

Insurance Act 18 of 2017

Joint Communication 4 of 2020

Clarification on certain regulatory requirements applicable to funeral insurance policies

1. Purpose and interpretation

1.1 The purpose of this Joint Communication (Communication) is to:

1.1.1 confirm the application of the maximum amounts prescribed under the –

- Funeral Class (Class 4) of insurance business in Table 1 of Schedule 2 to the Insurance Act, 2017 (Act No. 18 of 2017) (Insurance Act), read with the Governance and Operational Standards for Insurers (GOI 7) and Microinsurers (GOM); and
- definition of “microinsurance business” as per the Insurance Act; and.

1.1.2 confirm the regulatory status of funeral policies that provide benefits that exceed the maximum benefit amounts prescribed under the Funeral Class (Class 4) of insurance business in Table 1 of Schedule 2 to the Insurance Act, read with GOI 7 and GOM; and

1.1.3 provide clarity regarding some related aspects of the regulatory requirements in the Policyholder Protection Rules (PPRs) made under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTIA) applicable to funeral policies.

2. Background

2.1 The Insurance Act introduced new classes of insurance business, which include a dedicated class of life insurance business for funeral policies, as well as a proportionate and appropriate prudential regulatory and supervisory framework for microinsurers.

2.2 The regulatory framework that was introduced through the Insurance Act was complemented with amendments to the conduct regulatory framework for insurers, i.e. the LTIA PPRs. The amendments to the PPRs introduced product standards for microinsurance policies and funeral policies written under the Funeral Class of life insurance business.

2.3 When considering the regulatory framework applicable to funeral policies (i.e. policies underwritten under the Funeral Class of life insurance business), it is vital to consider the requirements in both the prudential and conduct frameworks in an equal manner. The prudential requirements are set out in the Insurance Act and its relevant standards, whilst the conduct of business-related requirements is set out in the LTIA PPRs which apply in their

entirety to insurance business, but with special emphasis on Rule 2A which prescribes the Microinsurance and Funeral Policy Product Standards.

- 2.4 The Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) (jointly referred to as the Authorities) have received requests for clarity in respect of the perceived regulatory inconsistency in the application of the maximum prescribed amounts as these amounts relate to the Funeral Class of insurance business. More specifically, the concerns raised related to the application of the maximum prescribed amounts that result in different outcomes for traditional insurers in contrast to microinsurers, which creates unlevel playing fields that are not justifiable.
- 2.5 These concerns seem to be premised on an interpretation of section 5.2 of GOI 7 which is perceived as placing a benefit limitation of a R100 000 per life insured per insurer¹ whilst section 11 of the GOM places a benefit limitation of R100 000 per life insured per policyholder when read with the definition of “microinsurance business”.
- 2.6 In addition to the interpretational challenges, a number of questions and queries related to the requirements on funeral insurance business in the context of the PPRs were raised with the Authorities.
- 2.7 This Communication aims to clarify the Authorities’ position in relation to these matters.

3. Interpretational challenges raised

3.1 *The application of maximum amounts prescribed for the Funeral Class of life insurance business applicable to traditional life insurers and microinsurers*

3.1.1 In the PA’s view it is clear that there should be no distinction between a policy sold under the Funeral Class by a traditional insurer and a policy sold under the Funeral Class by a microinsurer, aside from the defined differences as contained in Rule 2A of the PPR and the prudential requirements distinct to microinsurance business.

3.1.2 The design of the Tables in Schedule 2 of the Insurance Act ensure that the class description contained in the last column of the table flows from the sub-class (and sub-class definitions where relevant) and that the sub-class flows from the main identification class. Put differently, the “Description” column in the Tables in Schedule 2 of the Insurance Act must always be read with any terms and definitions that might be contained in the Class or Sub-class columns that are relevant to such Description.

3.1.3 The sub-class under the Funeral Class in Table 1 of Schedule 2 refers to “Individual” and “Group”. These terms are defined in Schedule 2 as follows:

“individual” in respect of the classes of insurance business, relates to an insurance policy entered into with a person (whether individually risk rated or underwritten on a group basis) and.....”

¹ In other words, the amount that may be insured per life insured cannot exceed R100 000 in respect of a particular insurer, the number of policies under which such life is insured is therefore irrelevant.

“group” in respect of the classes of insurance business, relates to an insurance policy entered into with.....”

3.1.4 When reading the relevant Funeral Class Description column with the relevant sub-class, it is clear that the maximum prescribed amount in section 5.2 of GOI 7, which informs the description column and which imposes a maximum amount per life insured, will always relate to ‘an insurance policy’ as per the sub-class description and definition of “individual” and “group” in Schedule 2. The R100 000 limit will thus always apply per life insured, per insurance policy which is concluded with a particular policyholder.

3.1.5 The PA therefore confirms that no inconsistency exists in the application of the maximum prescribed benefit amounts in section 5.2 of GOI7 and section 11 of the GOM.²

3.2 *Funeral policies that provide benefits that exceed the maximum prescribed benefit amounts in terms of the Funeral Class (Class 4)*

3.2.1 The PA confirms that funeral benefits in excess of the maximum prescribed amounts in terms of the Funeral Class (Class 4) may be provided under the Risk Class (Class 1) individual and group death, provided that the policy that provides the funeral benefit meets the Risk Class Description in Table 1 of Schedule 2.³ These benefits will be reported under the Risk Class (Class 1) of Schedule 2, Table 1 of the Insurance Act.

3.3 *Application of the maximum prescribed benefit limits to rider benefits*

3.3.1 The PA confirms that the maximum amount prescribed in terms of the Funeral Class (Class 4) in terms of the Insurance Act includes rider benefits, as defined. Rider benefits will therefore fall within the maximum prescribed amounts per class of insurance (i.e. within the regulatory “caps”). This means that the prescribed maximum limit applies to both primary and ancillary benefits on the aggregate and up to the maximum prescribed amounts per class of insurance.

3.3.2 Some industry stakeholders have queried how this interpretation will impact on rider benefits such as:

- the double accidental death benefit that will lead to the R100 000 threshold being exceeded;
- the waiver of premium benefit where it is not possible to determine the value of this benefit at point of sale or point of claim;
- the cashback benefit where the underlying basis for the benefit is to reward client loyalty or maintain persistency of the policy; and

² It might, however, be noted that paragraph (d) of the definition of microinsurance business as defined in the Insurance Act states that for microinsurance business the aggregate value of the insurance obligations under all insurance policies issued by the same insurer to the same policyholder may not exceed the maximum amounts prescribed under paragraphs (b) (note that paragraph (b) refers to the maximum amount that was prescribed in terms of section 11 of the GOM) and (c).

³ Such a policy would not, for example, be able to provide benefits in the form of a funeral service (in-kind benefit) as the Risk Class description only makes provision for lump sum / monetary benefits.

- other rider benefits that may be paid instalments, including grocery and education benefits.
- 3.3.3 The PA is of the view that the aforementioned benefits will be subject to the maximum prescribed limits as any other rider benefit. This approach is aligned to the PA's view that there should be an inextricable link between the ancillary benefit and the primary insurance obligations assumed. Ancillary benefits should not be "out of kilter" to that of the primary insurance obligation given the inherent nature of an ancillary benefit.
- 3.4 *Annual Escalation of the prescribed limits in terms of GOI 7*
- 3.4.1 The PA confirms that the maximum prescribed limits will be increased annually and automatically by the CPI rate published by Statistics South Africa. Contractual increases automatic or otherwise must result in policy benefits that remain within the prescribed thresholds at any given point in time.
- 3.5 *Interpretation of Rule 10.4.13 of the Long-term Insurance PPRs*
- 3.5.1 Rule 10.4.13 of the LTIA PPRs prohibits the use the term "funeral" or any derivative thereof in an advertisement unless the benefit being marketed is in fact intended to cover the cost associated with a funeral or the rendering of a service on the happening of a death event.
- 3.5.2 This prohibition should not be interpreted to relate to the classes of business under which funeral benefits can be written or not, or to the prescribed maximum amounts for the funeral class of business.
- 3.5.3 The purposes of rule 10.4.13 is therefore irrelevant whether the policy is written under the Funeral Class of life insurance business or the Risk Class of life insurance business (as referred to in paragraph 3.2 above), the test is whether or not the insurance product being advertised is aimed at offering costs associated with a funeral (i.e. funeral benefits) or the rendering of a funeral service.
- 3.6 *Waiver of waiting periods as referred to in PPR Rule 2A.6.5*
- 3.6.1 The limitations on waiting periods as provided for in Rule 2A.6.5 of the LTIA PPRs is aimed at ensuring that policyholders are protected by prohibiting the introduction of a waiting period if the policyholder in the recent past had a previous policy with another insurer and had already served the waiting period or part thereof under the previous policy. The policy view in this regard is informed by item 2.1.1 (h) of the National Treasury's Microinsurance Policy Document⁴ released in July 2011, which sets out the rationale for restricted waiting periods. The limitation on waiting periods is intended to balance the risk of adverse selection in situations where no individual underwriting occurs against the risk of unreasonably lengthy waiting periods which could adversely affect policyholders.

⁴ Available on the National Treasury's website <https://www.treasury.gov.za>.

3.6.2 The FSCA acknowledges that the wording in Rule 2A.6.5 may be open to different interpretations but confirm that the rule should be considered in its entirety taking into account the intention as set out above. Simply put, an insurer may not impose a waiting period under a microinsurance policy or a funeral policy if the policyholder had a previous policy which was still active within the past 31 days and the policy benefits under that previous policy had similar or the same benefits and the policyholder had completed the waiting period in respect of that previous policy.

3.6.3 In acknowledging the interpretational challenges in this regard, the wording in this sub-rule will be clarified in the next round of amendments to the LTIA PPRs which will be consulted on later in 2020.

3.7 *Burial Repatriation benefits*

3.7.1 There have been various engagements between insurers and the FSCA on the offering of burial repatriation benefits, how these benefits should be structured as part of a funeral policy and the information to be disclosed to policyholders in this regard. The FSCA acknowledges that some challenges remain with complying with the product standards in relation to burial repatriation benefits and is actively engaging with insurers in this regard through individual supervisory engagements.

3.7.2 The FSCA has requested information from insurers in the form of a questionnaire to be completed and submitted to the FSCA at the beginning of April 2020 but given the COVID-19 pandemic and national lockdown an extension to submit responses were given to participating insurers, and the timelines for this project have been slightly extended. The intention remains to clarify the FSCA's view in this regard and the FSCA might therefore in due course issue a formal document setting out our findings on repatriation benefits, our formal views on the matter and potentially a few proposals going forward. In the interim the supervision team is dealing with these matters on a case by case basis.

3.8 *The application of the product standards to existing business - Rule 2A2.2*

3.8.1 Rule 2A 2.2 sets out that policies entered into before Rule 2A took effect that meet the description of the funeral class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act, must comply with this rule by 1 July 2021.

3.8.2 This means that policies that cover the cost associated with a funeral or the rendering of a service on the happening of a death event, with benefits below the funeral class prescribed maximum benefit cap, that were entered into *prior to 1 October 2018* must comply with the funeral product standards in Rule 2A by 1 July 2021.

3.8.3 Conversely, all policies that were entered into *after 1 October 2018* must comply with Rule 2A as soon as the registered insurer license is converted to a license under the Insurance Act. The FSCA in its supervisory engagements have advised industry players to be proactive in aligning existing products with Rule 2A. It is acknowledged that this may in some cases require amendments

to existing policy wordings to comply with the product standards in Rule 2A of the PPRs, which is why the transitional period was introduced. Insurers have until 1 July 2021 to implement the necessary changes to products and policies. The industry is therefore urged to make the necessary arrangements and variations to ensure all existing funeral policies comply with Rule 2A by 1 July 2021.

4. Contact details for further queries related to funeral policies

- 4.1 Any queries related to prudential requirements applicable to funeral products, including any licensing related matters and application of the prescribed maximum benefits or any requirements, set out in terms of the Insurance Act must be directed at the PA as follows:

Prudential queries:

Contact person: Ashendran Padayachee

Email address: PA-Standards@resbank.co.za

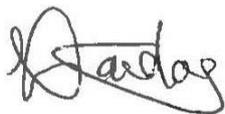
- 4.2 Any queries related to conduct of business-related requirements applicable to funeral products, including compliance with any requirements set out in the LTIA, the LTIA PPRs and Rule 2A thereof, must be directed at the FSCA as follows:

Conduct queries:

Contact person: Louisa Basitere

Email address: louisa.basitere@fsca.co.za,

or the relevant analyst / relationship manager at the FSCA dedicated to the insurer directing the query.



Kuben Naidoo

Deputy Governor and CEO:

PRUDENTIAL AUTHORITY

Date: 8 May 2020



pp

Abel Sithole

Commissioner:

FINANCIAL SECTOR CONDUCT AUTHORITY

Date: 8 May 2020