

FINANCIAL SECTOR REGULATION ACT, 2017

NOTICE REGARDING THE PUBLICATION OF CONDUCT STANDARD 2 of 2022 (INS) – REQUIREMENTS RELATING TO THIRD PARTY CELL CAPTIVE INSURANCE BUSINESS

The Financial Sector Conduct Authority (FSCA) hereby makes a conduct standard setting out the requirements applicable to third party cell captive insurance business, 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), as per the Schedule below.



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FINANCIAL SECTOR CONDUCT AUTHORITY

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SCHEDULE

FSCA CONDUCT STANDARD 2 of 2022 (INS)

REQUIREMENTS RELATING TO THIRD PARTY CELL CAPTIVE INSURANCE BUSINESS

1. Definitions

In this Conduct Standard, “**the Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it unless the context otherwise indicates, and -

“**associate**” has the meaning assigned to the term in Regulation 6.1 of the Long-term Insurance Regulations;

“**Authority**” means the Financial Sector Conduct Authority as defined in section 1 of the Act;

“**authorised financial services provider**” has the meaning as defined in the FAIS Act;

“**binder agreement**” in respect of a cell captive insurer that is licensed to conduct –

- (a) life insurance business, has the meaning assigned to the term in Regulation 6.1 of the Long-term Insurance Regulations;
- (b) non-life insurance business, has the meaning assigned to the term in Regulation 6.1 of the Short-term Insurance Regulations;

“**binder holder**” means a person with whom a cell captive insurer has concluded a binder agreement;

“**cell captive insurer**” has the meaning assigned to it in the Insurance Act;

“**cell owner**” means a person referred to in the definition of “cell structure”;

“**cell structure**” has the meaning assigned to it in the Insurance Act;

“**FAIS Act**” means the Financial Advisory and Intermediary Services, 2002 (Act No. 37 of 2002);

“**fair outcomes**” means the outcomes referred to in Rule 1 of the Policyholder Protection Rules;

“**Insurance Act**” means the Insurance Act, 2017 (Act No. 18 of 2017);

“**insurance business**” has the meaning assigned to it in the Insurance Act;

“**insurer**” has the meaning assigned to it in the Insurance Act;

“**life insurance cell captive insurer**” means a cell captive insurer that is licensed to conduct life insurance business;

“**life insurance business**” has the meaning assigned to it in the Insurance Act;

“**life insurance policy**” has the meaning assigned to it in the Insurance Act;

“**Long-term Insurance Act**” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998)

“Long-term Insurance Regulations” means the Regulations published under section 72 of the Long-term Insurance Act in Government Notice R1492 in Government Gazette 19495 of 27 November 1998 and amended from time to time;

“microinsurance cell captive insurer” means a cell captive insurer that is a microinsurer;

“microinsurer” has the meaning assigned to it in the Insurance Act;

“non-life insurance cell captive insurer” means a cell captive insurer that is licensed to conduct non-life insurance business;

“non-life insurance business” has the meaning assigned to it in the Insurance Act:

“non-life insurance policy” has the meaning assigned to it in the Insurance Act;

“non-mandated intermediary” in respect of –

- (a) life insurance business, has the meaning assigned to the term in Regulation 6.1 of the Long-term Insurance Regulations;
- (b) non-life insurance business, has the meaning assigned to the term in Regulation 6.1 of the Short-term Insurance Regulations;

“policy” in respect of a –

- (a) cell captive insurer that is licensed to conduct life insurance business, means a life insurance policy;
- (b) cell captive insurer that is licensed to conduct non-life insurance business, means a non-life insurance policy;

“policyholder” has the meaning assigned to it in the Insurance Act;

“Policyholder Protection Rules” means the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act and the Policyholder Protection Rules made under section 55 of the Short-term Insurance Act, as applicable;

“potential policyholder” means a person who –

- (a) has applied to or otherwise approached an insurer or an intermediary to become a policyholder; or
- (b) has been solicited by an insurer or an intermediary to become a policyholder;

“services as intermediary” in respect of –

- (a) life insurance business, means “rendering services as intermediary” as defined in Regulation 3.1 of the Long-term Insurance Regulations;
- (b) non-life insurance business, has the meaning assigned to the term in Regulation 1.1 of the Short-term Insurance Regulations;

“Short-term Insurance Act” means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

“Short-term Insurance Regulations” means the Regulations published under section 70 of the Short-term Insurance Act in Government Notice R1493 in Government Gazette 19495 of 27 November 1998 and amended from time to time; and

“third party risks” has the meaning assigned to it in the Insurance Act.

2. Application

This conduct standard applies to cell captive insurers licensed under the Insurance Act that insure third party risks.

3. Governance and oversight requirements

- (1) A cell captive insurer must, before it enters into any cell structure, undertake a comprehensive due diligence assessment of the business of the cell owner and the business plan of the proposed cell structure.
- (2) As part of the due diligence assessment referred to in subparagraph (1), the cell captive insurer must confirm that –
 - (a) the cell owner -
 - (i) has the systems and processes in place to support the cell captive insurer in complying with the relevant requirements in the Policyholder Protection Rules (Short-term Insurance, 2017), Policyholder Protection Rules (Long-term Insurance, 2017), the Short-term Insurance Regulations and the Long-term Insurance Regulations, as relevant; and
 - (ii) has the systems and processes in place to support the cell captive insurer in complying with any regulatory reporting requirements, including conduct of business returns.
 - (b) where the cell owner is a non-mandated intermediary, the cell owner meets all requirements around fitness and propriety as required of an authorised financial services provider under the FAIS Act; and
 - (c) where the cell owner is a binder holder, the cell owner has all necessary technical knowledge, skills and expertise to ensure that the conducting of insurance business through the cell structure results in the offering of suitable insurance products that provide fair value to the types, kinds or categories of policyholders at which the products will be targeted; and
- (3) As part of the due diligence assessment referred to in subparagraph (1), the cell captive insurer must confirm -
 - (a) that the cell structure will have –
 - (i) sufficient financial and operational capability to conduct its business in a prudent manner that will ensure fair outcomes to policyholders;
 - (ii) a business model and organisational culture which is designed to promote the fair treatment of policyholders; and
 - (iii) appropriate governance, risk and compliance management processes and internal controls; and
 - (b) that the cell structure will have measures in place to –
 - (i) ensure that the insurance business to be conducted in the cell structure will result in products that are designed in a manner which makes them suitable for the types, kinds or categories of policyholders for whose needs the products are developed;

- (ii) ensure that premiums are determined in a manner that is fair;
 - (iii) monitor claims ratios on an ongoing basis to ensure fair value to customers;
 - (iv) ensure that products are being distributed through appropriate and accessible distribution channels; and
 - (v) ensure that its claims and complaints processes are efficient and easily available for use by the types, kinds or categories of policyholders for whose needs the products are developed.
- (4) A cell captive insurer must keep adequate records of all due diligence assessments undertaken, as referred to in subparagraphs (1) to (3), for a period of at least 5 years from the date of entering into the cell structure.
- (5) The confirmations as part of the comprehensive due diligence required in terms of subparagraph (2) and (3) may not be delegated to the cell owner.
- (6) A cell captive insurer must, on an ongoing basis, ensure and be able to demonstrate that the –
 - (a) cell owner complies with the matters referred to in subparagraph (2); and
 - (b) cell structure and the insurance business conducted through the cell structure complies with the matters referred to in subparagraph (3).
- (7) Prior to entering into any outsourcing arrangement or binder agreement pertaining to the cell structure, a cell captive insurer must undertake a comprehensive due diligence assessment of the business of the contractor.
- (8) A cell captive insurer must -
 - (a) keep a central complaint register of all complaints received, regardless of whether the complaint was received by the cell structure, an independent intermediary or directly by the cell captive insurer; and
 - (b) ensure that any complaints escalation and review process allows for the direct escalation of a complaint to the cell captive insurer.

4. Disclosure requirements

- (1) A cell captive insurer must, before it enters into a policy and in addition to any disclosure requirements in terms of any other legislation, provide a potential policyholder with concise details of –
 - (a) the exact nature of the relationship between the cell captive insurer and the cell owner to which the policy relates;
 - (b) where the cell owner is a non-mandated intermediary, all remuneration arrangements (including profit share and dividends) between the cell owner and the cell captive insurer in relation to the policy; and
 - (c) any other fees or charges payable by the policyholder to the cell owner, in relation to the policy.
- (2) A cell captive insurer must, at the earliest reasonable opportunity, disclose to the policyholder any changes to the information referred to in subparagraph (1) that occur during the duration of the policy.

5. Reporting requirements

- (1) A cell captive insurer must, at least 30 days before entering into any cell structure agreement, notify the Authority in writing and in the format determined by the Authority of the proposed cell structure.
- (2) The Authority may at any time at the Authority's own accord, by notice to the cell captive insurer, –
 - (a) raise an objection related to the cell structure agreement; and
 - (b) instruct the cell captive insurer to –
 - (i) resolve the objection to the satisfaction of the Authority; or
 - (ii) amend any of the terms and conditions of the cell structure by a date determined by the Authority and as required by the Authority.
- (3) A cell captive insurer must comply with an instruction of the Authority as referred to in subparagraph (2)(b).
- (4) A cell captive insurer must, at least 60 days before terminating a cell structure agreement, inform the Authority in writing and in the format determined by the Authority of -
 - (a) the date on which the agreement will terminate;
 - (b) the reasons for the termination of the agreement;
 - (c) the manner in which the policies underwritten in the cell structure will be dealt with; and
 - (d) any other details required by the Authority to ensure the protection of any policyholder that may be impacted by the termination.

6. Additional requirements for ownership of cell structures by non-mandated intermediaries or associates of non-mandated intermediaries

- (1) A cell captive insurer may only have a cell structure with a cell owner that is a non-mandated intermediary if –
 - (a) the cell owner renders services as intermediary only in respect of policies underwritten through a cell structure of that cell owner;
 - (b) the cell structure does not result in the cell owner having a cell structure with –
 - (i) more than one life insurance cell captive insurer, non-life insurance captive insurer or microinsurance cell captive insurer; or
 - (ii) a microinsurance cell captive insurer and a life insurance cell captive insurer or non-life insurance cell captive insurer;
 - (c) the cell owner is an authorised financial services provider.
- (2) A cell captive insurer that enters into a cell structure with a cell owner that is a non-mandated intermediary or an associate of a non-mandated intermediary, must be able to demonstrate on an ongoing basis that -

- (a) it has assessed any risks that may impede or adversely impact the fair treatment of policyholders, as a result of the cell structure;¹
- (b) it has taken reasonable steps to avoid, and where avoidance is not possible to mitigate, these risks;
- (c) it has allocated adequate operational resources in respect of its control functions to be able to comply with the relevant governance and oversight requirements, bearing in mind the size and quantity of cell structures with the cell captive insurer;
- (d) the conducting of insurance business through the cell structure will result in the offering of suitable insurance products that consistently deliver fair value to policyholders; and
- (e) the conducting of insurance business through the cell structure does not compromise the delivery of fair outcomes to the policyholder.

7. Short title, commencement date and transitional arrangements

- (1) This Conduct Standard is called Requirements relating to Third Party Cell Captive Insurance Business, 2022 and comes into operation on **1 October 2022**.
- (2) Any cell structure entered into prior to the commencement date of this Conduct Standard must, within two years from the commencement date, comply with the requirements of this Conduct Standard.

¹ Including actual or potential conflicts of interest, the risk of biased advice to policyholders, the risk of mis-selling of policies, the risk of unfair decision-making related to the payment or repudiation of claims and the like.