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20 April 2012

RE: Comment on Proposed Amendment of Regulations under Section 70 of the Short-term Insurance Act

Premier Growth Group (Pty) Limited ("The Unlimited") is an authorised financial services provider, and holds several category 1 FSP licenses. The Unlimited provides, amongst other things, intermediary services in respect of policies underwritten by Centriq Insurance Company Limited, including accident and health policies as defined in the Short-term Insurance Act ("the Act"). The Unlimited has noted, with concern, the document published on 2nd March 2012 entitled 'Short-term Insurance Act, 1998: Publication of Proposed Amendment of Regulations made under Section 70 for Public Comment' ("the Regulations").

We respectfully submit that the Regulations will create more confusion than they seek to clear up. In this regard:

Concern 1 - Accident and Health Policies that pay benefits on the happening of a disability event

The Regulations are not explicit that accident and health policies that provide policy benefits on the happening of a disability event ("Disability Policies") fall outside the ambit of the Regulations (except to the extent that they relate to travel insurance). This much is implied, however, as the Regulations are virtually devoid of any reference to disability events. It is imperative that this is clarified.

The Disability Policies sold and administered by The Unlimited provide lump sum policy benefits to cover contingent liabilities on the occurrence of a disability event. Such Disability Policies do not provide cover

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1. to defray expenditure incurred in the rendering of any health service. In this regard the policy benefits are not:
 - a. paid to service providers, medical or otherwise;
 - b. determined by reference to medical expenses incurred by a policyholder. The benefit is a lump sum benefit;
2. to make provision for the obtaining of any relevant health service.

We have surveyed policyholders who have successfully claimed under their Disability Policies. The responses show that those policyholders have applied the benefits received to a wide range of contingent expenses, over and above medical costs, incurred whilst temporarily disabled including: the cost of purchasing a vehicle to replace the vehicle the policyholder was travelling in when the disability event (accident) occurred; repairs to vehicles; payment of school fees; purchasing groceries; leisure activities whilst recuperating; paying bond instalments; rent; attorney's fees; and travelling costs.

Very importantly, the contingent expenses paid by our policyholders' provide compelling evidence that Disability Policies do not compete with, and accordingly do not harm the medical schemes environment. We attach a sample of the responses transcribed from the voice logs. Those voice logs can be made available to you on request.

Other than in categories 5 and 6 (International and Domestic travel insurance) in the table at sub-regulation 7.2 of the Regulations, nowhere else are disability events addressed in the Regulations. In the circumstances our view is that Disability Policies fall within the general definition of 'accident and health policy' in the Act and are not impacted by the Regulations at all. The Unlimited accordingly requests that this be confirmed prior to enactment so as to avoid any possible confusion.

It is imperative that accident and health policies that provide policy benefits on the happening of a disability event are not impacted by the Regulations. Having said that we do not believe it is Government's intention that such policies are affected in any way. If the Regulations are not clarified in this respect, however, we shall continue on the basis that Disability Policies fall outside the ambit of the Regulations (save for categories 5 and 6).

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Concern 2 – Accident and Health Policies that pay benefits on the happening of a health event

As a general comment we see no good reason for the inclusion of the category 1 policies in the Regulations. Policies which provide for loss of income and contingency expenses, other than medical expenses, do not on any approach create a threat to the viability of medical schemes, nor do they provide an indemnity for medical expenses. Furthermore, the Explanatory Memorandum set out in Schedule B states that category 1 policies "may not provide policy benefits relating to medical expenses associated with a health event". In light of that explanation such policies should be permitted without any limitations or restrictions.

In light of the above we fail to understand why category 1 policy benefits payable on the occurrence of a health event will be limited to 70% of a policyholder's net daily income. Once again we feel that clarification is needed. In this regard:

1. how was the 70% limitation arrived at? By imposing a limit, the inference is that the limit takes a policy outside the ambit of the Medical Schemes Act and brings it within the ambit of the Short-term Insurance Act.
2. when one considers that medical schemes do not indemnify their members for loss of income or contingent expenses, what is the rationale for the proposed limitation on these benefits?
3. what is meant by income? How would daily income be calculated - by dividing monthly income over the actual number of days in a calendar month, or the average number of working days in a month (21.67)?
4. the current category 1 policy benefits require benefits that cover both loss of income and contingency expenses. The use of the word "and" is conjunctive, not disjunctive. Was this intended?
5. by limiting benefits to 70% of net daily income, the cover provided by such policies will be substantially diluted. The Unlimited currently administers in excess of 225,000 accident and health policies. The average income of those policyholder's, based on information received from credit bureaux, is R 9,160.00 per month. By imposing a 70% limit relative to daily income, policy benefits would be restricted to approximately R 295 per day on average (calculated over 21.67 working days in a month) versus the R 1,000 daily cover currently provided. No data has been produced to show that paying a policyholder an additional R 705 per day would cause harm to the medical schemes environment;

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6. 55% of policyholders serviced by The Unlimited earn less than R 9,000 per month. Medical aid cover is beyond the financial means of the majority of these policyholders. Accident and health policies address a real need in the marketplace for low income consumers who are in desperate need of meaningful cover when faced with contingent expenses after a health event. By linking benefits to daily income, however, the most vulnerable members of society will be prejudiced, rather than those persons who can afford medical scheme contributions;
7. as contingent expenses incurred following a health event cannot be foreseen, policyholder's may be severely prejudiced should benefits be linked to a policyholder's income. In this regard contingent expenses incurred due to a health event could far exceed a policyholder's income. See the data provided in clause 5 above in support of this submission,
8. implementing a benefit limit based on income will also create substantial logistical challenges. In this regard.
 - a. to ensure that policyholders are not over-insured relative to the 70% limit, insurers and their intermediaries will need to assess whether policyholders have multiple accident and health policies providing lump sum or income replacement policy benefits. This will lead to additional administrative costs and complexity in the sales and/or claims process,
 - b. calculating the quantum of a claim where a policyholder is in irregular employment or is unemployed will be difficult, if not impossible, to establish. This could mean, in practice, that cover could only be provided to people who are self-employed or who are in stable employment. Persons who become unemployed after entering into a policy may be especially prejudiced if they subsequently have a claim – how would the quantum of the claim be calculated, or would the policy need to be cancelled?

We accordingly propose that:

9. the determination of policy benefits relative to income be removed entirely. If a limit on policy benefits is deemed necessary, such limit should be set by reference to a fixed rand amount - ideally no less than R 5,000 per day to ensure that benefits provide meaningful cover for contingent liabilities, alternatively
10. should Government want to ensure that persons who can afford medical aid contributions do not take out accident and health policies as a substitute for medical scheme benefits, thereby undermining the principles underpinning medical schemes, this can be achieved without adversely affecting that segment of the population that are not able to afford medical scheme contributions - for example by setting the

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daily benefit limit as the greater of a fixed amount (e.g. R 5,000 per day) or a percentage of net daily income (which would provide a 'catch net' for higher income earners that can afford medical cover).

Concern 3 – Scope of Minister's Authority

Finally, we note that the Minister, in seeking to delegate to the Registrar of Short-term Insurance the powers set out in sub-regulations 7.4(3) and 7.5(3) in particular, will be acting outside the scope of his authority. The Minister goes beyond what is prescribed in section 70(1) of the Act and provides the Registrar with powers not envisaged by the Act. For example sub-regulation 7.4 will empower the Registrar to:

- "(a) prohibit the insurer from introducing or launching the accident and health policy; or
- (b) instruct the insurer to stop offering or renewing those accident and health policies to the public and within 90 days of the date determined by the Registrar, terminate any accident and health policy;"

By drafting the Regulations in this manner, the Minister has gone beyond the powers expressly conferred on him by the Act. The Regulations would, in that respect, be illegal in our view.

In conclusion, any possible unintended consequences the Regulations may have on accident and health policies which do not do the business of a medical scheme, or cause harm to medical schemes, must be avoided. Government has not provided any facts in support of its contention that medical schemes are being undermined by accident and health policies (taken out by persons who cannot afford medical scheme contributions). Government has stated that:

1. certain accident and health insurance products are harming the medical schemes environment by attracting younger and generally healthy persons out of medical schemes;
2. if left unchecked the practise could result in the affordability of medical schemes being adversely affected due to fewer low risk individuals (being the younger and generally healthier persons) joining medical schemes and whose membership effectively subsidises high risk members (being older and less healthy persons)

Bearing those concerns in mind The Unlimited would like to make the following further submissions:

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1. 80.9% of policyholders on The Unlimited's books who have accident and health policies are older than 30. The overwhelming number of these policies are not being taken up by younger members of society;
2. in a 2008 judgment delivered by the Supreme Court of Appeal in the matter of Guardrisk Insurance Company Limited vs. Registrar of Medical Schemes, the Supreme Court was asked to consider the definition of the 'business of a medical scheme' in the Medical Schemes Act in relation to the definition of 'accident and health policy' in the Short Term Insurance Act in order to determine whether certain accident and health policies offered by Guardrisk fell within the ambit of the business of a medical scheme. At paragraph 21 of the judgment the Court held that there was *'no factual indication before [it] that the policies of [Guardrisk] are undermining or would undermine the Medical Schemes Act, or would in any way effect the viability of medical schemes in general'* (our emphasis added). The Court found in favour of Guardrisk.

We would be happy to discuss any aspect of this correspondence with you, and thank you for the opportunity to make this submission.

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