

FSCA COMMUNICATION 17 OF 2020 (INS)

Publication of draft exemption notice proposing an exemption of insurers that offer investment policies to medical schemes from Regulation 4.2(1) of the Regulations under the Long-Term Insurance Act, 1998

14 April 2020

1. PURPOSE

The purpose of this Communication is to inform stakeholders that a draft general exemption has been published on the Financial Sector Conduct Authority's (FSCA) website for public comment by 12 May 2020.

2. BACKGROUND

- 2.1 Schedule 2 to the Insurance Act, 2017 (Act No. 18 of 2017) (the Insurance Act), which came into effect on 1 July 2018, introduced a definition of "fund" that is different to the definition of fund that was contained in the Long-term Insurance Act, 1998 (Act 52 of 1998) (LTIA) prior to the effective date of the Insurance Act.
- 2.2 The LTIA's definition of "fund"¹ specifically included a medical scheme as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), whilst the Insurance Act definition of "fund"² does not include a medical scheme in the context of life insurance.
- 2.3 The effect of this is that a medical scheme as defined in section 1 of the Medical Schemes Act, which qualified as a fund for purposes of a registered insurer as defined in the LTIA, no longer qualifies as a fund for purposes of a licensed insurer as defined in the LTIA. Accordingly, once an insurer has been licensed for life insurance business under section 23 of the Insurance Act it will not be allowed to offer policies underwritten under the fund risk or fund investment class of life insurance business, as set out in Table 1 of Schedule 2 of the Insurance Act, to a medical scheme.

¹ For purposes of the LTIA, "fund" means -

- (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) a medical scheme as defined in section 1 of the Medical Schemes Act; and
- (d) any other person, arrangement or business prescribed by the Authority.

² For purposes of the Insurance Act, "fund" means-

- (a) in respect of life insurance business-
 - (i) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (ii) a pension fund organisation as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956); and
- (b) in respect of non-life insurance business, a medical scheme as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

- 2.4 This change in definition has an implication insofar as it relates to the application of Part 4 of the Regulations made under section 72 of the LTIA (the Regulations). Part 4 of the Regulations, which sets out limitations on the provision of certain policies, does not apply to the following types of long-term policies (emphasis added):
- (a) a reinsurance policy;
 - (b) **a fund policy**;
 - (c) a fund member policy, for as long as no right under the policy is transferred by the fund to a life Insured under the policy, or is transferred to any person except another fund for the direct or indirect benefit of a life insured under the policy; or
 - (d) a living annuity as defined in section 1 of the Income Tax Act, 1962 (Act no. 58 of 1962).
- 2.5 For purposes of the Regulations, fund policy is defined as follows:
- “fund policy” in respect of a-*
- (a) *registered insurer, has the meaning assigned to it in section 1 of the Act; and*
 - (b) *licensed insurer, means a policy underwritten under the fund risk or fund investment class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act;*
- 2.6 Accordingly, in respect of a licensed insurer, policies held by a medical scheme will no longer qualify as a fund policy, which means by implication that these type of policies will be subject to the limitations in Part 4 of the Regulations.
- 2.7 This has been identified as having potential unintended consequences for medical schemes. Monitoring and ensuring sufficient liquidity to satisfy medical claims is of paramount importance to a medical scheme. If investment policies held by medical schemes are subject to the 5 year restriction period referred to in Part 4, it would render investment in such policies inappropriate for medical schemes, as such limitations would conflict with a medical scheme’s obligation to maintain appropriate liquidity.
- 2.8 It may also significantly prejudice the ability of medical schemes to invest in a variety of pooled vehicles, because if investment policies held by medical schemes were subject to the 5 year restriction period referred to in Part 4, it would mean that the only investment route available to medical schemes would essentially be to invest in a traditional CIS, thereby limiting the investment options available to medical schemes.
- 2.9 Because of these unintended consequences, the FSCA will be proposing amendments to the Regulations to exclude investment policies, where a medical scheme is the policyholder, from the ambit of Part 4 of the Regulations.
- 2.10 However, the FSCA has been approached by the Association of Savings and Investments South Africa, representing their members that offer investment insurance products to medical schemes, to identify a possible interim dispensation pending the amendment of the Regulations in order for medical

schemes to still be able invest in investment products offered by life insurers directly after the Insurance Act licence conversion process has taken place.

- 2.11 Accordingly the proposal is to in the interim, pending the amendment of the Regulations, exempt insurers from the limitations in Regulations 4.2(1) as set out in Notice containing the draft exemption.
- 2.12 The FSCA believes that the exemption will not be contrary to public interest nor will it prejudice the achievement of the objects of the Regulations under the LTIA.

3. INVITATION TO COMMENT ON DRAFT EXEMPTION NOTICE

- 3.1 The exemption, which is proposed to be issued in terms of section 281(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), is published together with this communication for public comment.
- 3.2 Interested parties are invited to submit comments on the draft exemption in writing on or before **12 May 2020** 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 Lezanne Botha at lezanne.botha@fsca.co.za.