



## **FSCA COMMUNICATION 28 OF 2022 (INS)**

### **Publication of FSCA Conduct Standard 2 of 2022 – Requirements relating to third party cell captive insurance business**

#### **1. PURPOSE**

- 1.1. The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (FSCA) today published on its website the Conduct Standard setting out requirements relating to third party cell captive insurance business, made in terms of section 106(1)(a) read with sections 106(2)(b) and 108(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act).
- 1.2 Following the requisite processes as set out in Chapter 7 of the FSR Act, the FSCA published the final Conduct Standard and relevant supporting documents as follows:
  - (a) FSCA Conduct Standard 2 of 2022 (INS) - Requirements relating to third party cell captive insurance business (Conduct Standard);
  - (b) Statement of need, expected impact and intended operation of the Conduct Standard required in terms of section 98(1) of the FSR Act (Statement of Need); and
  - (c) Consultation report required in terms of section 104 of the FSR Act (Consultation report).

#### **2. BACKGROUND**

- 2.1 The main objective of the Conduct Standard is to set out the requirements that cell captive insurers must comply with in order to mitigate certain conduct of business-related risks that have been identified in respect of third-party cell captive insurance business arrangements.
- 2.2 Enhancements to the regulatory framework for third party cell captive insurance business have been under consideration for a number of years. Since 2009 the former Financial Services Board, and more recently the FSCA, consistently raised concerns around the third-party cell captive insurance business model and the particular risks that have been identified in these models. Extensive research and industry consultation have informed regulatory considerations on how best to achieve policyholder protection by ensuring their fair treatment by insurers, while at the same time supporting broader national policies on competition, sustainable market development and financial inclusion. The FSCA undertook an intensive public consultation process, which included various specific engagements with industry participants and two rounds of formal public consultation on the draft Conduct Standard. Further details around the background and policy development process in this regard are set out in the Statement of Need and Consultation report.
- 2.3 After careful consideration of all submissions received on the draft Conduct Standard, the FSCA made necessary amendments and refinements to the draft Conduct Standard, where appropriate, in response to the various targeted engagements and public consultation processes.

2.4 National Treasury assisted the FSCA in submitting the draft Conduct Standard to Parliament, which was recorded as tabled on 11 May 2022. The required 30-day period in Parliament has elapsed and no material issues emanated therefrom. The FSCA can consequently make the final Conduct Standard effective.

2.5 The Conduct Standard comes into operation on 1 October 2022.

### **3. AIM AND SUMMARY OF THE CONDUCT STANDARD**

3.1 As explained above, the Conduct Standard is intended to facilitate appropriate governance and oversight measures by cell captive insurers to help mitigate the specific conduct-related risks that were identified as particularly prominent in third party cell captive insurance models. These requirements include:

- a general overarching oversight requirement, that places a positive obligation on third party cell captive insurers to have ongoing oversight over the business being operated under their licences;
- a specific requirement that the complaints review and escalation processes relating to such business must allow for escalation to be made directly to the insurer, including the maintenance of a central complaints register;
- minimum requirements for the due diligence process to be undertaken in respect of a cell owner;
- ongoing oversight and governance measures applicable to all insurance businesses in cell structures to ensure, among others, that products from these structures are suitably designed and appropriately distributed, provide value to the policyholder, and that the premiums for these products are fairly determined;
- disclosure requirements by cell captive insurers to policyholders;
- specific reporting requirements to the FSCA; and
- a limitation on ownership in cell structures where the cell owner is a non-mandated intermediary (NMIs).

3.2 The making of this Conduct Standard is an important step in mitigating specific conduct risks identified in the third-party cell captive insurance business model.

3.3 Clause 7 of the Conduct Standard provides that the Conduct Standard comes into operation on its publication. However, the Conduct Standard also provides for a two-year transitional period for cell arrangements entered into before the effective date of the Conduct Standard, meaning that all such cell arrangements have a 2-year period to comply with the requirements of the Conduct Standard. The Conduct standard will apply immediate to cell structures entered into after the effective date of the Conduct Standard.

### **4. LICENSING CONDITIONS OF CELL CAPTIVE INSURERS**

4.1 As a collaborative and temporary measure, the Prudential Authority (PA) currently includes a limitation on ownership of cell structures in the licence conditions of cell captive insurers in respect of third-party cell captive arrangements.<sup>1</sup> This condition was included by agreement between the FSCA and PA pending the finalisation of the conduct regulatory framework for third party cell captive insurance business. As the regulatory framework development process has now been completed and the Conduct Standard has been finalised, the licence condition imposed on cell captive insurers to this effect can be lifted.

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<sup>1</sup> The current licence condition applicable to cell captive insurers in this respect reads as follows:

*"No shares may be issued, whether directly or indirectly, to any independent intermediary or its associates, except for shares issued directly or indirectly to underwriting managers who are not associates of a non-mandated intermediary, respectively (as defined in the Regulations under the Short-term Insurance Act, 1998), through a cell structure, except for the purpose of providing cover for such independent intermediary or associate's own risk (corporate self-insurance) in that cell structure".*

The FSCA has formally requested the PA to remove these conditions as soon as possible after with the effective date of the Conduct Standard of 1 October 2022.

- 4.2 The requirements and limitations in the Conduct Standard, once effective, will replace the PA's licence condition limitation on licensed cell captive insurers, as the FSCA will be responsible for the supervision and enforcement of the Conduct Standard.

## 5. AVAILABILITY OF DOCUMENTS AND ENQUIRIES

- 5.1 The Conduct Standard, together with this Communication, is available on the FSCA's website (<https://www.fsca.co.za>) under *Regulatory Frameworks > Standards > Insurer / Microinsurer*.
- 5.2 For more information regarding this Communication or Conduct Standard 2 of 2022 (INS) contact the FSCA's Regulatory Framework Department via email at [Johann.Vanderlith@fsca.co.za](mailto:Johann.Vanderlith@fsca.co.za).

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', with a large, sweeping flourish underneath.

**UNATHI KAMLANA**  
**Commissioner: Financial Sector Conduct Authority**

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