

EXPLANATORY DOCUMENT OF PROPOSED AMENDMENTS TO THE INSURANCE LAWS AMENDMENT BILL, 2013

1. BACKGROUND TO BILL

- 1.1 The Insurance Laws Amendment Bill, 2013 ("the Bill") proposes amendments to the Long-term Insurance Act No. 52 of 1998 ("the LTIA") and the Short-term Insurance Act 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- 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 Measures for 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 (Act No. 3 of 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 (Act No. 3 of 2000) and the principles of fair 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.