

FSCA COMMUNICATION 9 OF 2019 (INSURANCE)

PUBLICATION OF DRAFT EXEMPTION NOTICE PROPOSING AN EXEMPTION OF INDEPENDENT INTERMEDIARIES FROM 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)

19 DECEMBER 2019

1. PURPOSE

The purpose of this Communication is to inform stakeholders that draft general exemptions have been published on the website of the Financial Sector Conduct Authority (FSCA) for public comment by **24 January 2020**.

2. BACKGROUND

- 2.1 FSCA Communication 7 of 2019 communicated 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) (STIA Regulations) and Regulation 8.2(2) of the Regulations under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTIA Regulations) until 1 February 2020.
- 2.2 The general extension was necessary to afford the FSCA more time to consider how to deal with various exemption applications related to Regulation 4.2(3) of the STIA Regulations and Regulation 8.2(2) of the LTIA Regulations that were received shortly before the 28 September 2019 effective date of the aforementioned Regulations.
- 2.3 In addition to the exemption applications highlighting practical challenges, the FSCA has also through various engagements with industry become aware of several other types of business models that are experiencing practical challenges in complying with Regulation 4.2(3) and 8.2(2), respectively.
- 2.4 After analysing the business models that are experiencing practical challenges¹ in complying with Regulation 4.2(3) and 8.2(2), the following commonalities were evident:
 - 2.4.1 they largely operate in the retail space;
 - 2.4.2 the insurance policies in respect of which they collect premiums are typically ancillary to another non-insurance related commercial contract. Examples include insurance policies supporting credit agreements (including motor vehicle installments), DSTV subscription agreements, freight agreements and cell phone contracts;
 - 2.4.3 intermediation of insurance policies is typically not their primary business.

¹ Emanating from the exemption applications as well as other engagements with industry.

3. DRAFT EXEMPTIONS AND INVITATION TO COMMENT

- 3.1 In the above context, and after considering the criteria for exemption contained in Regulation 4.4 of the STIA Regulations, Regulation 8.4 of the LTIA Regulations and section 281(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), the FSCA is intending to exempt independent intermediaries from compliance with Regulation 4.2(3) of the STIA Regulations and Regulation 8.2(2) of the LTIA Regulations, subject to certain conditions.
- 3.2 As such, the FSCA has published draft Exemption Notices that are intended to give effect to the aforementioned for public comment. The draft Exemption Notices are available on the FSCA's website at www.fsca.co.za. Interested parties are invited to submit comments on the draft Exemption Notices in writing on or before **24 January 2020** to marianne.vanrooyen@fsca.co.za.
- 3.3 The proposed conditions contained in the draft Exemption Notices are phrased in such a way as to capture the business models referred to in paragraph 2.4 above, and to mitigate any inherent risks that the FSCA has identified in exempting these business models from Regulation 4.2(3) of the STIA Regulations and Regulation 8.2(2) of the LTIA Regulations.
- 3.4 The FSCA believes that the granting of the above exemptions –
- 3.4.1 are necessary because practicalities impede the strict application of the relevant Regulations;
 - 3.4.2 will not materially increase risk to the relevant insurers;
 - 3.4.3 will not be contrary to public interest;
 - 3.4.4 will not compromise the fair treatment of or continuous and satisfactory service to policyholders; and
 - 3.4.5 will not prejudice the achievement of the objects of the Regulations.
- 3.5 Should the consultation process and finalisation of the exemptions not be concluded by 1 February 2020, a further extension of the period for compliance with Regulation 4.2(3) of the STIA Regulations and Regulation 8.2(2) of the LTIA Regulations will be considered by the FSCA.

4. APPLICATION OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003 (GENERAL CODE)

- 4.1 The FSCA Position Paper, which was published on 9 April 2019, titled "*Proposals on the future regulatory framework for the collection of insurance premiums*" (Position Paper) flagged that the General Code imposes specific requirements in respect of premium collection activities separately and distinctly from the insurance regulatory framework.²
- 4.2 The Position Paper also highlighted that the General Code sets out various requirements pertaining to the custody of financial products and funds.³ Section 10(1)(d) of the General Code, in particular, requires a financial services provider (FSP) who receives or holds financial products or funds of or on behalf of a client to, amongst other things, open and maintain a separate bank account designated for client funds. It must be noted that section 10(1)(d) has always applied to the collection of long-term insurance premiums, but an

² See paragraph 3.2.12 of the Position Paper.

³ See paragraph 3.9.1 of the Position Paper.

FSP collecting short-term insurance premiums has, however, always been excluded from the application of section 10(1)(d).⁴

- 4.3 The Position Paper further highlighted that the insurance regulatory framework must be read and applied separately and distinctly from the General Code and that for the time being there will essentially be dual regulatory frameworks governing aspects of long-term insurance premium collection (i.e. the LTIA Regulations and section 10 of the General Code).⁵
- 4.4 However, in the context of the current General Code requirements, the Position Paper flagged that the FSCA is currently considering aligning section 10 of the General Code and the premium collection requirements contained in the STIA and LTIA Regulations in order to avoid potential regulatory arbitrage and to ensure harmonisation between the requirements applicable to the collection of long-term and short-term insurance premiums.⁶
- 4.5 As a result, the FSCA is considering excluding the collection of long-term premiums from the application of section 10(1)(d) of the General Code similar to how the collection of short-term premiums are excluded. However, this will require an amendment to the General Code which will take some time to implement. Therefore, in the interim section 10(1)(d) of the General Code will apply to the collection of long-term insurance premium, notwithstanding the proposed general exemption from Regulation 8.2(2) of the LTIA Regulations, up until such time as the General Code is amended to exclude long-term insurance premiums from the application of section 10(1)(d) of the General Code.

5. 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.

⁴ By virtue of section 10(3) of the GCOC.

⁵ See paragraph 3.9.2 of the Position Paper.

⁶ See paragraph 3.9.4 of the Position Paper.