Insurance Act: Matrix

NOTE: The matrix is followed by a summary of the amendments relating to regulatory gaps in respect of the powers of the Registrar (primarily due to alignment with international standards) and policyholder protection and amendments to enhance clarity & certainty. Please see page 49 and 50. Comment: Do we need this?

KEY TO CLASSIFICATION OF AMENDMENTS:

	Overarching amendment proposed in respect of all sector specific Acts - Website, advisory committees, clarification on Registrar & deputy Registrar, onsite visits, alignment of penalties
	Alignment with Companies, Income Tax, Banks & Financial Institutions (Protection of Funds) Act
	Regulatory gap: Powers of the Registrar (primarily due to alignment with international standards)
	Regulatory gap: Policyholder protection and amendments to enhance clarity & certainty

Clause	Section in tabled bill	Commentator	Summary of concern/ comment	Proposed response
69 & 111	Section 1 of the Long-term Insurance Act, 1998 (in this Part referred to as the principal Act), is hereby amended— *(a)* by the deletion in subsection (1) of the definition of **"Advisory Committee";**	ASISA (18.02.2013) (18.04.2013)		See Key Issues document.
72 & 114	*(b)* by the substitution for paragraph *(f)* of subsection (4) of the following paragraph: "*(f)* The registrar **[may]** must, where a directive is issued	ASISA (18.02.2013) (18.04.2013)	ASISA members support the publication of matters to be prescribed on the official website subject to the FSB website being re-developed to provide for proper version	See Key Issues document.

	to ensure the protection of the public in general, publish the directive **[in the *Gazette*]** on the official website and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive."; and		control of documents and an archive facility to provide for access to historic documents. ASISA members require legal certainty and are concerned that consecutive publications may be altered without the knowledge of the industry and that there will be no access to previous versions of published documentation (notices, directives etc). The FSB website is currently, with respect, not generally reliable and effective and in some instances not functioning properly (for example the search facility). Until such time as the FSB website has been re-developed, publication in the Gazette should continue. There should also be provision for Disaster Recovery and Business Continuity Plans to ensure the consistent availability of the website. Without the website being re-developed, there is, with respect, little confidence that publications on the website will be properly dealt with. ASISA also proposes	

			the consideration of minimum requirements for the FSB website being included in the Financial Services Board Act.	
	(d) by the addition of the following subsection: "(8) *(a)* The Registrar may— (i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person to conduct an on-site visit of the business and affairs of a long-term insurer or an independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business; or (ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). *(b)* A person conducting an on-site visit in terms of paragraph *(a)*(i) may— (i) at any time during	ASISA (18.02.2013) (18.04.2013)	ASISA members suggest that this provision be aligned with the similar provision in the Credit Rating Services Act. The proposal provides more appropriately for the circumstances in which the Registrar may publish the details of an inspection or on-site visit.	See Key Issues document for discussion. It is proposed that subsections (8), (9) and (10) be replaced with the following subsection: (8) (a) The Registrar may— (i) conduct an on-site visit under Chapter 1A of the Financial Institutions (Protection of Funds) Act 2001, (Act No.28 of 2001); or (ii) instruct an inspector to conduct an inspection under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998). (b) After an on-site visit or inspection has been carried out in terms of paragraph (a), the registrar may, in accordance with section 4(2), direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the

	business hours— *(aa)* enter the premises of the long-term insurer, independent intermediary or representative and the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business, and the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit; *(bb)* search the premises of the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business for any document; *(cc)* examine, make extracts from and copy any document or, against the issue of a receipt,			Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”

	temporarily remove the document; *(dd)* against the issue of a receipt seize any document which may furnish proof of any failure to comply with the provisions of this Act; (ii) require the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the long-term insurer, independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business; (iii) require any person that is holding or is accountable for any document to provide information and explanation of that information. (9) After an on-site visit or inspection has been carried out in terms of subsection			

	(8), the Registrar may direct the long-term insurer, independent intermediary, representative, person to whom the long-term insurer has outsourced a part of its long-term insurance business or any other person concerned to take any steps, or to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001). (10) The Registrar may, if disclosure is in the public interest, make known by notice on the official web site or by means of any other appropriate public media— *(a)* the outcome and details of an on-site visit; *(b)* the status and outcome of an inspection; *(c)* the details of an inspection.".			

76 & 118	Section 12 of the principal Act is hereby amended— *(a)* by the substitution in subsection (1) for paragraph *(b)* of the following paragraph: "*(b)* **[(i)]** has made a material misrepresentation to members of the public in connection with the long-term insurance business carried on by it; **[(ii) has failed to comply with a material condition subject to which it is registered or deemed to be registered as a long-term insurer;** **(iii) has contravened or failed to comply with a material provision of this Act,** **and has thereafter, within a period determined by the Registrar, failed to remedy such conduct to the satisfaction of the**	ASISA (18.02.2013 and 18.04.2013)	The majority of ASISA members agree with the proposed amendment. A minority of ASISA members are of the view that the present position in terms of which the Minister has to authorise the Registrar to prohibit a long-term insurer from carrying on business should be retained as such a prohibition may have a severe impact on the business of the insurer and the rights of its policyholders.	The amendment was necessitated to ensure consistency with international standards, specifically IAIS ICPs 1.2, 2.3 and 2.4, aimed at ensuring the operational independence of the regulator and to align with the powers extended to other registrars.  To facilitate better reading of the clause which is intended to provide that the registrar may give notice to an insurer which is not managed in accordance with sound corporate principles or by fit and proper is it is proposed to amend subparagraph (bD) as follows: (bD) is in the opinion of the Registrar not managed or owned by persons who are fit and proper; or not managed in accordance with sound corporate governance principles;  CORRECTION IN THE LONG-TERM INSURANCE ACT ONLY: It is further proposed to in section 12 substitute in subsection (2) the words preceding paragraph (a) of the following words: 'When the Registrar has given notice to a long-term insurer in accordance with

	Registrar; or]"; *(b)* by the insertion in subsection (1) after paragraph *(b)* of the following paragraphs: "*(b*A*)* no longer meets the conditions under which it was registered; *(b*B*)* has failed to comply with any other condition imposed under this Act; *(b*C*)* has failed to comply with any directive issued under this Act; *(b*D*)* is in the opinion of the Registrar not managed in accordance with sound corporate governance principles, or owned or managed by persons who are not fit and proper; *(b*E*)* has contravened or failed to comply with a provision of this Act; or";			subsection (1), and has allowed that insurer **[at least 30 days]** a reasonable period in which to make representations to the Registrar in respect of the matter, the Registrar may, by notice to the long-term insurer. This amendment is reflected in the Short-term Insurance Act Amendments and was inadvertently not included in the Long-term Insurance Act.

	(c) by the substitution in subsection (1) for paragraph *(c)* of the following paragraph: "*(c)* were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9(3)**[*(b)*(i), (iii) or (iv)]**,"; *(d)* by the substitution in subsection (2) for paragraph *(c)* of the following paragraph: "*(c)* **[if it is appropriate and if the Minister has authorised the Registrar in writing to do so,]** prohibit the long-term insurer from carrying on such long-term insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.".			

89	Section 38 of the principal Act is hereby amended— *(a)* by the substitution for the heading of the following heading: **"Application to [Court] <u>Registrar</u>"**; *(b)* by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "When application is made to the **[Court]** <u>Registrar</u> for the approval of a transaction referred to in section 37—";	ASISA (18.02.2013) (18.04.2013)	If the Registrar and not the Court will approve a compromise, arrangement, amalgamation, demutualisation or transfer, it should not be necessary to still require that the Registrar be notified of the application prior to the application as the application will have to be submitted to the Registrar. This section may be amended to provide for an application in the form prescribed by the Registrar. It is also suggested that the format of the application should be prescribed to enable legal certainty and consistent application.	This process has been aligned to that of the Short-term Insurance Act, which process has worked well for the past 13 years or more. The notification assists in avoiding unnecessary delays. Further, please note that each transfer is unique, it is therefore impossible to develop formats and forms in this regard. It must also be noted that this section only applies where an insurer requests a transfer. The Registrar cannot instruct that such a transfer takes place. Also see Key Issues Document.

91	Section 40 of the principal Act is hereby amended— *(a)* by the substitution for subsections (1) and (2) of the following subsections, respectively: "(1) A transaction referred to in section 37(1) which is approved by the **[Court]** Registrar shall be binding on all persons and shall have effect as **[ordered]** directed by the **[Court]** Registrar notwithstanding anything to the contrary contained in the constitution or rules of the parties thereto. (2) Notice of the passing of a special resolution (if any) by the members of a long-term insurer confirming a transaction referred to in section 37 (1), together with a copy of the resolution and of the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by the public	Mr T Harris (20.03.2013)	Mr T Harris (DA) commented that the presentation had been very quick on Section 40 and the new powers of the Registrar.	To extend the powers of the Registrar to approve a compromise, arrangement, amalgamation, demutualisation or transfer, instead of the Courts and to align the requirements to that provided for under the Short-term Insurance Act. The Short-term Insurance Act process has worked well for the past 13 years or more. It must be noted that these provisions relates to where an insurer wishes to transfer its insurance business or a part thereof to another insurer only.

	officer of the long-term insurer **[to be]** as a true and correct copy shall be furnished to the Registrar by the long-term insurer concerned, within 60 days of the passing of the resolution**[, and certified copy of the order of Court as soon as practicable]**. *(b)* by the substitution in subsection (3) for paragraph *(a)* of the following paragraph: "*(a)* The officer in charge of a deeds registry or other office in which is registered any bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 37 (1) or 70 shall, upon production by the long-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the **[order of Court concerned]** approval of the Registrar, and without payment of any duty, tax, registration fee or other charge, make the endorsements upon the bond, title deed or registration certificate and the entries in his or her registers that are necessary to			

	effect the transfer concerned."; and *(c)* by the substitution for subsection (4) of the following subsection: "(4) A long-term insurer which is converted into a public company in accordance with this Part shall continue its corporate existence in the form of a public company incorporated under the Companies Act, and the **[Registrar of Companies shall register its memorandum and articles of association in accordance with section 36]** Commission shall endorse its Memorandum of Incorporation in accordance with section 14 of the Companies Act.".			
94	Section 42 of the principal Act is hereby amended— *(a)* by the substitution for the heading of the following heading: **"Winding-up [by Court]"**; *(b)* by the substitution for subsections (1) and (2) of the following subsections,	Mr Harris (20.03.2013)	Mr Harris thought that Section 40 had been dealt with very quickly. The existing provisions seemed like a good balance of powers. He was not convinced by the changes in Section 42. The existing checks and balances seemed to be of obvious value.	To extend the powers of the Registrar to apply to court for the winding-up of an insurer without first securing the approval of the Minister. This will allow the registrar to act swiftly when required in the interests of policyholders and financial stability. This amendment is also consistent with international standards and the powers extended to other registrars. It also addresses concerns raised in the 2010

	respectively: "(1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, **[Chapter XIV of]** sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a long-term insurer, and in such application the Registrar shall be deemed to be a person authorised **[by section 346 of]** under the Companies Act to make an application to the Court for the winding-up thereof. (2) The Registrar may**[, with the written approval of the Minister,]** make an application under **[section 346 of]** the Companies Act for the winding-up of a long-term insurer if he or she is satisfied, whether as contemplated in section 12(3) or 35(2) of this Act, or otherwise, that it is in the interests of the policyholders of that long-term insurer to do so.";	Ms Z Dlamini-Dubazana (20.03.2013) Mr Koornhof (20.03.2013)	Ms Z Dlamini-Dubazana (ANC) had a problem with the word 'may' in substituted Section 42(2), in that the Minister was an accounting officer. An insurance company did not account to the Minister. The Act must show that there was a consultation with the Minister. The Registrar on his or her own must not just close down an insurer. Mr Koornhof argued that it was quite a change. Mr Koornhof then wanted to ask Dr Sheoraj about the Long Term Insurance Act. He quoted from it. He asked if the Registrar of Long Term Insurance referred to was indeed appointed in terms of Section 1 of the Financial Services Board Act. Was that so? He then referred to the Financial Services Board Act to find a definition for the Registrar but did not find it. This was where the workshop had stopped last week. Was there	FSAP.

	(c) by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words: "In the application of **[Chapter XIV of]** sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act as provided by subsection (1)—"; and *(d)* by the substitution in subsection (3) for paragraphs *(c)*, *(d)* and *(e)* of the following paragraphs, respectively: "*(c)* notwithstanding any other provision of **[that Chapter]** sections 79 to 81 and item 9 of Schedule 5, there shall be considered whether a person is acting in contravention of section 7(1)*(a)* of this Act; *(d)* **[in the following sections of the Companies Act, namely—** **(i) sections 392, 394(5) and 400,]** the **[reference]** references to the Master, Registrar of Companies, Panel and Commission shall be construed as a reference also to the Registrar;		an omission. He wanted to know as this man or a woman was becoming a court unto him or herself. Could this person make the necessary decisions? Maybe an amendment was needed there?	

	[(ii) sections 375(5)*(a)* and 419(1), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar; and (**iii) section 400, the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act;]** and *(e)* **[section 346(3) of the Companies Act]** the requirement to give security shall not apply where the Registrar makes the application to Court.".			
96	The following section is hereby substituted for **section 45** of the principal Act: **"Prohibition on inducements** **45. [No]** Unless done in accordance with the rules made under section 62, no person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a long-term policy, other than a reinsurance policy.".	Mr Harris (20.03.2013)	Mr Harris said that inducements were currently very common. He was no expert on the insurance industry but, to him, it was such a large policy change. What was the international situation? Many insurance companies depended on such inducements to differentiate themselves and perhaps even make their products feasible.	The Act currently prohibits any inducement. The amendment will allow those inducements that are indeed in the interests of policyholders to be provided by insurers.

97	The following section is hereby substituted for section 49 of the principal Act: **"Limitation of remuneration [to intermediaries]** **49.** No consideration shall be offered or provided by or on behalf of a long-term insurer, a policyholder or **[a]** any other person **[on behalf of the long-term insurer]**, or accepted by any independent intermediary or any other person, for rendering services **[as intermediary as]** referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.".	ASISA (18.02.2013 and 18.04.2013)	ASISA members in its comments on the Draft Bill indicated that it is of utmost importance that this provision not be made effective until the FSB Intermediary Remuneration Review has been completed and appropriate regulations are put in place. The proposed wording, if made effective immediately, will bring about very serious negative consequences. Because there are no regulations governing outsourced activities such as policy administration by linked investment service providers (only binder functions are currently regulated), nor are there regulations governing negotiated fees that can be paid by policyholders, the very negative implications of the Maree vs Booysen SCA case will be confirmed in legislation. This will create enormous financial risk in the industry, which should not be underestimated. National Treasury has responded by	The National Treasury and the FSB has committed not to request the commencement of this provision prior to the completion of the Retail Distribution Review. Section 259(2) of the FSLGAB accommodates same.

			indicating that the comment is noted and a provision allowing for the staggered / delayed implementation of various sections of the Bill will be provided for. However, ASISA members would like to re-emphasise the importance of this proposed amendment to section 49 not being made effective until the regulations are appropriately amended and therefore propose that section 49 be re-phrased to clarify that this section and the applicable regulations, rules or directives will only apply to fees and/or commission to be paid by or on behalf of a long-term insurer in respect of those activities related to long-term insurance business. The proposed amendment will also address the impact of the Maree vs Booysen decision in so far as it will no longer contain a prohibition on the receipt of remuneration by a financial services provider from a person other than a	

			long-term insurer.	
		Mr Harris (20.03.2013)	Mr Harris objected that if the law was passed in its present form, there was no provision for postponement. Mr Harris asked when the FSB's internal process would be completed.	Section 259(2) of the FSLGAB accommodates the phased implementation of this provision. It is envisaged that the process will be completed during the latter part of 2013.
100	Section 53 of the principal Act is hereby amended— *(a)* by the substitution for subsection (1) of the following subsection: "(1) Despite the terms of an assistance policy entered into before 1 June 2009, the policy holder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money, in which case the sum of money must be equal in value to the	ASISA (18.02.2013) (18.04.2013)	It is understood that the amendment is proposed to clarify that where a policyholder elects to have an assistance policy benefit paid as a sum of money instead of the delivery of a funeral service, that the sum of money must be equal to the value of the funeral had it been provided by the insurer. This caters for old style policies before the Act required a Rand value to be included in the policy. At present the value of the	To clarify that where a policyholder elects to have an assistance policy benefit paid as a sum of money instead of opting for the rendering of a funeral service, that the sum of money must be equal to the value of the services that is provided for under the policy. For example, if a person has taken out a policy for a funeral service to the value of R 5000,00, and that person opts to take the cash value, that person must receive R 5000,00. It must be noted that this provision applies to policies entered into prior to 1 June 2009 – i.e. policies that did not allow for a cash payment.

	[cost the long-term insurer] policy benefit expressed otherwise than as a sum of money that would have **[incurred]** been provided had the policy benefit been provided otherwise than as a sum of money."; and *(b)* by the substitution in subsection (2) for paragraph *(b)* of the following paragraph: "*(b)* state the amount of the policy benefit that is to be provided as a sum of money, which amount must be equal to the value of the policy benefit expressed otherwise than as a sum of money.".	Mr Harris (20.03.2013) Mr Koornhof (20.03.2013)	funeral is determined by the cost to the insurer, in other words what the insurer would have paid for the funeral. If the reference to the —cost to the insurer‖ is deleted, the meaning of —value of the policy benefit‖ becomes unclear and it is thus suggested that the value be clarified as the fair value of a funeral as it would have been acquired by the insurer. Mr Harris read the new text. This was the most confusing clause that he had ever seen in any draft legislation. Mr Koornhof said that lawyers would love it.	It is proposed to amend subsection (1) as follows to clarify the purpose and intent: "(1) Despite the terms of an assistance policy entered into before 1 June 2009, the policy holder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money, in which case the sum of money must be equal in value to the **[cost the long-term insurer]** policy benefit that would have **[incurred]** been provided by the insurer or any person acting on behalf of the insurer had the policy benefit been provided otherwise than as a sum of money.";
102	The following section is hereby substituted for **section 62** of the principal Act: **"Protection of policyholders** **62.** (1) The Registrar, by notice in the *Gazette*, may— *(a)* make rules aiming to	ASISA (18.02.2013 and 18.04.2013)	Amendments to policyholder protection rules may have devastating consequences for both an insurer and a policyholder. The process to determine and amend these rules should therefore be particularly sound, fair and transparent. ASISA members	See Key Issues document. To further clarify the application of this section, which have been misunderstood as a result of the drafting convention that requires drafting in the singular, it is proposed to amend subsections (2)(d), (2) and (3) as follows:

	ensure that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally; *(b)* vary or rescind any such rule; and *(c)* determine the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette*. (2) Without derogating from the generality of subsection (1)(a), rules may provide— *(a)* that provisions with a particular import may not appear in a policy and that they shall be void if they do so appear; *(b)* that particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done; *(c)* that a policyholder may cancel a policy under particular		suggest that this section should specifically be subject to subsection (4) and the consultation as contemplated in the Financial Services Board Act (please refer to comments on clause 56 of the Bill). It is imperative that the amendment of rules be motivated and explained properly and that the Registrar responds to comments received. There is a concern that the Registrar may consider comments but not necessarily take them into account properly and then proceed to publish a rule without further consultation. To further enhance the soundness of the process, it is suggested that when the draft rules are submitted to Parliament for scrutiny, they be accompanied by comments submitted to the Registrar and that such scrutiny will also provide for the public to be able to raise any issues which may not have been resolved through the process of consultation.	(2)*(d)* for norms and standards with which policies, long-term insurers or types of long-term insurance business must comply; *(e)* for standardised wording, definitions or provisions that must be included in policies; (3) Rules referred to in subsection (2) may— *(a)* apply generally; or *(b)* be limited in application to a particular kind or type of policies, long-term insurers or long-term insurance business.  To alleviate the concerns raised in respect of emergency rules it is proposed to delete subsections (5) and (6).

	circumstances and within a determined period, and what the legal consequences shall be if he or she does so; *(d)* for norms and standards with which a policy, a long-term insurer or a type of long-term insurance business must comply; *(e)* for standardised wording, definitions or provisions that must be included in a policy; and *(f)* that in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 66(1)*(c)* or 67(1)*(c)* shall apply. (3) Rules referred to in subsection (2) may— *(a)* apply generally; or *(b)* be limited in application to a particular kind or type of policy, long-term insurer or long-term insurance business. (4) *(a)* Before the Registrar prescribes any rule under this section, the Registrar must – (i) publish notice of the release of		As policyholder protection rules will have general application, ASISA members are unable to envisage circumstances which would necessitate the immediate publication of a rule of general application. As indicated above, policyholder protection rules may have devastating consequences for both an insurer and a policyholder and as such the Registrar should not be able to make rules with general application without a proper consultation process being followed. National Treasury has indicated that it may be conceivable that certain conduct must be prohibited or restrained as a matter of urgency, but it is submitted that the Registrar already has powers to deal with specific circumstances as a matter of urgency. This proposed section provides for general application and not specific circumstances. It is also not practical to allow for a rule to be repealed or amended by the National	

	the proposed rule in the in the *Gazette*, indicating that the proposed rule is available on the official website and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and (ii) submit the draft rules to Parliament, while in session, for parliamentary scrutiny at least one month before their promulgation. *(b)* If the Registrar alters a draft rule because of any comment, the Registrar need not publish the alteration before making the rule. *(c)* After consideration of any comments received in response to the publication and tabling of the draft proposed rule in terms of paragraph *(a)*, the Registrar may publish the final rule in the *Gazette*. (5) The Registrar may, if circumstances necessitate the immediate publication of a rule, publish that rule without complying with subsection (4)*(a)*,		Assembly after the fact. The practical implications of such a possibility should not be underestimated. Insurers who conduct business from the time the emergency rule is published until such time as it may be repealed or amended by the National Assembly will face extreme legal uncertainty and more importantly, consumers may be severely prejudiced as a result thereof. It is therefore suggested that these proposed amendments be deleted.	

	but the notice of publication of that rule must— (a) set out the reason why circumstances necessitated publication of the rule without giving notice in accordance with subsection (4)(a); and (b) invite any person who is aggrieved by the rule to make representations to the Registrar within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice. (6) If the Registrar publishes a rule in terms of subsection (5), the notice referred to in subsection (5) must be tabled in Parliament, and the National Assembly may instruct the Registrar to repeal or amend the rule. (7) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2012, must be			

	regarded as having been made under this section, and remains valid and enforceable until repealed or amended by the Registrar.''.			
104, 105, and 106	Section 66 of the principal Act is hereby amended— *(a)* by the substitution in subsection (1) for paragraph *(c)* of the following paragraph: "*(c)* where a rule contemplated in section 62(2)**[*(e)*]***(f)* so provides, contravenes or fails to comply with a provision of any rule **[promulgated under section 62(5),]** to the extent so provided; or"; *(b)* by the substitution in subsection (1) for the words following paragraph *(d)* of the following words: "shall be guilty of an offence and liable on conviction to a fine not exceeding **[R100 000]** R5 million or to imprisonment for a period not exceeding **[one year]** five years, or to both such fine and such imprisonment."; and *(c)* by the substitution for subsection (2)	Mr Harris (20.03.2013)	Mr Harris thought that the increase in the fines was significant. How did National Treasury and FSB justify such a massive increase?	See Key Issues document.

	of the following subsection: "(2) A person, other than a long-term insurer, who contravenes or fails to comply with a provision of section 7(1)*(a)*, 8(3), 20(5)*(b)***[,]** or 26(1) or (2) **[or 50(4) or (6)]**, shall be guilty of an offence and liable on conviction to a fine not exceeding **[R1 000 000]** R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.". Section 67 of the principal Act is hereby amended— *(a)* by the substitution in subsection (1) for paragraph *(c)* of the following paragraph: "*(c)* where a rule contemplated in section 62(2)***[(e)]****(f)* so provides, contravenes or fails to comply with a provision of any rule **[promulgated under section 62(5),]** to the extent so provided;";			
	General Comments	Mr D Ross	Mr D Ross (DA) fully agreed with the provisions for the	See Key Issues document.

		(14.11.2012)	protection of policy holders. However, he disagreed with National Treasury's apparent insistence on urgency. Rules were not made 'at the speed of light'. Why not leave it to the Minister or the regulator to make the rules, with reference to the democratic process in Parliament? He had read the article by Professor Robert Vivian, Professor of Finance and Insurance at the University of the Witwatersrand. The insurance industry certainly thought that this was an attack on the very sustainability of the insurance industry. Previously Section 55 of the Short Term Insurance Act allowed the regulator to introduce rules, provided that they were approved by the Minister and the public had had the opportunity to comment. Now the new Bill removed the Minister from the process. This was a complete new dimension, and could have problematic implications as to freedom of speech. 'The regulator would now have the authority to pass	

			its own legislation.' This seemed extraordinary. It was also of concern that the regulator could operate in terms of 'a bill of attainder'. Had National Treasury abandoned that proposal? It had been in the press statement. Could one really make the regulator both part of the legislature and part of the executive? He asked National Treasury for its view on the proposal that Section 55(3)(b) be scrapped. Mr Ross had covered the two criticisms in the press, from Professor Vivian, in particular. The one was that the Bill gave excessive legislative powers to the FSB, and the other was that this Bill was 'a bill of attainder', which gave the regulator powers to find a party guilty and punish without the due judicial process. It was a new concept for Mr Harris.	
	General Comments	Mr Koornhof (13.03.2013)	Mr Koornhof said that it was important for the Bill to reconsider a definition for the word Executive Officer as there was confusion in terms of the	The Insurance Acts are clear that the Registrar is the Executive Officer of the FSB. The nature of legislation is to large extent

			definition, role and powers of officials who were called Executive Officers. Mr Koornhof said that the process of drafting legislation had to be an interactive one where future problems were addressed before they were even identified. Legislation could not be used as a responsive tool when problems had been identified in the system.	proactive, but also reactive where regulatory gaps are identified subsequent to the enactment of the legislation.
	General Comments	Mr Harris (14.11.2012)	Mr Harris asked when Members would receive the pack of documentation mentioned by Mr Momoniat, which would include, Mr Harris imagined, the inputs that National Treasury had received so far. *Business Day* had included comments from a law lecturer at the University of Cape Town (UCT). He quoted. He cautioned that this Bill did not simply add to the impression of some in the legal community that legislators were expecting members of the public to take too much on trust. In its deliberations on the Financial Markets Bill and the Credit	See Key Issues document. Notably "light touch" regulation, specifically in the USA, was the direct cause of the last financial crisis. The legislation aims to provide for a wide range of remedies that will be proportionately applied depending on the potential harm or harm that must be addressed.

			Ratings Services Bill the Committee had managed to highlight the role of competition as a regulatory tool. This role of competition was not apparent in the presentation. Mr Harris was quite surprised to see the National Treasury's emphasis on the use of this word 'draconian'. He reminded Mr Momoniat that the definition of 'draconian' was 'excessively harsh and severe'. This should not be the role of any regulator. Regulation should consist of options along a continuum from no regulation to harsh regulation, with 'light touch' or moderate in between. Certainly, if something is overly harsh and severe, it would not be a regulatory approach which he and his colleagues could support, or indeed which any legislature could, in good faith, support in the process of establishing such a regulatory framework. One did not want to be excessive; one wanted to be appropriately harsh. Taking out the reference to draconian legislation did not preclude	

			moving quickly or regulating harshly. 'Draconian' for him raised a red flag about a tendency throughout these bills as one approached the twin peaks process to be excessive. This word was not appropriate.	
	General Comments	BASA (17.03.2013)	**Remuneration in Long Term Insurance Act and Short Term Insurance Act** Clause 97 of the Bill amends section 49 of the Long-Term Insurance Act 52 of 1998 (Long-Term Insurance Act) by providing that remuneration to intermediaries or person providing services shall be compensated other than as contemplated in accordance with regulation. Clause 137 of the Short-Term Insurance Act 53 of 1998 (Short-Term Insurance Act) similarly provides that no compensation shall be paid to an intermediary other than in accordance with regulation. The proposed amendments are premature. The FSB Intermediary Remuneration Review has not	The NT and FSB have committed to not request the commencement of these amended sections until the completion of the drafting of the demarcation regulations and the Retail Distribution Review. Section 259 of the FSLGAB facilitates such a phased approach. In respect of the remainder of the comments please see responses to similar comments above and the Key Issues document.

			been completed and industry discussion regarding remuneration review is still underway. Furthermore, the appropriate regulations have not been put into place in respect of long term insurance, which would present serious risk to the industry. We recommend that the above two provisions are deleted from the Bill. **Demarcation in Long and Short Term Insurance Acts** Clause 257 of the Bill provides for an amendment to laws in the Schedule to the Bill, which includes the Medical Schemes Act 131 of 1998 (Medical Schemes Act). The Bill proposes to amend the definition of "business of a medical scheme" which provides the necessary carve out for the demarcation between the business of insurance and the business of a medical scheme, which is the subject of draft regulation. We recognise that the proposed demarcation is part of the Government's National Health Insurance (NHI)	

			progamme; however, until the NHI is in place the proposed demarcation is premature as an individual's right to health care will be unjustifiably limited. In this regard, the proposed demarcation could be subject to constitutional challenge as there is no rationale connection between the draft regulation and the achievement of a legitimate government purpose. **Long-Term Insurance Act 52 Of 1998** Clause 69 amends the definition section. The Bill uses the terms 'independent intermediary' and 'representative' but does not provide or include a definition for these terms. The current Long-Term Insurance Act does not have a definition for these terms. The Bill should be amended to provide for a definition for these terms. Clause 72 of the Bill amends section 4 of the Long-Term Insurance Act which deals with the special provisions	

			concerning the Registrar and the Registrar's powers. Section 4 is amended by the inclusion of sub-section (8) which deals with on-sites visits. The comments on 'on-site visits and inspections' above apply. Clause 76 amends section 12 of the Long-Term Insurance Act, which allows the Registrar under certain circumstances to prohibit a long-term insurer from carrying on business. The Bill adds further criteria if not met, that may cause the Registrar to impose this prohibition. In particular section 12(1)(bD) states that if 'in the opinion of the Registrar [the business of the long-term insurer is] not managed in accordance with sound corporate governance principles, or owned or managed by persons who are not fit and proper' the Registrar may impose the prohibition. Section 12(1)(bD) is vague and does not indicate which sound corporate governance principles would meet the requirement. The section affords the Registrar a wide discretion.	

			Section 12 should be amended to ensure that the circumstances under which the Registrar may apply this prohibition are clear and afford as little discretion as possible. Clause 91 of the Bill amends section 40 which deals with approved transactions. Section 40 is amended by removing all references to an order of court being required and replacing it with an approval by the Registrar. The amendment goes on to state that an officer of the Deeds Registry must effect transfer of the relevant bond, title deed or registration certificate upon the presentation of the certified approval. The Master of the High Court deals with the Deeds Registry and is acts on instruction of the High Court. It would be inappropriate for the Bill to usurp the powers of the court. The Bill should not remove the reference to the court and court order as found in the current version of the Long-Term Insurance Act. Clause 102 of the Bill amends section 62, by substituting	

			section 62 for a section which deals with the protection of policyholders. The section provides that the Registrar may make rules aiming to ensure to that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally. Section 62(5) states that if circumstances necessitate the immediate publication of the rule, the Registrar may publish the rule without complying with the comment process provided for in section 62(4). The Bill does not provide any indication what would be qualify as circumstance necessitating immediate publication. The section affords the Registrar a wide discretion. Clause 99 of the Bill should be amended to provide clear circumstances under which the rules may be published with no comment period. It is debateable whether this power to publish with no comment should even be in the	

			legislation. **Short-Term Insurance Act 53 Of 1998** Clause 111 amends the definition section. The Bill deletes the definition of 'independent intermediary' but the Bill continues to use the concept in various amendments of the Short-Term Insurance Act. Clarity is needed as to whether this term is deleted or whether it survives after the commencement of the Bill. Clause 114 of the Bill amends section 4 of the Short-Term Insurance Act which deals with the special provisions concerning the Registrar and the Registrar's powers. Section 4 is amended by the inclusion of sub-section (8) which deals with on-sites visits. The comments on 'on-site visits and inspections' above apply. Clause 118 amends section 12 of the Short-Term Insurance Act, which allows the Registrar under certain circumstances to	

			prohibit a short-term insurer from carrying on business. The Bill adds further criteria if not met, that may cause the Registrar to impose this prohibition. In particular section 12(1)(bD) states that if 'in the opinion of the Registrar [the business of the short-term insurer is] not managed in accordance with sound corporate governance principles, or owned or managed by persons who are not fit and proper' the Registrar may impose the prohibition. Section 12(1)(bD) is vague and does not indicate which sound corporate governance principles would meet the requirement. The section affords the Registrar a wide discretion. Section 12 should be amended to ensure that the circumstances under which the Registrar may apply this prohibition are clear and afford as little discretion as possible. Clause 133 of the Bill introduces the concept of business rescue into the Short- Term Insurance Act, but the Bill goes on to	

			provide that whether the short-term insurer is a company or not the business rescue provision found in the Companies Act shall apply. The Bill is effectively introducing the concept of business rescue to entities which are not companies as defined in the Companies Act. Certain financial service providers who conduct short term insurance business are individuals, for whom the provisions of business rescue are inappropriate. Taking into account the complexities the current business rescue provisions present for companies it would seem inappropriate to extend the concept to entities which are not covered by the Companies Act. Clause 133 should be amended by removing the words 'whether or not it is company' from the clause.	
	General Comments	Law Review Project	Clearly the scope of the proposed amendments, 11 Acts is far too extensive to permit consideration of all the proposed amendments. This	See Key Issues document.

			submission is confined to ss 102 and140 of B29-2012. S102 proposes a substitution of s62 of the Long-term Insurance Act 52 of 1998 (LTIA) and s140 proposes a substitution of s55 of the Short-term Insurance Act 53 of 1998 (STIA). Since the two sections marked for substitution are essentially the same, in the interests of simplification, reference will be made only to s55 of the STIA. If the concerns over these two substitutions are borne in mind, essentially the only two amendments considered in this submission, it is accepted that additional concerns about other sections of the proposed amendments, in this wide ranging Bill must also exist and it can be anticipated that the proposals contained in these amendments will lead to considerable problems to the financial industry in the future.	
	General Comments	SAIA (18.04.2013)	Our comments are submitted to ensure that the application of the legislation is correct and effective, so we urge you to view them in this spirit. We	Please see responses to similar comments above and the Key Issues document.

			confirm that the SAIA supports the repeal of the Advisory Committees and the introduction of a Code of Engagement in their place as part of rationalising the consultation process. We support a process of broader consultation with industry bodies as opposed to the current regime which limits it to representatives on the Advisory Committees, which ultimately reflects the opinion of individuals or a few select companies bound by confidentiality. It is however proposed that Clause 56 should be amended to impose an obligation to prescribe a code of engagement, consultation and communication for the Financial Services Board rather than providing for this Code as optional. The SAIA supports the phased-in approach provided for in the Bill, affording the Honourable Minister the right to determine different dates for the enactment of the different provisions of the Act, once promulgated. This will facilitate the process of	

			regulating certain definitions such as "*independent intermediary*", "*representative*", and "*services as intermediary*" and considering the approach of intermediaries receiving policy fees from clients in the Regulations as part of the retail distribution review planned for later this year. We welcome the requirement of the FSB Board to submit an annual report including a list of all directives and exemptions issued under Financial Services Board legislation during the reporting period and providing for the report to indicate that the directives and exemptions are available on the FSB's official web site. The SAIA supports the role of compliance officers as part of the Regulator's review of regulated financial institutions in its ongoing supervisory activities. Whilst recognising the objectives of the Bill, it is important to comment on the potential unintended	

			consequences and practical challenges that may impact the short-term insurance sector, its customers and other stakeholders. **Publish/prescribe** The SAIA considers it appropriate for the Honourable Minister rather than the Registrar to decide on the immediate publication of a Rule *"if circumstances necessitate"* to ensure appropriate checks and balances are in place, in addition to ensuring compliance with the separation of powers principle embedded in our Constitution. We support the enhancement of market conduct practices in the financial sector and enhanced policy holder protection, which principles are entrenched in the National Treasury Policy Document entitled "*A Safer Financial Sector to serve South Africa better*" published in February 2011. At the heart of the principle of	

			separation of powers is a desire to enhance democracy, increase accountability and efficiency and protect the fundamental rights enshrined in the Constitution from abuse. It is suggested that in the event that circumstances necessitate the immediate publication of a rule, this decision must be made by the Minister. The implementation of Rules without first submitting them for public comment is also not supported. We should ensure that the *audi alteram partem* rule of natural justice is not only followed but also seen to be followed. In addition, the Minister should review the draft rule in light of any submissions made. **Directives, Exemption Notices and Board Notices** The SAIA finds it difficult to support any provisions that depart from the Promotion of Administrative Justice Act, 2000 ("PAJA") in the issuing of Directives, even with a condition	

			that a statement to this effect and the reasons for the departure are included in the Directive (which may be found in clause 201 of the Bill). The SAIA remains of the view that the Registrar must not only follow fair administrative procedure but must also be seen to follow fair administrative procedure, including a right of review or internal appeal. **Publication on the FSB's website** Although the SAIA appreciates the intention of National Treasury to reduce costs by replacing gazetting with publishing via the official website of the FSB, we believe that the benefits of the gazetting process for all stakeholders outweigh the potential cost saving on the website. In addition, the FSB website as the only communication method may prejudice both insurers and consumers alike. Alternatively, it is suggested that the enactment of the provisions in the Bill affording the right of the	

			Regulator to publish them on the FSB's official website should be delayed in anticipation of the completion of the FSB's project to upgrade its website infrastructure, expected to be completed by September 2013. This will be achievable through clause 259 that provides for the staggered implementation of the Act. **Medical Schemes Act, 1998** We submit that the proposed amendment to the definition of "*business of a medical scheme*" will result in an unreasonably broad application of the Act, in that it will apply to any person rendering a health service in return for the payment of a premium, and not just a person intentionally undertaking the actual business of a medical scheme. The result of the Omnibus Bill amendment will be to extend the ambit of the Medical Schemes Act to all medical insurance products. Regulations are to be promulgated to allow only certain categories of medical	

			insurance products. These Regulations are still the subject of discussion and we therefore propose that it would be appropriate for the implementation of this Section to be delayed until such time as the Demarcation Regulations are law.	

SUMMARY OF REGULATORY GAPS:

Policyholder protection and amendments to enhance clarity & certainty

1. Definition of “fit and proper”: To insert a definition of “fit and proper” to provide an overarching indication as to what is meant with the term.
2. Definition of “publish”: To insert a definition of “publish” to clarify what constitutes publish by persons, other than the registrar, under the Act.
3. Clarity on section 4 & 8: To extend the prohibitions provided for under this section in respect of the insurers and other persons that publish documentation which is misleading or contrary to the public interest, contains an incorrect statement of fact or does not prominently include the name of the insurer underwriting the policy.
4. Section 26:

   To clarify the interpretation of the section to ensure that the registrar may, in considering an application for the acquisition of shares, assess the financial soundness and fit and properness of any potential shareholders, irrespective of the number or value of the shares to be acquired.

   To place an obligation on the insurer to, in addition to the person that must lodge an application, inform the registrar of the acquisition of shares within the meaning of the section.

   To increase the limit the Registrar may request the Court to reduce shareholding to.
5. Section 28: To align with the proposed amendments to section 26 of the Act.
6. Section 38: To ensure that the particulars of applications are provided in a structured and consistent manner and to allow for publication in media other than newspapers only. To remove gender references.
7. Section 43: To clarify that the voluntary winding-up provisions apply to a financially sound insurer only.
8. Section 53 [ONLY LT]: To clarify that where a policyholder elects to have an assistance policy benefit paid as a sum of money instead of opting for the rendering of a funeral service, that the sum of money must be equal to the value of the services that is provided for under the policy. For example, if a person has taken out a policy for a funeral service to the value of R 5000,00, and that person opts to take the cash value, that person must receive R 5000,00.
9. Section 63 [ONLY LT]: To remove the outdated limitation of R 50 000 on policy benefits and assets acquired with policy benefits that are excluded from a policyholder’s insolvent estate and to align the section to the Insolvency Act. This amendment was requested by the Ombudsman for Long-term Insurance.

Powers of the Registrar (primarily due to alignment with international standards)

1. Section 12: To extend the powers of and the circumstances under which the registrar may prohibit an insurer from carrying on business. The requirement that the registrar must obtain the approval of the Minister prior to acting under this section has been removed. This is consistent with the IAIS Insurance Core Principles (international standards) and the powers extended to other registrars.
2. Sections 37, 38 & 40 [ONLY LT]: To extend the powers of the Registrar to approve a compromise, arrangement, amalgamation, demutualisation or transfer, instead of the Courts and to align the requirements to that provided for under the Short-term Insurance Act. This will allow the Registrar to act swiftly when required in the interests of policyholders and financial stability. This amendment is also consistent with the IAIS Insurance Core Principles (international standards) and the powers extended to other registrars.
3. Section 39: To authorise the Registrar to impose conditions.
4. Section 42: To extend the powers of the Registrar to apply to court for the winding-up of an insurer without first securing the approval of the Minister. This will allow the registrar to act swiftly when required in the interests of policyholders and financial stability. This amendment is also consistent with international standards and the powers extended to other registrars. To addresses the concerns raised by the FSAP in this regard.
5. Section 45: To authorise the Registrar to prescribe what constitutes an inducement.
6. Section 62: To authorise the Registrar to make policyholder protection rules and extend the matters in respect of which these rules may be made. This will allow the Registrar to act swiftly when required, is consistent with international standards and the powers extended to other registrars.