

NOTICE
FINANCIAL SECTOR REGULATION ACT, 2017
DRAFT CONDUCT STANDARD

The Financial Sector Conduct Authority, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), invites submissions on the draft conduct standard to be made in terms of section 106(1)(a) read with section 108(1) of the FSR Act, as set out below.

The draft conduct standard, together with a statement supporting the conduct standard is available on the FSCA's website at <https://www.fsca.co.za>.

Submissions on the draft conduct standard using the submission template available on the FSCA website must be submitted in writing on or before 31 August 2018 to the FSCA at INS.CellCaptiveConductstandard@FSCA.co.za.

A handwritten signature in black ink, appearing to be 'CD da Silva', with a stylized, flowing script.

CD da Silva
For the Transitional Management Committee
FINANCIAL SECTOR CONDUCT AUTHORITY

Conduct Standard

Requirements for the conduct of cell captive insurance business in relation to third party risks

Objective of this Conduct Standard

This conduct standard sets out the requirements for the conduct of cell captive insurance business in relation to third party risks. The objective of this conduct standard is to address potential risks to the delivery of fair outcomes to policyholders inherent in the cell captive insurance business model.

The requirements in this conduct standard are aimed at protecting policyholders by ensuring that potential or actual conflicts of interest which may arise in instances where the cell owner is a non-mandated intermediary are properly mitigated and managed. These conflicts exist because of the profit sharing motivation underlying the cell arrangement, which could compromise the impartiality of the intermediary's advice, contrary to the intermediary's primary duty to act in the best interest of the policyholder.

This conduct standard is also aimed at ensuring that the products offered by cell captive insurers are suitably tailored and offer consistently fair value to policyholders.

It is intended to prevent possible regulatory arbitrage arising from the fact that non-mandated intermediaries who are cell owners are entitled to earn commission for the selling of policies and share in underwriting profits without necessarily having a material interest or role to play in the technical underwriting functions of the business, unlike underwriting managers who are entitled to a share in underwriting profits but are prohibited from earning commission for the selling of policies.

In addition this conduct standard recognises the significant role to be played by cell captive insurers in promoting the transformation of the insurance industry by allowing for a specific exemption process in instances where it can be shown that a proposed cell structure is intended to serve as an incubation hub, within a defined time period, for an emerging insurer.

Table of Contents

1. Application.....	3
2. Limitation on the ownership and shareholding in cell structures by an intermediary.....	3
3. Disclosure requirements	3
4. Exemption	4
5. Reporting requirements	4
Attachment 1: Definitions used in this conduct standard.....	5

1. Application

This conduct standard applies to insurance business conducted by cell captive insurers licensed under the Insurance Act, in relation to third party risks.

2. Limitation on the ownership of cell structures by intermediaries

2.1 A cell captive insurer may only have a cell structure arrangement with a cell owner that is a non-mandated intermediary or an associate of a non-mandated intermediary if –

- (a) the cell owner, or non-mandated intermediary of which the cell owner is an associate, renders services as intermediary only in respect of policies underwritten through a cell structure of that cell owner;
- (b) the cell structure arrangement does not result in the cell owner, or non-mandated intermediary of which the cell owner is an associate, individually or together having a cell structure arrangement with more than one cell captive insurer that is licensed to conduct –
 - (i) life insurance business; or
 - (ii) non-life insurance business;
- (c) an affinity relationship exists between the primary business of the cell owner and the insurance business conducted in the cell structure of which it is a cell owner; and
- (d) the primary business of the cell owner is not the rendering of services as an intermediary or the performance of any functions in terms of any binder or other outsourcing agreement with an insurer.

2.2 A relationship for purposes of section 2.1(c) would constitute an affinity relationship if -

- (a) the primary business of the cell owner is not insurance business;
- (b) the broader business relationship between the cell owner and the policyholder results in the offering of suitable insurance products and consistently fair value to the policyholder; and
- (c) the conducting of insurance business through the cell structure does not otherwise compromise the delivery of fair outcomes to the policyholder.

3. Disclosure requirements

3.1 A cell captive insurer must, before it enters into a policy, 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 owner and the cell captive insurer;
- (b) any remuneration arrangements (including profit share) between the cell owner and the cell captive insurer; and

(c) any other fees or charges payable to the cell owner by the policyholder.

3.2 A cell captive insurer must, at the earliest reasonable opportunity, disclose to the policyholder any changes to the information referred to in 3.1(a) to (c) that occur during the duration of the policy.

4. Exemption

4.1 The Authority may, on reasonable grounds, on application from a cell captive insurer or on the Authority's own initiative, subject to such conditions as the Authority may determine, exempt a cell captive insurer from any requirement of this conduct standard if the Authority is satisfied that the granting of the exemption will –

- (a) facilitate an incubation process leading to the cell owner becoming a licensed microinsurer or insurer, within a specified period of time, or substantively contribute to the transformation of the insurance sector;
- (b) not be contrary to the public interest; and
- (c) not compromise the delivery of fair outcomes or continuous and satisfactory service to policyholders.

5. Reporting requirements

5.1 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 required by the Authority of the proposed cell structure agreement.

5.2 A cell captive insurer must, at least 60 days before terminating a cell structure agreement, inform the Authority in writing and in the format required 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.

Annexure: Definitions used in this conduct standard

The following table sets out definitions of terms used in this conduct standard:

Term	Definition
associate	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
Authority	The Financial Sector Conduct Authority
cell captive insurer	has the meaning assigned to it in the Insurance Act
cell owner	the person referred to in the definition of “cell structure”
cell structure	has the meaning assigned to it in the Insurance Act
conduct standard	has the meaning assigned to it in the Financial Sector Regulation Act
Financial Sector Conduct Authority	has the meaning assigned to it in the Financial Sector Regulation Act
Financial Sector Regulation Act	Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)
Insurance Act	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 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	Long-term Insurance Act, 1998 (Act No. 52 of 1998)
Long-term Insurance Regulations	Regulations published under section 72 of the Long-term Insurance Act in Government Notice R1492 in <i>Government Gazette</i> 19495 of 27 November 1998 and amended from time to time
microinsurer	has the meaning assigned to it in the Insurance Act
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 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
outsourcing arrangement	has the meaning assigned to it in the Financial Sector Regulation Act

Term	Definition
person	has the meaning assigned to it in the Financial Sector Regulation Act
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
potential policyholder	a person who – (a) has applied to or otherwise approached an insurer or a non-mandated intermediary to become a policyholder; or (b) has been solicited by an insurer or a non-mandated intermediary to become a policyholder
services as intermediary	in respect of a cell captive insurer that is licensed to conduct – (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	Short-term Insurance Act, 1998 (Act No. 53 of 1998)
Short-term Insurance Regulations	Regulations published under section 70 of the Short-term Insurance Act in Government Notice R1493 in <i>Government Gazette</i> 19495 of 27 November 1998 and amended from time to time
transformation of the insurance sector	has the meaning assigned to it in the Insurance Act