

**NATIONAL TREASURY
NASIONALE TESOURIE**

No. 547

11 July 2014


**SHORT-TERM INSURANCE ACT, 1998: AMENDMENT OF REGULATIONS MADE
UNDER SECTION 70 FOR PUBLIC COMMENT**

I, Nhlanhla M Nene, Minister of Finance, under section 70(1)(gA) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), hereby publish the proposed amendment to Part 6 of the Regulations made under section 70 of the Short-term Insurance Act and published under GNR.1493 of 27 November 1998, and amended from time to time, as set out in Schedule A hereto, for public comment.

An explanatory memorandum on the proposed amendment is set out in Schedule B hereto.

Comments on the proposed amendment may be submitted in writing on or before 1 September 2014 to the National Treasury, c/o Dr Reshma Sheoraj at STBinders@treasury.gov.za or faxed to (012) 315 5206.

The proposed draft amendment of the regulations is available on the National Treasury's website at www.treasury.gov.za and the Financial Services Board's website at www.fsb.co.za.



**NHLANHLA M NENE, MP
MINISTER OF FINANCE
DATE: 3 / 7 / 14**

SCHEDULE A

1. Interpretation

In this Schedule "the Regulations" means the Regulations under the Short-term Insurance Act, 1998 as published in GNR 1493 of 1998 and amended by GNR 462 of 2008, GNR 1076 of 2011.

2. Substitution of Regulation 6.1 of Part 6 in the Regulations

The following Regulation is hereby substituted for Regulation 6.1 of the Regulations:

"6.1 Definitions and interpretation

(1) In this Part 6, unless the context indicates otherwise -

"associate" –

(a) has the meaning assigned to it in the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); and

(b) in addition to paragraph (a) includes, in relation to a juristic person –

(i) another juristic person that has a shareholder, director or managing executive that is also a shareholder, director or managing executive of the first mentioned juristic person; and

(ii) another juristic person that has a person as a shareholder, director or managing executive who is an associate (within the meaning referred to under paragraph (a)) of a shareholder, director or managing executive of the first mentioned juristic person;

"binder agreement" means an agreement contemplated in section 48A;

"binder holder" means a person with whom an insurer has concluded a binder agreement;

"commercial lines business" means short-term insurance business in respect of which the policyholder is a legal person;

"enter into" means any act that results in an insurer becoming liable to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"incidental" means any activity that is necessary or expedient for the performance of a binder function;

“insurer” means a short-term insurer or Lloyd’s, but excludes SASRIA as defined in section 1 and referred to in the Conversion of SASRIA Act, 1998 (Act 134 of 1998);

“non-mandated intermediary” means a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager;

“policy” means a short-term policy;

“renew” means any act that results in the renewal of an insurer’s liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

“representative” has the meaning assigned to it in the Act, but excludes an employee of an insurer;

“settle a claim” means any act that results in—

- (a) the acceptance of partial or full liability under a claim for policy benefits or a part thereof;
 - (b) the determination of the liability of an insurer under a claim for policy benefits; or
 - (c) the rejection of or refusal to pay a claim for policy benefits or a part thereof;
- where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

“this Part” means this Part 6;

“underwriting manager” means a person that—

- (a) performs one or more of the binder functions referred to in section 48A(1)(a) to (e); and
- (b) if that person renders services as an intermediary—
 - (i) does not perform any act the result of which is that another person will or does or offers to enter into, vary or renew a policy on behalf of an insurer, a potential policyholder or policyholder; and
 - (ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and

“vary” means any act that results in the variation, termination, repudiation or denial of an insurer’s liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed, and includes any act declaring a policy void.

(2) For purposes of subparagraph (i) of paragraph (b) of the definition of “underwriting manager”, a person renders services as an intermediary within the meaning of subparagraph (i) if that person has any relationship with an insurer (including the secondment of that person’s employees to an insurer or an associate of an insurer, the outsourcing of that person’s infrastructure to an insurer or an associate of an insurer, or any similar arrangement)

which may result in that person or its employees *de facto*, directly or indirectly, rendering the services referred to in subparagraph (i) above on behalf of an insurer, a policyholder or potential policyholder."

3. Amendment of Regulation 6.2 of Part 6 in the Regulations

Regulation 6.2 is hereby amended by the substitution for paragraph (a) of sub-regulation (4) of the following paragraph:

"(a) An underwriting manager who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing."

4. Amendment of Regulation 6.3 of Part 6 in the Regulations

Regulation 6.3 is hereby amended by the substitution for sub-regulation (3) of the following sub-regulation:

"(3) (a) A binder agreement may only provide for matters referred to in section 48A of the Act, this Part and must provide for matters incidental thereto.

(b) A binder agreement[, and] may not regulate any other arrangement or relationship with the binder holder, irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential to such other arrangement or relationship.

(c)[(b)] A binder agreement may not prohibit an insurer from communicating directly with its policyholders or any independent intermediary."

5. Amendment of Regulation 6.4 of Part 6 in the Regulations

Regulation 6.4 is hereby amended by –

(a) the insertion after sub-regulation (1) of the following sub-regulation:

"(1A) (a) The Registrar by notice in the Gazette may prescribe the fees that are reasonably commensurate with the actual costs of performing any binder functions.

(b) An insurer may not pay a binder holder a fee in excess of the fees prescribed under paragraph (a)."

(b) the substitution for sub-regulation (3) of the following sub-regulation:

"(3) (a) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(b) Paragraph (a) does not prohibit a non-mandated intermediary from receiving dividends in respect of shares held in an insurer if –

- (i) those shares were issued by the insurer in accordance with the Act; and
- (ii) the insurer's conditions of licensing explicitly in writing authorises it to issue shares to intermediaries, in accordance with that insurer's conditions of registration.”.

6. Amendment of Regulation 6.5 of Part 6 in the Regulations

Regulation 6.5 is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

“(1) Despite regulation 6.2 (2) or (3), the Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer that is the holding company or associate of more than one person referred to in regulation 6.2 (2) or (3), exempt that **[insurer and]** non-mandated intermediary or underwriting manager that is a subsidiary or associate of that insurer from regulation 6.2 (2) or (3), if the Registrar is satisfied that no conflict of interest or potential conflict of interest exists, or that any conflict of interest or potential conflict of interest is effectively mitigated.

7. Transitional provisions

Any agreement concluded before or on the date on which this amendment commences, which is not consistent with the amendment must be aligned with this amendment within one year of this amendment coming into operation.

SCHEDULE B
EXPLANATORY MEMORANDUM

1. PURPOSE

The purpose of this Explanatory Memorandum is to provide the motivation for the proposed amendment to Part 6 of the Regulations.

2. BACKGROUND

Part 6 of the Regulations became effective on 1 January 2012 and provided for a transitional period of 1 year for compliance therewith.

Part 6 of the Regulations regulates binder agreements entered into by insurers in terms of which the insurer authorises another person to enter into, vary or renew policies on its behalf.

3. THE PROPOSED AMENDMENT

The proposed amendment to the Regulations aims to address emerging undesirable practices and regulatory gaps identified post implementation of Part 6 of the Regulations.

Each of the proposed amendments is discussed in the table below:

Regulation	Amendment	Motivation
6.1	<p>“associate” -</p> <p>(a) has the meaning assigned to it in the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); and</p> <p>(b) <u>in addition to paragraph (a) includes, in relation to a juristic person –</u></p> <p>(i) <u>another juristic person that has a shareholder, director or managing executive that is also a shareholder, director or managing executive of the first mentioned juristic person; and</u></p> <p>(ii) <u>another juristic person that has a person as a shareholder, director or managing executive who is an associate (within the meaning referred to under paragraph (a)) of a shareholder, director or managing executive of the first mentioned juristic person;</u></p>	<p>To limit potential conflicts of interest inherent in certain binder function-related relationships by extending the scope of prohibited business relationships to –</p> <ul style="list-style-type: none"> ▪ mandated and non-mandated intermediaries that share shareholders, directors and executive management with non-mandated intermediaries and underwriting managers; and • natural persons that are related to the shareholders, directors and executive management of a binder holder.

	<p><u>"incidental" means any activity that is necessary or expedient for the performance of a binder function;</u></p>	<p>To clarify what constitutes matters incidental to the matters referred to in section 48A of the Act. The amendment must be read with the proposed amendments to Regulation 6.3(3)(a) and Regulation 6.4(1A).</p>
	<p><u>"insurer" means a short-term insurer or Lloyd's, but excludes SASRIA as defined in section 1 and referred to in the Conversion of SASRIA Act, 1998 (Act 134 of 1998);</u></p>	<p>To exclude SASRIA from the scope of the Binder Regulations. This is necessary given the fact that the Conversion of SASRIA Act read with the Reinsurance of Damage and Losses Act affords SASRIA a legislative mandate to underwrite specific risks relating to civil and labour unrest. Insurers are obliged to offer SASRIA cover to potential policyholders. SASRIA cover is non-refusable and non-cancellable by insurers. SASRIA policies may only be issued in conjunction with such other policies as are approved by the SASRIA Board.</p>
	<p><u>(2) For purposes of subparagraph (i) of paragraph (b) of the definition of "underwriting manager", a person renders services as an intermediary within the meaning of subparagraph (i) if that person has any relationship with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of that person's infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees de facto, directly or indirectly, rendering the services referred to in subparagraph (i) above on behalf of an insurer, a potential policyholder or policyholder."</u></p>	<p>To extend the definition of underwriting manager to strengthen the intention of the Binder Regulations. Given the functions an underwriting manager performs as the agent of the insurer and the fact that profit sharing is allowed in respect of underwriting managers only, it is essential to ensure that there is no conflict or potential conflict of interest that may significantly impact on the advice or intermediary services provided to a client. The amendment addresses an observed technical loophole.</p>
6.2	<p>"(4) (a) An underwriting manager who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing."</p>	<p><i>Technical correction:</i> To correct a grammatical error.</p>
6.3	<p>"(3) (a) A binder agreement may only provide for matters referred to in section 48A of the Act, this Part and <u>must provide for</u> matters incidental thereto.</p> <p><u>(b) A binder agreement[, and] may not regulate any other arrangement or relationship with the binder holder, irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential to such other arrangement or relationship.</u></p> <p><u>(c)[(b)] A binder agreement may not prohibit an insurer from communicating directly with its</u></p>	<p>To clarify that activities incidental to the matters referred to in section 48A of the Act must be addressed in a binder agreement.</p>

	policyholders or any independent intermediary.”.	
6.4	<p>“(1A) (a) <u>The Registrar by notice in the Gazette may prescribe the fees that are reasonably commensurate with the actual costs of performing any binder functions.</u></p> <p>(b) <u>An insurer may not pay a binder holder a fee in excess of the fees prescribed under paragraph (a).</u>”</p>	To authorise the Registrar to prescribe fees for the binder functions rendered under the binder agreement, given observed undesirable practices.
	<p>“(3) (a) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.</p> <p>(b) <u>Paragraph (a) does not prohibit a non-mandated intermediary from receiving dividends in respect of shares held in an insurer if –</u></p> <p>(i) <u>those shares were issued by the insurer in accordance with the Act, and</u></p> <p>(ii) <u>the insurer’s conditions of licensing explicitly in writing authorises it to issue shares to intermediaries, in accordance with that insurer’s conditions of registration.</u>”.</p>	To clarify that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer.
6.5	<p>“(2) Despite regulation 6.2 (2) or (3), the Registrar, <u>subject to such conditions as the Registrar may impose,</u> may on application from an insurer that is the holding company or associate of more than one person referred to in regulation 6.2 (2) or (3), exempt that non-mandated intermediary or underwriting manager that is a subsidiary or associate of that insurer from regulation 6.2 (2) or (3), if the Registrar is satisfied that no conflict of interest or potential conflict of interest exists, <u>or that any conflict of interest or potential conflict of interest is effectively mitigated.</u></p>	<p>To relax the circumstances under which an exemption may be provided by allowing an exemption to be granted in circumstances where a conflict of interest can be appropriately mitigated.</p> <p><i>Technical correction:</i> To remove the reference to insurer as an insurer cannot be exempted from regulation 6.2 (2) or (3) as those provisions do not apply to insurers.</p>
Transitional provision	Any agreement concluded before or on the date on which this amendment commences, which is not consistent with the amendment must be aligned with this amendment within one year of this amendment coming into operation.	To provide for the progressive implementation of the amendment to the Regulations.

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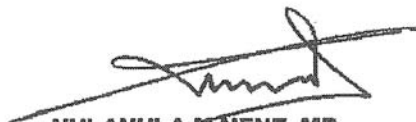
**LONG-TERM INSURANCE ACT, 1998: AMENDMENT OF REGULATIONS MADE UNDER
SECTION 72 FOR PUBLIC COMMENT**

I, Nhlanhla M Nene, Minister of Finance, under section 72(1)(gA) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), hereby publish the proposed amendment to Part 6 of the Regulations made under section 72 of the Long-term Insurance Act and published under GNR.1492 of 27 November 1998, and amended from time to time, as set out in Schedule A hereto, for public comment.

An explanatory memorandum on the proposed amendment is set out in Schedule B hereto.

Comments on the proposed amendment may be submitted in writing on or before 1 September 2014 to the National Treasury, c/o Dr Reshma Sheoraj at LTBinders@treasury.gov.za or faxed to (012) 315 5206.

The proposed draft amendment of the regulations is available on the National Treasury's website at www.treasury.gov.za and the Financial Services Board's website at www.fsb.co.za.



NHLANHLA M NENE, MP
MINISTER OF FINANCE
DATE: 3/7/14

SCHEDULE A**1. Interpretation**

In this Schedule “the Regulations” means the Regulations under the Long-term Insurance Act, 1998 as published in GNR 1492 of 1998 and amended by GNR 197 of 2000, GNR 164 of 2002, GNR 1209 of 2003, GNR 1218 of 2006, GNR 952 of 2008, GNR 1077 of 2011.

2. Substitution of Regulation 6.1 of Part 6 in the Regulations

The following Regulation is hereby substituted for Regulation 6.1 of the Regulations:

“6.1 Definitions and interpretation

(1) In this Part 6, unless the context indicates otherwise -

“**administrative FSP**” has the meaning assigned to it in the Codes of conduct for administrative and discretionary FSPs published in Board Notice No. 79 of 8 August 2003, and amended from time to time, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

“**associate**” -

(a) has the meaning assigned to it in the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); and

(b) in addition to paragraph (a) includes, in relation to a juristic person -

(i) another juristic person that has a shareholder, director or managing executive that is also a shareholder, director or managing executive of the first mentioned juristic person; and

(ii) another juristic person that has a person as a shareholder, director or managing executive who is an associate (within the meaning referred to under paragraph (a)) of a shareholder, director or managing executive of the first mentioned juristic person;

“**binder agreement**” means an agreement contemplated in section 49A;

“**binder holder**” means a person with whom an insurer has concluded a binder agreement;

“**enter into**” means any act that results in an insurer becoming liable to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

“incidental” means any activity that is necessary or expedient for the performance of a binder function;

“independent intermediary” has the meaning assigned to it in regulation 3.1;

“insurer” means a long-term insurer;

“mandated intermediary” means an independent intermediary that holds a written mandate from a potential policyholder or policyholder that authorises that intermediary, without having to obtain the prior approval of that potential policyholder or policyholder, to perform any act, including termination, in relation to a policy, that legally binds that potential policyholder or policyholder, other than an act directed only at changing the underlying investment portfolio of a policy;

“non-mandated intermediary” means a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager;

“policy” means a long-term policy;

“renew” means any act that results in the renewal or reinstatement of an insurer’s liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

“representative” has the meaning assigned to it in regulation 3.1, but excludes an employee of an insurer;

“settle a claim” means any act that results in—

- (a) the acceptance of partial or full liability under a claim for policy benefits or a part thereof;
- (b) the determination of the liability of an insurer under a claim for policy benefits; or
- (c) the rejection of or refusal to pay a claim for policy benefits or a part thereof;

where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

“this Part” means this Part 6;

“underwriting manager” means a person that—

- (a) performs one or more of the binder functions referred to in section 49A (1) (a) to (e); and
- (b) if that person renders services as an intermediary as defined in Part 3A of the Regulation—
 - (i) does not perform any act directed towards entering into, maintaining or servicing a policy on behalf of an insurer, a potential policyholder or policyholder (including the performance of such an act in relation to a fund, a member of a fund and the agreement between the member and the fund); and

- (ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and

“vary” means any act that results in the variation, termination, repudiation or denial of an insurer’s liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed, and includes any act declaring a policy void.

(2) For purposes of subparagraph (i) of paragraph (b) of the definition of “underwriting manager”, a person renders services as an intermediary within the meaning of subparagraph (i) if that person has any relationship with an insurer (including the secondment of that person’s employees to an insurer or an associate of an insurer, the outsourcing of that person’s infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees *de facto*, directly or indirectly, rendering the services referred to in subparagraph (i) above on behalf of an insurer, a potential policyholder or policyholder.”.

3. Amendment of Regulation 6.2 of Part 6 in the Regulations

Regulation 6.2 is hereby amended by the substitution for paragraph (a) of sub-regulation (4) of the following paragraph:

“(a) An underwriting manager who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing.”.

4. Amendment of Regulation 6.3 of Part 6 in the Regulations

Regulation 6.3 is hereby amended by the substitution for sub-regulation (3) of the following sub-regulation:

“(3) (a) A binder agreement may only provide for matters referred to in section 49A of the Act, this Part and must provide for matters incidental thereto.

(b) A binder agreement[, and] may not regulate any other arrangement or relationship with the binder holder, irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential to such other arrangement or relationship.

(c)[(b)] A binder agreement may not prohibit an insurer from communicating directly with its policyholders or any independent intermediary.”.

5. Amendment of Regulation 6.4 of Part 6 in the Regulations

Regulation 6.4 is hereby amended by –

(a) the insertion after sub-regulation (1) of the following sub-regulation:

“(1A) (a) The Registrar by notice in the Gazette may prescribe the fees that are reasonably commensurate with the actual costs of performing any binder functions.

(b) An insurer may not pay a binder holder a fee in excess of the fees prescribed under paragraph (a).”

(b) the substitution for sub-regulation (3) of the following sub-regulation:

“(3) (a) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(b) Paragraph (a) does not prohibit a non-mandated intermediary from receiving dividends in respect of shares held in an insurer if –

(i) those shares were issued by the insurer in accordance with the Act; and

(ii) the insurer's conditions of licensing explicitly in writing authorises it to issue shares to intermediaries, in accordance with that insurer's conditions of registration.”.

6. Amendment of Regulation 6.5 of Part 6 in the Regulations

Regulation 6.5 is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) Despite regulation 6.2 (2) or (3), the Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer that is the holding company or associate of more than one person referred to in regulation 6.2 (2) or (3), exempt that non-mandated intermediary or underwriting manager that is a subsidiary or associate of that insurer from regulation 6.2 (2) or (3), if the Registrar is satisfied that no conflict of interest or potential conflict of interest exists, or that any conflict of interest or potential conflict of interest is effectively mitigated.

7. Transitional provisions

Any agreement concluded before or on the date on which this amendment commences, which is not consistent with the amendment must be aligned with this amendment within one year of this amendment coming into operation.

SCHEDULE B EXPLANATORY MEMORANDUM

1. PURPOSE

The purpose of this Explanatory Memorandum is to provide the motivation for the proposed amendment to Part 6 of the Regulations.

2. BACKGROUND

Part 6 of the Regulations became effective on 1 January 2012 and provided for a transitional period of 1 year for compliance therewith.

Part 6 of the Regulations regulates binder agreements entered into by insurers in terms of which the insurer authorises another person to enter into, vary or renew policies on its behalf.

3. THE PROPOSED AMENDMENT

The proposed amendment to the Regulations aims to address emerging undesirable practices and regulatory gaps identified post implementation of Part 6 of the Regulations.

Each of the proposed amendments is discussed in the table below:

Regulation	Amendment	Motivation
6.1	<p>“associate” -</p> <p>(a) has the meaning assigned to it in the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); and</p> <p>(b) in addition to paragraph (a) includes, in relation to a juristic person –</p> <p>(i) <u>another juristic person that has a shareholder, director or managing executive that is also a shareholder, director or managing executive of the first mentioned juristic person; and</u></p> <p>(ii) <u>another juristic person that has a person as a shareholder, director or managing executive who is an associate (within the meaning referred to under paragraph (a)) of a shareholder, director or managing executive of the first mentioned juristic person;</u></p>	<p>To limit potential conflicts of interest inherent in certain binder function-related relationships by extending the scope of prohibited business relationships to –</p> <ul style="list-style-type: none"> ▪ mandated and non-mandated intermediaries that share shareholders, directors and executive management with non-mandated intermediaries and underwriting managers; and ▪ natural persons that are related to the shareholders, directors and executive management of a binder holder.

	<p><u>"incidental" means any activity that is necessary or expedient for the performance of a binder function;</u></p>	To clarify what constitutes matters incidental to the matters referred to in section 49A of the Act. The amendment must be read with the proposed amendments to Regulation 6.3(3)(a) and Regulation 6.4(1A).
	<p><u>(2) For purposes of subparagraph (i) of paragraph (b) of the definition of "underwriting manager", a person renders services as an intermediary within the meaning of subparagraph (i) if that person has any relationship with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of that person's infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees de facto, directly or indirectly, rendering the services referred to in subparagraph (i) above on behalf of an insurer, a potential policyholder or policyholder."</u></p>	To extend the definition of underwriting manager to strengthen the intention of the Binder Regulations. Given the functions an underwriting manager performs as the agent of the insurer and the fact that profit sharing is allowed in respect of underwriting managers only, it is essential to ensure that there is no conflict or potential conflict of interest that may significantly impact on the advice or intermediary services provided to a client. The amendment addresses an observed technical loophole.
6.2	<p><u>"(4) (a) An underwriting manager who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing."</u></p>	<i>Technical correction:</i> To correct a grammatical error.
6.3	<p><u>"(3) (a) A binder agreement may only provide for matters referred to in section 49A of the Act, this Part and must provide for matters incidental thereto.</u></p> <p><u>(b) A binder agreement[, and] may not regulate any other arrangement or relationship with the binder holder, irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential to such other arrangement or relationship.</u></p> <p><u>(c)[(b)] A binder agreement may not prohibit an insurer from communicating directly with its policyholders or any independent intermediary."</u></p>	To clarify that activities incidental to the matters referred to in section 49A of the Act must be addressed in a binder agreement.
6.4	<p><u>"(1A) (a) The Registrar by notice in the Gazette may prescribe the fees that are reasonably commensurate with the actual costs of performing any binder functions.</u></p> <p><u>(b) An insurer may not pay a binder holder a fee in excess of the fees prescribed under paragraph (a)."</u></p>	To authorise the Registrar to prescribe fees for the binder functions rendered under the binder agreement, given observed undesirable practices.
	<p><u>"(3) (a) A non-mandated intermediary that is a binder holder, in respect of the services</u></p>	To clarify that a non-mandated intermediary with whom an insurer may enter into a cell

	<p>rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.</p> <p><u>(b) Paragraph (a) does not prohibit a non-mandated intermediary from receiving dividends in respect of shares held in an insurer if –</u></p> <p><u>(i) those shares were issued by the insurer in accordance with the Act; and</u></p> <p><u>(ii) the insurer's conditions of licensing explicitly in writing authorises it to issue shares to intermediaries, in accordance with that insurer's conditions of registration.”.</u></p>	<p>captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer.</p>
6.5	<p>“(1) Despite regulation 6.2 (2) or (3), the Registrar, <u>subject to such conditions as the Registrar may impose</u>, may on application from an insurer that is the holding company or associate of more than one person referred to in regulation 6.2 (2) or (3), exempt that non-mandated intermediary or underwriting manager that is a subsidiary or associate of that insurer from regulation 6.2 (2) or (3), if the Registrar is satisfied that no conflict of interest or potential conflict of interest exists, <u>or that any conflict of interest or potential conflict of interest is effectively mitigated.”.</u></p>	<p>To relax the circumstances under which an exemption may be provided by allowing an exemption to be granted in circumstances where a conflict of interest can be appropriately mitigated.</p> <p><i>Technical correction:</i> To remove the reference to insurer as an insurer cannot be exempted from regulation 6.2 (2) or (3) as those provisions do not apply to insurers.</p>
Transitional provision	<p>Any agreement concluded before or on the date on which this amendment commences, which is not consistent with the amendment must be aligned with this amendment within one year of this amendment coming into operation.</p>	<p>To provide for the progressive implementation of the amendment to the Regulations.</p>