

FSCA COMMUNICATION 22 OF 2020 (INS)

Publication of draft exemption notices proposing exemption for the direct collection of premium by an independent intermediary on behalf of a short-term insurer or a long-term insurer from certain provisions of the Short-term Insurance Act, 1998 or Long-term Insurance Act, 1998 and certain Regulations thereunder.

17 April 2020

1. PURPOSE

The purpose of this Communication is to:

- inform stakeholders that two draft general exemptions have been published on the Financial Sector Conduct Authority's ("the Authority") website;
- provide background to the intention behind the proposed exemptions; and
- invite interested parties to submit written comment on the draft exemption by 15 May 2020, using the comments matrix published together with the exemptions.

2. BACKGROUND

2.1 On 9 April 2019 the Authority published a position paper setting out proposals on the future regulatory framework for the collection of insurance premiums ("the position paper")¹. The position paper put forward several regulatory proposals focusing on the following:

- identification and classification of premium collection related activities and the determination of appropriate remuneration for such activities;
- criteria for qualifying intermediaries who wish to collect premiums on behalf of insurers;
- treatment of premiums as trust monies;
- reduction in the allowable period for the remittance of premiums by third parties; and
- interim remuneration arrangements for intermediaries who perform premium collection related activities in direct collection models.

2.2 The position paper confirmed that the Authority strongly encourages a shift towards direct collections becoming the default rather than the exception. The risks around third-party collection of premium and the undesirable industry practices in this regard are set out in detail in section 2.3 of the position paper. It is the view of the Authority that the collection of premium directly into the bank account of an insurer will significantly reduce the potential liquidity, credit and customer risks that have materialised in the past. In order to encourage this shift to direct collections, the position paper proposed² that, as an interim measure, a general exemption be granted

¹ Available on the FSCA's website www.fsca.co.za under Regulatory Frameworks < Documents for Consultation < Insurance < FSCA Position Paper on future Insurance Premiums Collection Framework.

² See Proposal 5 of the position paper.

for insurers and independent intermediaries from the commission regulations when remunerating intermediaries for performing certain stipulated premium collection related activities in instances where premium is collected directly into the insurer's bank account. The exemption would therefore enable the payment of additional remuneration over and above commission for the direct collection of premium. It was further proposed that this exemption should be subject to specific conditions, including principles (such as commensuration with the activities being performed) or limits (fee caps or fee ranges) for determining the appropriateness of remuneration to be paid for performing these activities.

- 2.3 Twenty-one (21) commentators provided inputs on this proposal, of which thirteen (13) commentators expressed an outright support of the exemption of direct collection models and only two (2) commentators opposed the suggestion. The only reason provided for opposing the interim exemption was that it will complicate the framework and that one commentator preferred that the changes rather be effected through a change in the regulatory framework.
- 2.4 The Authority's intention remains to change the regulatory framework to reflect the enhanced requirements as alluded to in the position paper. However, as the change to the framework will take time, the intention is also still to, in the interim, enable remuneration for the direct collection of premium.

3. The approach taken in the draft exemption notices

- 3.1 The draft exemption notices is aimed at giving effect to the above proposal by facilitating the payment of remuneration to an independent intermediary where premiums are collected directly into the account of an insurer and the technological systems of the independent intermediary enables the direct collection method. Such an independent intermediary performs certain activities in support of the direct collection, which could be described as accounting for premium. Accordingly, the draft exemption notice proposes what accounting for premium would mean in case of the direct collection of premium and enables that remuneration to be allowed for purposes of these activities only, and subject to the conditions as set out in the exemption.
- 3.2 The draft exemptions include distinct conditions to which any insurer and intermediary intending to rely on the exemptions must comply. These conditions include strict requirements around the remuneration for accounting for premium functions as well as governance requirements applicable to the technological systems of the independent intermediary which enables the direct collection method. It also contains reporting and oversight requirements on the insurer that enters into any such an agreement.
- 3.3 To enable the Authority to monitor and supervise the application of these exemptions, the notices further require supervisory notification at least 30 days prior to entering into any agreements in terms of which any remuneration in addition to commission is being offered to an independent intermediary for the performance of 'accounting for premiums' in the direct collection model. Any such agreements will need to be closely monitored and scrutinised by the Authority to ensure that there are no adverse implications for policyholders. As the premiums will be collected directly into the account of the insurer, it means that interest that insurers in terms of historical collection models allowed to accrue to the independent intermediary will now go to the insurer, which will enable the insurer to pay the additional remuneration without increasing the cost of the insurance provided to the policyholders.

- 3.4 The Authority believes that the exemption will encourage the move to direct collection of premiums, and not be contrary to public interest nor will it prejudice the achievement of the objectives of the STIA, LTIA and the Regulations thereunder.

4. INVITATION TO COMMENT ON DRAFT EXEMPTION NOTICES

- 4.1 The exemptions, to be issued in terms of section 281(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), are published together with this communication for public comment.
- 4.2 Interested parties are invited to submit comments on the draft Exemption Notices in writing by using the comments matrix published together with the exemptions on or before **15 May 2020** to FSCA.RFDStandards@fsca.co.za .

4. CONTACT

For further information regarding this Communication please contact the Regulatory Framework Department of the Authority by emailing Johann van der Lith at johann.vanderlith@fsca.co.za.