



FSCA COMMUNICATION 9 OF 2022 (INS)

Exemption of independent intermediaries from Regulation 5.4 of the Regulations under the Short-term Insurance Act, 1998

1. PURPOSE

The purpose of this Communication is to inform stakeholders that today the Financial Sector Conduct Authority (FSCA) published the following documents on its website:

- 1.1. Draft Exemption of independent intermediaries from Regulation 5.4 of the Regulations under the Short-term Insurance Act, 1998 (draft Exemption); and
- 1.2. Comments Template.

2. BACKGROUND

- 2.1 Regulation 5.4 of the Regulations provides that, *“If a premium or any part thereof is for any reason refunded by an insurer, the commission payable in terms of this Part in respect of that premium, or the part of that premium, which is so refunded, shall be refunded, to the insurer by the person to whom it was paid.”*
- 2.2 In essence, this means that there is a legal obligation on an independent intermediary to refund commission to the insurer if the insurer refunds premiums to a policyholder.
- 2.3 It has come to the attention of the FSCA that numerous enquiries have been made by independent intermediaries to short-term insurers on the fairness of the recovery of commission, where premium is refunded to a policyholder due to the policy being voided by the insurer as a result of material misrepresentation or non-disclosure by the policyholder. It is argued that in this instance the independent intermediary is unfairly prejudiced, as the independent intermediary did in fact service the policyholder (provided services as intermediary) and the material misrepresentation or non-disclosure that occurred was not the fault or within the control of the independent intermediary.
- 2.4 The FSCA agrees that the clawback of commission in the above circumstances would impact independent intermediaries unfairly. It holds the view that where an independent intermediary rendered services as intermediary and the policy is then voided as a result of the policyholder acting improperly at his or her own accord, the independent intermediary should not be prejudiced and should retain the remuneration earned.

2.5 As such, the FSCA is intending to exempt independent intermediaries from Regulation 5.4, where the specific circumstances referred to above exist. Conditions have been included in the draft Exemption to ensure that the scope of the exemption is appropriate and that the scope for abuse is limited.

3. INVITATION TO COMMENT ON DRAFT EXEMPTION NOTICE

3.1 The Exemption is available on the FSCA's website at www.fsca.co.za.

3.2 Interested parties are invited to submit comments in writing on the draft Exemption on the Comments Template published herewith, in Word format, on or before **22 April 2022** to FSCA.RFDstandards@fsca.co.za

4. CONTACT

For further information regarding the draft Exemption and/or this Communication, please contact the Regulatory Frameworks Department of the FSCA by emailing Mrs Viloshnee Naidoo at Viloshnee.Naidoo@fsca.co.za.



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