

REPUBLIC OF SOUTH AFRICA

INSURANCE LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36513 of 31 May 2013)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 16—2013]

ISBN 978-1-77597-014-9

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Long-term Insurance Act, 1998 and the Short-term Insurance Act, 1998, so as to define certain terms; to state the objects of insurance regulation; to extend the powers of the Registrar; to extend the provisions relating to the licensing of insurers; to provide for explicit governance, risk management and internal control requirements of insurers; to provide for the supervision of insurance groups; to clarify certain market conduct matters; to make consequential amendments to other Acts; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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*Part 1**Amendment of Long-term Insurance Act, 1998*

Amendment of section 1 of Act 52 of 1998, as amended by section 2 of Act 17 of 2003, section 1 of Act 27 of 2008 and section 69 of Financial Services Laws General Amendment Act, 2013 30

1. Section 1 of the Long-term Insurance Act, 1998 (in this Part referred to as the principal Act), is hereby amended—
- (a) by the substitution for paragraph (a) of the definition of “assistance policy” of the following paragraph: 35
- “(a) the value of the policy benefits per life insured, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and”;
- (b) by the insertion after the definition of “company” of the following definitions: 40
- “**‘control function’** within a governance framework, means the risk management function, the compliance function, the actuarial control function and internal audit function;”;
- (c) by the insertion after the definition of “Financial Services Board Act” of the following definition: 45
- “**‘fit and proper requirements’** means, amongst others—
- | | | | |
|-----|---|--|----|
| (a) | in relation to a director, senior management and head of a control function, qualities of competence and integrity as may be prescribed by the Registrar; | | |
| (b) | in relation to a person to whom a control function is outsourced, qualities of competence and integrity as may be prescribed by the Registrar; and | | 50 |

- (c) in relation to any person that directly or indirectly controls a long-term insurer within the meaning of section 2(2) of the Companies Act, qualities of integrity and financial standing as may be prescribed by the Registrar;”;
- (d) by the insertion after the definition of “fund policy” of the following definition: 5
 “**‘head of a control function’** means any person that is in charge of a control function, and includes a person to whom a control function is outsourced;”;
- (e) by the insertion after the definition of “holding company” of the following definition: 10
 “**‘inter-related’** has the meaning assigned in the Companies Act;”;
- (f) by the deletion of the definition of “managing executive”;
- (g) by the insertion after the definition of “official web site” of the following definition: 15
 “**‘outsourcing’** means an arrangement of any form between a long-term insurer and another person, whether that person is supervised under any law or not, in terms of which that person performs a function or activity related to any aspect of the long-term insurance business of the insurer, whether directly or by sub-outsourcing, which would otherwise be performed by the long-term insurer itself;”;
- (h) by the insertion after the definition of “regulation” of the following definition: 20
 “**‘regulatory authority’** means—
 (a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996, responsible for the supervision or enforcement of legislation; or 25
 (b) a similar body designated in the laws of a country other than the Republic to supervise or enforce legislation of that country;”;
- (i) by the insertion after the definition of “reinsurance policy” of the following definition: 30
 “**‘related’** has the meaning assigned to it in the Companies Act;”;
- (j) by the insertion after the definition of “repealed Act” of the following definition: 35
 “**‘senior management’** means the chief executive officer or person in charge of a long-term insurer and any manager with decision-making powers who is directly accountable to or directly reports to the chief executive officer or person in charge of that long-term insurer;”;
- (k) by the addition of the following subsection: 40
 “(3) The Companies Act applies to an association of persons formed under another Act of Parliament that is licensed under this Act to the extent that the Companies Act—
 (a) can apply to it; and
 (b) applies to a public company registered under this Act.”.

Insertion of section 1A in Act 52 of 1998

2. The following section is hereby inserted after section 1 of the principal Act: 45

“Object of Act

1A. The object of this Act is to promote the maintenance of a fair, safe and stable long-term insurance market for the benefit and protection of policyholders.”.

Amendment of section 4 of Act 52 of 1998, as amended by section 3 of Act 17 of 2003, section 3 of Act 27 of 2008 and section 72 of Financial Services Laws General Amendment Act, 2013

3. Section 4 of the principal Act is hereby amended by the addition of the following subsections:

“(11) The Registrar may where practicalities impede the strict application of this Act or any provision of this Act, by notice on the official web site exempt any person or long-term insurer from this Act or any provision of this Act on the conditions determined in the notice.

(12) An exemption contemplated in subsection (11) may—

- (a) apply to persons or long-term insurers generally; or
- (b) be limited in its application to a particular—
 - (i) person or long-term insurer; or
 - (ii) kind of person or long-term insurer, which may, for the purposes of this section, be defined either in relation to a type or size of the person or long-term insurer or in any other manner.

(13) The Registrar may, in addition to any authority provided for under a specific provision in this Act, prescribe any requirements set out in this Act in greater detail.

(14) (a) The Registrar may issue interpretation guidelines on the manner in which the Registrar will apply the Act, or any section or sections of the Act for supervisory purposes.

(b) A person or long-term insurer must adhere to an interpretation guideline until such time as a court attaches a different interpretation to the subject matter of that interpretation guideline.

(15) The Registrar must, when acting under subsection (13) or (14), publish a draft of the requirements to be prescribed or an interpretation guideline on the official web site together with a notice 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.

(16) (a) The Registrar may, in addition to section 22 of the Financial Services Board Act, subject to paragraphs (b) and (c), request or obtain information from or provide information to a regulatory authority—

- (i) necessary for the supervision of a long-term insurer;
- (ii) necessary to develop and implement policies and activities to deter, prevent, detect, report and remedy fraud in insurance; or
- (iii) for anti-money laundering and combating the financing of terrorism purposes.

(b) The Registrar must—

- (i) proactively provide information which the Registrar deems relevant to regulatory authorities that the Registrar deems to have a material interest in a long-term insurer, which information may include information relating to financial standing, qualitative assessments and significant problems experienced with or within any institution referred to under paragraph (a)(i);
- (ii) prior to providing information, ensure that the regulatory authority that will receive the information has appropriate safeguards in place to protect the confidentiality of the information, which safeguards must be similar to those that the Registrar is subject to under law;
- (iii) only allow information provided to a regulatory authority to be made available to third parties if the Registrar is satisfied that the third parties have appropriate safeguards in place to protect the confidentiality of the information, which safeguards must be similar to those that the Registrar is subject to under law; and
- (iv) prior to taking regulatory action which the Registrar deems material against a person referred to under paragraph (a)(i), inform the relevant regulatory authorities of the pending regulatory action or, where this is not possible, inform the relevant regulatory authorities as soon as possible after taking the regulatory action.

(c) The Registrar must, when requesting or obtaining information—

- (i) act in the performance of functions provided for only in terms of this Act;
- (ii) use the information only for the purpose for which it was requested;
- (iii) not make the information available to third parties without the consent of the regulatory authority that provides the information;

- (iv) if lawfully compelled to make information provided by a regulatory authority available—
- (aa) inform that regulatory authority of the information and circumstances under which it will be made available; and
 - (bb) where possible, use all reasonable means to oppose the disclosure of or protect the information.
- (17) (a) The Registrar must, subject to subsection (16), take reasonable measures to establish adequate coordination arrangements with other regulatory authorities for the purposes referred to under subsection (16)(a).
- (b) The Registrar may, in addition to section 22 of the Financial Services Board Act and subsection (16)—
- (i) liaise with any regulatory authority on matters of common interest;
 - (ii) negotiate agreements with any regulatory authority to—
 - (aa) co-ordinate and harmonise the reporting and other obligations of long-term insurers;
 - (bb) provide mechanisms for the exchange of information; and
 - (cc) provide procedures for the coordination of supervisory activities to facilitate the monitoring of insurance business on an ongoing basis.
 - (iii) participate in the proceedings of any regulatory authority; and
 - (iv) advise or receive advice from any regulatory authority.
- (c) The Registrar may, without detracting from the generality of paragraphs (a) and (b), enter into a written cooperation agreement with a regulatory authority, including a regulatory authority in whose country a subsidiary or holding company of a long-term insurer is incorporated or a branch is situated.
- (d) The cooperation agreement referred to in paragraph (c) may include—
- (i) a provision that the Registrar may accept the regulatory and supervisory approaches implemented by that regulatory authority;
 - (ii) a provision that the Registrar or regulatory authority may conduct an on-site examination or an inspection of a long-term insurer, or an insurance undertaking registered or licensed by the regulatory authority;
 - (iii) a provision that the Registrar and regulatory authority may share information relating to the financial soundness and performance of the institutions referred to under subparagraph (ii);
 - (iv) a provision that the Registrar or regulatory authority—
 - (aa) be informed of adverse assessments of qualitative aspects of the operations of a long-term insurer; or
 - (bb) may provide information regarding significant problems that are being experienced within a long-term insurer; and
 - (cc) such other matters as the Registrar may deem relevant.
- (18) The Registrar must, in performing the functions provided for in terms of this Act or any other law, have regard to—
- (a) the objects of this Act;
 - (b) international regulatory and supervisory standards; and
 - (c) the principle that requirements imposed on persons regulated under this Act and the exercise of supervisory powers should be proportionate to the purpose for which it is intended.”.

Amendment of section 9 of Act 52 of 1998

4. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) unless the applicant—
- (i) is a public company **[and has the carrying on of long-term insurance business as its main object]** whose primary business activity is the conducting of long-term insurance business and operations arising directly therefrom; or
 - (ii) is **[incorporated without a share capital under a law providing specifically for the constitution of a person to carry on long-term insurance business as its main object]** a company other than a public company referred to in the definition of “company” in section 1 of the Companies Act or is an association of persons formed or established under an Act

- of Parliament whose sole business activity is the conducting of long-term insurance business and operations arising directly therefrom;”;
- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 5
“(b) unless the applicant demonstrates to the satisfaction of the Registrar that—
 (i) the applicant has complied and in future will be able to comply with the governance framework and financial soundness requirements of this Act; 10
 (ii) the directors, senior management and heads of control functions of the applicant meet the fit and proper requirements; 15
 (iii) any persons that directly or indirectly control the applicant within the meaning of section 2(2) of the Companies Act, meet the fit and proper requirements;”;
- (c) by the substitution at the end of subsection (3)(c) for the full stop of the word “; and”; and
- (d) by the addition in subsection (3) after paragraph (c) of the following paragraph: 20
“(d) if the registration of the applicant will be contrary to the interests of policyholders or the public interest.”.

Amendment of section 10 of Act 52 of 1998, as amended by section 5 of Act 17 of 2003, section 5 of Act 27 of 2008 and section 75 of Financial Services Laws General Amendment Act, 2013

5. Section 10 of the principal Act is hereby amended by the insertion after paragraph (f) of the following paragraph: 25
“(fA) relating to the business arrangements of the long-term insurer, including, but not limited to, the outsourcing arrangements that the long-term insurer may enter into;”.

Amendment of section 11 of Act 52 of 1998 30

6. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 35
“(1) The Registrar may by notice to the long-term insurer amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the long-term insurer is registered or deemed to be registered—
 (a) upon application by a long-term insurer and having regard, with the necessary changes, to section 9(3)(b);
 (aA) when in the public interest or the interests of the policyholders, or potential policyholders of the long-term insurer;
 (b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 35(2)(a) in relation to a long-term insurer; or 40
 (c) if a long-term insurer has ceased to enter into certain long-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the long-term insurer has been allowed at least 30 days in which to make representations in respect of the matter[, 45
 by notice to the long-term insurer vary a condition, subject to which the long-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10].”.

Insertion of Part IIA in Act 52 of 1998

7. The following Part is hereby inserted after Part II of the principal Act:

“PART IIA

**GOVERNANCE, RISK MANAGEMENT AND
INTERNAL CONTROL**

Governance framework

General governance framework 5

14A. (1) A long-term insurer must adopt, implement and document an effective governance framework that provides for the prudent management and oversight of its long-term insurance business and adequately protects the interests of its policyholders.

(2) The governance framework must be proportionate to the nature, scale and complexity of the long-term insurance business and risks of the long-term insurer, and must provide for at least,—

- (a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
- (b) compliance with this Act and any requirements as may be prescribed by the Registrar in respect of—
 - (i) fit and proper requirements for directors, senior management and heads of control functions;
 - (ii) the risk management system referred to under section 14G;
 - (iii) the internal control system referred to under section 14I;
 - (iv) control functions referred to under section 14J; and
 - (v) outsourcing referred to under section 14L;
- (c) written policies, approved by the board of directors, that comply with this Act and any requirements as may be prescribed by the Registrar;
- (d) any other requirements as may be prescribed by the Registrar.

- (3) The Registrar may, from time to time,—
- (a) review a long-term insurer’s governance framework or require the board of directors or senior management, or both, of the long-term insurer to demonstrate that the governance framework requirements provided for in this Act are being complied with; and
 - (b) direct the long-term insurer, its board of directors or senior management, or both, to strengthen and effect improvements to its governance framework or a part thereof.

Board of directors

Composition and governance of board of directors 35

14B. (1) (a) In addition to the provisions of the Companies Act—

- (i) the board of directors of a long-term insurer must at all times ensure that it—
 - (aa) consists of a sufficient number of non-executive directors and independent directors to promote objectivity in decision making by the board of directors; and
 - (bb) has an appropriate number and mix of individuals to ensure that there is an overall adequate spread and level of knowledge, skills and expertise at board level commensurate with the nature, scale and complexity of the long-term insurer’s business and risks;
 - (ii) the board of directors of a long-term insurer must at all times ensure that the chairperson of the board of directors of a long-term insurer at all times is an independent director.
- (b) For purposes of paragraph (a)—
- (i) a non-executive director means an individual who is not involved in the day-to-day management of the long-term insurer; and
 - (ii) an independent director means a non-executive director who is free from any business or other association that could materially interfere with the exercise of independent judgment.

(c) The Registrar, for purposes of subsection (b)(ii), may prescribe those matters that must be regarded as materially interfering with the exercise of independent judgment.

(2) (a) If the board of directors does not consist of a majority of non-executive directors of whom the majority is independent directors, the board of directors must—

- (i) notify and motivate the composition of the board of directors to the Registrar; and
- (ii) publicly disclose and motivate the composition of the board of directors together with the long-term insurer's annual financial statements.

(b) If the Registrar is of the opinion that the board of directors has failed to comply with subsection (1)(a)(i)(aa), the Registrar may instruct the long-term insurer to change the composition of its board of directors.

(3) The board of directors of a long-term insurer must—

- (a) have appropriate internal governance practices and procedures to support its work in a manner that promotes efficient, objective and independent judgment and decision making;
- (b) have adequate powers and resources to discharge its duties fully and effectively; and
- (c) adopt and implement a procedure to review, at least annually, its performance collectively, and that of each director individually.

(4) (a) The board of directors must—

- (i) without delay, notify the Registrar of its failure to meet the requirements referred to in subsection (1) or (3) or any risk of non-compliance with those requirements; and
- (ii) within one month after the notification referred to in subparagraph (i), submit a plan to the Registrar for approval to meet the requirements referred to in subsection (1) or (3).

(b) The board of directors whose plan was approved under paragraph (a) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the plan.

(5) If any action was taken by the board of directors or the Registrar under subsection (2) or (4), the board of directors must publicly disclose such action together with the long-term insurer's annual financial statements.

Committees of board of directors

14C. (1) The board of directors must assess whether, and to what extent, the establishment of committees of the board is necessary and appropriate, subject to, at least establishing an audit committee in accordance with this Act.

(2) If the board of directors elects not to establish a separate risk committee or a separate remuneration committee or both, the board of directors must—

- (a) notify and motivate the non-establishment of that separate committee to the Registrar; and
- (b) publicly disclose and motivate the non-establishment of that separate committee together with the long-term insurer's annual financial statements.

(3) A risk committee or remuneration committee must perform the functions as may be prescribed by the Registrar.

(4) If a long-term insurer decides not to establish a separate risk committee or separate remuneration committee, the functions of these committees must be performed by the audit committee or another committee as approved by the Registrar.

(5) Despite subsection (4), if the Registrar is of the opinion that a separate risk committee or separate remuneration committee must be established to ensure the prudent management of the long-term insurance business and protection of the interests of policyholders, the Registrar may instruct the long-term insurer to establish that committee or both.

Audit committee

14D. (1) The board of directors of a long-term insurer must appoint at least three of its members to form and serve on an audit committee.

(2) All of the members of the audit committee must be persons who are not employees of the long-term insurer.

(3) The majority of the audit committee may not be employees of any related party of the long-term insurer.

(4) The chairperson of the board of directors of the long-term insurer or its holding company may not be appointed as a member of the audit committee.

(5) The chairperson of the audit committee may not be an employee of any related party of the long-term insurer.

(6) If the composition of an audit committee is, in a particular case, inappropriate or impractical or would serve no useful purpose, the Registrar may, subject to such conditions as the Registrar may determine, exempt the long-term insurer concerned from the requirements of subsection (1), (3) or (4).

(7) Subsections (2), (3), (4) and (5) of section 94 of the Companies Act do not apply to the appointment of an audit committee by a long-term insurer.

(8) The audit committee, in addition to the functions referred to in section 94(7) of the Companies Act, must perform the functions as may be prescribed by the Registrar.

Duties of directors

14E. Each director of a long-term insurer, in addition to the requirements of the Companies Act, must—

- (a) at all times meet the fit and proper requirements;
- (b) act in the best interests of the long-term insurer and policyholders, putting the interests of the long-term insurer and policyholders ahead of that director's own interests; and
- (c) exercise independent judgment and objectivity in decision making, taking into account the interests of the long-term insurer and policyholders.

Roles and responsibilities of board of directors

14F. (1) The board of directors is accountable for the effective governance of a long-term insurer.

(2) The board of directors of a long-term insurer must—

- (a) determine and oversee the implementation of the long-term insurer's business objectives and strategies for achieving those objectives, which objectives and strategies must be regularly reviewed to be consistent with the long-term interests and viability of the long-term insurer and the legitimate interests of its stakeholders and policyholders;
- (b) ensure that the roles and responsibilities allocated to the board of directors, senior management and heads of control functions are clearly defined so as to promote an appropriate separation of oversight function from management responsibilities;
- (c) ensure that there are adequate policies and procedures relating to the appointment, dismissal and succession of senior management;
- (d) monitor that directors, senior management, heads of control functions, and persons that control the long-term insurer within the meaning of section 2(2) of the Companies Act at all times meet the fit and proper requirements, to facilitate the sound and prudent management of the business of the long-term insurer;
- (e) provide oversight in respect of the design and implementation of sound risk management and internal control systems and functions;
- (f) adopt and oversee the effective implementation of policies and procedures;

- (g) ensure reliable and transparent financial reporting for public and supervisory purposes;
 - (h) have systems and controls to ensure the promotion of appropriate, timely and effective communications with the Registrar and relevant stakeholders on the governance of the long-term insurer, which will allow the latter to make informed judgments to be made about the effectiveness of the board of directors and senior management in governing the long-term insurer;
 - (i) have appropriate policies and procedures to oversee that senior management—
 - (i) carries out the day-to-day operations of the long-term insurer effectively and in accordance with the long-term insurer’s strategies, policies and procedures;
 - (ii) promotes a culture of sound risk management, compliance and policyholder protection;
 - (iii) provides the board of directors adequate and timely information to enable it to carry out its duties and functions, including the monitoring and review of the performance and risk exposures of the long-term insurer, and the performance of senior management; and
 - (iv) provides relevant stakeholders and the Registrar the information required to satisfy the legal and other obligations applicable to the long-term insurer or senior management;
 - (j) regularly monitor and evaluate the adequacy and effectiveness of the long-term insurer’s governance framework; and
 - (k) perform such other roles and responsibilities as may be prescribed by the Registrar.
- (3) (a) The board of directors may delegate some of the activities or tasks associated with its roles and responsibilities to a board committee, senior management or any other person within the long-term insurer.
- (b) The board of directors of a long-term insurer must develop an appropriate system of delegation, which delegation must—
- (i) be appropriately and clearly mandated;
 - (ii) provide adequate checks and balances;
 - (iii) provide for the monitoring of and reporting on delegations;
 - (iv) not allow for the undue concentration of powers; and
 - (v) provide for the withdrawal of a delegation.
- (c) Anything done or omitted to be done under a delegation—
- (i) does not in any way abrogate the accountability of the board of directors; and
 - (ii) is deemed to have been done or omitted by the board of directors.

Risk management and internal control systems

Risk management system

- 14G.** (1) A long-term insurer, as part of its governance framework, must establish and maintain an effective risk management system, comprising the totality of strategies, policies and procedures for identifying, measuring, monitoring, managing, and reporting of all material risks to which the long-term insurer may be exposed.
- (2) The risk management system should adequately support the board of directors in meeting its responsibilities with respect to the furtherance of the safe and sound operation of the long-term insurer and the protection of policyholders, taking into account the nature, scale and complexity of the long-term insurer’s business and the risks of the long-term insurer.
- (3) The risk management system must, at least, include—
- (a) a clearly defined and documented risk management strategy that includes the risk management objectives, risk management principles and approach to assumption setting, and assignment of risk management responsibilities across all the activities of the long-term insurer, consistent with the long-term insurer’s overall business strategy;

- (b) adequate written policies consistent with the risk management strategy and the requirements of section 14H;
 - (c) appropriate processes, procedures and tools (including, where appropriate, models) for identifying, measuring, monitoring, managing, and reporting on material risks;
 - (d) reports to inform senior management and the board of directors on all material risks faced by the long-term insurer and on the effectiveness of the risk management system itself;
 - (e) processes for ensuring adequate contingency planning, business continuity and crisis management; and
 - (f) such matters as may be prescribed by the Registrar.
- (4) (a) The risk management system must be reviewed regularly by the long-term insurer's internal audit function or an objective external reviewer to ensure that necessary modifications are identified and made in a timely manner.
- (b) Any modifications must be documented and approved by the board of directors.

Risk management policies

- 14H.** (1) A long-term insurer must develop and regularly review adequate written risk management policies that include—
- (a) a definition and categorisation of the material risks to which the long-term insurer is exposed, taking into account the nature, scope, and time horizon of the long-term insurance business; and
 - (b) the levels of acceptable risk limits for each type of risk.
- (2) The risk management policies must incorporate—
- (a) an explicit asset-liability management policy that—
 - (i) clearly specifies the nature, role and extent of the insurer's asset liability management activities and their relationship with product development, pricing functions and investment management; and
 - (ii) includes the matters as may be prescribed;
 - (b) an explicit investment policy, that—
 - (i) provides for the investment of all the long-term insurer's assets in accordance with this Act;
 - (ii) specifies the nature, role and extent of the long-term insurer's investment activities and how the long-term insurer complies with the regulatory investment requirements as may be prescribed by the Registrar;
 - (iii) establishes explicit risk management procedures with regard to more complex and less transparent classes of asset and investment in markets or instruments that are subject to less governance or regulation; and
 - (iv) includes the matters as may be prescribed by the Registrar;
 - (c) an explicit reinsurance and other forms of risk transfer policy that—
 - (i) outlines appropriate strategies and procedures for the selection of suitable reinsurance programs and other risk transfer techniques, proportionate to the nature, scale and complexity of the long-term insurer's risks, and to the capabilities of the long-term insurer to manage and control the risk transfer technique used;
 - (ii) ensures transparent reinsurance arrangements and associated risks that enable the Registrar to understand the economic impact of reinsurance and other forms of risk transfer arrangements in place;
 - (iii) provides for processes and procedures for ensuring that the strategies referred to in sub-paragraph (i) are implemented and complied with, and that the long-term insurer has in place appropriate systems and controls over its risk transfer transactions; and
 - (iv) provides for the matters as may be prescribed by the Registrar; and

- (d) an explicit remuneration policy that—
- (i) does not induce excessive or inappropriate risk taking, is consistent with the identified risk appetite and long term interests of the long-term insurer, and has proper regard to the interests of its stakeholders; 5
 - (ii) at a minimum, addresses directors, senior management, heads of control functions and other persons whose actions may have a material impact on the risk exposure of the long-term insurer; and
 - (iii) provides for the matters as may be prescribed by the Registrar; 10
- (e) explicit policies in relation to underwriting risk that provide for the matters as may be prescribed;
- (f) an explicit insurance fraud risk management policy that—
- (i) outlines appropriate strategies, procedures and controls to deter, prevent, detect, report and remedy insurance fraud and to manage effectively fraud risk and possible risks to its financial soundness or continuity caused by fraud; 15
 - (ii) provides for the prompt reporting of insurance fraud to relevant regulatory authorities; and
 - (iii) provides for the matters as may be prescribed; 20
- (g) an explicit anti-money laundering and combating the financing of terrorism management policy that—
- (i) outlines appropriate strategies, procedures and controls to deter, prevent, detect, report and remedy anti-money laundering and the financing of terrorism; 25
 - (ii) provides for the prompt reporting of anti-money laundering and the financing of terrorism to relevant regulatory authorities in accordance with legislative requirements; and
 - (iii) provides for the matters as may be prescribed; and
- (h) such other policies or matters as may be prescribed. 30

Internal control system

14I. (1) A long-term insurer, as part of its governance framework, must establish, maintain and operate within an effective internal control system, comprising the totality of strategies, policies, procedures and controls to assist the board of directors and senior management in the fulfilment of their respective responsibilities for oversight and management of the long-term insurer. 35

(2) The internal control system must be appropriate to the nature, scale, and complexity of the long-term insurer's business and risks, and provide the board of directors and senior management with reasonable assurance from a control perspective that the long-term insurance business is operated consistently with— 40

- (a) the strategy determined by the board of directors;
- (b) the business objectives of the long-term insurer;
- (c) the key business, information technology and financial policies and processes, and related risk management policies and procedures, determined by the board of directors; and 45
- (d) the laws and regulations that apply to the long-term insurer.

(3) The internal control system must, at least, provide for— 50

- (a) appropriate controls to ensure the availability and reliability of financial and non-financial information;
- (b) the development, implementation and regular review of a compliance plan;
- (c) appropriate segregation of duties, and controls to ensure that such segregation is observed; 55
- (d) regular monitoring of all controls to ensure that the totality of controls forms a coherent system and that the internal control system functions as intended, fits within the overall governance framework and complements the risk identification, risk assessment, and risk management activities of the long-term insurer; 60

- (e) regular independent testing and assessments to determine the adequacy, completeness and effectiveness of the internal controls system and its usefulness to the board of directors and senior management for controlling the operations of the long-term insurer; and
- (f) such other matters as may be prescribed by the Registrar.

5

Control functions

General requirements for control functions

14J. (1) A long-term insurer must establish and maintain the following control functions:

- (a) A risk management function;
- (b) a compliance function;
- (c) an actuarial control function; and
- (d) an internal audit function.

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(2) Each control function referred to in subsection (1) must be structured to ensure that the function has the necessary authority, independence, resources, expertise and access to the board and all relevant employees and information to exercise its authority and perform its responsibilities.

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(3) The authority and responsibilities of each control function must be determined and documented under the governance framework of the long-term insurer referred to under section 14A.

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(4) (a) The risk management function, compliance function and actuarial control function must be regularly reviewed by the long-term insurer's internal audit function or an objective external reviewer.

(b) The internal audit function must be regularly reviewed by an objective external reviewer.

25

(c) The board of directors, taking into consideration the reviews referred to under paragraphs (a) and (b), must regularly review the performance of each control function.

(5) The existence of any control function does not relieve the board of directors or senior management from their respective governance and related responsibilities.

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(6) A long-term insurer may, where appropriate in light of the nature, scale and complexity of the long-term insurer's business, risks, and legal and regulatory obligations, outsource a control function subject to section 14L.

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(7) The Registrar may prescribe requirements for any control function, including, in addition to section 14K, requirements relating to the reporting structures, independence, resources, expertise, responsibilities and functions of a control function.

(8) The requirements prescribed under subsection (7) do not apply where the responsibilities and functions of the actuarial control function are performed by the statutory actuary in terms of section 20, to the extent that these requirements are addressed in section 20.

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Head of control function

14K. (1) (a) A long-term insurer, subject to paragraphs (b) and (c), must appoint a head for each of the control functions referred to in section 14J.

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(b) The appointment, performance assessment, remuneration, discipline and dismissal of the head of each control function (other than the head of the internal audit function) must be done with the approval of, or after consultation with, the board of directors or relevant board committee.

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(c) The appointment, annual or other periodic performance assessment and dismissal of the head of the internal audit function must be done by the board of directors, its chairperson or the audit committee which solely determines his or her remuneration, promotions, demotions or disciplinary actions.

55

(2) A long-term insurer may, where appropriate in light of the nature, scale and complexity of the long-term insurer's business, risks, and legal and regulatory obligations—

- (a) appoint a person, in full or in part, as the head of more than one control function (other than the head of the internal audit function); or
- (b) appoint the statutory actuary as the head of the actuarial control function, if that appointment precludes the statutory actuary from conducting any activities for the long-term insurer which would compromise the independence and oversight requirements of the role of the actuarial control function. 5
- (3) The Registrar may, on notification of the appointment or outsourcing of a head of control function in accordance with section 18, instruct the long-term insurer to appoint another or a dedicated person as the head of control function, or outsource to another person, if the Registrar is of the opinion that— 10
- (a) a person is not a suitable head for more than one control function; or
- (b) the appointment of a person as the head of more than one control function will detract from an adequate control environment and risk management system, taking into account the nature, scale and complexity of the long-term insurer’s business and the risks to which it is exposed. 15
- (4) The head of each control function must—
- (a) regularly report to the board of directors or one of its committees; 20
- (b) communicate directly and regularly meet (without the presence of senior management) with the chairperson of the board of directors or one of its committees.
- (5) The head of a control function must—
- (a) without delay, report in writing to the board of directors any matter relating to the business of the long-term insurer of which he or she becomes aware in the performance of his or her functions and which, in his or her opinion, constitutes a contravention of any section of this Act or a material contravention of any other legislation that applies to the long-term insurer; and 25
- (b) where the matter relates to a contravention of this Act, submit the report referred to in paragraph (a), without delay to the Registrar where, in the opinion of the head, appropriate steps to rectify the matter are not taken by the board of directors to the satisfaction of the head within 30 days after the date on which the report was submitted to the board of directors. 30 35

Outsourcing

- 14L.** (1) A long-term insurer that outsources any function or activity must have an outsourcing policy that includes the matters as may be prescribed by the Registrar. 40
- (2) A long-term insurer may not outsource any function or activity if that outsourcing may—
- (a) materially increase risk to the long-term insurer;
- (b) materially impair the quality of the governance framework of the long-term insurer, including the long-term insurer’s ability to manage its risks and meet its legal and regulatory obligations; 45
- (c) impair the ability of the Registrar to monitor the long-term insurer’s compliance with its regulatory obligations; and
- (d) compromise the fair treatment of or continuous and satisfactory service to policyholders. 50
- (3) A long-term insurer must when outsourcing any function or activity avoid, and where this is not possible mitigate, any conflicts of interest between the insurance business of a long-term insurer, the interests of policyholders or the business of the other person that performs the outsourcing. 55
- (4) Any remuneration paid in respect of outsourcing must—
- (a) be reasonable and commensurate with the actual function or activity outsourced;
- (b) not result in any function or activity in respect of which commission or a binder fee is payable being remunerated again; 60

- (c) not be structured in a manner that may increase the risk of unfair treatment of policyholders; and
- (d) not be linked to the monetary value of insurance claims repudiated, paid, not paid or partially paid.
- (5) Subsections (2), (3) and (4) apply to any sub-outsourcing of an outsourcing, where a person is authorised to sub-outsource under the outsourcing contract between the long-term insurer and that person. 5
- (6) Subject to subsection (12), a long-term insurer must timeously, but no later than one month, prior to the effective date of an outsourcing contract relating to the outsourcing of a control, management or material function, notify the Registrar of— 10
- (a) the proposed outsourcing;
- (b) the details of the other person to whom the long-term insurer will outsource that function; and
- (c) the key risks associated with the outsourcing and the risk mitigation strategies that will be put in place to address these risks. 15
- (7) (a) For purposes of subsection (6), a material function includes any function that has the potential, if disrupted, to have a significant impact on the long-term insurer's business operations or ability to manage risks effectively, including risks to the fair treatment of customers. 20
- (b) A long-term insurer, in determining whether a function is a material function, must, amongst others, consider—
- (i) the potential impact of the outsourcing on the policyholders, finances, reputation and the long-term insurer's business operations, or a significant part thereof, particularly where the other person may fail to perform over a given period of time; 25
- (ii) the ability of the long-term insurer to maintain appropriate internal controls and meet regulatory requirements; and
- (iii) the degree of difficulty and time associated with replacing the other person or performing the function or activity itself. 30
- (8) A long-term insurer must immediately notify the Registrar of any material developments (such as termination, material non-performance and the like) with respect to the outsourcing referred to in subsection (6) during the duration of the outsourcing contract.
- (9) (a) If a long-term insurer outsources a control function, or part thereof, the board of directors must prior to the outsourcing satisfy itself that the outsourcing will not interfere with the function's independence, objectivity or effectiveness. 35
- (b) The board of directors must regularly review the effectiveness of any arrangement for outsourcing control functions. 40
- (c) Where any control function is outsourced, the remuneration terms under the agreement with the service provider should be consistent with the objectives and approved parameters of the long-term insurer's remuneration policy.
- (10) The Registrar, on notification of the outsourcing of a control function, may instruct the long-term insurer to outsource the control function to another person, if the Registrar is of the opinion that— 45
- (a) the person to whom the control function is outsourced is not suitable; or
- (b) the outsourcing will detract from an adequate control environment and risk management system, taking into account the nature, scale and complexity of the long-term insurer's business and the risks to which it is exposed. 50
- (11) Senior management and the board of directors remain responsible for the effective functioning of all aspects of the long-term insurer's governance framework and the discharging of its obligations under this Act regardless of any outsourcing. 55
- (12) (a) The Registrar may prescribe—
- (i) the requirements with which any outsourcing and remuneration paid in respect of outsourcing must comply; 60
- (ii) the requirements with which a long-term insurer and any person who will perform an outsourced function or activity must comply;

- (iii) the matters that must be included and addressed in the outsourcing policy referred to under subsection (1);
 - (iv) the matters that must be included or addressed, or may not be included in an outsourcing contract; or
 - (v) the functions or activities of a long-term insurer that may not be outsourced. 5
- (b) The matters referred to in paragraph (a) may be limited in application to a particular kind or type of long-term insurer, a particular operational function or activity or type or class of insurance business, which may be defined either in relation to a category, type or in any other manner. 10
- (13) Section 49A and any matter prescribed by the Minister under section 72(1)(gA) read with 49A apply in addition to this section.
- (14) This section applies to the outsourcing of a function or activity by a long-term insurer to a reinsurer or by a reinsurer to a long-term insurer, whether under a reinsurance contract or not, but does not apply to the actual insurance provided under a reinsurance contract. 15
- (15) This section does not—
- (a) apply to the outsourcing of a function or activity by another person to a long-term insurer; and
 - (b) apply to rendering services as intermediary as defined in the regulations.”. 20

Amendment of section 16 of Act 52 of 1998

8. Section 16 of the principal Act is hereby amended by the deletion of subsection (2).

Substitution of section 18 of Act 52 of 1998

9. The following section is hereby substituted for section 18 of the principal Act: 25

“Notification of certain appointments, terminations and resignations

18. (1) A long-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director [**or managing executive**], person in senior management or head of a control function appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such appointment or termination or resignation, as the case may be, together with the reasons for any such termination or resignation. 30

(2) Any such director [**or managing executive**], person in senior management or head of a control function who resigns or whose employment or appointment has been terminated by a long-term insurer shall, at the request of the Registrar, inform the Registrar in writing of any matter relating to the affairs of that long-term insurer of which the director [**or managing executive**], person in senior management or head of a control function became aware in the performance of his or her duties and which may prejudice the long-term insurer’s ability to comply with this Act. 35 40

(3) No information furnished by a director [**or managing executive**], person in senior management or head of a control function in terms of subsection (2) may be used by the Registrar in any subsequent criminal proceedings against such director [**or managing executive**], person in senior management or head of a control function.”. 45

Amendment of section 19 of Act 52 of 1998, as amended by section 6 of Act 27 of 2008 and section 80 of Financial Services Laws General Amendment Act, 2013

10. Section 19 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (c) of the following paragraph: 50

“(c) inform the Registrar and the board of directors of the long-term insurer, without delay, in writing of any matter (including a description of the matter and such other particulars as the auditor considers appropriate) relating to the business of the long-term insurer of which the auditor becomes aware in the 55

performance of the auditor's functions as auditor and which, in the opinion of the auditor—

- (i) constitutes a contravention of section 29(1) or any other section of this Act or in future may prejudice the insurer's ability to comply with section 29(1) or any other section of this Act, **which information must give a description of the matter and must include such other particulars as the auditor considers appropriate.**; or
- (ii) may be contrary to principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls."

Substitution of section 22 of Act 52 of 1998

11. The following section is hereby substituted for section 22 of the principal Act:

“Removal of appointees

22. (1) (a) If the Registrar is of the opinion that a director, person in senior management, head of a control function, public officer, auditor or statutory actuary does not meet the fit and proper requirements or any other requirements of this Act, the Registrar may instruct the long-term insurer to remove that director from its board of directors, or to terminate the appointment of that person in senior management, head of a control function, public officer, auditor or statutory actuary.

(b) If the Registrar instructs the long-term insurer to remove a director from its board of directors, or to terminate the appointment of that person in senior management or head of a control function, public officer, auditor or statutory actuary, the long-term insurer must do so within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the oversight, management or control functions of the long-term insurer.

(2) Despite anything to the contrary in any law or in any agreement, the appointment by a long-term insurer of a director, person in senior management, head of a control function, public officer, auditor or statutory actuary is subject to the condition that the appointment may be terminated under paragraph (b) and the long-term insurer must make any appointment subject to this condition."

Repeal of section 23 of Act 52 of 1998

12. Section 23 of the principal Act is hereby repealed.

Amendment of section 26 of Act 52 of 1998, as amended by section 9 of Act 17 of 2003 and section 85 of Financial Services Laws General Amendment Act, 2013

13. Section 26 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Subject to this section, no person shall, directly or indirectly and without the prior approval of the Registrar, acquire or hold shares or any other financial interest in a long-term insurer or a related party of that long-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control within the meaning of section 2(2) of the Companies Act over that long-term insurer.”;
- (b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to **[25] 15** per cent or more of the total nominal value of all of the issued shares of the long-term insurer concerned;

- (b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to [25] 15 per cent or more of all the shares in a specific class of shares issued by the long-term insurer concerned.”; 5
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “The approval referred to in subsection (1) or (2)—”; 10
- (d) by the insertion in subsection (3) after paragraph (a) of the following paragraph:
 “(aA) shall not be given if the person does not meet the fit and proper requirements;”; 15
- (e) by the substitution in subsection 4 for paragraph (a) of the following subsection:
 “(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding [25] 15 per cent of—
 (i) the total nominal value or number of all the issued shares of the long-term insurer; or
 (ii) all the shares in a specific class of shares issued by the long-term insurer;”; and 20
- (f) by the deletion of subsections (5) and (6). 25

Amendment of section 52 of Act 52 of 1998

- 14.** Section 52 of the principal Act is hereby amended— 25
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) If a premium under a long-term policy, other than a fund policy or a reinsurance policy, has not been paid on its due date, the long-term insurer shall within 7 days of the due date notify the policyholder of the non-payment, and the policy shall, notwithstanding anything therein to the contrary, in the case of a long-term policy under which there are to be two or more premium payments at intervals of—
 (a) one month or less, remain in force for a period of 15 days after that due date; or
 (b) longer than one month, remain in force for a period of one month after that due date,
 or for such longer period as may be determined by agreement between the parties, and if the overdue premium is not paid by the end of any such period, the policy shall be dealt with in [accordance with subsection (2)] the manner prescribed by the Registrar.”; and 30
- (b) by the deletion of subsections (2) and (3).” 40

Amendment of section 62 of Act 52 of 1998, as amended by section 102 of Financial Services Laws General Amendment Act, 2013

- 15.** Section 62 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (b), the insertion of the word “; and” at the end of paragraph (c) and the addition of the following paragraph:
 “(cA) for claim handling, complaints handling and dispute resolution policies and procedures with which a long-term insurer must comply;”. 45

Insertion of Part VIIA in Act 52 of 1998

16. The following Part is hereby inserted after Part VII of the principal Act:

“PART VIIA

INSURANCE GROUPS

Definitions

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65A. For purposes of this Part—

‘controlling company’ means a non-operating holding company of an insurance group that is subject to this Part;

‘financial conglomerate’ means an insurance group that includes—

(a) at least one person subject to registration under this Act; and 10

(b) at least one person subject to registration, licensing or approval under—

(i) the laws, other than this Act, referred to in the definition of “financial institution” in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); 15

(ii) the Banks Act, 1990 (Act No. 94 of 1990), the Mutual Banks Act, 1993 (Act No. 124 of 1993) or the Co-operative Banks Act, 2007 (Act No. 40 of 2007); or

(iii) the National Credit Act, 2005 (Act No. 34 of 2005); or

(c) at least one person that provides a financial product as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and the activity of providing that financial product is not subject to registration, licensing or approval under another Act of Parliament; and 20

(d) their related and inter-related persons; 25

‘insurance group’ means two or more persons—

(i) at least one of whom is subject to registration under this Act; and

(ii) at least one of whom has a significant influence on the person referred to under paragraph (a); and 30

(iii) their related and inter-related persons, but excludes any holding company of a person referred to in paragraphs (a), (b) and (c) that is incorporated outside of the Republic;

‘insurance sub-group’ means a subset of an insurance group consisting of, but not limited to, all persons that are subject to registration under this Act or the Short-term Insurance Act, 1998 (Act No. 53 of 1998); 35

‘inter-group transaction’ means any arrangement or agreement in terms of which a long-term insurer, directly or indirectly, relies on another person that is part of the insurance group or a related or inter-related person of the aforementioned person, for the fulfilment of an obligation; 40

‘inter-related person’ has the meaning assigned in the Companies Act;

‘non-operating holding company’ means a holding company that is a public company whose only business is the acquiring, holding and managing of another company or other companies;

‘related person’ has the meaning assigned in the Companies Act; 45

‘risk concentration’ means any risk exposure that has a loss potential large enough to threaten the financially sound condition of a long-term insurer that is part of an insurance group; and

‘significant influence’ means, amongst others—

(a) a related or inter-related person; 50

(b) inter-connectedness;

(c) risk exposure;

(d) risk concentration;

(e) risk transfer;

(f) inter-group transactions; 55

(g) other transactions;

(h) contractual obligation; or

(i) of any combination of subparagraphs (a) to (h).

Object of Part

65B. (1) The object of this Part is to facilitate the effective and appropriate supervision of insurance groups to promote the maintenance of fair, safe and stable insurance markets for the benefit and protection of policyholders.

(2) In meeting the object of this Part, the Registrar must implement and maintain a prospective and risk-based supervisory approach that is proportionate to the nature, scale and complexity of the risks to which an insurance group or insurance sub-group is exposed.

Application of Part

65C. (1) This Part applies to all insurance groups, subject to subsection (2) and section 65D.

(2) (a) The Registrar, on application from a long-term insurer that is part of an insurance group (other than a financial conglomerate or an insurance sub-group that has more than one insurer that is subject to this Act or the Short-term Insurance Act, 1998), may exempt that insurance group from this Part on the conditions determined by the Registrar.

(b) A long-term insurer that is exempted from this Part under paragraph (a) is subject to this Act to the extent that it applies to a long-term insurer and the conditions imposed by the Registrar under paragraph (a).

(3) If an insurance group or insurance sub-group consists of at least a long-term insurer and at least a short-term insurer as defined in the Short-term Insurance Act, 1998, the group or sub-group is subject to this Part.

Registrar to determine scope of group supervision

65D. (1) (a) The Registrar must, in respect of each insurance group, and after consultation with other relevant regulatory authorities in the case of a financial conglomerate, determine the scope of the insurance group that is subject to this Part and, in writing, inform the holding company of that insurance group accordingly.

(b) In determining the scope of an insurance group that is subject to this Part, the Registrar—

- (i) must consider the significant influence that a person or persons have on a long-term insurer; and
- (ii) may exclude certain persons from that insurance group; or
- (iii) determine that an insurance sub-group constitutes the insurance group for purposes of this Part.

(2) The insurance group as determined by the Registrar under subsection (1) is subject to this Part.

(3) (a) The Registrar may at any time because of a change in the significant influence that a person has on a long-term insurer, by written notice to the controlling company referred to under section 65E, amend the scope of the insurance group that is subject to this Part.

(b) The insurance group as amended under paragraph (a) is subject to this Part.

(4) A long-term insurer, within three months of becoming part of an insurance group, must inform the Registrar of the composition of that insurance group in the manner and form as may be prescribed by the Registrar.

Incorporation of or conversion to controlling company

65E. (1) A holding company of an insurance group referred to under section 65D that is not a controlling company, must, within 4 months of being informed of the scope of the insurance group that is subject to this Part—

- (a) incorporate a controlling company or convert to a controlling company; and

(b) inform the Registrar of the details of that controlling company as may be prescribed by the Registrar.

(2) A holding company of an insurance group referred to under section 65D that is a controlling company, must, within three months of being informed of the scope of the insurance group that is subject to this Part, inform the Registrar of the details of that controlling company as may be prescribed by the Registrar.

Transparent group structure

65F. (1) A controlling company must ensure that the structure of the insurance group at all times does not impede the—

(a) financial stability and financial soundness of any long-term insurer that is part of the insurance group; or

(b) ability of the Registrar to determine—

(i) how the different types of business of the insurance group are conducted;

(ii) the risks of the insurance group and each person that is part of that insurance group; or

(iii) the manner in which risk management is organised and conducted for the insurance group and each person that is part of that insurance group.

(2) (a) The Registrar may, if the Registrar is of the opinion that the structure of an insurance group does not comply with subsection (1), and after consultation with other relevant regulatory authorities in the case of a financial conglomerate, direct the controlling company to amend the structure of the insurance group.

(b) The controlling company must, within one month after the directive referred to in paragraph (a) is issued, submit a resolution scheme to the Registrar for approval to amend the structure of the group within four months of the issuing of such directive.

(c) The controlling company whose resolution scheme was approved under paragraph (b) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the resolution scheme.

(d) The Registrar may restrict or prohibit certain activities or transactions until the resolution regime is implemented.

(e) The Registrar may extend the four month period referred to in paragraph (b) by an appropriate period of time, taking into account all relevant factors.

(f) The Registrar may take such regulatory action that the Registrar deems necessary and appropriate if the controlling company fails to submit a resolution scheme, fails to report as provided for under paragraph (c), or fails to implement a resolution scheme or implement a resolution scheme within the specified timeframe.

Approval of, or prior notification of, acquisition or disposal

65G. (1) A controlling company must—

(a) prior to making a material acquisition or disposal, obtain the approval of the Registrar;

(b) prior to making any other acquisition or disposal, notify the Registrar of that acquisition.

(2) The Registrar must prescribe what constitutes a material acquisition or disposal for purposes of subsection (1)(a).

Application of certain sections in Parts III, V and VI to controlling company and insurance group

65H. (1) Sections 18, 22, 24, 26, 27 and 28, and sections 41 to 43 (inclusive), apply with the necessary changes to a controlling company.

(2) Sections 41 and 42 also apply to any one of the persons that is part of an insurance group, where such person is situated within the Republic.

Governance framework

- 65I.** The relevant provisions of Part IIA apply, with the necessary changes, to a controlling company if that controlling company—
- (a) provides a governance framework or a part thereof (such as the risk management system or internal control system) for or facilitates that it is provided by any person in the insurance group for or on behalf of any long-term insurer or insurer (where 65C(3) applies), that is part of the insurance group; or
 - (b) performs a control function or facilitates that it is performed by any person in the insurance group for or on behalf of any long-term insurer or insurer (where 65C(3) applies), that is part of that insurance group.

Fit and proper requirements for directors, senior managers and heads of control functions of controlling company

- 65J.** A controlling company must ensure that its directors, and senior managers and heads of control functions (where section 65I applies), at all times meet the fit and proper requirements in respect of, amongst others, personal character qualities of honesty and integrity, competence, qualifications, continued professional development and experience, to facilitate the sound and prudent management of the insurance group.

Maintenance of financially sound condition by insurance group

- 65K.** (1) A controlling company must at all times ensure that the insurance group maintains its business in a financially sound condition by managing its affairs in such a way that the aggregate of the capital of the insurance group does not at any time amount to less than the aggregate of—
- (a) the required capital determined, valued, calculated and aggregated in accordance with the requirements as may be prescribed by—
 - (i) the Registrar; and
 - (ii) another regulatory authority; and
 - (b) any additional capital required by the Registrar under section 65M.
- (2) A controlling company that fails to comply with subsection (1) must, without delay, notify the Registrar of the failure and furnish the reasons therefore.
- (3) A controlling company and any long-term insurer within the insurance group may not declare or pay a dividend to its shareholders—
- (a) while it fails or is likely to fail to comply with subsection (1);
 - (b) if the declaration or payment would result in the insurance group failing or being likely to fail to comply with subsection (1).

Failure by insurance group to maintain financially sound condition

- 65L.** (1) If a controlling company gives notice to the Registrar in terms of section 65K(2), or if the Registrar is satisfied that a controlling company is failing, or is likely to fail, to comply with section 65K(1), the Registrar may, after consultation with other relevant regulatory authorities in the case of a financial conglomerate, direct that controlling company to, within a specified period, submit a recovery plan that sets out the measures that and the timeframes within which the controlling company will implement to restore the financial soundness of the insurance group, to the Registrar for approval.
- (2) A controlling company whose recovery plan was approved under subsection (1) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the plan.
- (3) The Registrar may restrict or prohibit certain activities or transactions until the recovery plan is implemented and the financial soundness of the insurance group has been restored.
- (4) The Registrar may take such regulatory action that the Registrar deems necessary and appropriate if—

- (a) the recovery plan is not approved by the Registrar;
- (b) the controlling company fails to notify the Registrar in accordance with section 65K(2);
- (c) the controlling company fails to submit a recovery plan in accordance with subsection (1);
- (d) the controlling company fails to report as provided for under subsection (3); or
- (e) the controlling company fails to implement a recovery plan.

Capital add-on

65M. (1) The Registrar may, at any time, require a long-term insurer within an insurance group to hold capital in addition to the required capital of that long-term insurer, as a consequence of—

- (a) risks associated with any acquisition or disposal referred to under section 65G; or
- (b) any material inter-group transaction or risk exposure; or
- (c) risks associated with persons referred to in paragraph (c) of the definition of financial conglomerate that is part of the insurance group of which the long-term insurer is a part; or
- (d) risks associated with a long-term insurer or a controlling company not being listed on an exchange licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012), and the long-term insurer on its own or the insurance group in combination accounting for a significant share of the relevant insurance market, as prescribed by the Registrar.

(2) The Registrar must prescribe what constitutes a material inter-group transaction or risk exposure for purposes of subsection (1)(b).

Returns by controlling company to Registrar

65N. (1) A controlling company must provide the Registrar with consolidated returns relating to such other matters as may be prescribed by the Registrar.

(2) The returns must be provided—

- (a) in the medium and form;
 - (b) containing the information; and
 - (c) by the date or within the period,
- as may be prescribed by the Registrar, either generally or in relation to a particular controlling company.

(3) If the Registrar is of the opinion that a return furnished to the Registrar under subsection (1) is incomplete or incorrect, the Registrar may, by notice—

- (a) direct the controlling company to furnish the Registrar, within a specified period, with specified information or documents which the Registrar considers necessary to complete or correct the return; or
- (b) reject the return and require the controlling company to furnish the Registrar, within a specified period, with a new return which is complete and correct.

(4) If the Registrar is of the opinion that a statement forming part of the returns furnished by the controlling company under subsection (1) or (3) requires further investigation, the Registrar may by notice direct the controlling company to furnish him or her by a specific date or within a specific period with a report—

- (a) in the medium and form; and
- (b) containing the required information, compiled by a person nominated by the Registrar at the cost of the controlling company.

General powers and functions of Registrar

65O. (1) The powers or functions conferred on the Registrar by or in terms of any other provision of this Act or any other law, specifically the Financial Institutions (Protection of Funds Act), 2001 (Act No. 28 of 2001), applies, with the necessary changes, to an insurance group.

(2) The Registrar may for purposes of this Part prescribe different requirements for different types of insurance groups, which types may be defined with reference to the business of the insurance group or matters referred to in the definition of significant influence or in any other manner.

(3) (a) The Registrar must, in respect of insurance groups, together with the regulatory authorities of any person that is part of an insurance group—

- (i) determine the need for a group supervisor;
- (ii) agree which regulatory authority is the group supervisor;
- (iii) agree to the roles and responsibilities of the group supervisor and the other regulatory authorities;
- (iv) participate in formal or informal structures for cooperation and coordination amongst regulatory authorities responsible for and involved in the supervision of different components or parts of insurance groups (such as supervisory colleges); and
- (v) enter into cooperation agreements with regulatory authorities, which agreements, amongst others, include procedures for—
 - (aa) the exchange of information on an ongoing basis and in emergency situations;
 - (bb) communications with the holding company of the insurance group;
 - (cc) convening regular meetings between the group supervisor and relevant regulatory authorities, including supervisory colleges; and
 - (dd) conducting comprehensive assessments of the insurance group.

(b) In circumstances where the Registrar is the group supervisor, the Registrar must—

- (i) initiate suitable coordination arrangements between the relevant regulatory authorities which are proportionate to the nature, scale and complexity of the risks inherent in the business of the insurance group and establish the key functions of these coordination arrangements;
- (ii) act as the key coordinator, convener and chairperson of meetings and supervisory colleges;
- (iii) take the lead in carrying out insurance group supervision;
- (iv) take into account assessments by relevant regulatory authorities in respect of any person that is part of an insurance group;
- (v) coordinate crisis management preparations; and
- (vi) proactively share information on insurance groups.

Amendment of section 66 of Act 52 of 1998, as amended by section 20 of Act 27 of 2008 and section 104 of Financial Services Laws General Amendment Act, 2013

17. Section 66 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

“Offences by persons other than long-term insurers or insurance groups”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A person, other than a long-term insurer or an insurance group, who—”;
- (c) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) contravenes or fails to comply with a provision of a notice, directive **[or], request or guideline** referred to in section 4[(3),(4), (9) or [(5)(a)(i)] (13), 8(1)(c), 22(2) or 27(2);”;
 - (b) contravenes or fails to comply with a provision of section 8(1)(a) or (b), 16(2), [23(1),] 28(1), 44(1), 45, 47, 49 or 49A;”;
- (d) by the substitution for subsection (2) of the following subsection:

“(2) A person, other than a long-term insurer or an insurance group, who contravenes or fails to comply with a provision of section 7(1)(a), 8(3), 18(2), 19(5), 20(5)(b) or 26(1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.”.

Amendment of section 67 of Act 52 of 1998, as amended by section 20 of Act 27 of 2008 and section 105 of Financial Services Laws General Amendment Act, 2013

18. Section 67 of the principal Act, is hereby amended—
- (a) by the substitution for the heading of the following heading: 5
“Offences by long-term insurers, insurance groups or its board of directors”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
“A long-term insurer [which], an insurance group or its board of directors, who—”;
- (c) by the substitution in subsection (1) for paragraphs (a) and (b) for the following paragraphs: 15
“(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2), [(3) or] (4), (9) or (13), 22(1) or (2), 27(1), 31(1), 35(1) or (2)(a) or 36(2) or (3);
(b) contravenes or fails to comply with a provision of section 7(1)(b), 8(2), 14D(1) to (5), 16(1), 17, 18, [23(1) or (2),] 25(1), 29(3), 36(1), 44(1), 45, 48 (1), 49, 49A, 54 or 55(1);”; and
- (d) by the addition after subsection (2) of the following subsections: 20
“(3) An insurance group which—
(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2) or (4), 22(1) or (2), 27(1), 65F(2), 65L(1) or (2) or 65N(3);
(b) contravenes or fails to comply with a provision of section 18, 65E(2), 65G(1), 65K(2) or 65L(3) or (4), shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million.
(4) An insurance group who contravenes or fails to comply with section 24, 26 (1) or (2) or 65K(1), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million.”. 25

Amendment of section 71 of Act 52 of 1998, as amended by section 22 of Act 27 of 2008 and section 107 of Financial Services Laws General Amendment Act, 2013 30

19. Section 71 of the principal Act is hereby amended—
- (a) by the substitution of the heading for the following heading: 35
“Special provisions concerning long-term insurers [that are not public companies]”; and
- (b) by the deletion of subsections (1) and (3).

Part 2

Amendment of Short-term Insurance Act, 1998

Amendment of section 1 of Act 53 of 1998, as amended by section 25 of Act 17 of 2003, section 27 of Act 27 of 2008 and section 111 of Financial Services Laws General Amendment Act, 2013 40

20. Section 1 of the Short-term Insurance Act, 1998 (in this Part referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of “company” of the following definitions: 45
“‘control function’ within a governance framework, means the risk management function, the compliance function, the actuarial control function and internal audit function;”
- (b) by the insertion after the definition of “Financial Services Board Act” of the following definition: 50
“‘fit and proper requirements’ means, amongst others—
(a) in relation to a director, senior management and head of a control function, qualities of competence and integrity as may be prescribed by the Registrar;
(b) in relation to a person to whom a control function is outsourced, qualities of competence and integrity as may be prescribed by the Registrar; and 55

- (c) in relation to any person that directly or indirectly controls a short-term insurer within the meaning of section 2(2) of the Companies Act, qualities of integrity and financial standing as may be prescribed by the Registrar;”;
- (c) by the insertion after the definition of “guarantee policy” of the following definition: 5
“‘head of a control function’ means any person that is in charge of a control function, and includes a person to whom a control function is outsourced;”;
- (d) by the insertion after the definition of “holding company” of the following definition: 10
“‘inter-related’ has the meaning assigned in the Companies Act;”;
- (e) by the deletion of the definition of “managing executive”;
- (f) by the insertion after the definition of “official web site” of the following definition: 15
“‘outsourcing’ means an arrangement of any form between a short-term insurer and another person, whether that person is supervised under any law or not, in terms of which that person performs a function or activity related to any aspect of the short-term insurance business of the insurer, whether directly or by sub-outsourcing, which would otherwise be performed by the short-term insurer itself;”; 20
- (g) by the insertion after the definition of “regulation” of the following definitions: 25
“‘regulatory authority’ means—
 (a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996, responsible for the supervision or enforcement of legislation; or
 (b) a similar body designated in the laws of a country other than the Republic to supervise or enforce legislation of that country;”;
- “‘related’ has the meaning assigned in the Companies Act;”; 30
- (h) by the insertion after the definition of “repealed Act” of the following definition: 35
“‘senior management’ means the chief executive officer or person in charge of a short-term insurer and any manager with decision-making powers who is directly accountable to or directly reports to the chief executive officer or person in charge of that short-term insurer;”; and
- (i) by the addition of the following subsection: 40
“(3) The Companies Act applies to an association of persons formed under another Act of Parliament that is licensed under this Act to the extent that the Companies Act—
 (a) can apply to it; and
 (b) applies to a public company registered under this Act.”.

Insertion of section 1A in Act 53 of 1998

21. The following section is hereby inserted after section 1 of the principal Act:

“Object of Act 45

1A. The object of this Act is to promote the maintenance of a fair, safe and stable short-term insurance market for the benefit and protection of policyholders.”.

Amendment of section 4 of Act 53 of 1998, as amended by section 26 of Act 17 of 2003, section 29 of Act 27 of 2008 and section 114 of Financial Services Laws General Amendment Act, 2013 50

22. Section 4 of the principal Act is hereby amended by the addition of the following subsections:

“(11) The Registrar may where practicalities impede the strict application of this Act or any provision of this Act, by notice on the official web site exempt any person or short-term insurer from this Act or any provision of this Act on the conditions determined in the notice. 55

- (12) An exemption contemplated in subsection (11) may—
- (a) apply to persons or short-term insurers generally; or
 - (b) be limited in its application to a particular—
 - (i) person or short-term insurer; or
 - (ii) kind of person or short-term insurer, which may, for the purposes of this section, be defined either in relation to a type or size of the person or short-term insurer or in any other manner.
- (13) The Registrar, in addition to any authority provided for under a specific provision in this Act, may prescribe any requirements set out in this Act in greater detail.
- (14) (a) The Registrar may issue interpretation guidelines on the manner in which the Registrar will apply the Act, or any section or sections of the Act for supervisory purposes.
- (b) A person or short-term insurer must adhere to an interpretation guideline until such time as a Court attaches a different interpretation to the subject matter of that interpretation guideline.
- (15) The Registrar must when acting under subsection (13) or (14) publish a draft of the requirements to be prescribed or an interpretation guideline on the official web site together with a notice 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.
- (16) (a) The Registrar may, in addition to section 22 of the Financial Services Board Act, subject to paragraphs (b) and (c), request or obtain information from or provide information to a regulatory authority—
- (i) necessary for the supervision of a short-term insurer; or
 - (ii) necessary to develop and implement policies and activities to deter, prevent, detect, report and remedy fraud in insurance.
- (b) The Registrar must—
- (i) proactively provide information which the Registrar deems relevant to regulatory authorities that the Registrar deems to have a material interest in a short-term insurer, which information may include information relating to financial standing, qualitative assessments and significant problems experienced with or within any institution referred to under paragraph (a)(i);
 - (ii) prior to providing information, ensure that the regulatory authority that will receive the information has appropriate safeguards in place to protect the confidentiality of the information, which safeguards must be similar to those that the Registrar is subject to under law;
 - (iii) only allow that information provided to a regulatory authority may be made available to third parties if the Registrar is satisfied that the third parties have appropriate safeguards in place to protect the confidentiality of the information, which safeguards must be similar to those that the Registrar is subject to under law; and
 - (iv) prior to taking regulatory action which the Registrar deems material against a person referred to under paragraph (a)(i), inform the relevant regulatory authorities of the pending regulatory action or, where this is not possible, inform the relevant regulatory authorities as soon as possible after taking the regulatory action.
- (c) The Registrar must, when requesting or obtaining information—
- (i) act in the performance of functions provided for in terms of this Act only;
 - (ii) use the information for the purpose for which it was requested only;
 - (iii) not make the information available to third parties without the consent of the regulatory authority that provides the information;
 - (iv) if lawfully compelled to make information provided by a regulatory authority available—
 - (aa) inform that regulatory authority of the information that and circumstances under which it will be made available; and
 - (bb) where possible, use all reasonable means to oppose the disclosure of or protect the information.
- (17) (a) The Registrar must, subject to subsection (16), take reasonable measures to establish adequate coordination arrangements with other regulatory authorities for the purposes referred to under subsection (16)(a).
- (b) The Registrar may, in addition to section 22 of the Financial Services Board Act and subsection (16)—

- (i) liaise with any regulatory authority on matters of common interest;
- (ii) negotiate agreements with any regulatory authority to—
 - (aa) co-ordinate and harmonise the reporting and other obligations of short-term insurers;
 - (bb) provide mechanisms for the exchange of information; and
 - (cc) provide procedures for the coordination of supervisory activities to facilitate the monitoring of insurance business on an ongoing basis.
- (iii) participate in the proceedings of any regulatory authority; and
- (iv) advise or receive advice from any regulatory authority.
 - (c) Without detracting from the generality of paragraphs (a) and (b), the Registrar may enter into a written cooperation agreement, including a memorandum of understanding, with a regulatory authority, including a regulatory authority in whose country a subsidiary or holding company of a short-term insurer is incorporated or a branch is situated.
 - (d) The cooperation agreement referred to in paragraph (c) may include—
 - (i) a provision that the Registrar may accept the regulatory and supervisory approaches implemented by that regulatory authority;
 - (ii) a provision that the Registrar or regulatory authority may conduct an on-site examination or an inspection of a short-term insurer, or an insurance undertaking registered or licensed by the regulatory authority;
 - (iii) a provision that the Registrar and regulatory authority may share information relating to the financial soundness and performance of the institutions referred to under subparagraph (ii);
 - (iv) a provision that the Registrar or regulatory authority—
 - (aa) be informed of adverse assessments of qualitative aspects of the operations of a short-term insurer; or
 - (bb) may provide information regarding significant problems that are being experienced within a short-term insurer; and
 - (cc) such other matters as the Registrar may deem relevant.
- (18) The Registrar must, in performing the powers and functions provided for in terms of this Act, or any other law, have regard to—
 - (a) the objects of this Act;
 - (b) international regulatory and supervisory standards; and
 - (c) the principle that requirements imposed on persons regulated under this Act and the exercise of supervisory powers should be proportionate to the purpose for which it is intended.”.

Amendment of section 9 of Act 53 of 1998

23. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 - “(a) unless the applicant—
 - (i) is a public company **[and has the carrying on of short-term insurance business as its main object]** whose primary business activity is the conducting of short-term insurance business and operations arising directly therefrom; or
 - (ii) is **[incorporated without a share capital under a law providing specifically for the constitution of a person to carry on short-term insurance business as its main object]** a company other than a public company referred to in the definition of “company” in section 1 of the Companies Act or is an association of persons formed or established under an Act of Parliament whose sole business activity is the conducting of short-term insurance business and operations arising directly therefrom;”;
- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 - “(b) unless the applicant demonstrates to the satisfaction of the Registrar that—
 - (i) the applicant has complied and in future will be able to comply with the governance framework and financial soundness requirements of this Act;

- (ii) the directors, senior management and heads of control functions of the applicant meet the fit and proper requirements;
 - (iii) any persons that directly or indirectly control the applicant within the meaning of section 2(2) of the Companies Act, meet the fit and proper requirements.”;
- (c) by the substitution at the end of subsection (3)(c) for the full stop of the word “and”; and
- (d) by the insertion after paragraph (c) of the following paragraph:
“(d) the registration of the applicant will not be contrary to the interests of policyholders or the public interest.”.

Amendment of section 10 of Act 53 of 1998, as amended by section 31 of Act 27 of 2008 and section 117 of Financial Services Laws General Amendment Act, 2013

24. Section 10 of the principal Act is hereby amended by the insertion after paragraph (f) of the following paragraph:
- “(fA) relating to the business arrangements of the short-term insurer, including, but not limited to, the outsourcing arrangements that the short-term insurer may enter into;”.

Amendment of section 11 of Act 53 of 1998

25. Section 11 of the principal Act, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) The Registrar may by notice to the short-term insurer amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the short-term insurer is registered or deemed to be registered—
- (a) upon application by a short-term insurer and having regard, with the necessary changes, to section 9(3)(b);
 - (aA) when in the public interest or the interests of the policyholders, or potential policyholders of the short-term insurer;
 - (b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 34(2)(a) in relation to a short-term insurer; or
 - (c) if a short-term insurer has ceased to enter into certain short-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the short-term insurer has been allowed at least 30 days in which to make representations in respect of the matter[,
by notice to the short-term insurer vary a condition, subject to which the short-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10].”.

Insertion of Part IIA in Act 53 of 1998

26. The following Part is hereby inserted after Part II of the principal Act:

“PART IIA

GOVERNANCE, RISK MANAGEMENT AND INTERNAL CONTROL

Governance framework

General governance framework

- 14A.** (1) A short-term insurer must adopt, implement and document an effective governance framework that provides for the prudent management and oversight of its short-term insurance business and adequately protects the interests of its policyholders.

- (2) The governance framework must be proportionate to the nature, scale and complexity of the short-term insurance business and risks of the short-term insurer, and must provide for at least—
- (a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities; 5
 - (b) compliance with this Act and any requirements as may be prescribed by the Registrar in respect of—
 - (i) fit and proper requirements for directors, senior management and heads of control functions;
 - (ii) the risk management system referred to under section 14G; 10
 - (iii) the internal control system referred to under section 14I;
 - (iv) control functions referred to under section 14J; and
 - (v) outsourcing referred to under section 14L;
 - (c) written policies, approved by the board of directors, that comply with this Act and any requirements as may be prescribed by the Registrar; 15
 - (d) any other requirements as may be prescribed by the Registrar;
- (3) The Registrar may, from time to time—
- (a) review a short-term insurer's governance framework or require the board of directors or senior management, or both, of the short-term insurer to demonstrate that the governance framework requirements provided for in this Act are being complied with; and 20
 - (b) direct the short-term insurer, its board of directors or senior management, or both, to strengthen and effect improvements to its governance framework or a part thereof.

Board of directors 25

Composition and governance of board of directors

- 14B.** (1) (a) In addition to the provisions of the Companies Act—
- (i) the board of directors of a short-term insurer must at all times ensure that it—
 - (aa) consists of a sufficient number of non-executive directors and independent directors to promote objectivity in decision making by the board of directors; and 30
 - (bb) has an appropriate number and mix of individuals to ensure that there is an overall adequate spread and level of knowledge, skills and expertise at board level commensurate with the nature, scale and complexity of the short-term insurer's business and risks; 35
 - (ii) the board of directors of a short-term insurer must at all times ensure that the chairperson of the board of directors of a short-term insurer at all times is an independent director. 40
 - (b) For purposes of paragraph (a)—
 - (i) a non-executive director means an individual who is not involved in the day-to-day management of the short-term insurer; and
 - (ii) an independent director means a non-executive director who is free from any business or other association that could materially interfere with the exercise of independent judgment. 45
 - (c) The Registrar, for purposes of subsection (b)(ii), may prescribe those matters that must be regarded as materially interfering with the exercise of independent judgment.
- (2) (a) If the board of directors does not consist of a majority of non-executive directors of whom the majority is independent directors, the board of directors must— 50
- (i) notify and motivate the composition of the board of directors to the Registrar; and
 - (ii) publicly disclose and motivate the composition of the board of directors together with the short-term insurer's annual financial statements. 55
- (b) If the Registrar is of the opinion that the board of directors fails to comply with subsection (1)(a)(i)(aa), the Registrar may instruct the short-term insurer to change the composition of its board of directors. 60

- (3) The board of directors of a short-term insurer must—
- (a) have appropriate internal governance practices and procedures to support its work in a manner that promotes efficient, objective and independent judgment and decision making;
 - (b) have adequate powers and resources to discharge its duties fully and effectively; and
 - (c) adopt and implement a procedure to review, at least annually, its performance collectively and that of each director individually.
- (4) (a) The board of directors must—
- (i) without delay, notify the Registrar of its failure to meet the requirements referred to in subsection (1) or (3) or any risk of non-compliance with those requirements; and
 - (ii) within one month after the notification referred to in subparagraph (i), submit a plan to the Registrar for approval to meet the requirements referred to in subsection (1) or (3).
- (b) The board of directors whose plan was approved under paragraph (a) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the plan.
- (5) If any action was taken by the board of directors or the Registrar under subsection (2) or (4), the board of directors must publicly disclose such action together with the short-term insurer's annual financial statements.

Committees of board of directors

- 14C.** (1) The board of directors must assess whether, and to what extent, the establishment of committees of the board is necessary and appropriate, subject to, at least establishing an audit committee in accordance with this Act.
- (2) If the board of directors elects not to establish a separate risk committee or a separate remuneration committee or both, the board of directors must—
- (a) notify and motivate the non-establishment of that separate committee to the Registrar; and
 - (b) publicly disclose and motivate the non-establishment of that separate committee together with the short-term insurer's annual financial statements.
- (3) A risk committee or remuneration committee must perform the functions as may be prescribed by the Registrar.
- (4) If a short-term insurer decides not to establish a separate risk committee or separate remuneration committee, the functions of these committees must be performed by the audit committee or another committee as approved by the Registrar.
- (5) Despite subsection (4), if the Registrar is of the opinion that a separate risk committee or separate remuneration committee must be established to ensure the prudent management of the short-term insurance business and protection of the interests of policyholders, the Registrar may instruct the short-term insurer to establish that committee or both.

Audit committee

- 14D.** (1) The board of directors of a short-term insurer must appoint at least three of its members to form and serve on an audit committee.
- (2) All of the members of the audit committee must be persons who are not employees of the short-term insurer.
- (3) The majority of the audit committee may not be employees of any related party of the short-term insurer.
- (4) The chairperson of the board of directors of the short-term insurer or its holding company may not be appointed as a member of the audit committee.

(5) The chairperson of the audit committee may not be an employee of any related party of the short-term insurer.

(6) If the composition of an audit committee is, in a particular case, inappropriate or impractical or would serve no useful purpose, the Registrar may, subject to such conditions as the Registrar may determine, exempt the short-term insurer concerned from the requirements of subsection (1), (3) or (4).

(7) Subsections (2), (3), (4) and (5) of section 94 of the Companies Act do not apply to the appointment of an audit committee by a short-term insurer.

(8) The audit committee, in addition to the functions referred to in section 94(7) of the Companies Act, must perform the functions as may be prescribed by the Registrar.

Duties of directors

14E. Each director of a short-term insurer, in addition to the requirements of the Companies Act, must—

- (a) at all times meet the fit and proper requirements;
- (b) act in the best interests of the short-term insurer and policyholders, putting the interests of the short-term insurer and policyholders ahead of that director's own interests; and
- (c) exercise independent judgment and objectivity in decision making, taking into account the interests of the short-term insurer and policyholders.

Roles and responsibilities of board of directors

14F. (1) The board of directors is accountable for the effective governance of a short-term insurer.

(2) The board of directors of a short-term insurer must—

- (a) determine and oversee the implementation of the short-term insurer's business objectives and strategies for achieving those objectives, which objectives and strategies must be regularly reviewed to be consistent with the long-term interests and viability of the short-term insurer and the legitimate interests of its stakeholders and policyholders;
- (b) ensure that the roles and responsibilities allocated to the board of directors, senior management and heads of control functions are clearly defined so as to promote an appropriate separation of oversight function from management responsibilities;
- (c) ensure that there are adequate policies and procedures relating to the appointment, dismissal and succession of senior management;
- (d) monitor that directors, senior management, heads of control functions, and persons that control the short-term insurer within the meaning of section 2(2) of the Companies Act at all times meet the fit and proper requirements, to facilitate the sound and prudent management of the business of the short-term insurer;
- (e) provide oversight in respect of the design and implementation of sound risk management and internal control systems and functions;
- (f) adopt and oversee the effective implementation of policies and procedures;
- (g) ensure reliable and transparent financial reporting for public and supervisory purposes;
- (h) have systems and controls to ensure the promotion of appropriate, timely and effective communications with the Registrar and relevant stakeholders on the governance of the short-term insurer, which will allow the latter to make informed judgments to be made about the effectiveness of the board of directors and senior management in governing the short-term insurer;
- (i) have appropriate policies and procedures to oversee that senior management—

- (i) carries out the day-to-day operations of the short-term insurer effectively and in accordance with the short-term insurer's strategies, policies and procedures;
 - (ii) promotes a culture of sound risk management, compliance and policyholder protection;
 - (iii) provides the board of directors adequate and timely information to enable it to carry out its duties and functions, including the monitoring and review of the performance and risk exposures of the short-term insurer, and the performance of senior management; and
 - (iv) provides relevant stakeholders and the Registrar the information required to satisfy the legal and other obligations applicable to the short-term insurer or senior management;
 - (j) regularly monitor and evaluate the adequacy and effectiveness of the short-term insurer's governance framework; and
 - (k) perform such other roles and responsibilities as may be prescribed by the Registrar.
- (3) (a) The board of directors may delegate some of the activities or tasks associated with its roles and responsibilities to a board committee, senior management or any other person within the short-term insurer.
- (b) The board of directors of a short-term insurer must develop an appropriate system of delegation, which delegation must—
- (i) be appropriately and clearly mandated;
 - (ii) provide adequate checks and balances;
 - (iii) provide for the monitoring of and reporting on delegations;
 - (iv) not allow for the undue concentration of powers; and
 - (v) provide for the withdrawal of a delegation.
- (c) Anything done or omitted to be done under a delegation—
- (i) does not in any way abrogate the accountability of the board of directors; and
 - (ii) is deemed to have been done or omitted by the board of directors.

Risk management and internal control systems

Risk management system

- 14G.** (1) A short-term insurer, as part of its governance framework, must establish and maintain an effective risk management system, comprising the totality of strategies, policies, and procedures for identifying, measuring, monitoring, managing, and reporting of all material risks to which the short-term insurer may be exposed.
- (2) The risk management system should adequately support the board of directors in meeting its responsibilities with respect to the furtherance of the safe and sound operation of the short-term insurer and the protection of policyholders, taking into account the nature, scale and complexity of the short-term insurer's business and the risks of the short-term insurer.
- (3) The risk management system must, at least, include—
- (a) a clearly defined and documented risk management strategy that includes the risk management objectives, risk management principles and approach to assumption setting, and assignment of risk management responsibilities across all the activities of the short-term insurer, consistent with the short-term insurer's overall business strategy;
 - (b) adequate written policies consistent with the risk management strategy and the requirements of section 14H;
 - (c) appropriate processes, procedures and tools (including, where appropriate, models) for identifying, measuring, monitoring, managing, and reporting on material risks;
 - (d) reports to inform senior management and the board of directors on all material risks faced by the short-term insurer and on the effectiveness of the risk management system itself;
 - (e) processes for ensuring adequate contingency planning, business continuity and crisis management; and
 - (f) such matters as may be prescribed by the Registrar.

(4) (a) The risk management system must be reviewed regularly by the short-term insurer's internal audit function or an objective external reviewer to ensure that necessary modifications are identified and made in a timely manner.

(b) Any modifications must be documented and approved by the board of directors.

Risk management policies

14H. (1) A short-term insurer must develop and regularly review adequate written risk management policies that include—

(a) a definition and categorisation of the material risks to which the short-term insurer is exposed, taking into account the nature, scope, and time horizon of the short-term insurance business; and

(b) the levels of acceptable risk limits for each type of risk.

(2) The risk management policies must incorporate—

(a) an explicit asset-liability management policy that—

(i) clearly specifies the nature, role and extent of the insurer's asset-liability management activities and their relationship with product development, pricing functions and investment management; and

(ii) includes the matters as may be prescribed;

(b) an explicit investment policy, that—

(i) provides for the investment of all the short-term insurer's assets in accordance with this Act;

(ii) specifies the nature, role and extent of the short-term insurer's investment activities and how the short-term insurer complies with the regulatory investment requirements as may be prescribed by the Registrar;

(iii) establishes explicit risk management procedures with regard to more complex and less transparent classes of asset and investment in markets or instruments that are subject to less governance or regulation; and

(iv) includes the matters as may be prescribed by the Registrar;

(c) an explicit reinsurance and other forms of risk transfer policy that—

(i) outlines appropriate strategies and procedures for the selection of suitable reinsurance programs and other risk transfer techniques, proportionate to the nature, scale and complexity of the short-term insurer's risks, and to the capabilities of the short-term insurer to manage and control the risk transfer technique used;

(ii) ensures transparent reinsurance arrangements and associated risks that enable the Registrar to understand the economic impact of reinsurance and other forms of risk transfer arrangements in place;

(iii) provides for processes and procedures for ensuring that the strategies referred to in sub-paragraph (i) are implemented and complied with, and that the short-term insurer has in place appropriate systems and controls over its risk transfer transactions; and

(iv) provides for the matters as may be prescribed by the Registrar; and

(d) an explicit remuneration policy that—

(i) does not induce excessive or inappropriate risk taking, is consistent with the identified risk appetite and long term interests of the short-term insurer, and has proper regard to the interests of its stakeholders;

(ii) at a minimum, addresses directors, senior management, heads of control functions and other persons whose actions may have a material impact on the risk exposure of the short-term insurer; and

(iii) provides for the matters as may be prescribed by the Registrar;

- (e) explicit policies in relation to underwriting risk that provide for the matters as may be prescribed;
- (f) an explicit insurance fraud risk management policy that—
 - (i) outlines appropriate strategies, procedures and controls to deter, prevent, detect, report and remedy insurance fraud and to manage effectively fraud risk and possible risks to its financial soundness or continuity caused by fraud;
 - (ii) provides for the prompt reporting of insurance fraud to relevant regulatory authorities; and
 - (iii) provides for the matters as may be prescribed; and
- (g) such other policies or matters as may be prescribed.

Internal control system

14I. (1) A short-term insurer, as part of its governance framework, must establish, maintain and operate within an effective internal control system, comprising the totality of strategies, policies, procedures and controls to assist the board of directors and senior management in the fulfilment of their respective responsibilities for oversight and management of the short-term insurer.

(2) The internal control system must be appropriate to the nature, scale, and complexity of the short-term insurer's business and risks and provide the board of directors and senior management with reasonable assurance from a control perspective that the short-term insurance business is operated consistently with—

- (a) the strategy determined by the board of directors;
- (b) the business objectives of the short-term insurer;
- (c) the key business, information technology and financial policies and processes, and related risk management policies and procedures, determined by the board of directors; and
- (d) the laws and regulations that apply to the short-term insurer.

(3) The internal control system must, at least, provide for—

- (a) appropriate controls to ensure the availability and reliability of financial and non-financial information;
- (b) the development, implementation and regular review of a compliance plan;
- (c) appropriate segregation of duties, and controls to ensure that such segregation is observed;
- (d) regular monitoring of all controls to ensure that the totality of controls forms a coherent system and that the internal control system functions as intended, fits within the overall governance framework and complements the risk identification, risk assessment, and risk management activities of the short-term insurer;
- (e) regular independent testing and assessments to determine the adequacy, completeness and effectiveness of the internal controls system and its usefulness to the board of directors and senior management for controlling the operations of the short-term insurer; and
- (f) such other matters as may be prescribed by the Registrar.

Control functions

General requirements for control functions

14J. (1) A short-term insurer must establish and maintain the following control functions:

- (a) A risk management function;
- (b) a compliance function;
- (c) an actuarial control function; and
- (d) an internal audit function.

(2) Each control function referred to in subsection (1) must be structured to ensure that the function has the necessary authority, independence, resources, expertise and access to the board and all relevant employees and information to exercise its authority and perform its responsibilities.

(3) The authority and responsibilities of each control function must be determined and documented under the governance framework of the short-term insurer referred to under section 14A.

(4) (a) The risk management function, compliance function and actuarial control function must be regularly reviewed by the short-term insurer's internal audit function or an objective external reviewer.

(b) The internal audit function must be regularly reviewed by an objective external reviewer.

(c) The board of directors, taking into consideration the reviews referred to under paragraphs (a) and (b), must regularly review the performance of each control function.

(5) The existence of any control function does not relieve the board of directors or senior management from their respective governance and related responsibilities.

(6) A short-term insurer may, where appropriate in light of the nature, scale and complexity of the short-term insurer's business, risks, and legal and regulatory obligations, outsource a control function subject to section 14L.

(7) The Registrar may prescribe requirements for any control function, including, in addition to section 14K, requirements relating to the reporting structures, independence, resources, expertise, responsibilities and functions of a control function.

(8) The requirements prescribed under subsection (7) do not apply where the responsibilities and functions of the actuarial control function are performed by the statutory actuary in terms of section 19A, where appointed, to the extent that these requirements are addressed in section 19A.

Head of control function

14K. (1) (a) A short-term insurer, subject to paragraphs (b) and (c), must appoint a head for each of the control functions referred to in section 14J.

(b) The appointment, performance assessment, remuneration, disciplining and dismissal of the head of each control function (other than the head of the internal audit function) must be done with the approval of, or after consultation with, the board of directors or relevant board committee.

(c) The appointment, annual or other periodic performance assessment and dismissal of the head of the internal audit function must be done by the board of directors, its chairperson or the audit committee which solely determines his or her remuneration, promotions, demotions or disciplinary actions.

(2) A short-term insurer may, where appropriate in light of the nature, scale and complexity of the short-term insurer's business, risks, and legal and regulatory obligations—

(a) appoint a person, in full or in part, as the head of more than one control function (other than the head of the internal audit function); or

(b) appoint the statutory actuary as the head of the actuarial control function, if that appointment precludes the statutory actuary from conducting any activities for the short-term insurer which would compromise the independence and oversight requirements of the role of the actuarial control function.

(3) The Registrar may, on notification of the appointment or outsourcing of a head of control function in accordance with section 18, instruct the short-term insurer to appoint another or a dedicated person as the head of control function, or outsource to another person, if the Registrar is of the opinion that—

(a) a person is not a suitable head for more than one control function; or

(b) the appointment of a person as the head of more than one control function will detract from an adequate control environment and risk management system, taking into account the nature, scale and complexity of the short-term insurer's business and the risks to which it is exposed.

- (4) The head of each control function must—
- (a) regularly report to the board of directors or one of its committees;
 - (b) communicate directly and regularly meet (without the presence of senior management) with the chairperson of the board of directors or one of its committees. 5
- (5) The head of a control function must—
- (a) without delay, report in writing to the board of directors any matter relating to the business of the short-term insurer of which he or she becomes aware in the performance of his or her functions and which, in his or her opinion, constitutes a contravention of any section of this Act or a material contravention of any other legislation that applies to the short-term insurer; and 10
 - (b) where the matter relates to a contravention of this Act, submit the report referred to in paragraph (a), without delay to the Registrar where, in the opinion of the head, appropriate steps to rectify the matter are not taken by the board of directors to the satisfaction of the head within 30 days after the date on which the report was submitted to the board of directors. 15

Outsourcing

14L. (1) A short-term insurer that outsources any function or activity must have an outsourcing policy that includes the matters as may be prescribed by the Registrar. 20

(2) A short-term insurer may not outsource any function or activity if that outsourcing may—

- (a) materially increase risk to the short-term insurer; 25
- (b) materially impair the quality of the governance framework of the short-term insurer, including the short-term insurer's ability to manage its risks and meet its legal and regulatory obligations;
- (c) impair the ability of the Registrar to monitor the short-term insurer's compliance with its regulatory obligations; and 30
- (d) compromise the fair treatment of or continuous and satisfactory service to policyholders.

(3) A short-term insurer must when outsourcing any function or activity avoid, and where this is not possible mitigate, any conflicts of interest between the insurance business of a short-term insurer, the interests of policyholders or the business of the other person that performs the outsourcing. 35

(4) Any remuneration paid in respect of outsourcing must—

- (a) be reasonable and commensurate with the actual function or activity outsourced; 40
- (b) not result in any function or activity in respect of which commission or a binder fee is payable being remunerated again;
- (c) not be structured in a manner that may increase the risk of unfair treatment of policyholders; and
- (d) not be linked to the monetary value of insurance claims repudiated, paid, not paid or partially paid. 45

(5) Subsections (2), (3) and (4) apply to any sub-outsourcing of an outsourcing, where a person is authorised to sub-outsource under the outsourcing contract between the short-term insurer and that person.

(6) Subject to subsection (12), a short-term insurer must timeously, but no later than one month, prior to the effective date of an outsourcing contract relating to the outsourcing of a control, management or material function, notify the Registrar of— 50

- (a) the proposed outsourcing;
- (b) the details of the other person to whom the short-term insurer will outsource that function; and 55
- (c) the key risks associated with the outsourcing and the risk mitigation strategies that will be put in place to address these risks.

(7) (a) For purposes of subsection (6), a material function includes any function that has the potential, if disrupted, to have a significant impact on 60

the short-term insurer's business operations or ability to manage risks effectively, including risks to the fair treatment of customers.

(b) A short-term insurer, in determining whether a function is a material function, must, amongst others, consider—

- (i) the potential impact of the outsourcing on the policyholders, finances, reputation and the short-term insurer's business operations, or a significant part thereof, particularly where the other person may fail to perform over a given period of time; 5
- (ii) the ability of the short-term insurer to maintain appropriate internal controls and meet regulatory requirements; and 10
- (iii) the degree of difficulty and time associated with replacing the other person or performing the function or activity itself.

(8) A short-term insurer must immediately notify the Registrar of any material developments (such as termination, material non-performance and the like) with respect to the outsourcing referred to in subsection (6) during the duration of the outsourcing contract. 15

(9) (a) If a short-term insurer outsources a control function, or part thereof, the board of directors must prior to the outsourcing satisfy itself that the outsourcing will not interfere with the function's independence, objectivity or effectiveness. 20

(b) The board of directors must regularly review the effectiveness of any arrangement for outsourcing control functions.

(c) Where any control function is outsourced, the remuneration terms under the agreement with the service provider should be consistent with the objectives and approved parameters of the short-term insurer's remuneration policy. 25

(10) The Registrar, on notification of the outsourcing of a control function, may instruct the short-term insurer to outsource the control function to another person, if the Registrar is of the opinion that—

- (a) the person to whom the control function is outsourced is not suitable; 30
- or
- (b) the outsourcing will detract from an adequate control environment and risk management system, taking into account the nature, scale and complexity of the short-term insurer's business and the risks to which it is exposed. 35

(11) Senior management and the board of directors remain responsible for the effective functioning of all aspects of the short-term insurer's governance framework and the discharging of its obligations under this Act regardless of any outsourcing.

(12) (a) The Registrar may prescribe— 40

- (i) the requirements with which any outsourcing and remuneration paid in respect of outsourcing must comply;
- (ii) the requirements with which a short-term insurer and any person who will perform an outsourced function or activity must comply;
- (iii) the matters that must be included and addressed in the outsourcing policy referred to under subsection (1); 45
- (iv) the matters that must be included or addressed or may not be included in an outsourcing contract; or
- (v) the functions or activities of a short-term insurer that may not be outsourced. 50

(b) The matters referred to in paragraph (a) may be limited in application to a particular kind or type of short-term insurer, a particular operational function or activity or type or class of insurance business, which may be defined either in relation to a category, type or in any other manner.

(13) Section 48A and any matter prescribed by the Minister under section 70(gA) read with section 48A apply in addition to this section. 55

(14) This section applies to the outsourcing of a function or activity by a short-term insurer to a reinsurer or by a reinsurer to a short-term insurer, whether under a reinsurance contract or not, but does not apply to the actual insurance provided under a reinsurance contract. 60

(15) This section does not—

- (a) apply to the outsourcing of a function or activity by another person to a short-term insurer; and
- (b) apply to rendering services as intermediary as defined in the regulations.”.

Amendment of section 16 of Act 53 of 1998

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27. Section 16 of the principal Act is hereby amended by the deletion of subsection (2).

Substitution of section 18 of Act 53 of 1998

28. The following section is hereby substituted for section 18 of the principal Act:

“Notification of certain appointments, terminations and resignations 10

18. (1) A short-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director [**or managing executive**], person in senior management or head of a control function appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such appointment or termination or resignation, as the case may be, together with the reasons for any such termination or resignation. 15

(2) Any such director [**or managing executive**], person in senior management or head of a control function who resigns or whose employment or appointment has been terminated by a short-term insurer shall, at the request of the Registrar, inform the Registrar in writing of any matter relating to the affairs of that short-term insurer of which the director [**or managing executive**], person in senior management or head of a control function became aware in the performance of his or her duties and which may prejudice the short-term insurer’s ability to comply with this Act. 20 25

(3) No information furnished by a director [**or managing executive**], person in senior management or head of a control function in terms of subsection (2) may be used by the Registrar in any subsequent criminal proceedings against such director [**or managing executive**], person in senior management or head of a control function.”. 30

Amendment of section 19 of Act 53 of 1998, as amended by section 32 of Act 27 of 2008 and section 122 of Financial Services Laws General Amendment Act, 2013

29. Section 19 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (c) of the following paragraph: 35

“(c) inform the Registrar and the board of directors of the short-term insurer, without delay, in writing of any matter (including a description of the matter and such other particulars as the auditor considers appropriate) relating to the business of the short-term insurer of which the auditor becomes aware in the performance of the auditor’s functions as auditor and which, in the opinion of the auditor— 40

- (i) constitutes a contravention of section 28(1) or any other section of this Act or in future may prejudice the insurer’s ability to comply with section 28(1) or any other section of this Act[, **which information must give a description of the matter and must include such other particulars as the auditor considers appropriate**]; or 45
- (ii) may be contrary to principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls.”.

Substitution of section 21 of Act 53 of 1998

30. The following section is hereby substituted for section 21 of the principal Act:

“Removal of appointees

21. (1) (a) If the Registrar is of the opinion that the a director, person in senior management, head of a control function, public officer, auditor or statutory actuary does not meet the fit and proper requirements or any other requirements of this Act, the Registrar may instruct the short-term insurer to remove that director from its board of directors, or to terminate the appointment of that person in senior management, head of a control function, public officer, auditor or statutory actuary. 5 10

(b) If the Registrar instructs the short-term insurer to remove a director from its board of directors, or to terminate the appointment of that person in senior management or head of a control function, public officer, auditor or statutory actuary, the short-term insurer must do so within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the oversight, management or control functions of the short-term insurer. 15

(2) Despite anything to the contrary in any law or in any agreement, the appointment by a short-term insurer of a director, person in senior management, head of a control function, public officer, auditor or statutory actuary is subject to the condition that the appointment may be terminated under paragraph (b) and the short-term insurer must make any appointment subject to this condition.”. 20

Repeal of section 22 of Act 53 of 1998

31. Section 22 of principal Act is hereby repealed. 25

Amendment of section 25 of Act 53 of 1998, as amended by section 9 of Act 17 of 2003 and section 127 of Financial Services Laws General Amendment Act, 2013

32. Section 25 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to this section, no person shall, directly or indirectly and without the prior approval of the Registrar, acquire or hold shares or any other financial interest in a short-term insurer or a related party of that short-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control within the meaning of section 2(2) of the Companies Act over that short-term insurer.”; 30 35

(b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to [25] 15 percent or more of the total nominal value of all of the issued shares of the short-term insurer concerned; 40

(b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to [25] 15 percent or more of all the shares in a specific class of shares issued by the short-term insurer concerned.”; 45 50

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) The approval referred to in subsection (1) or (2)—”;

- (d) by the insertion in subsection (3) after paragraph (a) of the following paragraph:
 “(aA) shall not be given if the person does not meet the fit and proper requirements;”;
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 5
 “(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding [25] 15 per cent of—
 (i) the total nominal value or number of all the issued shares of 10 the short-term insurer; or
 (ii) all the shares in a specific class of shares issued by the short-term insurer;”; and
- (f) by the deletion of subsections (5) and (6).

Amendment of section 32 of Act 53 of 1998, as amended by section 42 of Act 27 of 2008 15

33. Section 32 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:
 “(ii) but not yet reported, reduced by the amount which it estimates will 20 be paid in respect of those claims under approved reinsurance policies, being an amount [not less than the amount] calculated in accordance with [Part II of] Schedule 2;”; and
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 25
 “(b) an unearned premium provision, being an amount [not less than the amount] calculated in accordance with [Part II of] Schedule 2;”.

Amendment of section 55 of Act 53 of 1998, as amended by section 140 of Financial Services Laws General Amendment Act, 2013 30

34. Section 55 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (b), the insertion of the word “and” at the end of paragraph (c) and the addition of the following paragraph:

- “(cA) for claim handling, complaints handling and dispute resolution policies and procedures with which a short-term insurer must comply;” 35

Insertion of Part VIIA in Act 53 of 1998

35. The following Part is hereby inserted after Part VII of the following Act:

“PART VIIA

INSURANCE GROUPS

Definitions 40

55A. For purposes of this Part—

- ‘controlling company’ means a non-operating holding company of an insurance group that is subject to this Part;
- ‘financial conglomerate’ means an insurance group that includes— 45
- (a) at least one person subject to registration under this Act; and
- (b) at least one person subject to registration, licensing or approval under—
- (i) the laws, other than this Act, referred to in the definition of ‘financial institution’ in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); 50
- (ii) the Banks Act, 1990 (Act No. 94 of 1990), the Mutual Banks Act, 1993 (Act No. 124 of 1993), or the Co-operative Banks Act, 2007 (Act No. 40 of 2007); or

- (iii) the National Credit Act, 2005 (Act No. 34 of 2005); or
- (c) at least one person that provides a financial product as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and the activity of providing that financial product is not subject to registration, licensing or approval under another Act of Parliament; and 5
- (d) their related and inter-related persons;
- ‘insurance group’** means two or more persons—
- (a) at least one of whom is subject to registration under this Act; and
- (b) at least one of whom has a significant influence on the person referred to under paragraph (a); and 10
- (c) their related and inter-related persons, but excludes any holding company of a person referred to in paragraphs (a), (b) and (c) that is incorporated outside of the Republic;
- ‘insurance sub-group’** means a subset of an insurance group consisting of, but not limited to, all persons that are subject to registration under this Act or the Long-term Insurance Act, 1998 (Act No. 52 of 1998); 15
- ‘inter-group transaction’** means any arrangement or agreement in terms of which a short-term insurer, directly or indirectly, relies on another person that is part of the insurance group or a related or inter-related person of the aforementioned person, for the fulfilment of an obligation; 20
- ‘inter-related person’** has the meaning assigned in the Companies Act;
- ‘non-operating holding company’** means a holding company that is a public company whose only business is the acquiring, holding and managing of another company or other companies; 25
- ‘related person’** has the meaning assigned in the Companies Act;
- ‘risk concentration’** means any risk exposure that has a loss potential large enough to threaten the financially sound condition of a short-term insurer that is part of an insurance group; and
- ‘significant influence’** means, amongst others— 30
- (a) a related or inter-related person;
- (b) inter-connectedness;
- (c) risk exposure;
- (d) risk concentration;
- (e) risk transfer; 35
- (f) inter-group transactions;
- (g) other transactions;
- (h) contractual obligation; or
- (i) of any combination of subparagraphs (a) to (h).

Object of Part 40

55B. (1) The object of this Part is to facilitate the effective and appropriate supervision of insurance groups to promote the maintenance of fair, safe and stable insurance markets for the benefit and protection of policyholders. 45

(2) In meeting the object of this Part, the Registrar must implement and maintain a prospective and risk-based supervisory approach that is proportionate to the nature, scale and complexity of the risks to which an insurance group or insurance sub-group is exposed. 50

Application of Part

55C. (1) This Part applies to all insurance groups, subject to subsection (2) and section 55D. 50

(2) (a) The Registrar, on application from a short-term insurer that is part of an insurance group (other than a financial conglomerate or an insurance sub-group) that has more than one insurer that is subject to this Act or the principal Act may exempt that insurance group from this Part on the conditions determined by the Registrar. 55

(b) A short-term insurer that is exempted from this Part under paragraph (a) is subject to this Act to the extent that it applies to a short-term insurer and the conditions imposed by the Registrar under paragraph (a).

(3) If an insurance group or insurance sub-group consists of at least a short-term insurer and at least a long-term insurer as defined in the Long-term Insurance Act the group or sub-group is subject to Part VIIA of the Long-term Insurance Act, 1998.

Registrar to determine scope of group supervision

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55D. (1) (a) The Registrar must, in respect of each insurance group, and after consultation with other relevant regulatory authorities in the case of a financial conglomerate, determine the scope of the insurance group that is subject to this Part and, in writing, inform the holding company of that insurance group accordingly.

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(b) In determining the scope of an insurance group that is subject to this Part the Registrar—

- (i) must consider the significant influence that a person or persons have on a short-term insurer; and
- (ii) may exclude certain persons from that insurance group; or
- (iii) determine that an insurance sub-group constitutes the insurance group for purposes of this Part.

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(2) The insurance group as determined by the Registrar under subsection (1) is subject to this Part.

(3) (a) The Registrar may at any time because of a change in the significant influence that a person has on a short-term insurer, by written notice to the controlling company referred to under section 55E, amend the scope of the insurance group that is subject to this Part.

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(b) The insurance group as amended under paragraph (a) is subject to this Part.

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(4) A short-term insurer, within three months of becoming part of an insurance group, must inform the Registrar of the composition of that insurance group in the manner and form as may be prescribed by the Registrar.

Incorporation of or conversion to controlling company

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55E. (1) A holding company of an insurance group referred to under section 55D that is not a controlling company, must, within 4 months of being informed of the scope of the insurance group that is subject to this Part—

- (a) incorporate a controlling company or convert to a controlling company; and
- (b) inform the Registrar of the details of that controlling company as may be prescribed by the Registrar.

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(2) A holding company of an insurance group referred to under section 55D that is a controlling company, must, within three months of being informed of the scope of the insurance group that is subject to this Part, inform the Registrar of the details of that controlling company as may be prescribed by the Registrar.

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Transparent group structure

55F. (1) A controlling company must ensure that the structure of the insurance group at all times does not impede the—

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- (a) financial stability and financial soundness of any short-term insurer that is part of the insurance group; or
- (b) ability of the Registrar to determine—
 - (i) how the different types of business of the insurance group are conducted;
 - (ii) the risks of the insurance group and each person that is part of that insurance group; and
 - (iii) the manner in which risk management is organised and conducted for the insurance group and each person that is part of that insurance group.

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(2) (a) The Registrar may, if the Registrar is of the opinion that the structure of an insurance group does not comply with subsection (1), and after consultation with other relevant regulatory authorities in the case of a financial conglomerate, direct the controlling company to amend the structure of the insurance group. 5

(b) The controlling company must, within one month after the directive referred to in paragraph (a) is issued, submit a resolution scheme to the Registrar for approval to amend the structure of the group within four months of the issuing of such directive.

(c) The controlling company whose resolution scheme was approved under paragraph (b) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the resolution scheme. 10

(d) The Registrar may restrict or prohibit certain activities or transactions until the resolution regime is implemented. 15

(e) The Registrar may extend the four month period referred to in paragraph (b) by an appropriate period of time, taking into account all relevant factors.

(f) The Registrar may take such regulatory action that the Registrar deems necessary and appropriate if the controlling company fails to submit a resolution scheme, fails to report as provided for under paragraph (c), or fails to implement a resolution scheme or implement a resolution scheme within the specified timeframe. 20

Approval of, or prior notification of, acquisition or disposal

55G. (1) A controlling company must— 25

(a) prior to making a material acquisition or disposal, obtain the approval of the Registrar;

(b) prior to making any other acquisition or disposal, notify the Registrar of that acquisition.

(2) The Registrar must prescribe what constitutes a material acquisition or disposal for purposes of subsection (1)(a). 30

Application of certain sections in Parts III, V and VI to controlling company and insurance group

55H. (1) Sections 18, 21, 23, 25, 26 and 27, and sections 40 to 42 (inclusive), apply with the necessary changes to a controlling company. 35

(2) Sections 40 and 41 also apply to any one of the persons that is part of an insurance group, where such person is situated within the Republic.

Governance framework

55I. The relevant provisions of Part IIA apply, with the necessary changes, to a controlling company if that controlling company— 40

(a) provides a governance framework or a part thereof (such as the risk management system or internal control system) for or facilitates that it is provided by any person in the insurance group for or on behalf of any short-term insurer or insurer (where Section 55C(3) applies), that is part of the insurance group; or 45

(b) performs a control function or facilitates that it is performed by any person in the insurance group for or on behalf of any short-term insurer or insurer (where Section 55C(3) applies), that is part of that insurance group.

Fit and proper requirements for directors, senior managers and heads of control functions of controlling company 50

55J. A controlling company must ensure that its directors, and senior managers and heads of control functions (where section 55I applies), at all times meet the fit and proper requirements in respect of, amongst others, personal character qualities of honesty and integrity, competence, qualifi- 55

cations, continued professional development and experience, to facilitate the sound and prudent management of the insurance group.

Maintenance of financially sound condition by insurance group

- 55K.** (1) A controlling company must at all times ensure that the insurance group maintains its business in a financially sound condition by managing its affairs in such a way that the aggregate of the capital of the insurance group does not at any time amount to less than the aggregate of—
- (a) the required capital determined, valued, calculated and aggregated in accordance with the requirements as may be prescribed by—
 - (i) the Registrar; and
 - (ii) another regulatory authority; and
 - (b) any additional capital required by the Registrar under section 55M.
- (2) A controlling company that fails to comply with subsection (1) must, without delay, notify the Registrar of the failure and furnish the reasons therefore.
- (3) A controlling company and any short-term insurer within the insurance group may not declare or pay a dividend to its shareholders—
- (a) while it fails or is likely to fail to comply with subsection (1);
 - (b) if the declaration or payment would result in the insurance group failing or being likely to fail to comply with subsection (1).

Failure by insurance group to maintain financially sound condition

- 55L.** (1) If a controlling company gives notice to the Registrar in terms of section 55K(2), or if the Registrar is satisfied that a controlling company is failing, or is likely to fail, to comply with section 55K(1), the Registrar may, after consultation with other relevant regulatory authorities in the case of a financial conglomerate, direct that controlling company to, within a specified period, submit a recovery plan that sets out the measures that and the timeframes within which the controlling company will implement to restore the financial soundness of the insurance group, to the Registrar for approval.
- (2) A controlling company whose recovery plan was approved under subsection (1) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the plan.
- (3) The Registrar may restrict or prohibit certain activities or transactions until the recovery plan is implemented and the financial soundness of the insurance group has been restored.
- (4) The Registrar may take such regulatory action that the Registrar deems necessary and appropriate if—
- (a) the recovery plan is not approved by the Registrar;
 - (b) the controlling company fails to notify the Registrar in accordance with section 55K(2);
 - (c) the controlling company fails to submit a recovery plan in accordance with subsection (1);
 - (d) the controlling company fails to report as provided for under subsection (3); or
 - (e) the controlling company fails to implement a recovery plan.

Capital add-on

- 55M.** The Registrar may, at any time, require a short-term insurer within an insurance group to hold capital in addition to the required capital of that short-term insurer, as a consequence of—
- (a) risks associated with any acquisition or disposal referred to under section 55G; or
 - (b) any material inter-group transaction or risk exposure; or
 - (c) risks associated with persons referred to in paragraph (c) of the definition of financial conglomerate that is part of the insurance group of which the short-term insurer is a part; or

- (d) risks associated with a short-term insurer or a controlling company not being listed on an exchange licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012), and the long-term insurer on its own or the insurance group in combination accounting for a significant share of the relevant insurance market, as prescribed by the Registrar. 5
- (2) The Registrar must prescribe what constitutes a material inter-group transaction or risk exposure for purposes of subsection (1)(b).

Returns by controlling company to Registrar

55N. (1) A controlling company must provide the Registrar with consolidated returns relating to such other matters as may be prescribed by the Registrar. 10

- (2) The returns must be provided—
- (a) in the medium and form;
 - (b) containing the information; and
 - (c) by the date or within the period, 15
- as may be prescribed by the Registrar, either generally or in relation to a particular controlling company.

(3) If in the opinion of the Registrar a return furnished to the Registrar under subsection (1) is incomplete or incorrect, the Registrar may, by notice— 20

- (a) direct the controlling company to furnish the Registrar, within a specified period, with specified information or documents which the Registrar considers necessary to complete or correct the return; or
- (b) reject the return and require the controlling company to furnish the Registrar, within a specified period, with a new return which is complete and correct. 25

(4) If in the opinion of the Registrar a statement forming part of the returns furnished by the controlling company under subsection (1) or (3) requires further investigation, the Registrar may by notice direct the controlling company to furnish him or her by a specific date or within a specific period with a report— 30

- (a) in the medium and form; and
 - (b) containing the required information, 35
- compiled by a person nominated by the Registrar at the cost of the controlling company.

General powers and functions of Registrar

55O. (1) The powers or functions conferred on the Registrar by or in terms of any other provision of this Act or any other law, specifically the Financial Institutions (Protection of Funds Act), 2001 (Act No. 28 of 2001), applies, with the necessary changes, to an insurance group. 40

(2) The Registrar may for purposes of this Part prescribe different requirements for different types of insurance groups, which types may be defined with reference to the business of the insurance group or matters referred to in the definition of significant influence or in any other manner.

(3) (a) The Registrar must, in respect of insurance groups, together with the regulatory authorities of any person that is part of an insurance group— 45

- (i) determine the need for a group supervisor;
- (ii) agree which regulatory authority is the group supervisor;
- (iii) agree the roles and responsibilities of the group supervisor and the other regulatory authorities; 50
- (iv) participate in formal or informal structures for cooperation and coordination amongst regulatory authorities responsible for and involved in the supervision of different components or parts of insurance groups (such as supervisory colleges); and
- (v) enter into cooperation agreements with regulatory authorities, which agreements, amongst others, include procedures for— 55
 - (aa) the exchange of information on an ongoing basis and in emergency situations;

- (bb) communications with the holding company of the insurance group;
 - (cc) convening regular meetings between the group supervisor and relevant regulatory authorities, including supervisory colleges; and
 - (dd) conducting comprehensive assessments of the insurance group.
- (b) In circumstances where the Registrar is the group supervisor, the Registrar must—
- (i) initiate suitable coordination arrangements between the relevant regulatory authorities which are proportionate to the nature, scale and complexity of the risks inherent in the business of the insurance group and establish the key functions of these coordination arrangements;
 - (ii) act as the key coordinator, convener and chairperson of meetings and supervisory colleges;
 - (iii) take the lead in carrying out insurance group supervision;
 - (iv) take into account assessments by relevant regulatory authorities in respect of any person that is part of an insurance group;
 - (v) coordinate crisis management preparations; and
 - (vi) proactively share information on insurance groups.

Amendment of section 64 of Act 53 of 1998, as amended by section 49 of Act 27 of 2008 and section 141 of Financial Services Laws General Amendment Act, 2013

36. Section 64 of the principal Act is hereby amended—
- (a) by the substitution for the section heading of the following heading:
“Offences by persons other than short-term insurers or insurance groups;”;
 - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “A person, other than a short-term insurer or an insurance group, who—;”;
 - (c) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
 “(a) contravenes or fails to comply with a provision of a notice, directive ~~[or]~~, request or guideline referred to in section 4[(3),](4), (9) or [(5)(a)(i)] (13), 8(1)(c), 21(2) or 26(2);”;
 (b) contravenes or fails to comply with a provision of section 8(1)(a) or (b) or (5), 16(2), [23(1),] 27(1), 43(1), 44, 46, 48 or 48A;”;
 - (d) by the substitution for subsection (2) of the following subsection:
 “(2) A person, other than a short-term insurer or an insurance group, who contravenes or fails to comply with a provision of section 7(1)(a), 8(2), 18(2), 19(5), 19A(5)(b), 25(1) or (2) or 49(4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.”; and
 - (e) by the insertion after the phrase “short-term insurer”, wherever it may occur, of the phrase “or insurance group”.

Amendment of section 65 of Act 53 of 1998, as amended by section 50 of Act 27 of 2008 and section 142 of Financial Services Laws General Amendment Act, 2013

37. Section 65 of the principal Act is hereby amended—
- (a) by the substitution for the section heading of the following heading:
“Offences by short-term insurers, insurance groups or its board of directors”;
 - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “A short-term insurer [**which**], an insurance group or its board of directors, who—”;

- (c) by the substitution in subsection (1) for paragraphs (a) and (b) for the following paragraphs:
- “(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2), [(3) or](4), (9) or (13), 21(1) or (2), 26(1), 34(1) or (2)(a) or 35(2) or (3); 5
- (b) contravenes or fails to comply with a provision of section 14D(1) to (5), 16(1), 17, 18, [22(1) or (2),] 24(1), 35(1), 43(1), 44, 45, 46, 47, 48 or 48A;”;
- (d) by the substitution of subsection (2) for the following subsection:
- “(2) A short-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1)(a), 15(1), (2), (4) or (5), 19(1) or (3), 19A(1), (3) and (4), 23, 25(1) or (2), 28(1), (3) or (4) or 33, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million.”; and 10 15
- (e) by the addition after subsection (2) of the following subsections:
- “(3) An insurance group which—
- (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2) or (4), 21 (1) or (2), 26(1), 55F(2), 55L(1) or (2) or 55N(3); 20
- (b) contravenes or fails to comply with a provision of section 18, 55E(2), 55G(1), 55K(2) or 55L(3) or (4), shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million.
- (4) An insurance group who contravenes or fails to comply with section 24, 26 (1) or (2) or 65K(1), shall be guilty of an offence and liable on conviction to a fine not exceeding R 10 million.”. 25

Amendment of section 69 of Act 53 of 1998, as amended by section 51 of Act 27 of 2008 and section 144 of Financial Services Laws General Amendment Act, 2013

38. Section 69 of the principal Act is hereby amended— 30
- (a) by the substitution of the heading for the following heading:
“Special provisions concerning short-term insurers [that are not public companies];”; and
- (b) by the deletion of subsections (1) and (3).

Part 3 35

General

Transitional and implementation provisions

39. The holding companies of all insurance groups must within one month of the date on which this section takes effect, submit to the Registrar—
- (a) a list of all persons that are part of the insurance group— 40
- (i) the name and address of the person;
- (ii) the purpose, extent and other particulars of the interest; and
- (iii) such other information as may be required by the Registrar; and
- (b) details of all intra-group transactions and risk exposures as required by the Registrar. 45

Amendment of legislation

40. The legislation referred to in the Schedule is hereby amended to the extent specified in the third column thereof.

Short title and commencement

41. (1) This Act is called the Insurance Laws Amendment Act, 2013. 50
- (2) The Registrar may, by notice on the official web site—
- (a) delay the implementation of a provision of this Act for a transitional period not exceeding one year from the date when this section takes effect.

- (b) where practicalities impede the strict application of a specific provision of this Act, exempt any long-term or short-term insurer or insurance group from such provision for a period and on conditions determined in the notice.
- (3) A delay or exemption under subsection (2) may—
 - (a) apply to long-term insurers, short-term insurers, insurance groups or insurance sub-groups generally; or 5
 - (b) be limited in its application to a particular—
 - (i) long-term insurer, short-term insurer, insurance group or insurance sub-group;
 - (ii) kind of long-term insurer, short-term insurer, insurance group or insurance sub-group, which may, for the purposes of this section, be defined either in relation to a category or type of long-term insurer, short-term insurer, insurance group, insurance sub-group or in any other manner. 10

SCHEDULE

| No. and year of Act | Short title | Extent of amendment or repeal |
|---------------------|--|---|
| Act No. 97 of 1990 | Financial Services Board Act | <p>Amendment of section 1 of Act 97 of 1990, as amended by section 1 of Act 41 of 1992, section 67 of Act 104 of 1993, section 5 of Act 22 of 1997, section 1 of Act 12 of 2000, section 117 of Act 45 of 2002, section 117 of Act 36 of 2004 and section 19 of Act 22 of 2008</p> <p>1. Section 1 of Act 97 of 1990 is hereby amended by the substitution in subsection (1)(a) for subparagraph (vii) of the definition of “financial institution” of the following subparagraph:</p> <p>“(vii) any ‘long-term insurer’ or ‘insurance group’ as defined in section I(1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and any ‘short-term insurer’ or ‘insurance group’ as defined in section I(1) of the Short-term Insurance Act 1998 (Act No. 53 of 1998);”.</p> |
| Act No. 37 of 2002 | Financial Advisory and Intermediary Services Act | <p>Amendment of section 1 of Act 37 of 2002, as amended by section 45 of Act 22 of 2008</p> <p>1. Section 1 of Act 37 of 2002 is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the definition of “intermediary services” of the following definition:</p> <p>“‘intermediary service’ means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person [for or on behalf of a client or product supplier]—</p> <p>(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product [with a product supplier]; or</p> <p>(b) with a view to—</p> <p>(i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product [purchased by a client from a product supplier or in which the client has invested];</p> <p>(ii) collecting or accounting for premiums or other moneys payable by the client [to a product supplier] in respect of a financial product; or</p> <p>(iii) receiving, submitting or processing the claims of a client [against a product supplier] in respect of a financial product;”;</p> <p>and</p> <p>(b) by the deletion of subparagraph (ii) of subsection (3)(b).</p> |

MEMORANDUM ON THE OBJECTS OF THE INSURANCE LAWS AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1 The Insurance Laws Amendment Bill, 2013 (“the Bill”) proposes amendments to the Long-term Insurance Act, 1998 (No. 52 of 1998), (“the LTIA”) and the Short-term Insurance Act, 1998 (No. 53 of 1998), (“the STIA”). The amendments are contained in one Bill, as many of the amendments are made to both of the said Acts, which Acts substantially correspond as regards content.
- 1.2 The Bill, building on the amendments introduced by the Financial Services Laws General Amendment Act, 2013, further gives effect to the rationalisation and improvement of the financial regulatory framework as envisaged in the National Treasury’s policy paper on financial sector reform entitled “*A safer financial sector to serve South Africa better*,” published in February 2011.
- 1.3 The Bill primarily addresses interim measures relating to the governance, risk management and internal controls of insurers, as well as insurance group supervision, pending the finalisation of the broader review of the Insurance Laws and the Solvency Assessment and Management Project (“SAM”). SAM will introduce a new, risk-based solvency and management regime for the South African long-term and short-term insurance industries, and will be based on the principles of the Solvency II Directive adopted by the European Parliament, but adapted to South African circumstances where necessary. The SAM regime will be designed to meet the requirements of a third country equivalence assessment under Solvency II, which will enhance the financial soundness oversight of South African insurers, as well as enhance their participation in the global insurance market.
- 1.4 These interim measures are urgently required to address—
 - 1.4.1 Shortcomings in respect of appropriate requirements on corporate governance, risk management and internal controls in the insurance sector. The ongoing financial soundness and stability of an insurer is highly dependent on the quality of its leadership, governance, and management teams, and on its risk management and internal control systems. The requirements proposed should not present insurers with significant challenges, as insurers should already, from a good corporate governance perspective, have the majority of these measures in place;
 - 1.4.2 effective supervision of insurance groups. It is important that the Financial Services Board (“the FSB”), form a comprehensive view of the overall risk exposure of South African insurance groups and financial conglomerates, especially as they affect the regulated entities operating within South Africa. Additionally, this group-wide view will enable the FSB to better assess the financial position of regulated insurers, and assist in mitigating any potentially adverse systemic impact on the South African financial system, and the wider economy; and
 - 1.4.3 regulatory gaps identified by the IMF/World Bank Financial Sector Assessment Program (“FSAP”) evaluation of South Africa’s adherence to international financial regulatory principles in respect of insurance. The major shortcomings of the current regulatory and supervisory regime for insurers, as noted in the 2010 FSAP, is the lack of a group-wide supervisory framework and regulatory requirements relating to the governance, risk management and internal controls for all insurers.

- 1.5 Two discussion documents that further elaborate on the need for this Bill and motivate the proposed requirements in detail are available. These are:
 - 1.5.1 A discussion document titled “*Interim Measures for Insurance Groups*”; and
 - 1.5.2 A discussion document titled “*Interim Requirements—Governance, Risk Management, Internal Controls*”.
- 1.6 In addition, certain amendments are proposed to clarify the intent and purpose of certain market conduct and prudential provisions and to address gaps in the legislative framework. These amendments include a consequential amendment to the Financial Advisory and Intermediary Services Act, 2002.

2. OBJECTS OF BILL

The primary objective of the Bill is to ensure a sound and well-regulated insurance sector and to promote financial stability by—

- 2.1 strengthening the regulatory requirements in respect of governance, risk management and internal controls for all insurers;
- 2.2 enhancing the FSB’s ability to appropriately supervise insurance groups; and
- 2.3 effecting technical amendments to clarify the intent and purpose of certain provisions and addressing gaps in the legislative framework.

3. SUMMARY OF BILL

In summary, the amendments which relate to both the LTIA and the STIA are—

- 3.1 to add and expand certain definitions to inform the substantive provisions proposed (clauses 1 and 19) to clarify the definition of “assistance policy”;
- 3.2 to explicitly provide for the objects of insurance regulation (clauses 2 and 20);
- 3.3 to extend the powers of the Registrar (subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the principles of just administrative action) by empowering the latter to grant exemptions subject to certain criteria, to issue interpretation guidelines, and to share information with international and national regulators (clauses 3 and 21);
- 3.4 to align the prerequisites for registration as an insurer with the proposed governance framework requirements for insurers, and to extend these prerequisites to include fit and proper requirements for those persons that control insurers (clauses 4 and 22);
- 3.5 to empower the Registrar (subject to the Promotion of Administrative Justice Act, 2000 and the principles of just administrative action) to impose conditions on registration relating to the business arrangements of insurers (including outsourcing) (clauses 5 and 23);
- 3.6 to empower the Registrar (subject to the Promotion of Administrative Justice Act, 2000 and the principles of just administrative action) to, by notice to the insurer, amend, delete, replace or impose additional conditions of registration subject to which the insurer is registered or deemed to be registered when in the public interest or the interests of the policyholders, or potential policyholders of the insurer (clauses 6 and 24);
- 3.7 to impose governance, risk management and internal control requirements (clauses 7 and 25—these clauses introduce a new Chapter into the LTIA and STIA, respectively);

- 3.8 to remove the responsibility of public officers to ensure that the insurer complies with the LTIA or the STIA. This responsibility is now placed on the board of directors and senior management (clauses 8 and 26);
- 3.9 to amend the requirements relating to the notification of certain appointments to align with the governance framework requirements (clauses 9 and 27);
- 3.10 to amend the requirements relating to auditors to align with the governance framework requirements (clauses 10 and 28);
- 3.11 to amend the requirements relating to the removal of certain appointees to align with the governance framework requirements (clauses 11 and 29);
- 3.12 to replace the requirements for audit committees (clauses 12 and 30). The requirements are replaced by the new sections 14D introduced by clauses 7 and 24;
- 3.13 to align the concept of control with that set out in the Companies Act, 2008 (Act No. 71 of 2008); to reduce the threshold at which the Registrar’s approval for the acquisition of shares or a beneficial interest in an insurer is required; and to explicitly empower the Registrar to refuse such approval or to apply to court for a reduction in such shares or beneficial interest if the holder thereof is not fit and proper (clauses 13 and 31);
- 3.14 to provide for the period within which notification of the non-payment of a premium on the due date thereof must be provided to the policyholder to allow the policyholder adequate time to address such non-payment and to authorise the Registrar to prescribe the manner in which these policies must be dealt with where non-payment continues (clause 14);
- 3.15 to specifically authorise the Registrar to prescribe claims handling, complaints handling and dispute resolution policies and procedures with which insurers must comply (clauses 15 and 33);
- 3.16 to provide for insurance group supervision (clauses 16 and 34—these clauses introduce a new Chapter into the LTIA and STIA, respectively);
- 3.17 to amend the criminal provisions to align with the amendments proposed (clauses 17, 18, 35 and 36);
- 3.18 to correct an incorrect reference (clause 32); and
- 3.19 to provide for transitional and implementation provisions, a consequential amendment to the Financial Services Board Act, and the short title and commencement of the Bill.
- 3.20 The amendments which relate to the Financial Advisory and Intermediary Services Act are (the Schedule):
 - 3.20.1 to amend the definition of “intermediary services” to remove references to product suppliers;
 - 3.20.2 to delete the exemption for product suppliers rendering intermediary services from the ambit of the Act.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

Ad hoc consultations with affected industry participants prior to submission of the Bill to Cabinet were undertaken. The Bill was revised where considered necessary in the light of comments received.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will have no organisational and personnel implications for the FSB.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77597-014-9