

Insurers brace for fresh wave of regulatory reforms in 2021

Non-life insurers will have to stay on their toes throughout 2021. Hard on the heels of the Covid-19 business interruption judgements that caught some insurers off guard in 2020, a raft of new regulatory reforms aimed at protecting policy holders is likely in the coming months.



Christine Rodrigues, partner, Bowmans

The anticipated reforms are likely to affect the way insurers contract with policyholders and their intermediaries as well as the kind of products that are sold to customers among others. "And of course, the most substantial change of all for insurers – and the rest of the financial services industry – is likely to be the coming into effect of the Conduct of Financial Institutions (CoFI) Bill, whether in its existing form or after further revisions," says Christine Rodrigues, partner at Bowmans.

How 2020 set the scene for change

Referring to 2020 and 2021 as years of far-reaching regulatory change for the insurance industry, she says the Covid-19 pandemic has been catalytic, particularly in how Treating Customers Fairly (TCF) is approached.

"Until the end of 2019, 'principles-based regulation' was unexplored and untested. When the pandemic was declared, it was tested and tested again, resulting in TCF going from abstract to concrete in a short period of time," she says.

The shift began during 2020 when 'policyholders unexpectedly took on insurance giants to enforce their rights' on business interruption insurance, and gained momentum when the Supreme Court of Appeal came down against insurers.

What 2021 will bring

While some of the expected reforms will apply to the general financial sector, others are specific to non-life insurance.

Sector-specific reforms include a revised conduct standard for the third-party captive cell insurance business. Rodrigues says the Financial Sector Conduct Authority (FSCA) published a draft revised standard on 28 July 2020 and is considering all public comments received. "If there are no significant changes required, the current draft conduct standard will be tabled for parliamentary scrutiny."

Premium collection is also being addressed. On 30 October 2020, the FSCA published exemptions to facilitate payment of remuneration in the context of direct premium collection models, she says. "Several concerns were subsequently raised and the FSCA will reconsider the exemptions published."

In addition, premium collection requirements will be included in the amendments the FSCA is making to the Policyholder Protection Rules (PPRs).

"These amendments accommodate various Retail Distribution Review developments, such as carving out advice from intermediary services to facilitate the charging of advice fees and what commission may be paid for," Rodrigues says.

Another important change, concerns insurance sold at motor dealers. On 19 October 2020, the FSCA published an information request relating to add-on insurance policies sold at points of sale at dealerships or as part of vehicle financing arrangements. "This is more than likely to inform future regulatory reform," She says.

The Financial Conduct Authority in the United Kingdom, also conducted its own analysis and in 2019 published its findings relating to among other things, conflict of interest relating to commission payments which is an area that the FSCA is focusing on.

Meanwhile, non-life insurers will also be affected by the general reforms planned for the financial services sector.

Governance, financial education and CoFI

The general reforms include the joint standard that the FSCA and the Prudential Authority (PA) will start drafting a to regulate the corporate governance and culture of financial institutions.

"The FSCA is also drafting a proposed conduct standard for consumer financial education initiatives," Rodrigues says. This follows the publishing for comments of the FSCA's discussion document, titled Ensuring Appropriate Financial Consumer Education Initiatives, in June 2020.

Then there is the CoFI Bill, which the National Treasury published for comments on 29 September 2020 and is likely to come into effect in 2021.

Rodrigues says the CoFI Bill will usher in a complete overhaul of market conduct regulation in the South African financial sector.

"All in all, 2021 is set to be a momentous year for regulatory reform in the sector," she says.

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