

FSCA findings on cancellation of the Living Legacy and Covergrow policies by Constantia Insurance Company Limited (Constantia)

Background

1. The Financial Sector Conduct Authority (FSCA) has received numerous enquiries and complaints from policyholders affected by policy cancellations in respect of two product offerings, namely Prime Living Covergrow (Covergrow) and Living Legacy (Legacy) underwritten by Constantia. Constantia communicated the cancellation of their policies to policyholders with active cover, citing regulatory changes introduced by the Insurance Act, 18 of 2017 (Insurance Act) as the reason for the policy cancellations.
2. The Covergrow and Legacy policies were previously distributed as accident and health policies by Primary Asset Administration Services, which is the underwriting manager who also developed the products. The products were then marketed by Prime Meridian Direct, an authorised financial services provider. Direct administration of these policies was taken over by Constantia during April of 2019.

Changes in the regulatory landscape: What does that mean?

3. The Covergrow and Legacy products were initially marketed as Accident and Health policies under Constantia's short-term insurance licence in terms of the Short-term Insurance Act, 53 of 1998 (Short-term Insurance Act). However, the Insurance Act came into effect on 1 July 2018. The Insurance Act predominantly deals with the prudential aspects of insurance supervision and it includes the aspect of licensing. All previously registered insurers therefore have to undergo a process wherein their registration as insurers, in the case of Constantia in terms of the Short-term Insurance Act, be converted to a licenced insurer as defined in the Insurance Act conducting non-life business.
4. As part of the licence conversion process, an insurer will scrutinise all of its product offerings on its current licence prior to the licence being converted. From this analysis performed it became evident that the product offerings in question had features of a long-term (life) insurance product and going forward it should be offered on a long-term (life) licence. It is

no longer possible for an insurer to do a combination of what is defined (classified) in the Insurance Act as either life and non-life business on one licence and it will either be licenced as a life or non-life insurer. Section 6 under Schedule 3 of the Insurance Act provides for the conversion process of existing insurer licences in order to meet compliance with the current regulations.

5. The Prudential Authority (PA) is in the process of converting the registration of previously registered insurers, to a licence to conduct a class and/or sub-class of life insurance business or non-life insurance business referred to in Schedule 2 of the Insurance Act, provided that the previously registered insurer, immediately prior to the effective date of the Insurance Act, were actively and prudently conducting insurance business similar to that class or sub-class of insurance business.

6. Furthermore, section 6(5) under Schedule 3 of the Insurance Act further provides as follows:

6.1 If the PA does not convert the registration of a previously registered insurer to a licence to conduct insurance business in respect of a specific class or sub-class that is similar to the business that the previously registered insurer was registered for on the effective date, because the insurer did not immediately prior to the effective date conduct that insurance business actively or prudently or, because of the classes and sub-classes provided for in the Act, no longer conduct that insurance business, the PA must direct the insurer to make arrangements to the satisfaction of the PA to:

- i. discharge its obligations under all insurance policies entered into in respect of that class or sub-class before the conversion of that insurer's registration;
- ii. ensure the orderly resolution of that insurance business of the insurer; or
- iii. transfer that insurance business to another insurer under section 50 of the Insurance Act by a specified date.

7. Rule 19.2 of the Policyholder Protection Rules issued in terms of the Short-term Insurance Act provide that an insurer may terminate policies provided that an insurer gives the policyholder at least 31 days' written notice of the intended termination.

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Engagements between the FSCA and Constantia regarding alternative options:

8. The FSCA was notified by Constantia of the policy terminations on 3 March 2020. Whilst the FSCA as part of its supervisory engagements had engaged with Constantia regarding its product offerings on previous occasions prior to the 3 March 2020 notification, including the two offerings in question, it was not made aware (and it could not have been aware) that product offerings and consequently policies would have to be cancelled, as this is not the default position in the licence conversion process.
9. The FSCA in its engagement with Constantia questioned the insurer on the possibility of transferring these policies to the life licence of the insurer. It must be noted that in order for the insurer to offer this product on its life licence, product amendments had to be introduced. After an actuarial analysis performed by the insurer, it was found that it would not have been in a position to offer the product on the exact same terms and conditions it had whilst underwriting it on the short-term licence. Part of the assessment also revealed that offering this product on the life licence would have significant impact on the pricing, which would have resulted in the policyholder paying substantially more in premium. It is therefore with the policyholder in mind that the decision was taken to discontinue this product offering as it would not have been reasonable to expect a policyholder to pay a much higher premium.
10. Although questioned on the possibility of providing alternative cover, please note that there is no explicit obligation on the insurer to provide alternative product offerings to the policyholder. In an attempt to deliver fair outcomes to policyholders, this was considered by the insurer.
11. With respect to the requests from a number of policyholders that premiums be refunded, it is important to note that premiums are paid monthly for cover which is provided monthly and as such there is no build-up of funds. The insurer has the right to cancel policies with the proper notification. Essentially, the policyholder pays for the insurer being on risk. Where the insurer is not on risk, the policyholder will not pay and vice versa. There is no basis for premiums to be refunded in the normal scope of how insurance operates.
12. As explained before, whilst the policyholders were paying premiums, they enjoyed being covered and insured against potential risk events materialising. Therefore, after engagements with Constantia, the FSCA could not find a basis to, for example, direct Constantia to refund the premiums received.

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Discharge of obligations:

13. The cancellation of these policies is unique in the sense that it is linked to the conversion process which is currently under way and the discharge of obligations is one of the factors that has to be taken into account as indicated in our previous media response. Therefore, it would be premature to pronounce at this stage whether or not Constantia has discharged its obligations under the policies. Having said this, it is important to note whilst Constantia is on risk and continues accepting any premium until the cancellation of the policy becomes effective, Constantia has a legal obligation to honour and pay out valid claims upon receipt of such claims.
14. Constantia is expected to continuously communicate with its policyholders, either directly or through its chosen business partner, and to notify them of any changes which may have a significant impact on them, as in the current instance. The insurer also needs to demonstrate that it considered various options to try and accommodate the policyholder and that cancellation is really a last resort. Following its engagements with Constantia, the FSCA is satisfied with the second batch of communication which was dispatched by the insurer to clarify the cancellation of these policies. The FSCA is further satisfied that Constantia considered various options in an attempt to accommodate its policyholders before taking the unfortunate decision to cancel the policies.

The way forward: What can affected policyholders do?

15. Constantia has confirmed that there would be no further cancellations in respect of any other life products which it currently has on its books.
16. The FSCA empathises with the policyholders whom are on the receiving end of these cancellations, however in the circumstances and considering alternative options, it is not possible for the insurer to continue with these product offerings. The FSCA urges affected policyholders to engage their intermediaries, where applicable, and to consult the insurance market for alternative offerings.

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