

CLARIFICATION NOTE CN400

ON

CODE SERIES FS400, STATEMENT 400

GENERAL PRINCIPLE FOR MEASURING ENTERPRISE AND SUPPLIER DEVELOPMENT

Preferential Procurement: Insurance Broker and Intermediary Commission

THIS NOTE SEEKS TO CLARIFY HOW INSURANCE BROKER AND INSURANCE INTERMEDIARY COMMISSION PAYMENT(S), SHOULD BE TREATED WHEN CALCULATING THE TOTAL MEASURED PROCUREMENT SPEND IN TERMS OF CODE SERIES FS400.

1. Introduction

Following the gazetting of the Amended Financial Code (Amended FSC) on 01 December 2017, Code Series FS400, paragraph 5.14 and paragraph 6.10 requires commission payments to brokers and intermediaries to contribute toward the total measured procurement spend in terms of the Amended FSC after the first three (3) years following the implementation date of the Amended FSC, (i.e. after 1 December 2020).

2. Definition

2.1. For the purposes of this Clarification Note [CN400], commission will mean those payments as stipulated in the commission regulations as promulgated in terms of the Long-term Insurance Act, 52 of 1998 and Short-term Insurance Act, 53 of 1998, respectively. And when applicable, commission standards published in terms of the Insurance Act, 18 of 2017.

2.2. There is no specific definition of "intermediary/ies" in the Amended FSC, but the Financial Advisory and Intermediary Services Act of 2002 [FAIS] provides a definition for, "intermediary service". The following definitions provides guidance to the above by this Act:

"intermediary service" means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier –

(a) *the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or*

- (b) *with a view to—*
 - (i) *buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;*
 - (ii) *collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or*
 - (iii) *receiving, submitting, or processing the claims of a client against a product supplier;*

2.3. As such, for the purposes of the Amended FSC, 'intermediaries' shall mean 'intermediaries' as defined by FAIS.

2.4. 'Employees', shall mean individuals who are on the payroll of the measured entity and should be included on the measured entity's Department of Employment and Labour submissions as permanent or temporary employees in accordance with the Employment Equity Act, No. 55 of 1988 and its subsequent regulations. Such employees should thus not be classified as 'intermediaries' for the purpose of the Preferential Procurement Total measured spend as referred to section 5.14 in Statement FS400: The General Principles for measuring Procurement Enterprise and Supplier Development.

2.5. These commission payments are generally described as commission expenses, acquisition costs, sales remuneration, or similar in the Financial Statements, as per the Public Reporting Basis [PRB] in terms of the International Financial Reporting Standards [IFRS]. Each insurer has their unique recognition criteria of the commission payments.

3. Purpose

3.1. The purpose of this Note is to confirm that, irrespective of different recognition criteria, the commission payments defined above should be included in the *procurement spend* component of the scorecard, both the calculation of the Total Measured Procurement Spend as well as the Broad-Based Black Economic Empowerment [B-BBEE] procurement spend.

3.2. All other fees [i.e. advice fees] negotiated and payable to the intermediary by the client [policyholder], and facilitated by an insurer, are not deemed to be part of commissions/measured procurement spend of the measured entity and should therefore be excluded for the purpose of the scorecard. Any other fees (e.g. Binder and outsourced fees) that are payable to the intermediary by the measured entity should, however, be included as part of the normal procurement spend of a registered insurer.

- 3.3. The inclusion of commission payments will apply to any scorecard being issued after 1 December 2020, which is aligned to the application of the implementation date of the FSC.