Draft Amendments on Premium Collection

The demise of IGF and other changes

Alan Holton reports on a number of significant changes which will affect a far bigger section of the industry than before.

On Friday, 23 March 2018, the Minister of Finance published a number of amendments to the Regulations of both the Long-Term Insurance Act (LTIA) and the Short-Term Insurance Act (STIA). Comment is invited and must be submitted before 23 April 2018.

These amendments, once finalised, are expected to become effective on 1 July 2018.

Regulation 4 of the STIA, which regulates the authorisation of, and requirements for collection of premiums by intermediaries, has been extensively amended. In particular, the requirement that any intermediary who collects premiums on short term insurance policies on behalf of an insurer must provide security – usually by way of an Intermediary Guarantee Facility (IGF) policy – has been deleted. There is no longer any requirement that collecting intermediaries need provide any form of security.

The decision by Treasury, and hence the Minister, to remove the requirement for security in the form of a guarantee policy from the Regulations is based on the principle that it is the responsibility of insurers to ensure that those intermediaries it authorises to collect premiums on its behalf have the necessary governance and resources to do so, and to mitigate risks associated with allowing an intermediary to collect premiums on its behalf.

There is however, no reason that insurers will not still require some form of guarantee or fidelity insurance cover from an intermediary when allowing it to collect premiums on its behalf and will do so in the interest of good governance rather than as a consequence of a regulatory requirement. (See comments at the second paragraph on page 5 of **Annexure E**)

Long-Term Insurance Premiums

What has not been commented on as yet in any media read by this writer, is the fact that the provisions relating to the authorisation of an intermediary to collect premiums and the handling of premiums so collected, will also apply in respect of long-term insurance premiums – including assistance business (funeral) premiums.

Schedule 1 of the Insurance Act inserted section 47A into the LTIA. The requirement in section 47A is equivalent to the requirement in section 45 of the STIA. This amendment is intended to provide greater protection to policyholders and to align the legislative framework governing premium collection across the LTIA and the STIA. To further align the legislative framework governing premium collection across the LTIA and STIA, it has been proposed that the LTIA Regulations be amended to include equivalent requirements to those in Regulation 4 under the STIA.

It must be noted that the effective date of the Insurance Act has still to be proclaimed. Accordingly, S 47A of the LTIA will thus only become effective once the Insurance Act becomes effective. This is expected to be 1 July 2018 and coincides with the expected effective date of the amended Regulation 8 that will govern the collection of long-term policy premiums.

Requirements for authorisation

In terms of the amended Regulations, both LTIA and STIA, any authorisation provided by an insurer to an independent intermediary to receive, hold or in any other manner deal with a premium payable under a policy of that insurer must be in writing and must, amongst other things -

- specify the level and standard of services that must be rendered in terms of the authorisation;
- specify the operational requirements that the intermediary must meet at all times to render services under the authorisation;
- provide for the type and frequency of reporting by the intermediary on the services rendered under the authorisation; and
- provide for the manner in and the means by which an insurer will monitor the intermediary's performance under and compliance with the authorisation.

In addition, an insurer must be satisfied that the intermediary has the necessary operational ability to satisfactorily perform the functions or activities contemplated in the authorisation and, on an ongoing basis, must monitor whether the intermediary holds or in any other manner deals with premiums in accordance with the authorisation.

Management of premiums held by intermediaries

In terms of the proposed amendments to the Regulations, intermediaries who collect premiums on long-term or short-term insurance policies will have to operate separate bank accounts into which all premiums must be deposited.

A premium received or deposited into a bank account may only be transferred to the insurer for whom the premium is intended and may not be utilised or transferred for any purpose other than remitting the premium to the insurer concerned.

Within a period of 15 days after the end of every month, the collecting intermediary must pay to the insurer concerned the total amount of the premiums received during that month.

The intermediary may, subject to the insurer's authorisation, reduce that amount payable to the insurer by the value of any refund of premiums paid to any policyholder or prospective policyholder represented by such independent intermediary. The intermediary may also withhold any commission due for rendering services as intermediary in respect of the policies concerned.

RDR Comments on Premium Collection

In the Retail Distribution Review 2014, two comments regarding premium collection are significant.

Firstly, in Proposal E, the statement is made that premium collection by intermediaries tends to exacerbate challenges regarding insurer access to policyholder information and management of conduct risks.

Secondly, Proposal F is quite definite in its intentions.

> *Collection of insurance premiums will not be permitted to be carried out by intermediaries in the case of any long-term insurance business or in the case of personal lines short-term insurance business, unless the intermediary complies with prescribed conduct standards for this service. Details of these standards will be*

consulted on but they will include operational capability requirements and standards relating to remuneration for the service and mitigation of conflicts of interest.

So, What's Next?

Of undoubted significance is the fact that, one week after the publication of the proposed amendments, the Minister on the 29th March 2018 determined the effective date of almost all of the Financial Sector Regulation Act, 9 of 2017 as the 1st April 2018. (Strangely, the effective date for other parts of this Act was 29 March 2018 . . .)

In terms of the FSRA, the Conduct Authority (previously the FSB) is able to "make" regulatory instruments – and this includes conduct standards. In terms of S 108 of the FSRA, the Conduct Authority may make conduct standards for, inter alia, any financial institution. This includes financial services providers. A conduct standard must be aimed at certain defined objectives, including ensuring the efficiency and integrity of financial markets and assisting in maintaining financial stability.

Conduct standards may be made to govern such matters as:

- Fit and proper person requirements
- The operation of, and operational requirements for, financial institutions
- Risk management and internal control requirements
- Recordkeeping and data management by financial institutions and representatives.
- Requirements for the safekeeping of assets

So, it is a safe bet to reckon on one or more conduct standards being issued shortly that will, at the very least, spell out in detail the operational ability requirements that will have to be met by collecting intermediaries including the nature and frequency of reports from intermediaries to insurers and data access standards. In all probability, risk management and governance standards will also be imposed on intermediaries who seek to be authorised to collect premiums on behalf of insurers.

Toto, I've a feeling we're not in Kansas anymore. (Dorothy in "The Wizard of Oz")

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