

FSCA COMMUNICATION 2 OF 2018

Update on the future of the premium collection regulatory framework under the Short- and Long-term Insurance Acts

14 December 2018

1. PURPOSE

The purpose of this Communication is to provide a status update on the technical work currently underway which is aimed at further refining the premium collection regulatory framework for short and long-term insurers.

2. BACKGROUND

2.1. On 28 September 2018, National Treasury published amendments to the Regulations under the Short-term Insurance Act, 1998 and Long-term Insurance Act, 1998 ("the Regulations").¹

2.2. The amendments to Regulation 4 of the Short-term Insurance Regulations, in particular, signalled a change in the regulatory approach to premium collection by, amongst other things, removing the security/guarantee requirement and introducing enhanced governance and monitoring requirements that place greater accountability on insurers that allow intermediaries to collect premiums on their behalf. The new requirements take effect 12 months after the effective date of the amendments to the Regulations, with the exception of Regulation 4.1(5) which took effect immediately and provides as follows:

"An insurer must, before it authorises an independent intermediary under section 45, and at all times thereafter, be satisfied that-

(a) the independent intermediary is fit and proper and has the necessary operational ability to satisfactorily perform the functions or activities contemplated in the authorisation;

(b) such authorisation will not materially increase risk to the insurer; and

(c) such authorisation will not compromise the fair treatment of or continuous and satisfactory service to policyholders."

¹ As published in Government Notices 1015 and 1018 of 28 September 2018 (read with General Notice 658 of 26 October 2018).

- 2.3. To ensure alignment across the Short-term Insurance Regulations and Long-term Insurance Regulations insofar as it relates to premium collection, similar requirements applicable to premium collection as provided for in the Short-term Regulations have been incorporated into the Long-term Insurance Regulations through said amendments.
- 2.4. On 3 October 2018, the Financial Sector Conduct Authority (“FSCA”) and the Prudential Authority (“PA”) issued Joint Communication 3 of 2018 which related to the temporary continuation of the insurance business of the Intermediaries Guarantee Facility (“IGF”). The communication indicated that the PA will allow the continued operation of the IGF until 31 March 2019, with the purpose of providing industry with sufficient time to phase out the previous security/guarantee approach and to align with the new requirements contained in Regulation 4. It was however confirmed that notwithstanding this extension of time, insurers should immediately be able to demonstrate what steps they are taking to ensure compliance with the new requirements contained in Regulation 4.1(5).

3. FUTURE OF THE PREMIUM COLLECTION REGULATORY FRAMEWORK

- 3.1. Notwithstanding the above enhancements to the regulatory framework, recent failures in the premium collection industry have raised questions as to whether the framework potentially requires further refinement in order to more effectively pre-empt and/or mitigate the risks inherent in third party premium collection business models.
- 3.2. In recent engagements between the FSCA and industry role-players, some short-term insurers have called for an outright prohibition on intermediaries collecting premiums. Whilst this would manage concentration risk, remove additional costs from the insurance value chain, and alleviate the risks associated with the rolling of premium, it is not clear whether this would be the most appropriate or pragmatic solution in the context of some prevalent and necessary business models.
- 3.3. While the FSCA remains of the view that ideally the industry should move to a situation where premiums, as far as possible, are collected directly into the insurer’s bank account, the FSCA needs further insight on the practical implications of such an approach. To this end, the FSCA is currently in the process of engaging with the short-term insurance industry to obtain a better understanding in this regard.
- 3.4. In addition to the above, the FSCA is currently considering other possible regulatory interventions, including the following:
- (a) limiting the period within which premiums must be paid over to the insurer from the current 45 days (maximum) period to, for example, 48 hours;
 - (b) limiting “qualifying intermediaries” that collect premiums as mooted in Proposal F of the Retail Distribution Review (“RDR”) to intermediaries that are registered with the Payments Association of South Africa as Third Party Payment System Providers; and

- (c) reclassifying premium collection as outsourcing, as per our previous communications under the RDR. As part of this reclassification, it has become evident that it might be necessary to split out the activity of the physical collection of premiums and other more administrative type premium related functions such as reconciliation and credit control. The FSCA is currently engaging with industry role-players to obtain a better understanding of the various activities that are being performed in relation to premium collection over and above the physical collection of premiums. The intention is to deal with these premium collection activities (including the physical collection of premiums) as functions separate from “services as intermediary” which would mean that remuneration for the performance of these activities would not be limited to commission.

4. NEXT STEPS

- 4.1. During the course of 2019 further industry role-player engagements relating to the above matters will take place, including engagements with the long-term insurance industry. Ultimately the FSCA will use information gathered through these engagements to formulate an internal policy position on potential further revisions to the premium collection regulatory framework. The FSCA policy position, once defined, will be formally communicated through appropriate channels.
- 4.2. The FSCA wishes to reiterate that we, as a collective, cannot succeed in achieving the desired outcomes for the industry in as far as it relates to premium collection without industry itself taking accountability for the risks that have been created by prevailing market practices in this regard. In assuming such accountability, the FSCA urges key industry role-players to develop a viable collaborative solution to address some of the key risks inherent in third party premium collection business models.

5. CONTACT

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