

FSCA COMMUNICATION 2 OF 2023 (INS)

EXEMPTION FOR DIRECT COLLECTION OF PREMIUM - EXTENSION OF THE EXEMPTION UNTIL FURTHER NOTICE

1 PURPOSE

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) today published two notices, FSCA INS Notice 1 and 2 of 2023, which extends the period of the exemption provided by *FSCA INS Notice 1 of 2022 - Exemption for direct collection of premiums by certain independent intermediaries and short-term insurers, 2021* (“FSCA INS Notice 1 of 2022”) and *FSCA INS Notice 2 of 2022 - Exemption for direct collection of premiums by certain independent intermediaries and long-term insurers, 2022* (“FSCA INS Notice 2 of 2022”), until further notice, and the reasons for the extension thereof.

2 BACKGROUND

2.1 On 29 January 2021, the FSCA under section 281 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) published FSCA INS Notice 1 of 2021 in respect of Regulation 5.1(1) and (2) of the Regulations under the Short-term Insurance Act, 1998 (“STIA”) and FSCA INS Notice 2 of 2021 in respect of Regulation 3.2(1) and (2) of the Regulations under the Long-term Insurance Act, 1998 (“LTIA”). These notices expired on 31 January 2022 and were followed by FSCA INS Notice 1 of 2022 and FSCA INS Notice 2 of 2022, published on 31 January 2022, which effectively granted a further exemption on the same conditions until 31 January 2023. For purposes of this communication, FSCA INS Notice 1 of 2022 and FSCA INS Notice 2 of 2022 are collectively referred to as the “Exemption Notices”.

2.2 As explained in FSCA Communication 1 of 2021¹ and FSCA Communication 1 of 2022,² these exemptions were granted as an interim step in transforming the premium collection framework. It gave effect to Proposal 5 of the FSCA’s 2019 Position Paper, which set out the proposals on the future regulatory framework for the collection of insurance premium³ and aims to facilitate the payment of remuneration to an independent intermediary where premiums are collected directly into the account of an insurer and the technological systems of the independent intermediary enable the direct collection method. Such an independent intermediary performs certain activities in support of the direct collection,

¹ Available on the FSCA’s website under Regulatory Frameworks < Notices < Insurance < 2021 or by clicking on the following link: <https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Notices.aspx>

² Available on the FSCA’s website under Regulatory Frameworks < Notices < Insurance < 2022 or by clicking on the following link: [https://www.fsca.co.za/Notices/FSCA%20INS%20Notices%201%20and%202%20of%202022%20and%20FSCA%20Communication%201%20of%202022%20\(INS\).zip](https://www.fsca.co.za/Notices/FSCA%20INS%20Notices%201%20and%202%20of%202022%20and%20FSCA%20Communication%201%20of%202022%20(INS).zip)

³ Available on the FSCA’s website under Regulatory Frameworks < Documents for Consultation < Insurance < 2019 or by clicking on the following link: <https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/FSCA%20Position%20Paper%20on%20future%20Insurance%20Premiums%20Collection%20Framework.zip>

which can be described as “accounting for premium”. Accordingly, the Exemption Notices define “accounting for premium” in the context of the direct collection of premium and enable that additional remuneration be allowed, outside of the maximum commission prescribed, for purposes of these activities only, and subject to the conditions as set out in the Exemption Notices.

- 2.3 The Exemption Notices enable remuneration to independent intermediaries where the premium is collected directly into the insurer's account, to support a move to the direct collection model, as is preferred by the FSCA. The intention with FSCA INS Notice 1 of 2022 and FSCA INS Notice 2 of 2022 only being granted until 31 January 2023 was to allow for the draft amendments to the Regulations under the STIA and LTIA to be developed, which were mooted as the regulatory instruments in terms of which the changes and limitations to the future regulatory framework for the collection of insurance premium were to be effected. The Exemption Notices published alongside this Communication will, however, for now remain in effect until further notice.

3 REASONS FOR GRANTING THE EXEMPTIONS UNTIL FURTHER NOTICE

- 3.1 As previously alluded to in FSCA Communication 22 of 2020 and related FSCA Communication 1 of 2021, appropriate changes and limitations will be introduced in the future regulatory framework over the longer term. On 30 June 2022 the FSCA published its 3-year Regulation Plan⁴. The Regulation Plan highlights the specific regulatory framework developments and areas that will be focused on during the course of the next three years, of which a key component is the transition of existing laws into the envisaged Conduct of Financial Institutions (COFI) Bill framework. The effect of this, as explained in the Regulation Plan, is that certain existing regulatory developments which potentially overlap with the development of the future conduct framework will not be progressed in isolation, and will form part of the harmonisation and transition work, as cornerstones of the development of a new conduct regulatory framework and in anticipation of the COFI Bill. Therefore, the amendments to the Regulations under the LTIA and STIA will not be progressed at this stage, and the future regulatory framework for the collection of insurance premiums will be part of the new conduct regulatory framework under the COFI Bill.

4 THE REQUIREMENTS OF THE LTIA AND THE STIA AS IT APPLIES TO ENTITIES THAT QUALIFY FOR THIS EXEMPTION

- 4.1 It is important to note that any independent intermediary that performs any activity that falls within the definition of “direct collection of premium” (as defined in FSCA INS Notice 1 of 2022 and FSCA INS Notice 2 of 2022 respectively) must be authorized in writing by the insurer to perform such an activity. These activities may not be ‘sub-outsourced’ amongst/by agreement between intermediaries without the explicit authorisation by the licensed insurer of each of the independent intermediaries involved in any of the activities that fall within the definition on “direct collection of premium”. The authorisation is a requirement in terms of section 47A of the LTIA and section 45 of the STIA, and any such authorisation must be done in accordance with Part 4 of the Regulations under the STIA, or Part 8 of the Regulations under the LTIA as applicable.
- 4.2 Consequently, where more than one independent intermediary is authorised to perform the direct collection of premium activities -

⁴ Available on the FSCA's website under Regulatory Frameworks < FSCA Regulation Plan or by clicking on the following link:

https://www.fsca.co.za/Regulatory%20Frameworks/Temp/FSCA%20Regulation%20Plan_1%20April%202022%20-%2031%20March%202025.pdf

- (a) each intermediary involved in one or more of the activities must be authorised separately by the insurer in accordance with the LTIA or STIA (as applicable);
 - (b) the insurer involved must satisfy itself that none of the intermediaries receives remuneration more than once for the same activity; and
 - (c) the insurer remains accountable for the effective oversight of the activities of the independent intermediaries, insofar as it relates to performing direct collection of premium on behalf of that insurer.
- 4.3 The FSCA once again reiterates that the existing regulatory framework as applicable to the rendering of services as intermediary (as defined in Regulations under the LTIA and STIA respectively) and premium collection related activities apply in relation to the direct collection of premium. Meeting the conditions set out in the Exemption Notices remains paramount to any insurer or intermediary relying on the exemption to justify the payment of remuneration for the direct collection of premium. All remuneration arrangements in this respect must be reasonable and commensurate with the direct collection services being performed, also taking into consideration the nature of the function and the systems required to perform such functions.

5 ENQUIRIES

For more information regarding this Communication contact the Regulatory Framework Department of the Authority at FSCA.RFDRRegulatorySupport@fsc.co.za



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