

30 MARCH 2020

CORPORATE & COMMERCIAL

INSURANCE ALERT

IN THIS ISSUE

When being 'captured' is not a dirty word

The hive of activity surrounding the radical transformation of the South African financial services sector ushered in certain stringent supervisory measures for regulatory oversight of the insurance market. Such recent activity includes a focus on the regulation of the conduct of insurance business by cell captives, in particular, in the third-party cell captive insurance space.

When being 'captured' is not a dirty word

Regulation of cell structures have mainly been secured through the imposition of conditions of licence and indirectly through contractual cell arrangements put in place by the participants in the cell.

The hive of activity surrounding the radical transformation of the South African financial services sector ushered in certain stringent supervisory measures for regulatory oversight of the insurance market. Such recent activity includes a focus on the regulation of the conduct of insurance business by cell captives, in particular, in the third-party cell captive insurance space.

Regulation of cell structures have mainly been secured through the imposition of conditions of licence and indirectly through contractual cell arrangements put in place by the participants in the cell. In effect, in the past, the authorities had less involvement in the regulation of cell captive insurance business.

The express legislative earmarking of cell captive insurance business as a segment of the insurance market that requires specific regulatory oversight, the legislative recognition of the need to segregate business within the cell and

the subtle hints that the regulator wishes to formally regulate the content within cell agreements signals a step approach towards the alignment of South Africa's regulation of cells to that applicable in jurisdictions which formally entrench protection or segregation of cells.

The lack of focused formal regulation of cell captives and its associated arrangements has seen a proliferation of various cells and, in certain instances, the establishment of hybrid cell captive structures such as a single parent company/group non-controlled foreign cell captive structure which has been brought into the regulatory net through the Insurance Act 18 of 2017.

While cell captive insurance business has been fingered as an economic enabler due to its inherent 'rent-a-licence' advantages that also arguably breathed life into the micro-insurance industry, a careful balance has to be struck to protect the interests of the various stakeholders.

CDH'S COVID-19 RESOURCE HUB

Click here for more information 

When being 'captured' is not a dirty word...*continued*

While the reaches of the twin peaks are currently clouded due to the uncertainty concerning the FSCA's and PA's policy position on the implementation of the relevant law.

It comes as no surprise that the Financial Sector Conduct Authority (FSCA) and the Prudential Authority (PA) are keen to complete its claw back of some lost ground by using the twin peaks of regulation to properly capture the cell captive industry within their regulatory oversight, respectively.

While the reaches of the twin peaks are currently clouded due to the uncertainty concerning the FSCA's and PA's policy position on the implementation of the relevant law, the soon to be released revised draft conduct standard to follow on from the Draft Conduct Standard of 2018 will hopefully be fully responsive to the various concerns raised by the industry. There are other matters that have seemingly been shelved for the moment and which stakeholders are grappling with; short of handing back their cell captive licences or doing a premature nose-dive for a micro-insurance licence.

Clarity is yet to be provided by the FSCA in relation to certain key features of cell structures including the delineation of

the scope and extent of first party vs third party risks, equity participation by cell owners in the context of preference share structures underpinning the cell structure and on-boarding procedures for foreign based cell captives.

Schedule 3 to the Insurance Act, 2017 makes provision for a transitional period of two years from 1 July 2018 to end of June 2020 for compliance with the provisions thereof. However, news via the insurance grapevine has it that the FSCA intends to grant an additional grace period to affected persons within which compliance ought to be achieved.

In the interim, we suggest that cell captive insurers and cell owners continue with their review of existing cell structures, including from a business, commercial and/or regulatory (including actuarial, legal, accounting and tax) perspective in order to be nimble enough to meet any future regulatory imposed deadline.

*Charl Williams, Andrea Trueman
and Kamvelihle Mangqishi*

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

OUR TEAM

For more information about our C&C: Insurance Regulatory & Transactional sector and services, please contact:



Charl Williams

Director

T +27 (0)21 405 6037

M +27 (0)82 829 4175

E charl.williams@cdhlegal.com



Andrea Trueman

Associate

T +27 (0)21 481 6322

E andrea.trueman@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2020 8718/MAR

