

FSCA COMMUNICATION 7 OF 2019 (INSURANCE)

GENERAL EXTENSION OF THE PERIOD FOR COMPLIANCE WITH REGULATION 4.2(3) OF THE REGULATIONS UNDER THE SHORT-TERM INSURANCE ACT, 1998 (ACT NO. 53 OF 1998) AND REGULATION 8.2(2) OF THE REGULATIONS UNDER THE LONG-TERM INSURANCE ACT, 1998 (ACT NO. 52 OF 1998) GRANTED

27 September 2019

1. PURPOSE

The purpose of this Communication is to –

- (a) inform stakeholders that a general extension of the period for compliance with Regulation 4.2(3) of the Regulations under the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (Regulations under the STIA) and Regulation 8.2(2) of the Regulations under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (Regulations under LTIA) has been granted by the Financial Sector Conduct Authority (the Authority), and
- (b) confirm the requirements in applying for an exemption from Regulation 4 of the Regulations under the STIA or Regulation 8 of the Regulations under the LTIA.

2. REASON FOR EXTENDING THE PERIOD FOR COMPLIANCE

- 2.1 The amendments to Regulation 4 of the Regulations under the STIA and the insertion of Regulation 8 of the Regulations under the LTIA was published by notice in the Government Gazette on 28 September 2018, with an effective date of 28 September 2019, allowing for a 12 month transitional period for insurers to comply.
- 2.2 Despite the transitional period allowed, the Authority has recently received a number of applications for exemption from independent intermediaries operating in the retail space, where rendering of services as intermediary is not the primary business of the entity and the insurance product is ancillary to a commercial contract. In all of these instances the premium for the insurance product is collected together with payment for a non-insurance service or product.
- 2.3 Reasons cited for the applications vary greatly but in many instances include practicalities, customer convenience and suitable service to policyholders as well as evidence of substantial risk mitigation through strict governance and oversight over the accounting for premium by the independent intermediary.
- 2.4 These applications will require interrogation by the Authority with particular focus on complexities in business models especially where the independent intermediary operates in the retail market and the primary business of the independent

intermediary is not insurance. The Authority therefore requires more time to consider these applications and to make an informed decision on how to approach the variety of issues emanating from these submissions.

- 2.5 In light of the above the Authority has taken a decision to, in terms of section 279(1) of the FSR Act, extend the period of time to comply with the requirements in Regulation 4.2(3) of the Regulations under the STIA and Regulation 8.2(2) of the Regulations under the LTIA until 1 February 2020.
- 2.6 Insurers and independent intermediaries are reminded that an exemption from any requirements contained in Regulation 4 of the Regulations under the STIA and Regulation 8 of the Regulations under the LTIA was deliberately positioned in a way that it is the insurer's responsibility to bring an application for exemption on behalf of the independent intermediary. The wording of Regulation 4.4(1) of the Regulations under the STIA and Regulation 8.4(1) of Regulation 8 of the Regulations under the LTIA specifies that the Authority may, on reasonable grounds, on application from an insurer or on the Authority's own initiative, subject to such conditions as the Authority may determine, exempt an insurer or independent intermediary from any requirement of the relevant Part of the Regulations.
- 2.7 Accordingly any application for exemption from these requirements must be brought by an insurer and not by the independent intermediary. The insurer remains accountable for any actions performed on its behalf, including the collection of premium, regardless of choosing to authorise a third party to render such service on its behalf.

3. CONTACT

For further information regarding this Communication please contact the Regulatory Framework Department of the FSCA by emailing eugene.dutoit@fsca.co.za