

FSCA COMMUNICATION 3 OF 2021 (FAIS)

PUBLICATION OF DRAFT EXEMPTION NOTICE PROPOSING AN EXEMPTION OF FSPs, KEY INDIVIDUALS AND REPRESENTATIVES FROM COMPLIANCE WITH CERTAIN COMPETENCY REQUIREMENTS

1. PURPOSE

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) published the following documents on its website today:

- 1.1 Draft Exemption of Particular Persons from certain Requirements, 2021; and
- 1.2 Comments Template for Draft Exemption.

2. BACKGROUND AND CONTEXT

- 2.1 In 2017, new classes and sub-classes of insurance business were introduced through the Insurance Act, 2017 (Act No. 18 of 2017) (“Insurance Act”). Subsequently, the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 (Board Notice 194 of 2017) (“Fit and Proper Requirements”) was amended to ensure alignment between the subcategories of financial products contained in the Fit and Proper Requirements and the new classes and sub-classes of insurance business under the Insurance Act.
- 2.2 Notwithstanding the above alignment, it was recently identified through requests for exemptions and queries received that some of the reclassification that took place under the Insurance Act inadvertently resulted in certain complications in the context of the Fit and Proper Requirements.
- 2.3 In particular, the following complications were identified:

2.3.1 Credit life products:

- (a) Prior to the Insurance Act, credit life type products could be written under the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (“STIA”), i.e. as short-term insurance policies. Credit life type products that were written under the STIA were classified in the Fit and Proper Requirements under the short-term Insurance: personal lines subcategory. All credit life products written under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (“LTIA”) were classified in the Fit and Proper Requirements under long-term insurance subcategory B1 (if only risk benefits were provided) or long-term insurance subcategory B2 (if risk benefits were provided in conjunction with a guaranteed investment value or a materially equivalent value).
- (b) With the advent of the Insurance Act, credit life insurance products were no longer classified under the short-term insurance/non-life insurance classes and had to be written under Credit Life Class (which falls under life insurance).

- (c) Before the Insurance Act, where FSP's and representatives were rendering financial services in relation to credit life products written under the STIA, and key individuals were managing and overseeing the rendering of such financial services, they were licensed to operate under the short-term insurance: personal lines subcategory in terms of the Fit and Proper Requirements.
- (d) In instances where such FSP's representatives and key individuals were not also authorised to operate under the long-term insurance B1 or B2 subcategories, the change in the Insurance Act relating to the reclassification of credit life policies inadvertently resulted in a situation where such FSP's, representatives and key individuals are no longer authorised for the correct FAIS subcategory when rendering financial services in respect of credit life products, or managing and overseeing the rendering of such services (i.e. their authorisation for short-term insurance personal lines is no longer appropriate and they need to be authorised for long-term insurance subcategory B1 or B2).

2.3.2 Funeral products:

- (a) Prior to the Insurance Act, funeral products below R30,000 were written under the assistance business "class" in the LTIA and funeral products above R30,000 was written under the life insurance "class" under the LTIA.
- (b) Funeral products that were written under the assistance business "class" under the LTIA were classified as long-term insurance subcategory A under the Fit and Proper Requirements, whilst funeral products that were written under the life insurance "class" under the LTIA were classified as long-term insurance subcategory B1.
- (c) With the advent of the Insurance Act, all funeral products below R100,000 now fall within the Funeral Class in the Insurance Act.
- (d) Before the Insurance Act, where FSP's and representatives were rendering financial services in relation to funeral products offering policy benefits between R30,000 and R100,000, and key individuals were managing and overseeing the rendering of such financial services, they were licensed to operate under long-term insurance subcategory B1.
- (e) In instances where such FSP's representatives and key individuals were not also authorised to operate under long-term insurance subcategory A, the change in the Insurance Act relating to the reclassification of funeral products inadvertently resulted in a situation where such FSP's, representatives and key individuals are no longer authorised for the correct FAIS subcategory when rendering financial services in respect of funeral products, or managing and overseeing the rendering of such services (i.e. their authorisation for long-term subcategory B1 is no longer appropriate and they need to be authorised for long-term insurance subcategory A).

- 2.4 The effect of the above is that certain FSPs are not authorised to render financial services in respect of the reclassified subcategories of financial products. Consequently, such FSPs, their key individuals and representatives also do not comply with some of the competence requirements applicable to the relevant subcategories of financial products.
- 2.5 The FSCA is of the view that the above complications created by the reclassifications introduced through the Insurance Act were unintentional and must not result in undue prejudice to the affected persons. As such, the FSCA

has decided to afford a temporary dispensation to all affected persons in order to facilitate and ensure a fair transition to the new classification of financial products.

- 2.6 For this purpose, the FSCA has published a proposed general exemption to FSPs, key individuals and representatives, subject to certain conditions. As these complications manifested when insurers were converted to licences under the Insurance Act, this exemption will have retrospective effect and be applicable from 1 July 2020.
- 2.7 The Authority believes that the granting of the exemption will not –
 - 2.7.1 conflict with public interest;
 - 2.7.2 prejudice the interests of clients; or
 - 2.7.3 frustrate the achievement of the objects of the FAIS Act.

3. INVITATION TO COMMENT ON DRAFT EXEMPTION NOTICE

- 3.1 The documents referred to in paragraph 1 is available on the FSCA's website at www.fsca.co.za.
- 3.2 Interested parties are invited to submit comments on the draft Exemption Notice on the Comments Template published herewith, in Word format, on or before **10 March 2021** to FSCA.RFDstandards@fsca.co.za.

4. CONTACT

For further information regarding this Communication please contact the Regulatory Framework Department of the FSCA by emailing Marianne van Rooyen at marianne.vanrooyen@fsca.co.za.



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