

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002**

**REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED EXEMPTION OF CERTAIN FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES FROM SECTIONS 13(1)(c) AND 19(3) OF THE FAIS ACT, SECTION 9(3) OF THE DETERMINATION OF FIT AND PROPER REQUIREMENTS FOR FINANCIAL SERVICES PROVIDERS, 2008, AND SECTION 13 OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003**


**LIST OF COMMENTATORS**



1	Dealer Financial Services CC	8	Insure Group Managers Ltd
2	KGA Life Limited	9	I Desire
3	Europ Assistance South Africa	10	Payle Financial Services CC
4	IntegriSure Administrators	11	South African Insurance Association (SAIA) Travel Insurance Forum
5	Black Insurance Advisors Council (BIAC)	12	Masthead
6	IDA Risk Management (Pty) Ltd	13	South African Insurance Association (SAIA)
7	Compliance Monitoring Systems CC		

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<b>GENERAL COMMENTS RE ALL PROPOSED EXEMPTIONS</b>				
1.	3		In our view, all of the proposed exemptions support the Registrar's stance that regulatory requirements must be proportionate to risks. The requirements are meant to mitigate and the cost it imposes on financial service providers.	Noted.
2.	5		BIAC is of the view that: 1. Steps being taken are intended to assist those who are finding it difficult to participate fully in the financial services industry	Noted. Exemptions should be subject to an expiry date to ensure regular review of the appropriateness of the

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			<p>2. Steps being taken seeks to protect all existing players who were caught up by the FAIS ACT We would however wish to have permanent exemptions and not temporary ones because there are control measures in place.</p> <p>And BIAC also hopes that there won't be a price to be paid for these exemptions</p>	<p>exemption. The Registrar, therefore, will be monitoring the exemptions in order to determine and assess-</p> <p>(a) the impact and effect of the exemptions on achieving fair outcomes for consumers; and (b) whether the exemptions remain compliant with the requirements set out in section 44(1) of the Act.</p> <p>No fee is payable in respect of the exemption.</p>
3.	11		<p>The Registrar is requested to consider the following comments prior to reviewing the specific comments raised for the Registrar's response.</p> <p>1. The Invitation to Comment dated 31 August 2016 provides a useful background to and interpretation of the draft Exemptions. It is requested that the Exemptions be issued with an Explanatory Memorandum to address matters which would not readily be included in a formal regulatory instrument. An example is the matter of the premium collection requirements under the Short-term Insurance Act. To this end, it is not entirely clear as to whether the need for the juristic representative to hold an IGF guarantee is retained.</p> <p>2. It is noted that the Registrar previously issued on 24 June 2015 a Guidance Note on FAIS Section 13(1)(c), therefore the status of this Guidance Note should be clarified. The SAIA Travel Insurance Forum's suggestion is that this Guidance Note should not be withdrawn and should be read in conjunction with the Exemption.</p> <p>3. The Exemption makes no mention of Professional Insurance (PI) and Fidelity Guarantee (FG) Covers and it is therefore assumed that these requirements remain in place. However, with the extensive</p>	<p>Noted.</p> <p>The Registrar does not intend to publish an additional explanatory memorandum that sets out the rationale for the proposed exemptions as that has been addressed in the Invitation to Comment document.</p> <p>Please note that the exemptions only apply to requirements under the FAIS Act and do not extend to requirements set out in other laws. Therefore, a person must continue to comply with other applicable laws.</p> <p>Agree. The Guidance Note must be read in conjunction with the Exemptions.</p> <p>Section 13 of the General Code of Conduct only applies to FSPs and specifically excludes representatives from the requirement to have and</p>

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			governance requirements of this Exemption, and with the existing Exemption for Insurers for PI and FG Covers which was issued 22 May 2015, clarification is requested if this requirement is necessary to apply to juristic representatives who are subject to this Exemption.	maintain Professional Insurance or Fidelity Guarantee Insurance.
4.	13		The SAIA maintains its support of regulatory interventions for the broader implementation of fair consumer treatment, the protection of insurance consumers, financial awareness and the integrity of the financial system. The SAIA appreciates the consultative approach by the FSB to date and welcomes the opportunity to engage further with the FSB on the Proposed Exemptions of certain financial services providers and representatives from sections 13(1) (c) and 19 (3) of the FAIS Act, section 9(3) of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008 and Section 13 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003.	Noted.
5.	12		We believe that successful and effective regulation involves a balancing of roles and responsibilities of at least 4 key players – those are the customer, the regulator, the product supplier and the advisor. If there is an imbalance in responsibilities of one party relative to the others, then the system will be out of balance. That will have a negative impact and impede success. We, therefore, support the approach that the 'burden' of compliance with regulation should rest with party which is primarily responsible for various functions, irrespective of whether such functions have been outsourced to a third party. Therefore, in principle, we are in favour of the exemptions and provide comment only in relation to some practical aspects.	Noted.
6.	10		With reference to your invitation published by the Registrar of Financial Services Providers (Registrar) on the website of the Financial Services Board, inviting comments on the proposed exemptions of certain representatives from section 13(1)(c) and certain FSPs from section 19(3) of the FAIS Act, section 9(3)(b) and (c) of the Determination of Fit and	Noted.  The exemption, once published, will be of general application. There is thus no need to apply for it on an individual basis.




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			<p>Proper Requirements for Financial Services Providers, 2008, and section 13 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003.</p> <p>We would like to take this opportunity to apply for exemption in this regard.</p>	
<b>EXEMPTION FROM SECTION 13(1)(c)</b>				
7.	1	General comment	<p>This proposed exemption is planned to be introduced 18 months after the introduction of section 13(1)(c). Surely all FSPs who can meet the conditions laid out in paragraphs (a), (b) and (c) have already implemented procedures to not need the exemption. If they have not, and are not compliant with section 13(1)(c), they shouldn't qualify for the exemption.</p> <p>I believe this is an "oxymoron" that makes the work and efforts put in by the FSP's to be compliant with the desires of the FSB a waste of time and resources.</p> <p>By introducing the exemptions contemplated in this proposal it will undermine and remove the strategic advantage I have given my company by investing in systems and procedures to be compliant to the act and section 13(1)(c).</p> <p>This proposed introduction will prejudice the compliant and we urge you to continue down the road of guided enforcement where inspectors implement risk mitigation plans with deadlines and feedback etc.</p>	<p>Noted.</p> <p>The exemptions, and the impact thereof, are limited to specific persons acting under specific circumstances as set out in the Notices.</p> <p>The Registrar supports the principle that regulatory requirements must be proportionate to the risks the requirements are meant to mitigate and the cost it imposes on financial services providers. The Registrar is satisfied that the proposed exemptions will not diminish the protection afforded to clients under the Act, given the limited extent of the exemptions and the specific conditions attached thereto. The Registrar further does not agree that the exemptions would prejudice the "compliant".</p> <p>The Registrar, in alignment with the principles set out under the Retail Distribution Review project has decided to limited the exemption further by providing that it only applies to a juristic representative (as defined in the exemption) that acts on behalf of <b>one</b> particular FSP (insurer).</p> <p> See amendment to definition of "juristic representative" that requires the representative to be appointed as a representative of one particular FSP only.</p>

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8.	6	General comment	<p>With reference to the amendments to the FAIS Act and more specifically the Section 13(1)(c) amendments that were implemented, it is not clear to us, IDA and IDA Risk Management, why the Registrar would now allow possible exemptions in terms of Section 13(1)(c) as this could result in motor dealers being juristic representatives and being authorised by particular FSPs per definition to once again start collecting and/or holding client funds (premiums).</p> <p>This, without any guidance with reference to the applicability to the Short Term Insurance Act Section 45 (Collection of Premiums by Intermediaries) read with Section 13(1)(c) where the bank guarantee or IGF to be in the name of the FSP.</p> <p>Without clarity, and I speak under correction, but this exemption, if allowed, will defeat the object of the exercise, namely to allow a third party, at least in our industry, to hold client funds and/or to collect premiums. If the exemption is granted to the juristic representative, the written mandate between the particular FSP and the Juristic Representative for the rendering of the specific financial service, must be very clear with regards to the security referred to in Section 45 of STIA.</p> <p>It should also be noted that guidance will have to be provided if a juristic representative would be allowed to act as a representative of more than one particular FSP when rendering specific financial services, and if this is</p>	<p>Noted. Please refer to the Registrar's response under item 7. The exemption only applies to a juristic representative as defined in the exemption Notice that complies with the requirements and conditions set out therein, irrespective of the industry in which such representative operates. Please also note that the exemption is limited in that it only applies where the juristic representative acts on behalf of <b>one particular FSP (Insurer)</b>.</p> <p>The exemption does not apply to the juristic representative of FSPs who are not also registered insurers or where a representative is appointed as a juristic representative of more than one particular FSP (insurer).</p> <p>Noted.  See amendment to definition of 'juristic representative'</p> <p>Noted.  See amendment to definition of "juristic</p>

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			<p>the case, how will this be communicated to the client and does this mean that there must be separate banking accounts for these particular FSPs.</p> <p>Taking all of the above into consideration, we are of the opinion that this will impact on the Binder Regulations, more specifically the "entering into" Section of the Binder Regulations.</p> <p>In conclusion, as an industry role player, we are uncomfortable with the proposed exemptions and can therefore not support the proposed exemptions.</p>	<p>representative" that requires the representative to be appointed as a representative of a single particular FSP only.</p> <p>Disclosure of the full particulars of the exemption would have to be made by the juristic representative in terms of section 5(g) of the General Code of Conduct.</p> <p>The effect of the exemption would be that juristic representatives would be allowed to receive premiums into their own bank accounts and subsequently paying same over to the particular FSP (insurer).</p> <p>Disagree.</p> <p>The exemption only relates to the collection of premium which is not a binder function. The exemption further will have no impact on the Binder Regulations as it only applies to requirements under the FAIS Act and does not extend to requirements set out in other laws. It is important to note that a juristic representative cannot in its own name enter into a binder agreement with an insurer.</p>
9.	2	General comment	<p>We fail to understand why this exemption is only considered for juristic representatives and not Sole Proprietors also. Due to the informal nature of the funeral insurance industry many businesses are run as sole proprietaries. Section 47 of the LTIA also does not distinguish between juristic representatives and individual representatives; the section refers to "person"- which includes both natural and juristic persons. Therefore there is no risk to policyholders as premiums are deemed to be received by the insurer irrespective of the legal nature of the recipient.</p>	<p>Noted.</p> <p>A person acting as a sole proprietor is the FSP. The prohibition in section 13(1)(c) does not apply to an FSP, it applies to representatives only.</p>
10.	3	General comment	<p>The task of collecting, receiving or holding of a premium on behalf of a particular FSP in the name of the FSP has resulted in administrative and financial burdens on affected FSPs and intermediaries.</p>	<p>Noted.</p>

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			<p>In terms of paragraph 4 of the Guidance Note on the Interpretation and Application of Section 13(1)(c) of the FAIS Act, published on the 24th of June 2016, the purpose of Section 13(1)(c) is, amongst others, to:</p> <ol style="list-style-type: none"> <li>1. ensure that consumers know with whom they are contracting and who will ultimately be responsible to perform;</li> <li>2. to remove any uncertainty as to whether the representative is acting for or on behalf of a principal or on its own behalf;</li> </ol> <p>Ultimately it boils down to transparency and protection of the consumer. In this regard, the proposed exemption limits its scope to Category I and IV FSP's (which in general have less stringent requirements) provided that the FSP is also a registered insurer. Further controls are built into the definition of "particular FSP".</p> <p>The client is further protected and transparency is ensured through the conditions of the exemption, particularly the condition to comply with section 5(g) of the General Code of Conduct which requires the FSP to inform the client of any exemptions applicable.</p> <p>Transparency and protection of the client is therefore ensured while at the same time removing the administrative and financial burden from FSP's and their respective juristic representatives.</p>	
11.	5	General comment	<p>BIAC welcomes the proposal for exemption and it has the support from the organisation. This support is informed by the following reasons:</p> <ol style="list-style-type: none"> <li>1. Letter of appointment of the representative by a particular FSP, will bring order and control of movements from one FSP to another whenever there are procedural differences;</li> <li>2. The annual report and review of the relationship will be recorded by the Regulator; and</li> <li>3. The client, the representative and the FSP will be treated fairly.</li> </ol>	Noted.
12.	9	General comment	<p>With regards to the exemptions being considered on juristic representatives. From my understanding this exemption in a nutshell states that the FSPs would be allowed to utilize juristic representatives (another company) provided that there would be no infringement on</p>	<p>Disagree. The exemption only applies to the juristic representatives of a FSP <b>who is also an insurer</b>. See definitions of "juristic representative" and "particular</p>

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			<p>manageability and reporting etc. on the FSP itself. I see no problem with that, as the FSP would be held accountable. My question is what about the requirements to be placed on a representative register in the first place. Surely it's all good and makes business sense to utilize other companies to expand and grow income, but are we making this much more professionalized if the requirements set to the people giving the advice is not strictly adhered to? I do not want to be in an industry where people make decisions purely based on financial gain.</p>	<p>FSP". The exemption from section 13(1)(c) is further limited to certain defined activities and does not extend to any other financial services. The exemption also has no impact on the requirements relating to the register of representatives referred to in section 13(3) and 13(5) of the Act.</p>
13.	7		<p>Risk Management – move to conditions Sections 11 and 12 of the General Code of Conduct do not apply to representatives and are confined to financial services providers. In order to provide the greatest and most realistic protection to insurers, it is proposed that additional conditions of the exemption be included that will compel the juristic representative at all times:</p> <ol style="list-style-type: none"> <li>1. to have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions; and</li> <li>2. To structure the internal control procedures concerned so as to provide reasonable assurance that the relevant business can be carried on in an orderly and efficient manner, that financial and other information used or provided by the provider will be reliable and that all applicable laws are complied with.</li> </ol> <p>In the case of the collection of short term insurance premiums, applicable legislation would include compliance with the Value Added Tax Act 1991; In the case of the collection of long term insurance premiums, the appointment would render the representative an agent of an Accountable Institution and thus subject to the Financial Intelligence Centre Act 2001. This fact should be noted. In addition to the above, a representative is not required to comply with Part VIII (Operational Ability) of Board Notice 106 of 2008 as amended</p>	<p>Disagree.</p> <p>Section 11 of the General Code of Conduct does apply to representatives. A "provider" is defined in that Code to include a representative.</p> <p>The Registrar disagrees that the proposed conditions should be included as the issue raised is covered by section 13(2) of the Act that requires an FSP to ensure that its representatives comply <i>"with any applicable code of conduct as well as other applicable laws on conduct of business"</i>.</p> <p>Particular FSPs (insurers) that appoint persons as juristic representatives to render financial services on their behalf must ensure that such persons have the ability to perform the delegated functions.</p>


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			<p>(Determination of Fit and Proper Requirements for Financial Services Providers, 2008) – particularly sub-paragraphs 3 – 7 thereof. Accordingly, it is suggested that the mandate be required to include provisions that will ensure that the juristic representative has the necessary operation ability. (See below)</p> <p>It is also suggested that a juristic representative should be confined to being appointed as a juristic representative of only one FSP – not only one <u>particular FSP</u> as defined in the exemption.</p> <p>It is recognised that this exemption has been considered and is welcomed in light of specific situations encountered in the market place where strict compliance with the provisions of S 13(1)(c) would be practically impossible. However, in order to ensure that this exemption is enjoyed only where it is essential and is not exploited by entities for whom the exemption was not intended, certain additional risk management procedures are suggested.</p> <p>In the circumstances, it is proposed that the terms of the exemption be enlarged and a suggested rewording is provided. In this regard, I acknowledge the guidance provided by Directive 159.A.i (LT&amp;ST) issued by the Registrar of Long and Short Term Insurers.</p> <p>Proposed wording:</p> <p style="padding-left: 40px;">Extent of exemption, duration and conditions</p> <p>(1) A juristic representative is exempted from section 13(1)(c) of the Act when rendering a specific financial service on behalf of a particular FSP, subject to the following conditions:</p> <p style="padding-left: 40px;">a) Any mandate granted in respect a specific financial service relating to premiums on long term insurance policies, shall be in accordance with paragraph 5.1(a) of the Policyholder Protection Rules (Long-Term Insurance), 2004 (as amended) and shall include the matters referred to in paragraph (2) below.</p> <p style="padding-left: 40px;">b) Any mandate granted in respect of a specific financial service relating to premiums on short term insurance</p>	<p>Agree.</p> <p> See amendment to definition of “juristic representative”.</p> <p>The Registrar does not agree with the proposed additional requirements relating to the content of the mandate as the specific matters are covered by the principle criteria set out in the definition of ‘Particular FSP’ (insurer). The exemption, therefore, will not apply to a FSP who renders the specific financial services on behalf of an insurer who does not meet those criteria and who is unable to demonstrate compliance with it. The exemption will further not apply to a juristic representative that does not meet all the criteria set out in the definition of ‘juristic representative’.</p> <p> In this regard, see inclusion of requirement that the representative must maintain a guarantee policy or a contract as contemplated in Part 4 of the Short-term Insurance Regulations.</p> <p> See amendment to paragraph 2(2) that clarifies that failure by the particular FSP (insurer) to meet any of the criteria set out in the definition of “particular FSP” or to provide confirmation of its compliance with those criteria will result in the</p>


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			<p>policies, shall be in accordance with paragraph 7.1(a) of the Policyholder Protection Rules (Short-Term Insurance), 2004 (as amended) and shall comply with the requirements of S 45 and Regulation 4 of the Short Term Insurance Act, 1998 and shall include the matters referred to in paragraph (2) below.</p> <p>(2) The written mandate granted by the particular FSP shall, in respect of the specific financial service and in addition to the requirements of paragraphs 1(a) and (b) above, be required to:</p> <ul style="list-style-type: none"> <li>a) specify the duration of the contract;</li> <li>b) specify the level and standard of service that must be rendered to the particular FSP;</li> <li>c) require the juristic representative to have appropriate governance, risk management, and internal controls in place to perform the specific financial service;</li> <li>d) require the juristic representative to comply with applicable laws including, where applicable, the Value Added Tax Act, 1991 and the Financial Intelligence Centre Act, 2001;</li> <li>e) require the juristic representative to disclose the existence of the specific exemption from the provisions of Section 13(1)(c) of the Act which the Registrar has granted to the juristic representative;</li> <li>f) specify the commission (if any) payable by the particular FSP to the juristic representative in order to ensure that the total commission payable to all intermediaries concerned with the particular transaction does not exceed the maximum allowed in law;</li> <li>g) provide for the type and frequency of reporting by the juristic representative on rendering of the specific financial service performed under the contract;</li> <li>h) provide that the particular FSP must monitor the juristic representative's performance under and compliance with the contract and the manner in and means by which that</li> </ul>	<p>exemption not being applicable to its juristic representative. In the absence of the exemption the Registrar will take regulatory action against the representative for non-compliance with section 13(1)(c) and the particular FSP (insurer) for non-compliance with section 13(2).</p>

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			<p>monitoring will take place;</p> <ul style="list-style-type: none"> <li>i) provide for periodic performance reviews of the juristic representative and the regular review of the contract;</li> <li>j) specify that the particular FSP has continued access to information relating to the specific financial service, including access to any information the particular FSP may require to monitor the treatment of policyholders, where relevant;</li> <li>k) address confidentiality, privacy and the security of information of the particular FSP and policyholders;</li> <li>l) provide for business contingency processes, including the continuity of the specific financial service if the juristic representative is placed under curatorship, business rescue, becomes insolvent, is liquidated or is for any reason unable to continue to render the specific financial service in accordance with the contract;</li> <li>m) specify the circumstances under which the particular FSP may terminate the contract;</li> <li>n) in the case of long term insurance premiums, include indemnity and liability provisions;</li> <li>o) set out any warranties or guarantees to be furnished and insurance to be secured by the juristic representative in respect of its ability to fulfil its contractual obligations;</li> <li>p) provide for a dispute resolution process;</li> <li>q) provide for a reasonable termination period, irrespective of the circumstances under which the agreement is terminated (including the lapsing or non-renewal of the agreement) that will allow the particular FSP 's contingency plans to be implemented; and</li> <li>r) Contain a prohibition on being appointed as a juristic representative of any other FSP</li> </ul> <p>(3) The particular FSP must regularly assess the juristic representative's-</p> <ul style="list-style-type: none"> <li>a) governance, risk management, and internal controls</li> </ul>	

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			<p>(including fit and properness);</p> <p>b) ability to comply with applicable laws; and</p> <p>c) operational and financial capability.</p> <p>(4) This exemption will automatically lapse upon failure to comply with any condition referred to in subparagraphs (1) to (3) above.</p>	
15.	11	1 – Definition of “particular FSP”	The definition of “particular FSP” is noted, however, it is noted with concern that it does not recognise the Host FSP Model. The Registrar is therefore requested to provide clarification on the status of the juristic representatives who are appointed under a Host FSP Model.	The exemption only applies to the juristic representatives of a <b>FSP who is also an insurer</b> . See definitions of “juristic representative” and “particular FSP”. The exemption is further limited to a particular activity namely: the collection of premium on behalf of an FSP that is an insurer, and does not extend to any other financial services or juristic representatives of other FSPs. Therefore, the exemption will not apply to representatives appointed under a “Host FSP Model” as the requirements and conditions of the exemption will not be met.
16.	2	1 – Definition of “particular FSP”	Reference is made to the fact that the FSP must be able to “ <b>demonstrate</b> ” certain things. We suggest that each insurer draw up a <u>risk register</u> for this exemption with corresponding <u>mitigating factors</u> and that the register is <u>updated annually</u> .	Noted. The Exemption does not prescribe how the ‘particular FSP’ must satisfy itself of the criteria set out under paragraph (b) of the definition. It must, however, be able to demonstrate that it complies with the requirement. The Registrar will supervise compliance by that FSP with the requirements through its standard supervisory practices.
17.	2	1 – Definition of “particular FSP”	“monitor, manage and regular reviews” It is also not clear what is meant by this. We suggest that “regular reviews” be defined as <u>written reports</u> compiled <u>once a year or every six months</u> .	Disagree. The ordinary meaning of the words will apply.
18.	11	1 – Definition of “particular FSP”	It is presumed that the governance matters and risk management matters referred to relate exclusively to the process of premium collection. Otherwise clarification is required.	The requirement relates to the delegation of the “specific financial service”.

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19.	13	1 – Definition of “particular FSP”	It is noted that the definition of a “particular FSP” excludes an FSP that is not registered as a short-term insurer. It is recommended that the exemption to the provision of Section 13(1)(c) be extended to FSP’s that are operating as UMA’s as well as it would directly affect the operations of members who have structured their business relationships this way (travel and others).	Disagree. The exemption is intentionally limited to the juristic representatives of FSPs who are insurers to ensure that the exemption does not conflict with public interest, prejudice the interests of clients or frustrate the achievement of the objects of the Act.
20.	11	1 – Definition of “specific financial service”	It is noted that the Exemption is limited to collection, receiving or holding of a premium on behalf of a particular FSP. The SAIA Travel Insurance Forum will further engage the Registrar regarding an acceptable manner of dealing with the advice question for travel insurance.	Noted.
21.	11	2(1)	The primary focus of Section 13(1)(c) is the name in which the juristic representative renders financial services or contracts. Paragraph 3.5 of the Guidance Note confirms that Section 13(1)(c) requires the representative to render financial services or contract exclusively in the name of the Host FSP. This Exemption provides comprehensive, and not partial, exemption from Section 13(1)(c). It therefore follows that a juristic representative will be in a position to render financial services and contract in its own name. In addition, the implication is that a juristic representative may only operate (transact) in its own name if it is a juristic representative of a “particular FSP”. Clarification is requested as to whether a juristic representative not performing “specific financial service” can only contract in the name of the Host FSP?	Disagree. The exemption from section 13(1)(c) of the FAIS Act is limited to the rendering of the specific financial service (collection of premium) as defined in the Exemption Notice by a juristic representative of an FSP that is an insurer, and subject to the criteria and conditions set out therein. A juristic representative rendering any service, other than the specific financial service as defined in the Notice, must comply with section 13(1)(c), i.o.w. it must render the financial services or contract in the name of its FSP.
22.	11	2(1)(b)	Clarification is requested on what is intended with the Host FSP Model?	See response under item 15.
23.	7	2(1)(a)(i)	This requirement could result in confusion in both the long terms and short term space. Long Term Insurance Paragraph 5.1(a)(i) of the Policyholder Protection Rules provides, inter alia, that an insurer must, where an agreement has been entered into with an intermediary in connection with the insurance products of that insurer, furnish the intermediary with a written copy setting out the	Disagree. The condition that the juristic representative must at all times have a written mandate from the particular FSP does not impact on the requirements under the Short-term and Long-term Insurance Acts. It is a condition to the exemption. Failure to comply with that condition will result in the exemption not being

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			<p>terms and conditions thereof.</p> <p>Short Term Insurance</p> <p>Paragraph 7.1(a)(i) of the Policyholder Protection Rules provides, inter alia, that an insurer must, where an agreement has been entered into with an intermediary in connection with the insurance products of that insurer, furnish the intermediary with a written copy setting out the terms and conditions thereof.</p> <p>Furthermore, S 45 of the Short Term Insurance Act, 1998 (Collection of premiums by intermediaries) provides that no independent intermediary may receive, hold or in any other manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums unless authorised to do so by the short-term insurer concerned as prescribed by regulation and otherwise than in accordance with the regulations.</p> <p>The Regulation referred to that is specific to this situation is Regulation 4.1 (Authorisation) this Regulation provides that a short-term insurer may in writing authorise an independent intermediary to receive, hold or in any other manner deal with premiums payable to it under short-term policies subject to the express condition that the intermediary has provided security, to the extent and in accordance with the requirements of Part 4 of the Regulations.</p>	<p>applicable.</p>
24.	7	2(1)(a)(ii)	<p>As an agent of the insurer/FSP, it is submitted that a representative has, in reality, limited ability to insist on this information being provided or to ensure the accuracy of the information. In the alternative, it is proposed that the obligation to comply with the criteria set out in the definition of "particular FSP" be imposed on the FSP who should, in terms of Paragraphs 11 and 12 of the General Code of Conduct, be required to be able to demonstrate to the satisfaction of the Registrar that it can and does meet these criteria. Specific requirements should be imposed on the parties and included in the written mandate.</p>	<p>Noted.</p> <p> See amendment to paragraph 2(2) that clarifies that failure by the particular FSP (insurer) to meet any of the criteria set out in the definition of "particular FSP" or to provide confirmation of its compliance with those criteria will result in the exemption not being applicable to its juristic representative. In the absence of the exemption the Registrar could take regulatory action against the representative for non-compliance with section</p>

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				13(1)(c) and the particular FSP (insurer) for non-compliance with section 13(2). The Registrar does not agree with the proposed additional requirements relating to the content of the mandate as the specific matters are covered by the principle criteria set out in the definition of "insurer".
25.	12	2(1)(a)(ii)	For the sake of consistency between the three proposed exemptions, we would suggest that the outsourcing FSP be required to submit a copy of the written confirmation provided to the juristic representative, to the FSB together with its annual financial statements.	Disagree. In terms of the other exemptions the FSP is exempted and the requirement to submit the 'confirmation' is to alert the Registrar that the exemptions apply to the FSP and that the FSP does not have to comply with the relevant requirements.
26.	13	2(1)(a)(iii)	Section 5(g) of the General Code of Conduct reads as follows: <i>"Where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of the following information and, where such information is provided orally, must confirm such information within 30 days in writing: (g) the existence of a specific exemption that the Registrar may have granted to the provider with regard to any matter covered by the Act."</i> Section 5 of the General Code of Conduct refers to "providers other than direct marketers"; as such clarity is sought with regard to the applicability of the requirements of this section to direct marketers. It is assumed that this will be applicable to both direct and indirect marketers.	Noted.  See amended wording.
27.	7	2(1)(b)	This provision is unnecessary as there are statutory provisions that govern this matter. Section 47(3) of the Long Term Insurance Act, 1998 provides as follows: <i>For the purposes of the validity of a long-term policy the payment of a premium under the long-term policy to a person on behalf of the long-term insurer shall be deemed to be payment to the long-term insurer under that long-term policy.</i>	Disagree. The condition was purposefully included to avoid any disputes or uncertainty and to make sure that the exemption does not apply if the conditions are not met.

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			Section 54(4) of the Short Term Insurance Act 1998 provides as follows: <i>For the purposes of the validity of a short-term policy the payment of a premium under a short-term policy to a person authorised as contemplated in section 45, shall be deemed to be payment to the short-term insurer under that short-term policy.</i>	
28.	13	2(1)	For the purposes of clarity, it is suggested that the following be added, immediately following section 2(1)(b): (c) "The juristic representative may not at any given time, conduct itself as if it is an authorised Financial Services Provider and therefore contract in its own name with other insurers for the purposes of rendering financial services."	Disagree. The exemption from section 13(1)(c) of the FAIS Act is limited to the rendering of the specific financial service (collection of premium) as defined in the Notice, and subject to the criteria and conditions as set out therein. A juristic representative rendering any service, other than the aforementioned specific financial service, must comply with section 13(1)(c), i.o.w. it must render the financial services or contract in the name of its FSP.
29.	12	2(2)	In a situation where the conditions referred to in subparagraph (1) are not met resulting in the exemption automatically lapsing, the juristic representative (together with the particular FSP), without being afforded a period of grace in which to re-arrange its business structure, may immediately be in contravention of Section 13(1)(c). We, therefore, suggest that the juristic representative and the particular FSP be granted a reasonable period of time in which to comply with the requirements of Section 13(1)(c) from the date on which the exemption lapses.	Disagree. Failure to comply with the conditions and criteria of the exemption may cause prejudice to clients, conflict with the public interest and frustrate the achievement of the objects of the Act. Compliance with the conditions and criteria are paramount in ensuring fair outcomes for clients. Therefore, should the exemption lapse the juristic representative must immediately comply with the relevant section or must immediately cease to render the particular financial service and the FSP must immediately ensure such compliance– failure to do so will result in regulatory action against the representative and FSP.
30.	13	2(3)	It is noted that the exemption is scheduled to expire on 31 December 2019. It is not clear how the challenge, in particular to the travel	Disagree. Exemptions should be subject to an expiry date to


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			<p>insurance industry, will be addressed after the expiry date. Clarity is sought as to the way forward after 2019 as industry will incur costs to align its business with the provisions of the exemption.</p> <p>We therefore recommend that no reference be made to the expiry date of the exemption other than indicate that the exemption can be withdrawn by the Registrar's office.</p>	<p>ensure regular review of the appropriateness of the exemption. The Registrar, therefore, will be monitoring the exemptions in order to determine and assess-</p> <p>(a) the impact and effect of the exemptions on achieving fair outcomes for consumers; and</p> <p>(b) whether the exemptions remain compliant with the requirements set out in section 44(1) of the Act.</p>
31.	11	2(3)	Clarification is requested as to what is intended with this limitation?	See response under item 30.
<b>EXEMPTION FROM SECTION 19(3) AUDIT REPORT AND LIQUIDITY REQUIREMENTS</b>				
32.	3	General comment	<p>This exemption applies only to "particular FSP's" as defined in the exemption and only to section 19(3) of the Act and sections 9(3)(b) and (c) of the Fit and Proper Requirements. One of the conditions of the exemption is to ensure compliance with section 9(3)(a) of the Fit &amp; Proper Requirements which was not exempted, therefore ensuring that the FSP's remain solvent notwithstanding any other exemptions.</p> <p>Further controls are contained in the definitions and conditions of the exemption thereby ensuring that the risk remains mitigated and clients remain protected while at the same time minimising the financial burden placed on these particular FSPs, as defined.</p>	Noted.
33.	4	General comment	<p>IS-Administrators is a registered Financial Service Provider who has a full binding authority that includes the collection of premiums. The insurers conduct regular audits in order to ensure that the binder holder adheres to the binder agreements in respect of the collection of premiums. The audit also evaluates the accounting practices followed by the binder holder, ensuring the adherence to good corporate governance. The insurer audits thus include the overall prescribed requirement of being fit and proper.</p>	Noted.

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			In closing, we are completely supportive of this proposed exemption from section 19(3) Audit Report and Liquidity Requirements as these checks and balances are already performed by the Insurers as part of the Binder Agreements.	
34.	5	General comment	<p>BIAC views the proposal as seeking to support and grow the small business within the industry. The industry has been having a growing number of underwriters, more especially in the funeral services industry that did not have the expertise and exposure to the real profession.</p> <p>BIAC welcomes the proposal for exemption. It is informed by the following reasons:</p> <ul style="list-style-type: none"> <li>• The data base of the players will be kept by the regulator;</li> <li>• FSP's will be required to formally appoint them;</li> <li>• FSP's will be responsible for their activities; and</li> <li>• The relationship will be reviewed annually.</li> </ul>	Noted.
35.	7	General comment	<p>The proposed Exemption in the form that it has presented, has the sole effect of exempting any FSP from the requirements of s 19(3) and the liquidity requirements set out in 9(3)(b) and (c) of the Fit and Proper Requirements. This will potentially result in a flood of exemption applications from all manner of FSPs who have, until now, not been able to fulfil these requirements and who now are no longer required to do so. It is recognised that this exemption has been considered and is welcomed in light of specific situations encountered in the market place where strict compliance with the provisions of S 13(1)(c) would be practically impossible. However, in order to ensure that this exemption is enjoyed only where it is essential and is not exploited by entities for whom the exemption was not intended, certain additional risk management procedures are suggested.</p> <p>In the circumstances, it is proposed that the terms of the exemption be enlarged and a suggested rewording is provided. In this regard, I acknowledge the guidance provided by Directive 159.A.i (LT&amp;ST) issued</p>	<p>Disagree.</p> <p>The exemption <b>only</b> applies to certain FSPs when rendering a 'specific financial service' on behalf of an insurer <b>and</b> where that FSP does not deal with monies, other than premiums contemplated in the definition of specific financial service, relating to a financial product. See definition of "particular FSP" and "specific financial service". In addition, the exemption will only apply to the aforementioned particular FSPs when they comply with all the requirements and conditions on the exemption.</p> <p>The Registrar further does not agree with the proposed additional requirements relating to the content of the mandate as the specific matters are covered by the principle criteria set out in the</p>


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			<p>by the Registrar of Long and Short Term Insurers. Proposed wording:</p> <p>2. Extent of exemption, duration and conditions</p> <p>(1) A particular FSP that renders a specific financial service is exempted from section 19(3) of the Act and section 9(3)(b) and (c) of the Fit and Proper Requirements subject to the conditions that-</p> <p>a) Any mandate granted in respect a specific financial service relating to premiums on long term insurance policies, shall be in accordance with paragraph 5.1(a) of the Policyholder Protection Rules (Long-Term Insurance), 2004 (as amended) and shall include the matters referred to in paragraph (2) below.</p> <p>b) Any mandate granted in respect of a specific financial service relating to premiums on short term insurance policies, shall be in accordance with paragraph 7.1(a) of the Policyholder Protection Rules (Short-Term Insurance), 2004 (as amended) and shall comply with the requirements of S 45 and Regulation 4 of the Short Term Insurance Act, 1998 and shall include the matters referred to in paragraph (2) below.</p> <p>(2) The written mandate granted by the Insurer to the particular FSP shall, in respect of the specific financial service and in addition to the requirements of paragraphs 1(a) and (b) above, be required to:</p> <p>a) specify the duration of the contract;</p> <p>b) specify the level and standard of service that must be rendered to the particular FSP;</p> <p>c) require the particular FSP to have appropriate governance, risk management, and internal controls in place to perform the specific financial service;</p> <p>d) require the particular FSP to comply with applicable laws including, where applicable, the Value Added Tax Act, 1991 and the Financial Intelligence Centre Act, 2001;</p> <p>e) require the particular FSP to disclose the existence of the specific exemption from the provisions of Section 13(1)(c) of the Act which the Registrar has granted to the particular FSP;</p>	<p>definition of "insurer". The exemption, therefore, will not apply to a FSP who renders the specific financial services on behalf of an insurer who does not meet those criteria and who is unable to demonstrate compliance with it.</p> <p>The main object of the FAIS Act is to protect consumers of financial services. The Registrar is satisfied that the limited extend of the exemption and the conditions attached thereto mitigate any risk or potential risks to clients in that the premiums received or held by the FSP will be deemed to have been paid to the insurer. The insurer will be at risk and not the client.</p>

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			<p>f) specify the commission (if any) payable by the Insurer to the particular FSP in order to ensure that the total commission payable to all intermediaries concerned with the particular transaction does not exceed the maximum allowed in law;</p> <p>g) provide for the type and frequency of reporting by the particular FSP on rendering of the specific financial service performed under the contract;</p> <p>h) in the case of a specific financial service relating to premiums on long term insurance policies, stipulate the period within which the net premiums, after deduction of any commission due to that particular FSP, must be paid to the Insurer concerned and accounted for by the particular FSP;</p> <p>i) provide that the Insurer must monitor the particular FSP's performance under and compliance with the contract and the manner in and means by which that monitoring will take place;</p> <p>j) provide for periodic performance reviews of the particular FSP and the regular review of the contract;</p> <p>k) specify that the Insurer has continued access to information relating to the specific financial service, including access to any information the particular FSP may require to monitor the treatment of policyholders, where relevant;</p> <p>l) address confidentiality, privacy and the security of information of the Insurer and policyholders;</p> <p>m) provide for business contingency processes, including the continuity of the specific financial service if the particular FSP is placed under curatorship, business rescue, becomes insolvent, is liquidated or is for any reason unable to continue to render the specific financial service in accordance with the contract;</p> <p>n) specify the circumstances under which the Insurer may terminate the contract;</p> <p>o) in the case of long term insurance premiums, include indemnity and liability provisions;</p> <p>p) set out any warranties or guarantees to be furnished and</p>	

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			<p>insurance to be secured by the particular FSP in respect of its ability to fulfil its contractual obligations;</p> <p>q) provide for a dispute resolution process;</p> <p>r) provide for a reasonable termination period, irrespective of the circumstances under which the agreement is terminated (including the lapsing or non-renewal of the agreement) that will allow the particular FSP 's contingency plans to be implemented; and</p> <p>s) Contain a prohibition on being appointed as a particular FSP of any other Insurer without the written consent of both Insurers.</p> <p>(3) The Insurer must regularly assess the particular FSP's-</p> <p>a) governance, risk management, and internal controls (including fit and properness);</p> <p>b) ability to comply with applicable laws; and</p> <p>c) operational and financial capability.</p> <p>(4) This exemption will automatically lapse upon failure to comply with any condition referred to in subparagraphs (1) to (3) above.</p>	
37.	8	General comment	<p>The exemption as presented seems to lack clarity of intent and application.</p> <p>For example: What circumstances/unintended consequences of current regulation have given rise to the requirement for an exemption. Was this overlooked within the impact studies previously conducted?</p> <p>This is important because regulatory uncertainty makes prudent compliance planning for business models lack credibility. Therefore there should be public disclosure on what exemptions (if any) have been issued by the FSB on this matter to date. This gives further context and promotes a sense of fairness.</p> <p>With regard to intent it is therefore open to some market speculation as to whether this exemption is an accommodation to deal with certain aspects of business models (group structures and "joint ventures") that have been deployed on a significant scale in the retail and consumer orientated space when part of the offering to the customer includes a defined FAIS product.</p>	<p>Disagree.</p> <p>The extent and impact of the exemption are limited to specific persons acting under specific circumstances as set out therein.</p> <p>The exemption, <i>inter alia</i>, is granted because the Registrar supports the principle that regulatory requirements must be proportionate to the risks the requirements are meant to mitigate and the cost it imposes on financial services providers whilst ensuring that it-</p> <p>(a) does not conflict with public interest;</p> <p>(b) will not result in diminishing the protection afforded to clients under the Act; or</p> <p>(c) does not frustrate the achievement of the object of the Act.</p> <p>The industry is constantly evolving and regulation and</p>

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			<p>Whilst the acknowledgement of different business models and removal of their impediments is encouraging in relation to risk (given the changing dynamics of the insurance market and consumer needs) it could encourage anti-competitive behaviour within commercial group structures or "joint venture" arrangements. That is - will FSP's not now be incentivised to rather place business with an "associate" insurer to "save" both the opportunity cost of providing liquidity capital and the S 19 (3) audit fees?</p>	<p>legislation consequently has to be adapted. Such adaptation is not as a result of, nor does it indicate, regulatory uncertainty.</p>
			<p>The wording of the exemption introduces new definitions being "a particular FSP" and "specific financial service". However - as a consumer or other participant - how would one know that the product marketed was provided by via such "tied" FSP's and an Insurer who had elected to utilise the exemption?</p>	<p>The Act further requires that all exemptions granted by the Registrar from any provision of the Act (including subordinate legislation) must be published on the official web site of the Financial Services Board.</p>
			<p>It is unclear whether there can be more than one insurer as part of the exemption. The exemption seems to read that there would only be a</p>	<p>The Registrar disagrees with the view that the proposed exemption will result in anti-competitive behaviour due to the limited extent of the exemption. However, the Registrar agrees that the inclusion of Category IV FSPs under the exemption when collecting premium may create un-level playing fields in light of the fact that a Category IV FSPs who does not collect premium will not benefit from the exemption. In addition, the Registrar has decided given the additional risks inherent in the activities of a Category IV FSP and the necessity for orderly resolution, to exclude Category IV FSPs from the exemption.</p>
				<p> See amended definition of "particular FSP".</p>
				<p>See condition in paragraph 2(1)(a)(v) of the Notice that requires the FSP to disclose to clients that the exemption applies to it. See also section 5(g) of the General Code of Conduct.</p>
				<p>The exemption applies to an FSP who renders a specific financial service whether on behalf of one or</p>

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			<p>single insurer but could be open to selective interpretation. If this is the case what then is the circumstance where there is both ST and LT insurance covers provided?</p> <p>What is the position on "VALUE – ADDED Products" – VAPS? What is the position of Lloyds placed business? Is Lloyds "an Insurer"?</p> <p>In conclusion the market players (interested persons) will be better placed to comment on the ramifications of the exemption and content of further drafts when the context of its intended purpose is understood.</p> <p>In the interim Insure Group Managers welcomes exemptions which would assist the consumer in accessing financial services to protect them through fair and equitable business models.</p>	<p>more one insurer provided all the criteria and conditions of the exemption are complied with.</p> <p>The exemption is limited to the services and products referred to in the definition of "specific financial service". See also paragraph (b) of the definition of "particular FSP" that specifically provides that an FSP would not qualify for the exemption if it deals with monies other than premiums contemplated in the definition of "specific financial service".</p>
38.	13	General comment	<p>With the current wording, it is our respectful submission that this exemption cannot be an exemption in terms of section 19(3) as the latter deals with monies and assets held on behalf of clients.</p> <p>Reference is made to the Draft Guidance Note which was released by the Registrar on the 11<sup>th</sup> of September 2014 and the Response of the Registrar of Financial Services Providers to comments received , published on the 24<sup>th</sup> of June 2015.</p> <p>It is noted under paragraph 4.1 "<u>Does section 19(3) apply to "all monies" held by an FSP</u>" that in terms of section 54 of the Short-term Insurance Act, the payment of premiums under a short-term policy to a person authorised (which in this instance would be an FSP who does not collect, account, receive, or hold premiums without a written mandate on behalf of an insurer) as contemplated in section 45 of that Act, shall be deemed to be payment to the insurer. Premiums are always collected on behalf of the insurer and not on behalf of the client. These are monies held on behalf of the insurer and as such Section 19(3) would not be applicable in</p>	Noted.

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			any event, to short-term insurers. Clarity is thus sought on the applicability of the exemption	
39.	12		We support this exemption as we believe that it will decrease the cost of doing business for the particular FSPs and enable them to re-direct resources to build sustainable businesses and provide greater opportunity for financial customers to access financial services.	Noted.
40.	12	1 – definition of “insurer”	We support the view that an insurer that outsources a function has the responsibility to ensure the FSP to whom it outsources has the necessary capacity and is able to do so. What’s missing for us here is the assurance or reassurance that the FSP performing the outsourcing has that capacity. We would therefore like to see some evidence of due diligence or certification that the insurer has conducted. We suggest that the definition of “insurer” in section 1 be expanded [perhaps by adding subsection (iv)] which should provide that the FSP is able to carry out the functions that are the subject of the delegated specific financial service.	Disagree. The Registrar is of the view that the concern raised by the commentator is adequately addressed by the requirement that the insurer must be able to demonstrate that the criteria in paragraph (b) of the definition of “insurer” are met. See also paragraph (c) of that definition.   See further amended to paragraph 2(2).
41.	7	2(1)(a)(ii)	This requirement could result in confusion in both the long terms and short term space. Long Term Insurance Paragraph 5.1(a)(i) of the Policyholder Protection Rules provides, inter alia, that an insurer must, where an agreement has been entered into with an intermediary in connection with the insurance products of that insurer, furnish the intermediary with a written copy setting out the terms and conditions thereof. Short Term Insurance Paragraph 7.1(a)(i) of the Policyholder Protection Rules provides, inter alia, that an insurer must, where an agreement has been entered into with an intermediary in connection with the insurance products of that insurer, furnish the intermediary with a written copy setting out the terms and conditions thereof. Furthermore, S 45 of the Short Term Insurance Act, 1998 (Collection of	Disagree. The exemption only applies insofar it relates to requirements under the FAIS Act and does not extend to requirements set out in other laws. The criteria and conditions of the Exemption, a person relies on the exemption, will be in addition to the requirements of other laws.

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			<p>premiums by intermediaries) provides that no independent intermediary may receive, hold or in any other manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums unless authorised to do so by the short-term insurer concerned as prescribed by regulation and otherwise than in accordance with the regulations.</p> <p>The Regulation referred to that is specific to this situation is Regulation 4.1 (Authorisation). This Regulation provides that a short-term insurer may in writing authorise an independent intermediary to receive, hold or in any other manner deal with premiums payable to it under short-term policies subject to the express condition that the intermediary has provided security, to the extent and in accordance with the requirements of Part 4 of the Regulations.</p>	
42.	7	2(1)(a)(iii)(aa)	<p>As an independent intermediary, it is submitted that an FSP has, in reality, limited ability to insist on this information being provided or to ensure in any manner the accuracy of the information.</p> <p>In the alternative, it is proposed that the obligation to comply with the criteria set out in the definition of "particular FSP" be imposed on the Insurer who should be required to be able to demonstrate to the satisfaction of the Registrar that it can and does meet these criteria. Specific requirements should be imposed on the parties and included in the written mandate.</p>	<p>Noted.</p> <p>The exemption is granted to the particular FSP and the conditions therefore should apply to it.</p> <p>The particular FSP, in order to qualify for the exemption, only requires confirmation from the Insurer that the latter complies with the criteria set out in the definition of "insurer".</p> <p>The Registrar further does not agree with the proposed additional requirements relating to the content of the mandate as the specific matters are covered by the principle criteria set out in the definition of "insurer".</p>
43.	7	2(1)(a)(iv)	<p>It is submitted that the FSP should be required to submit written confirmation from the Insurer concerned that the FSP has complied in every manner with the terms and conditions of the mandate.</p>	<p>Disagree.</p> <p>However, nothing prevents the Insurer from requiring that confirmation from the FSP when providing it with a mandate to collect premium on behalf of the Insurer.</p>

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44.	7	2(b)	<p>This provision is unnecessary as there are statutory provisions that govern this matter.</p> <p>Section 47(3) of the Long Term Insurance Act, 1998 provides as follows:  <i>For the purposes of the validity of a long-term policy the payment of a premium under the long-term policy to a person on behalf of the long-term insurer shall be deemed to be payment to the long-term insurer under that long-term policy.</i></p> <p>Section 54(4) of the Short Term Insurance Act 1998 provides as follows:  <i>For the purposes of the validity of a short-term policy the payment of a premium under a short-term policy to a person authorised as contemplated in section 45, shall be deemed to be payment to the short-term insurer under that short-term policy.</i></p>	<p>Disagree.  See the Registrar's response under item 27.</p>
45.	12	Section 2(2)	<p>Should the exemption automatically lapse upon failure by the particular FSP to comply with the prescribed conditions, the particular FSP may also automatically be in contravention of Section 19(3) of the Act and Section 9(3)(b) of the Fit and Proper requirements if not afforded a reasonable period of time in which to make the necessary arrangements to meet the requirements. We therefore suggest that a period of grace be included from the date of automatic lapse of the exemption for the particular FSP to comply.</p>	<p>Disagree.  Failure to comply with the conditions and criteria of the exemption may cause prejudice to clients, conflict with the public interest and frustrate the achievement of the objects of the Act.  Compliance with the conditions and criteria are paramount in ensuring fair and good outcomes for clients. Therefore, should the exemption lapse the particular FSP must immediately comply with the relevant section or must immediately cease to render the particular financial service – failure to do so will result in regulatory action against the representative and FSP.</p>
<b>EXEMPTION FROM SECTION 13 OF THE GENERAL CODE OF CONDUCT</b>				
46.	3	General comment	<p>In our view, this exemption is necessary as it supports the Registrar's stance that regulatory requirements must be proportionate to risks the</p>	<p>Noted.</p>

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			<p>requirements are meant to mitigate and the cost it imposes on financial service providers (FSP's) by only making this exemption applicable to particular FSP's as defined in the exemption (who are UMA's) and alleviating their financial burden.</p> <p>Monthly premiums for professional indemnity and fidelity insurance result in an unnecessary financial burden on these particular FSP's and this exemption will address this concern while at the same time ensuring protection of the client and mitigation of the risk through adequate controls.</p>	
47.	5	General comment	<p>BIAC views the proposal as focussing on the one stop shopping system whereby the FSP might be underwriting and rendering financial advice on their own products, but with support from the insurer.</p> <p>Their lack of the financial muscle associated with the risk of the practice. The cost of providing for the PI and Fidelity Cover is always high for small players in the space.</p> <p>Being associated with the insurer will help grow the practice and ensure that it complies with the regulatory mechanisms continuously.</p> <p>The conditions and controls which are being proposed are supported by BIAC.</p> <ul style="list-style-type: none"> <li>• The written mandate will be provided and monitored by the insurer</li> <li>• The regulator will be kept informed on an annual basis</li> <li>• Moneys collected by the FSP will be taken to the insurer as premium payment that was received from the clients</li> </ul>	Noted.
48.	13	General comment	It is our submission that the PI and Fidelity cover best serve the interest of insurers in light of the fact that the UMA performs functions on behalf of the insurer. We are concerned that the recommendation to remove the cover may result in an unfair playing field as the insurer who does insist on the cover for the protection of its interest, may be faced with a	<p>Noted.</p> <p>It is currently a requirement under the Insurance Laws that an insurer must ensure that the underwriting manager has appropriate governance, risk management, internal controls and information</p>

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			<p>business partner who is not compelled by another insurer to have such cover.</p> <p>This may lead to the unintended consequence of placing an insurer who prudently manages their risks in a less favourable position, where the competitors who do not ask for PI and IGF cover are at competitive advantage. This may result in UMA's in whom an insurer has a minority interest placing business elsewhere to avoid the costs of security.</p> <p>We thus recommend that security be maintained to protect insurers and avoid an unfair playing field.</p>	<p>technology systems in place to render the services under the binder agreement.</p> <p>The abovementioned requirement effectively compels an insurer to assess the adequacy of the risk management policies, processes and arrangements of the underwriting manager. This could include an assessment of the adequacy of any professional and indemnity insurance cover and in the absence thereof the adequacy of any other arrangements to that ensures effective risk management.</p> <p>Therefore, if an insurer decides to delegate any of its functions it is responsible to ensure that the delegation does not pose an increase to the risk of an insurer.</p>
49.	9	General comment	<p>I appreciate that the FSB has softened to the underwriting managers, and makes sense that the FSPs need to think for themselves if they would want the protection. I think this requirement, even though it costs me money as well, should still be enforced. I'd say prevention is far better than cure, the fact that PI cover is a requirement, there could be some way in this industry that could go wrong. I don't think it would be a good scenario where an FSP has omitted something causing loss and gets sued by the client and the FSP cannot compensate for the mistake. Where does this leave the client? Obviously beneficial to the FSP but what about the client? IGF same scenario. Bearing in mind that the Underwriting manager also has a task to perform and if this is not carried out correctly can leave a client with no cover no compensation.</p>	<p>Noted.</p> <p>In terms of the Insurance Laws, an insurer that enters into an agreement with an underwriting manager is liable for any claims relating to policies included in that agreement, including any claims that may arise because of the failure of the underwriting manager to comply with the agreement. The exemption further makes it an explicit requirement that the insurer must in writing, on an annual basis, confirm that it accepts responsibility for the activities of the underwriting manager performed in terms of the exemption. Clients are therefore protected against the failure of the underwriting manager in that the insurer is responsible and liable for the activities of the underwriting manager. The client's recourse will be against the insurer on whose behalf the FSP rendered the specific financial service.</p>

Item NO	COMMENTATOR	PARAGRAPH	COMMENT	REGISTRAR'S RESPONSE
50.	12	Section 2(2)	Should the exemption automatically lapse upon failure by the particular FSP to comply with the prescribed conditions, the particular FSP may also automatically be in contravention of Section 13 of the General Code of Conduct if not afforded a reasonable period of time in which to make the necessary arrangements to meet the requirements. However, the impact of an automatic lapse of this exemption on the ability of the particular FSP to comply with Section 13 of the General Code of Conduct, in our view will be less as the necessary insurance cover should be able to be put in place relatively easily. However, we do still believe that the particular FSP should be granted a reasonable period of time to comply with the requirements as a result of the lapse of the exemption.	Disagree. Failure to comply with the conditions and criteria of the exemption may cause prejudice to clients, conflict with the public interest and frustrate the achievement of the objects of the Act. Compliance with the conditions and criteria are paramount in ensuring fair and good outcomes for clients. Therefore, should the exemption lapse the FSP must immediately comply with section 13 or must immediately cease rendering the particular financial service – failure to do so will result in regulatory action.