RETAIL DISTRIBUTION REVIEW:

DISCUSSION DOCUMENT ON A REMUNERATION DISPENSATION FOR SAVINGS AND INVESTMENT PRODUCTS FOR THE LOW-INCOME MARKET (RDR PROPOSAL TT)

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FSCA

Financial Sector
Conduct Authority

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1. BACKGROUND AND PURPOSE

1.1. In November 2014, the former Financial Services Board published the Retail Distribution Review document ("initial RDR proposals"), putting forward a number of proposals to reform the regulatory framework for the distribution of financial products to better support fair customer outcomes. Among the initial RDR proposals was Proposal TT which recognised that other RDR proposals could have unintended consequences in the low-income market and that a specific remuneration dispensation may be appropriate for product suppliers and intermediaries serving low-income customers, in respect of life insurance risk products and investment products.

1.2. In December 2018, the Financial Sector Conduct Authority (FSCA) published the *RDR Proposal TT Status Update* document to provide an update on regulatory reforms to implement Proposal TT and to elicit stakeholders' inputs on the FSCA's proposed approach to outstanding issues. One of the outstanding issues highlighted in the status update document was the possible introduction of a special remuneration dispensation for savings and investment products aimed at the low-income market.

1.3. RDR Proposal MM stipulates that no remuneration may be paid to any intermediary for selling or servicing of investment products, other than advice fees agreed to by the customer. However, Proposal TT proposed that, as an exception to Proposal MM, a special commission dispensation on investment products aimed at low-income earners should be developed. This exception was intended to ensure that advisers continue to advise on investment or savings products that meet appropriate standards of simplicity and offer good value to customers. As indicated in the status update document, such a dispensation requires striking a balance between remuneration that will encourage sustainable advice models for these products and ensuring that these products are appropriate to the needs of the market and offer good value.

1.4. To support the development of such a dispensation, the FSCA has engaged with several product suppliers to develop a deeper understanding of the value proposition of products currently targeted at low-income customers. Suppliers included insurers, banks as well as other financial services providers (FSPs) that offer savings and investment products through digital platforms with an automated advice capability.

1.5. This document sets out the FSCA's policy proposals for the implementation of RDR Proposal TT in relation to an intermediary remuneration dispensation for savings and investment products in this market and solicits inputs on these policy proposals.

2. ENGAGEMENTS WITH PRODUCT SUPPLIERS

2.1. Engagements with insurers

2.1.1. Insurers who participated in the engagements with the FSCA presented investment products that they consider suitable and accessible to the low-income market. These include endowment policies, retirement annuities and tax-free savings accounts structured as insurance policies, amongst others. These products are targeted at the low-income market primarily through setting low minimum premiums, ranging from R250 to R600 monthly. These products are in most instances linked to relatively low risk, non-volatile underlying investment structures[1].

[1] Typical underlying investment structures include smoothed bonus portfolios, balanced portfolios, and linkages to CIS money market portfolios and other less volatile CIS portfolios.

2.1.2. During the engagements with insurers there was general consensus that investment products offered by insurers are by their nature more suitable and appropriate for customers with medium to long-term investment goals. They are designed and priced to offer returns over longer terms, with contract terms typically starting from 10 years, or longer for retirement savings products. It was acknowledged that these products generally do not provide real (inflation-beating) returns over shorter periods.

2.1.3. Insurers raised concerns about customers' inappropriate use of these products to access funds in the short-term, leaving customers worse off because of high costs and charges imposed for early terminations or withdrawals. This behaviour was attributed to a lack of customers' understanding of the difference between (short-term) savings and (long-term) investment, and which products are most suitable to their specific needs. The risk of poor customer outcomes is exacerbated by customer vulnerability to financial shocks in the low-income market as well as mis-selling in some instances. There was a general recognition that customers with short-term savings goals (0-5 years) are better off saving through banks' more liquid savings products.

2.1.4. In terms of the customer value proposition, insurers indicated that these products are generally capable of offering real returns to customers if the investment is kept until the maturity date or for at least 5 years (assuming relatively normal market conditions), as this enables adequate time to recover up-front expenses through ongoing product charges. In addition, linkages to less volatile investments reduces the risk of negative returns over shorter durations – albeit also reducing the potential for higher returns over the long term.

2.1.5. With regards to distribution, insurers' investment products are distributed through a variety of channels including face-to-face advice channels (intermediaries and insurers' agents), tele-channels and digital platforms where there is no human interaction and advice is provided online or through a mobile app. The general view of insurers with regards to remuneration of intermediaries is that commission must be retained for selling investment products accessible to the low-income market. However, there are divergent views on the appropriate quantum of the commission. One view is that the current commission cap must be reduced in order to improve the value for money of these products while another view proposed an increased commission cap. One insurer proposed that if only products with a premium below a maximum threshold will qualify for a special remuneration dispensation under proposal TT, in order to promote financial inclusion and avoid an advice gap, the premium cap should also cater for the middle-income market.

2.1.6. Insurers also raised concerns around the current Financial Advisory and Intermediary Services Act (FAIS Act) fit and proper requirements. There was a general view amongst insurers that the current list of Tier 2 products set out in FAIS Board Notice 194 of 2017 (Determination of Fit and Proper Requirements for FSPs) has resulted in the unintended consequence of limiting the sale and distribution of certain types of investment products. The rationale for requiring less stringent fit and proper requirements for Tier 2 products is to achieve proportionality between product complexity and adviser compliance requirements, by avoiding inappropriate barriers to entry for advisers and thus enhancing access to FAIS-approved advisers for consumers of simpler products. To the extent that products targeted at less sophisticated customers typically have relatively simpler product design[2], it follows that the less stringent fit and proper requirements for marketing these products should enable a broader range of advisers to market them to underserved customers. However, this presupposes that the products listed as Tier 2 products are suitable and appropriate to the needs of this market. The concerns raised by insurers regarding the Tier 2 product designation call this into question. Because Tier 2 includes specific types of endowment policies but excludes other investment products such as retirement annuities and collective

[2] For example, Tier 2 therefore also includes simple life risk products.

investment scheme (CIS) portfolios, this has limited the advice-based distribution of these products to the low-income market, notwithstanding that these products can be structured to be appropriate to low-income consumers. In addition, because an endowment policy is required to offer an investment guarantee in order to qualify as a Tier 2 product, investment policy offerings to this market tend to be skewed toward policies with guarantees, despite the fact that the provision of these guarantees typically drive up product costs.

2.2. Engagements with FSPs that offer products through digital platforms

2.2.1. The FSCA also engaged with several FSPs that offer savings and investment products primarily on digital platforms.

2.2.2. Products believed to be suitable to the low-income market include tax free savings accounts, CIS portfolios and retirement annuities. One of the FSPs also offers equity investment accounts to customers, enabling them to invest in securities through its digital platform. Products offered by these FSPs were not specifically designed to target the low-income market but because the product design was motivated by the desire to make investing simple, easy, affordable and convenient, the FSPs consider them suitable for this market. Arguments for the suitability of these products to the low-income market are also based on their simple and low-risk underlying investment structure and the view that these products generally provide real return to customers due to their lower cost structure – particularly lower cost of distribution.

2.2.3. Products distributed through digital platforms are offered in different ways. One FSP offers products without providing advice (i.e. sales execution only) while other FSPs provide online digital advice (automated advice) that recommends a product and a fund suitable to the customer after online assessment of personal circumstances.

2.2.4. With regards to remuneration the general view of these FSPs is that there should not be an outright prohibition of commission. According to these FSPs, the FSCA should regulate intermediary boundaries regarding fees, i.e. set reasonable caps on fees that an intermediary can earn in total. These FSPs were opposed to upfront commissions. Regarding the FAIS Act fit and proper requirements, these FSPs proposed that these requirements should be relaxed to encourage the sale of a more diverse range of savings products. It was proposed that fee regulation should include a prohibition of termination costs, cancellation fees and performance fees.

2.2.5. Unlike products offered by insurers, where there are limits on access to funds during the first five years and where guaranteed maturity benefits typically only apply at the end of the contract term, products offered by these FSPs have no lock-in periods. Levels of required premiums and/or once-off contributions to these products differ. Some had no minimum contribution while others had minimum contributions of R100 per month, or once-off minimum contributions of R5 000.

2.3. Engagements with the banking sector

2.3.1. Savings and investment products offered by banks include transactional savings accounts, notice period savings accounts, fixed deposit accounts and tax-free savings accounts. Savings accounts and notice period saving accounts are appropriate for customers with a short-term savings goal, while fixed deposit accounts are suitable for customers with short to medium term savings goals, depending on duration. According to the banks engaged with, these products are deemed suitable for the low-income market because of simple features and low minimum contribution and balance requirements.

2.3.2. With regards to distribution, banks' savings and investment products are distributed through bank branches and digital platforms (internet banking and banks' mobile apps). In most cases, no advice is provided through these channels even though most of the products fall under the FAIS Tier 2 product classification. Therefore, if banks were to provide advice on these products their representatives would not be subject to stringent FAIS fit and proper requirements.

2.3.3. The engagements with the banking sector revealed a risk aversion in the sector to providing advice on savings products, and even to providing detailed factual information or support to customers (for example on how to use automated advice tools), in case this may be deemed advice and thus trigger the need to comply with more onerous FAIS Act requirements.

3. POLICY PROPOSALS

3.1. As indicated in the status update document published in December 2018, RDR Proposal TT is being considered as part of the FSCA's holistic approach to financial inclusion. This approach includes incentivising the development and distribution of simple, better value products that are affordable, have a transparent pricing structure, have appropriate features and meet the needs of low-income and under-served customers.

3.2. In line with this approach and after our engagements with product suppliers, the FSCA remains of the view that a special remuneration dispensation for savings and investment products accessible to the lower end of the market is needed to ensure that there is no advice gap resulting from the implementation of RDR Proposal MM, and that low-income customers have access to appropriate savings and investment products that meet their needs and economic circumstances.

3.3. The FSCA invites inputs on the following proposals:

Commission and suitable products

3.4. In line with the initial RDR Proposal TT, the FSCA maintains the view that intermediaries should be able to continue earning commission in respect of specified insurance savings and investment products accessible to the low-income market. The FSCA has considered whether any change to the current commission regulations for these products is required. In the interests of ease of implementation and avoiding undue disruption to current business models, we propose retaining the current commission regulation model for qualifying insurance products.[3] Once the full suite of RDR remuneration proposals is closer to finality, we will review whether any change to the Proposal TT remuneration regime may be appropriate.

3.5. Although the overall activity-based RDR framework delineates that commission is payable for the sale of products (a service to the product supplier, paid for by the product supplier) and advice fees are payable for the provision of advice (a service to the customer, payable by the customer), the special remuneration dispensation proposed for Proposal TT requires an exception to this approach. We therefore propose that, where commission continues to be payable under the Proposal TT dispensation, the commission will be deemed to be remuneration for both the selling of the product and any advice provided to the customer. This means that intermediaries that earn commission on qualifying savings and investment products will not be permitted to charge an advice fee in addition to commission in respect of advice on the product/s concerned. To ensure that commissions are only applicable to products accessible to the low-income market, a maximum contribution threshold is required.

3.6. The following is proposed:

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[3] Annexure A, Table 1 of the Regulations made under Long-Term Insurance Act, 1998.

a. **Allow commission to be payable in respect of qualifying insurance policies (see (b) and (c) below), within a contribution size threshold, to ensure the dispensation applies in relation to the correct target market:**

- In respect of recurring premium policies, the proposed maximum contribution is R1000 per month (and equivalent for other regular payment frequencies).
- In respect of single premium policies, the proposed maximum contribution is aligned to the maximum annual contribution limit prescribed for tax free savings account products, which is currently R33 000.

Questions for stakeholder input:
Q1: Do you agree or disagree with the proposal to retain the current commission regulation model for qualifying insurance investment products? If you disagree, what changes would you propose to the current commission regulation model and why?

Q2: Do you agree that the proposed premium or contribution thresholds are appropriate to cover the low-income market? If no, what lower or higher thresholds do you propose and why?

3.7. Engagements on Proposal TT also highlighted the need to reconsider the range of investment products falling under the FAIS Tier 2 product categorisation under the FAIS Determination of Fit and Proper Requirements for FSPs. The risk to be addressed (as discussed under paragraph 2.1.6), is that the narrowness of the list of products under FAIS Tier 2 could be inhibiting the wider distribution of suitable, simple savings and investment products to more customers, including lower income customers.

3.8. In this regard, the following is proposed:

b. **Identify savings product features that can reasonably be expected to meet the needs of this market:**

In making any necessary amendments to the FAIS Tier 2 product categorisation, the emphasis should be on products that:
- Are relatively simple and offer lower risk investment options - recognising the lower investment risk appetite and vulnerability to financial shocks of the target market; and
- Provide value for money.

The following products are therefore proposed to be included in a revised Tier 2 product list, in addition to the current Tier 2 products:

i. Collective investment schemes falling into the following categories: South African portfolios that are: Interest Bearing portfolios (all three sub-categories) and Multi Asset portfolios, only in the Income sub-category.[4]
ii. Long-term insurance investment policies in smoothed bonus portfolios or invested in one or more of the above CIS categories
iii. Individual retirement annuities or preservation fund investments invested in smoothed bonus insurer portfolios or in one or more of the above CIS categories
iv. Tax-free savings accounts invested in an insurer smoothed bonus portfolio or one or more of the above CIS categories.

[4] As defined in the ASISA standard on fund classification for South African regulated collective investment scheme portfolios

Questions for stakeholder input:
Q3: Do you agree or disagree with the proposed list of additional products to be added to the current Tier 2 product list? If you disagree, which product do you think is not suitable and appropriate for inclusion in the Tier 2 product list?

Q4: Are there other product/s that could be appropriate for the low-income market and should be included in the Tier 2 product list?

Q5: Are there additional CIS classification categories that should be added to Tier 2 products? Why would these be considered suitable for low-income investors?

3.9. In addition, it is proposed that the FAIS Tier 2 fit and proper dispensation will going forward be limited to intermediaries providing services only to retail financial customers, i.e. only intermediaries serving financial customers that are natural persons will qualify to sell Tier 2 products. This limitation is proposed to mitigate risks of expanding the range of Tier 2 products, which can result in the Tier 2 dispensation extending beyond the intended target market. Our supervisory experience is that existing Tier 2 products are already targeted at retail customers and we therefore do not believe that this limitation will disrupt existing business models. We do however invite input on whether this limitation will have any unintended consequences.

Question for stakeholder input:
Q6: Will limiting the FAIS Tier 2 fit and proper dispensation to intermediaries providing services to retail financial customers only disrupt current business models and practices? If the answer is yes, please provide a detailed response as to why this would be the case.

c. Set additional requirements for insurance savings products to promote value for money:

3.10. To promote the provision of products that provide fair value for money, the following additional requirements are proposed for insurance products to be regarded as suitable for this market:

- **i.** The product charging structure is such that the Effective Annual Cost (EAC) (using the ASISA calculation basis) is below an appropriately capped level at specified intervals. Our initial proposal is that these EAC caps should apply at 1, 3, 5 years and at the end of the contract term (where there is a specified term). Where there is no specified term, EAC at 10 years should be used as the end-of-term measure for products, other than retirement annuities or preservation funds. In the case of retirement annuities and preservation funds age 55 should be used as the end-of-term measure, except where the actual term ends later than age 55 (for example due to the product commencing after age 55). Stakeholders are invited to provide inputs on the level of EAC and the intervals at which these levels should apply. The focus should be on EAC levels and intervals that will support cost structures that enable inflation-beating returns after deduction of charges (subject to reasonable return assumptions) in the medium term and at the end of the contractual term, balanced against the fact that the product makes business sense for the insurer.
- **ii.** Any causal event charges remain subject to current regulatory requirements.

Questions for stakeholder input:
Q7: Please provide your views on the feasibility of setting a cap on EAC levels for purposes of the Proposal TT dispensation.

Q8 If a cap on EAC is introduced, should the maximum EAC limits apply to insurance policies only? Would it be sensible to apply to CIS products?

Q9: What is an appropriate maximum level of EAC and applicable intervals at which a maximum EAC level should apply for products that will qualify for the Proposal TT dispensation? Please provide some detail in terms of why these levels and intervals are deemed appropriate.

3.11. The FSCA welcomes inputs on the above proposals, including definitional issues, any potential unintended consequences, and additional product categories that could be considered.

Appropriate fit and proper requirements

3.12. In order to avoid barriers to accessing fair and competent advice on savings products, it is necessary to provide for an appropriate fit and proper regime for intermediaries in this market. Regulatory considerations in this regard are discussed further below.

4. REGULATORY OPTIONS

4.1. Giving effect to the proposals set out in Section 3 will require amendments to both the Long-term Insurance Act (LTIA) Commission Regulations to set out which insurance savings products remain eligible for commission, and the FAIS Tier 2 product categorisation under the FAIS Determination of Fit and Proper Requirements for FSPs, to ensure an appropriate fit and proper regime for intermediaries offering products suitable to the needs of the low-income market.

Possible regulatory framework approaches for implementing an appropriate remuneration and fit and proper dispensation for savings and investment products aimed at the low-income market

4.2. The FSCA invites comment on three possible regulatory framework approaches for implementing an appropriate remuneration and fit and proper dispensation for savings and investment products aimed at the low-income market:

Option 1

LTIA Commission Regulations	FAIS Tier 2 product categorisation
The regulations are amended to specify products that will qualify for commission: • Products must be on Tier 2 list (as amended) • Product premiums are limited to proposed thresholds (paragraph 3.6(a) above) • Proposed EAC thresholds apply (paragraph 3.10 (c)(i) above) • Current causal event limitations apply	• Amend FAIS Tier 2 product categorisation to add the list of products identified in paragraph 3.8(b) above • Products added to be subject to the existing limitation on portfolio switching referred to in the definition of long-term insurance subcategory B2-A[5] under Board Notice 194 - FAIS Determination of Fit and Proper Requirements for FSPs. • Fit and proper requirements remain as for current Tier 2 products.

4.3. A potential disadvantage to this option is that it may lead to inappropriate advice, whereby intermediaries who are qualified to sell only Tier 2 products (which have conservative underlying portfolios), sell these products to customers for which these products are not appropriate and suitable to their needs – for example customers with higher risk tolerance levels.

[5] Under Board Notice 194 - FAIS Determination of Fit and Proper Requirements for FSPs, Long-term insurance subcategory B2-A is defined as those long-term insurance policies referred to in the definition of long-term insurance subcategory B2 which provide for the premiums to be invested in an investment portfolio managed by the product supplier with no option by the policyholder to request a change or amendment to that portfolio

4.4. Note that this proposal does not cap the premium or contribution size of Tier 2 products. A premium size threshold will only apply, through the LTIA Commission regulations, for purposes of entitling intermediaries to earn commission on Tier 2 insurance policies. An additional risk of Option 1 is therefore that it can affect products aimed at a broader range of customers than the target market that Proposal TT is aimed to benefit.

Option 2

4.5. To address the concern of potentially overly broad impact of the new Tier 2 product list raised under Option 1, this option proposes that in addition to the classification of the additional products listed under Option 1 as Tier 2 products, the premium/contribution cap be introduced, not in the commission Regulations, but instead under the FAIS Tier 2 product categorisation. The following is proposed:

LTIA Commission Regulations	FAIS Tier 2 product categorisation
The regulations are amended to specify products that will qualify for commission: • Policy must be on Tier 2 list (as amended) • Proposed EAC thresholds apply (paragraph 3.10 (c)(i) above) • Current causal event limitations apply	• Amend FAIS Tier 2 product categorisation to add the list of products identified in paragraph 3.8(b) above • Add limitation on portfolio switching referred to in the definition of long-term insurance subcategory B2-A under Board Notice 194 - FAIS Determination of Fit and Proper Requirements for FSPs. • Add premium or contribution threshold/limit (paragraph 3.6(a) above) for the added products. • Fit and proper requirements remain as for current Tier 2 products.

4.6. The concern with this option is that it might be difficult for the FSPs and for the FSCA to supervise or monitor that intermediaries qualified and accredited to sell Tier 2 products are only selling products with premiums or contributions below the thresholds, particularly in the case of non-insurance products and do not mis-sell multiple products to a single customer in order to avoid more onerous Tier 1 fit and proper requirements.

Option 3

4.7. Under this option we propose the introduction of a new FAIS product category (Tier 2A products) that introduces a new and specific dispensation regarding fit and proper requirements for the "new" products listed under Option 1. Tier 2A fit and proper requirements will not be as onerous as current Tier 1 requirements and not as lenient as current Tier 2 requirements.

LTIA Commission Regulations	FAIS Tier 2 product categorisation
The regulations are amended to specify products that will qualify for commission: • Products must be on Tier 2 or 2A list (as proposed) • Product premiums are limited to proposed thresholds (paragraph 3.6(a) above) • Proposed EAC thresholds apply (paragraph 3.10(c)(i) above)	• Current Tier 2 list of products remains the same • A new Tier 2A list is created which includes the list of products identified in paragraph 3.8(b) above • Add limitation on portfolio switching referred to in the definition of long-term insurance subcategory B2-A under Board

• Current causal event limitations apply	Notice 194 - FAIS Determination of Fit and Proper Requirements for FSPs. • Add competency and qualification requirements for Tier 2A products. Our initial proposal is the following: Representatives will be required to meet the same minimum qualification, experience and product specific training as currently applicable for Tier 2 products, but will in addition need to undergo class of business training in respect of the applicable Tier 2A products. - Representative to remain exempted from Regulatory Examination and Continuous Professional Development (CPD) requirements.

4.8. Stakeholders are invited to provide inputs on the fit and proper requirements appropriate for the proposed Tier 2A products.

4.9. This option mitigates the risks of potentially over-broad application of the Proposal TT regime. A disadvantage of this option however is that it adds an additional layer of complexity to the already complex FAIS fit and proper regime.

4.10. A risk across all options is that advisers will attempt to sell multiple policies to the same customers in order to earn commission on investment sizes above the proposed thresholds. Insurers and FSPs will be required to have oversight and control mechanisms in place to detect attempts to circumvent the thresholds in this way.

Questions for stakeholder input:

Q10: Which of the regulatory framework options above do you believe is the most appropriate to introduce a remuneration and FAIS fit and proper dispensation for savings and investment products for the low-income market and why? Provide a detailed explanation of why you prefer a particular option and why the other options will not be appropriate. If you do not believe that any of the options are appropriate, please explain why and let us know if you have any alternative suggestions.

Q11: If your preferred regulatory option is Option 3, please provide your views on the proposed fit and proper requirements for Tier 2A. If you do not agree with these proposed requirements, please suggest alternative fit and proper requirements for Tier 2A.

FAIS Needs Analysis requirement

4.11. Under the FAIS Act it is mandatory for an intermediary offering advice to conduct an appropriate financial needs analysis for their clients before giving advice. The FSCA proposes introducing an explicit requirement that advisers selling and providing advice on medium and longer-term investment products, assess whether the customer has short-term liquid savings before recommending a medium or long-term investment product. This requirement could be met if the medium or long-term product being recommended includes features that provide for such short-term access. Where the customer does not have such access, the adviser concerned should explicitly highlight the risks of taking up a product, in a manner understandable to a customer, and ensure that such warning is recorded as part of the record of advice. This additional requirement is proposed in light of feedback from product suppliers that a lack of access to liquid savings is a significant driver of early withdrawal of funds from a long-term investment to finance short-term shocks, resulting in the long-term product failing to meet its intended purpose.

Question for stakeholder input:
Q12: Do you agree or disagree with the proposed introduction of an explicit requirement for advisers to assess whether the customer has short-term liquid savings before recommending a medium or long-term investment product? Do you think this will address the inappropriate use of products by customers highlighted under Section 2.1?

Addressing reluctance to provide advice or adequate information

4.12. Engagements with product suppliers, and banks in particular, revealed a risk aversion approach to the provision of advice and, in some cases, the provision of adequate information to customers. This is notwithstanding the fact that the FAIS regime has been specifically tailored (and will be further enhanced by the proposals in this paper) to avoid imposing a disproportionate compliance burden on intermediaries in respect of simpler products. (See section 2.3 above). The effect is that vulnerable customers, who may be most in need of suitable advice or adequate information, are potentially deprived of this support. The FSCA will issue a guidance note clarifying the extent of an FSP's responsibilities regarding the provision of advice and factual information respectively in relation to Tier 2 products, with a view to avoiding an unintended advice gap being caused by an inappropriately risk averse approach.

5. WAY FORWARD

5.1. Stakeholders are invited to provide inputs on proposals outlined in this document. The inputs received from stakeholders will inform the development of draft regulatory instruments in relation to RDR Proposal TT. Such draft instruments will in turn be preceded by our usual legislative consultation processes.

5.2. Please provide your input by using the attached Feedback Template. Responses should be submitted to FSCA.rdrfeedback@fsca.co.za by no later than 28 February 2020.