must constitute:</p> <p>(b) a benefit on death relating to the accumulation of contributions towards retirement, subject to a minimum of a sum insured (to be chosen by the member between a minimum and maximum value) where the member had an option at inception to add a sum insured (irrespective of whether a sum insured was added or not), and where, if a sum insured was added, it is structured in such a way that the premiums for the sum at risk (sum assured less accumulation of retirement</p>	<p>Proposed wording not accepted.</p> <p>A policy which represents an investment alone should not be exempted from the two component system. It is the interaction with the insurance part and the funding of this that results in legacy RAs being exempted.</p> <p>All administration systems had to be revamped to allow for the application of two pots.</p>
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		experience of the policy with regard to contributions and investment returns, without the need to remove or reprice the risk over time.	In addition, where the fund member did select a sum insured, over time (depending on the longevity of the member) there will come a point where the policy “breaks through” i.e. the accumulated savings will exceed the sum insured and the insured element of the policy will fall away. Should this occur after 1 September 2024, there will then no longer be a sum insured and based on the current wording of this condition, the condition will no longer be applicable and therefore the exemption will fall away. This will force the policy into the two-component system.	contributions) are deducted from regular contributions as well as from the previously accumulated contributions to retirement over time, depending on the experience of the policy with regard to contributions and investment returns, without the need to remove or reprice the risk over time.	
8.	Momentum	2(4)(b)		<i>2(4)(b) is proposed to be reworded as follows:</i>	Proposed alternative wording accepted, with amendment.

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		<p>The benefit offered by the retirement annuity fund, and insured by the fund with the insurer through a retirement annuity policy, must constitute:</p> <p>(b) a benefit on death relating to the accumulation of contributions towards retirement, subject to a minimum of a sum insured (to be chosen by the member between a minimum and maximum value), structured in such a way that the premiums for the sum at risk (sum assured less accumulation of retirement contributions) are deducted from regular contributions as well as from the previously accumulated contributions to retirement over time,</p>	<p>The definition can be simplified to remove ambiguity.</p>	<p>a benefit on death relating to the accumulation of contributions towards retirement, subject to a minimum of a sum insured (<u>as determined by the actuarial basis</u>), structured in such a way that the <u>risk</u> premiums for the sum at risk (sum assured less accumulation of retirement contributions) are deducted <u>regularly</u> from <u>the regular contribution or accumulated fund value</u> as well as from the previously accumulated contributions to retirement over time, depending on the experience of the policy with regard to contributions and investment returns; <u>or</u></p>	<p>The minimum and maximum sum insured must be as defined in the policy, not as determined by the actuarial basis. This part of the suggested change was, therefore, not included.</p>

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		<p>depending on the experience of the policy with regard to contributions and investment returns, without the need to remove or reprice the risk over time.</p>			
9.	ASISA	<p>2(5)(a) The retirement annuity fund must – (a) be able to evidence that the application of the two-component system will result in a significant negative impact on the fair value of certain of the members’ retirement benefits in the fund through –</p>	<p>“Significant” is not defined and will make certification by the Head of Actuarial Function and Board problematic.</p> <p>Additional wording is also proposed for clarification.</p>	<p>Proposed wording: (a) be able to evidence that the application of the two-component system <u>on policies meeting the conditions described in section 2(4)</u> will result in a significant negative impact on the fair value of certain of the members’ retirement benefits in the fund through – (i) potentially attracting early termination charges, or</p>	<p>Additional wording for clarification accepted, but reference to the term “significant” negative impact not removed. The use of the word ‘significant’ will take on the grammatical meaning of the word, and need not be defined. The intention is that the negative impact will on the fair value for members would need to be substantial / noteworthy, and not nominal / negligible. It will therefore require an element of judgment on the side of the Head of Actuarial Function and Board as to whether</p>

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		<ul style="list-style-type: none"> (i) potentially attracting early termination charges, or (ii) policy guarantees being compromised, or (iii) any risk cover that may form part of the policies being compromised; 		<ul style="list-style-type: none"> (ii) policy guarantees being compromised, or (iii) any risk cover that may form part of the policies being compromised; 	the impact would in fact be significant. Without the use of the word it would mean any negative impact would suffice, which is not the intention.
10.	Momentum	<p>2(5)(a) The retirement annuity fund must –</p> <p>(a) be able to evidence that the application of the two-component system will result in a significant negative impact on the fair value of certain of the members’ retirement benefits in the fund through –</p>	<p>We believe that section 2(4) sufficiently defines legacy contracts making section 2(5)(a)(i) to (iii) superfluous.</p> <p>“Significant” is not defined and will make certification by the Head of Actuarial Function and Board problematic.</p> <p>To avoid ambiguity “certain members” should rather</p>	<p><i>We propose that Section 2(5)(a) is removed, or alternatively reworded as follows:</i></p> <p>be able to evidence that the application of the two-component system <u>on policies meeting the conditions described in section 2(4)</u> will result in a negative impact on the fair value of certain of the members’ retirement benefits in the fund;</p>	See response directly above.

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		<ul style="list-style-type: none"> (i) potentially attracting early termination charges, or (ii) policy guarantees being compromised, or (iii) any risk cover that may form part of the policies being compromised; 	specifically refer to the product as not all products would be excluded as legacy products.		
11	ASISA	<p>2(5)(b) The retirement annuity fund must –</p> <ul style="list-style-type: none"> (b) be able to evidence that all members are afforded the option to transfer to a different product in the same retirement annuity fund that is subject to the two-component system or to a different retirement annuity fund; 	<p>It is understood that the intention is that this applies only to those members in respect of whom a legacy retirement annuity policy has been issued. The wording should be clarified to make this clear.</p>	<p>Proposed wording:</p> <p>The retirement annuity fund must –</p> <ul style="list-style-type: none"> (b) be able to evidence that all members in <u>respect of whom legacy retirement annuity policies have been issued</u> are afforded the option to transfer to a different product in the same retirement annuity fund that is subject to 	<p>Proposed alternative wording accepted.</p>

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				the two-component system or to a different retirement annuity fund;	
12	ASISA	2(5)(c) The retirement annuity fund must – (c) ensure that elements of the two-component system do not apply only to a limited group of members of the fund, meaning that all members with a particular legacy retirement annuity policy will not be subject to the two-component system;	Wording is unclear. If the intent of wording is to ensure consistent treatment of “all legacy policies” then there is no concern.	Proposed wording: The retirement annuity fund must – (c) ensure all members in the fund with a particular type of legacy retirement annuity policy will be treated in the same way and will not be subject to the two-component system;	Proposed wording not accepted. The original paragraph gave further detail and was clearer as to the intention.
13	ASISA	2(5)(d) The retirement annuity fund must – (d) ensure that the fund rules have been amended to	The fund rules should specifically refer to legacy retirement annuity policies.	Proposed wording: The retirement annuity fund must –	Proposed alternative wording partially accepted. The reference to the relevant elements of the two-component system is retained as relevant as

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		provide that the relevant elements of the two-component system will not apply;	There will not be cases where only some elements of the two-component system are relevant to these members and some not. The entire two-component system will not apply in all instances.	(d) ensure that the fund rules have been amended to provide that the relevant elements of the two-component system will not apply <u>to these legacy retirement annuity policies</u> ;	it intends to refer to those elements of the two-component system as per the definitions in the Income Tax Act through which this determination is enabled. It is, therefore, the relevant elements in those definitions in particular that will not apply.
14	ASISA	2(5)(e) The retirement annuity fund must – (e) develop a comprehensive communication strategy with clear communication documentation explaining to all affected members why the fund is acting in the best interest of the members in relying on these conditions to be excluded from the	We support that the client must receive communication about the exemption of the legacy policies. However, while it is important to explain the options available to these members, it should not be a requirement that the fund explain why the policies are excluded from the two-component retirement system. Different funds will have different reasons in respect of	Proposed wording: The retirement annuity fund must – (e) develop a comprehensive communication strategy with clear communication documentation explaining clearly <u>communicate an explanation</u> to all affected members why the fund is acting in the best interest of the members in relying on these conditions to be that their <u>the policies issued in respect of</u>	Disagree. This must be considered from the member's perspective. The member expects to be able to have a savings withdrawal possibility, as has been communicated in the media and other funds relating to the two-component system. Since the members of a legacy retirement annuity policy will not have this possibility, they should be informed why they cannot access any part of their savings component.

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		<p>application of the two components system, and the impact this has on the members and the fund's rationale in this regard;</p>	<p>different types of legacy retirement annuity policies, and this could potentially cause confusion amongst affected members.</p> <p>In addition, it is felt that a "comprehensive communication strategy" is not necessary – what is important is clear communication to affected members.</p> <p>Further, the reference to "their policies" should be changed for the sake of clarity. The policies do not belong to the member. They belong to the retirement annuity fund and are taken out by the fund in respect of the member.</p>	<p><u>these members</u> are excluded from the application of the two-components system, <u>and the options available to these members if they want to participate in the two-component system</u> impact this has on the members and the fund's rationale in this regard;</p>	<p>This should not be written by the insurer like an option to change product.</p> <p>Disagree that a strategy is not necessary. The communication approach should be comprehensive, structured and planned, hence the reference to a strategy.</p> <p>Comment not clear as there is no reference in paragraph 2(5)(e) to "their policies".</p>

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15	ASISA	The retirement annuity fund must – (g) be able to evidence that the board of the fund has certified that these policies of the fund comply with these conditions.	It would seem unnecessary and inappropriate for the Board itself as well as the Head of Actuarial Function of the insurer to certify that these policies comply with the conditions. Once they have received the certification from the Head of Actuarial Function as required in par 2(5)(f), that should be adequate.	Proposed wording: The retirement annuity fund must – (g) be able to evidence that the board of the fund has certified <u>satisfied itself</u> that these policies of the fund comply with these conditions.	Proposed alternative wording not accepted. As the Board is ultimately responsible, they should certify that these conditions have been met. It is not enough to simply accept that the insurer has confirmed compliance.
16	Momentum	2(5)(g) The retirement annuity fund must – (g) be able to evidence that the board of the fund has certified that these policies of the fund comply with these conditions.	Should the RA Fund not simply provide a certification from the Board that the legacy RA policies comply with the condition?		This is the exact intention – the expectation is that the Board should certify that these conditions have been met .
3. AMENDMENT AND WITHDRAWAL OF NOTICE					
			No comments received		

	Commentator	Paragraph in draft Determination	Issue / Comment	Recommendation by commentator	FSCA Response
4. SHORT TITLE AND COMMENCEMENT					
			No comments received		

SECTION C – GENERAL COMMENTS

No	Commentator	Issue	Comment/Recommendation	FSCA Response
1.	Momentum	Clarifying comments	<ol style="list-style-type: none"> 1. We have not tried to narrow the FSCA definition more than is the case in the draft conditions – the wording changes are only intended to make the legislation clearer. 2. It is important to note, however, that the current definition is substantially narrower than what the industry was expecting or hoping for and, consequently, planning for in the absence of clarity. 3. We would like to emphasise that we were expecting a definition that includes all universal life contracts, regardless of the level of sum assured. While we acknowledge the objectives of 	<ol style="list-style-type: none"> 1. Noted. 2. Noted. It is, however, related to the reasons originally raised by industry as to why these policies cannot apply the two-component system. 3. Noted. The timing is indeed short. The implementation of the savings component withdrawal when an individual member requests this through the conversion to a new

N o	Commenta tor	Issue	Comment/Recommendation	FSCA Response
			<p>the FSCA with a narrower definition, compliance with these requirements are not practical at such short notice. We will therefore take the necessary steps to ensure compliance as soon as possible and enable access to savings pots through, for example, conversion to new generation products where necessary.</p>	<p>generation product can be done on an individual basis while processes for compliance are being developed.</p>