

FSCA INS Notice [X] of 2020

FINANCIAL SECTOR REGULATION ACT, 2017 (ACT NO. 9 OF 2017)

**DRAFT EXEMPTION FOR DIRECT COLLECTION OF PREMIUMS BY CERTAIN
INDEPENDENT INTERMEDIARIES AND SHORT-TERM INSURERS UNDER THE
SHORT-TERM INSURANCE ACT, 1998 (ACT NO. 53 OF 1998)**

The Financial Sector Conduct Authority hereby invites submissions on the draft exemption to be made under section 281(1) of the Financial Sector Regulation Act, 2017 proposing to exempt certain intermediaries and short-term insurers from section 48 of the Short-term Insurance Act, 1998 and Regulation 5.1 (1) and (2) of the Regulations under the Short-term Insurance Act, 1998, to the extent set out in the attached Schedule.

This Notice, together with the Schedule, is available on the FSCA's website.

Interested parties are invited to submit comments on the draft exemption in writing on or before 15 May 2020 to FSCA.RFDStandards@fsc.co.za

**CD DA SILVA
FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY
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SCHEDULE

DRAFT EXEMPTION FOR DIRECT COLLECTION OF PREMIUMS BY CERTAIN INDEPENDENT INTERMEDIARIES AND SHORT-TERM INSURERS FROM SECTION 48 OF THE SHORT-TERM INSURANCE ACT, 1998 (ACT NO. 53 OF 1998) AND REGULATION 5.1(1) AND (2) OF THE REGULATIONS UNDER THE SHORT-TERM INSURANCE ACT, 1998

Definitions

1. In this Schedule “the Act” means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and any word or expression to which a meaning is assigned in the Act bears, subject to context, that meaning unless otherwise defined, and –

“**accounting for premium**” means the rendering of the following information technology system driven administrative activities on behalf of a short-term insurer:

- (a) Provision of payment processing services, including payment gateways consisting of the hosting of one or more gateways and routing of premium payment transactions;
- (b) financial and data transfer consisting of bank account validation, verification and premium payment tracking;
- (c) system-based recognition of revenue conducted through the raising and allocation of premium and policyholder communication in relation thereto;
- (d) maintenance of records including record keeping of debit order mandates;
- (e) provision of system controls including:
 - (i) fraud detection through data analytics (including identification of any warning or “red flag” indicators, such as a substantial increase in cash premium payments from foreign countries); and
 - (ii) reconciliation of premiums including confirmation of bordereaux for payment and query resolution; and
- (f) reporting to the short-term insurer by way of-
 - (i) e-mailing reports to the short-term insurer and /or allowing access to the systems of the independent intermediary to provide for downloading relevant reports;
 - (ii) pre-validation systems and reporting on banks’ rejection codes; and
 - (iii) notifications of internal data or payment rejections.

“**binder holder**” has the meaning assigned to it in Part 6 of the Regulations;

“**direct collection of premium**” means accounting for premium performed by a third party on behalf of a short-term insurer, with the purpose of facilitating the collection of a premium from the premium payer directly into the bank account of the short-term insurer, and without the third party receiving or holding such premium or having any authority or rights in respect of the actual premium in the short-term insurer’s bank account into which the premium is collected;

“**independent intermediary**” has the meaning assigned to it in Part 1 of the Regulations;

“**payment gateway**” means an e-commerce system that securely creates an electronic connection to enable online payment transactions from the bank account of a policyholder into the bank account of a short-term insurer in order to support the transfer of premium;

“services as intermediary” has the meaning assigned to it in Part 1 of the Regulations; and

“Regulations” means the Regulations made under section 70 of the Act promulgated by GN R.1493 in *Government Gazette* 19495 of 27 November 1998 and amended from time to time.

Extent and Conditions of Exemption

2. Any independent intermediary authorised under section 45 of the Act that performs the service of direct collection of premium only, and any short-term insurer that authorises such an independent intermediary, is hereby exempted from section 48 of the Act and Regulation 5.2(1) and (2) of the Regulations.
3. The exemption referred to in paragraph 2 is subject to the following conditions:
 - (a) The independent intermediary does not –
 - (i) perform any other service as intermediary in respect of the policies to which the direct collection of premium relates; and
 - (ii) act as a binder holder of the short-term insurer in respect of the policies to which the direct collection of premium relates.
 - (b) The independent intermediary must notify the Authority prior to entering into an agreement to facilitate direct collection of premiums of its intention to do so;
 - (c) The notification referred to in sub-paragraph (b) must –
 - (i) be submitted to the Authority at least 30 days prior to entering into the agreement referred to in subparagraph (b);
 - (ii) contain details of the fee or remuneration payable to the independent intermediary for performing direct collection of premium; and
 - (iii) be submitted to the Authority in the form and manner as may be determined by the Authority.
 - (d) The fee or remuneration that the independent intermediary receives for performing direct collection of premium –
 - (i) must be reasonable and commensurate with the actual cost of performing the service, taking into consideration the nature of the function and the systems required to perform it;
 - (ii) must be a fixed fee per transaction performed;
 - (iii) may not be based on a percentage of the total premium amount received by the short-term insurer; and
 - (iv) may not result in the independent intermediary being remunerated more than once for performing a similar function on behalf of the short-term insurer.
 - (e) The independent intermediary must at all times have –
 - (i) appropriate systems and data integration capability to ensure that the relevant short-term insurer is readily able to access any relevant data in respect of any direct collection of premiums on behalf of the relevant short-term insurer at any given time; and
 - (ii) appropriate and regularly tested business continuity and disaster recovery plans to mitigate risks arising from potential failures in its direct collection of premium administration infrastructure; and

- (iii) clearly defined segregation and access controls between functions related to the provision of direct collection of premiums for multiple short-term- and/or long-term insurers; and
 - (iv) proper record keeping procedures to document and retain details of every premium processed.
- (f) A short-term insurer must before entering into an agreement for direct collection of premium and at all times thereafter -
- (i) have the necessary resources and ability to exercise effective oversight over the independent intermediary performing the direct collection of premium services on an ongoing basis;
 - (ii) satisfy itself of the adequacy of the independent intermediary's governance, risk management and internal control framework, including the intermediary's ability to comply with applicable laws; and
 - (iii) have documented controls in place to ensure the validity, accuracy, completeness and security of any information provided by the independent intermediary performing the direct collection of premium.
4. Failure by a short-term insurer or independent intermediary to comply with the conditions referred to in paragraph 3 will result in the exemption no longer being applicable to that short-term insurer and the independent intermediary.

Amendment and withdrawal of Exemption

5. This Exemption is subject to –
- i. amendment thereof published by the Authority by notice on the website of the Authority; and
 - ii. withdrawal in a like manner.

Short title and commencement

6. This Notice is called the Exemption for direct collection of premiums by certain independent intermediaries and short-term insurers, 2020 and comes into effect on the date of publication of this Notice.