

SCHEDULE 3

TRANSITIONAL ARRANGEMENTS

KEY: Additional amendments are shaded.

Definitions and interpretation

1. (1) In this Schedule, unless the context indicates otherwise—
“**effective date**” means the date fixed by the Minister in accordance with section 73(1) as the date that this Act comes into operation;

“**previous Act**” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), or both, as the case may be; and

“**previously registered insurer**” means an insurer registered or deemed to have been registered under the previous Act.

(2) A reference in this Schedule to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

Repeal of matters prescribed under previous Act and savings

2. (1) Any matter prescribed by the Minister under a section of a previous Act in respect of the prudential supervision of insurers before the section was amended or repealed is hereby repealed, including Part 2 of the Regulations under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and Parts 2 and 3 of the Regulations under the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

(2) Despite sub-item (1), any Regulations made under section 72(2A) of the Long-term Insurance Act, 1998 and section 70(2A) of the Short-term Insurance Act, 1998 prior to the repeal thereof by this Act must be regarded as having been made under section 69(1) of this Act and remains valid and enforceable until repealed or amended by the Minister.

Pending matters

3. Any matter relating to prudential supervision pending before the Registrar under the previous Act immediately before the effective date and not fully addressed at that time, must be concluded by the Prudential Authority in terms of that previous Act, despite its amendment.

Preservation and continuation of court proceedings and orders

4. (1) Any proceedings in any court in terms of the previous Act immediately before the effective date are continued in terms of that Act, as if it had not been amended.

(2) Any order of a court in terms of the previous Act, and in force immediately before the effective date, continues to have the same force and effect as if that Act had not been amended, subject to any further order of the court.

Continued investigation and enforcement of previous Act

5. (1) Despite the partial repeal of the previous Act—
- (a) any investigation or inspection under the previous Act by the Registrar in respect of compliance with the previous Act and pending immediately before the effective date, may be continued by the Prudential Authority, and the Prudential Authority may take any regulatory action under those Acts that the Prudential Authority deems appropriate in respect of any non-compliance; and
 - (b) for a period of three years after the effective date, the Prudential Authority may initiate an investigation or inspection under the Financial Sector Regulation Act in respect of any suspected non-compliance with the previous Act that occurred during the period of three years immediately before the effective date, and may take any regulatory action under those Acts that the Prudential Authority deems appropriate in respect of that non-compliance.

Continuation of previously registered insurers

6. (1) As of the effective date, every previously registered insurer that was, immediately before that date, registered as a long-term insurer or a short-term insurer under the previous Act continues to exist as an insurer, as if it had been licensed under this Act, and may continue to conduct the insurance business for which it was so registered until its registration is converted to a licence under this Act during the period of two years referred to in subitem (2), subject to and in accordance with the governance, financial soundness, security, reporting and public disclosure obligations imposed under this Act.

(2) The Prudential Authority must, subject to subitem (4), within a period of two years after the effective date, convert the registration of all previously registered insurers to a licence in accordance with this Act.

(3) (a) The Prudential Authority must, within two months of the effective date, publish the process the Prudential Authority will implement to give effect to subitem (2).

(b) The process referred to in paragraph (a) must be –

- (i) reasonable and fair; and
- (ii) allow for sufficient engagement with a previously registered insurer.

(4) (a) The Prudential Authority must convert the registration of a previously registered insurer to a licence to conduct a class and sub-class of life insurance business or non-life insurance business referred to in Schedule 2 to the Act if the previously registered insurer, immediately prior to the effective date, were actively and prudently conducting insurance business similar to that class or sub-class of insurance business.

(b) Despite paragraph (a) and subject to any limitations relating to a type or kind of insurer or insurance business provided for in the Act, a previously registered insurer who applies for the conversion of its registration to a licence to conduct –

- (i) life insurance business must only be licensed to conduct a class or sub-class of life insurance business referred to in Table 1 of Schedule 2; and
- (ii) non-life insurance business must only be licensed to conduct a class or sub-class of life insurance business referred to in Table 2 of Schedule 2.

(5) If the Prudential Authority does not convert the registration of a previously registered insurer to a licence to conduct insurance business in respect of a specific class or sub-class set out in Schedule 2 that is similar to the business that the previously registered insurer was registered for on the effective date because –

- (a) the insurer did not immediately prior to the effective date conduct that insurance business; or
- (b) of the application of subitem 4(b),

the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to—

- (i) discharge its obligations under all insurance policies entered into in respect of that classes or sub-classes before the conversion of that insurer's registration;
- (ii) ensure the orderly resolution of that insurance business of the insurer; or
- (iii) transfer that insurance business to another insurer under section 50 of this Act by a specified date.

(6) Section 23(5)(a) comes into effect six months after the date on which a previously registered insurer's registration is converted to a licence.

Maintenance of financial soundness

7. (1) A previously registered insurer that immediately after the effective date fails to comply with the financial soundness requirements must submit a scheme or strategy referred to in section 39 of this Act to the Prudential Authority in accordance with that section, subject to that insurer holding capital of at least R 10 million.

(2) Despite subitem (1), any reinsurance arrangement entered into with an insurer or reinsurer located in a foreign jurisdiction may continue until the previously registered insurer's registration under the previous Act is converted to a licence under this Act during the period of two years referred to in item 6(2) despite that foreign jurisdiction not having been determined by the Prudential Authority as equivalent.

Reporting

8. A previously registered insurer whose 2017 financial year end falls before the effective date, must, despite the effective date, comply with the reporting obligations imposed under this Act in respect of that financial year.

Key persons and significant owners other than representatives, deputy representatives of Lloyd's and trustees of Lloyd's trust

9. (1) Any person appointed as a key person and any significant owner of an insurer immediately before the effective date is deemed to meet the fit and proper requirements of this Act, subject to the requirements of this Act.

(2) Despite sub-item (1), the Prudential Authority may act in accordance with section 19 if the Prudential Authority reasonably believes that a key person or significant owner does not comply or no longer complies with the prescribed fit and proper requirements.

(3) The Prudential Authority must, when considering the conversion of the registration of a previously registered insurer —

- (a) approve the directors and auditor of the insurer; and
- (b) require the previously registered insurer to demonstrate and certify that its key persons (other than directors and auditor) and significant owners meet the prescribed fit and proper requirements.

Conducting of business other than insurance business inside Republic and conducting of any other business outside Republic

10. (1) As of the effective date, subject to subitem (3) below, every previously registered insurer that, immediately before that date, was conducting any business other than insurance business in the Republic or conducting any business, including business similar to insurance business, outside the Republic, may continue to conduct that business until its registration under the previous Act is converted to a licence under this Act.

(2) A previously registered insurer must, as part of the process referred to in item 6(3)(a) apply for approval to conduct—

- (a) any business other than insurance business in the Republic, including any business performed on behalf of another person; or
 - (b) any business, including business similar to insurance business, outside the Republic.
- (3) If the Prudential Authority does not approve the business referred to in sub-item (2), the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to ensure the orderly resolution or transfer of that business of the insurer.

Lloyd's

11. (1) (a) The requirements of Part 8 of the previous Act continue to apply to Lloyd's and Lloyd's underwriters for a period of 18 months after the effective date.

(b) Any sections of the previous Act that did not apply to Lloyd's and Lloyd's underwriter prior to the amendment of that Act by Schedule 1 to this Act continues not to apply to Lloyd's and Lloyd's underwriter for a period of 18 months only after the effective date.

(2) Lloyd's must, within three months after the effective date, submit a plan to the Prudential Authority demonstrating how compliance with this Act will be achieved within 18 months after the effective date.

Insurance groups

12. A previously registered insurer that is part of a group of companies must, within two months of the effective date, notify the Prudential Authority thereof, and provide the Prudential Authority with detailed information on the structure of the group of companies, its holding company and intra-group transactions.

Delays and exemptions

13. The Prudential Authority, to facilitate the incremental implementation of this Act, may, by notice in the Gazette—

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding two years from the date when that section takes effect; or
- (b) where practicalities require the progressive or incremental application of a specific provision of this Act, exempt any insurer, controlling company, key person or significant owner from that provision for a period and on conditions determined in the notice.