national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

FSB

INSURANCE LAWS AMENDMENT BILL: GOVERNMENT'S RESPONSE TO COMMENTS RECEIVED - REVISED TO CORRECT FORMATTING -

Presentation to PCoF – 06 June 2008

List of commentators:

1 The Life Offices' Association of South Africa
2 South African Insurance Association
3 Lloyd's
4 COX YEATS representing McCarthy Limited
5 The Standard Bank of South Africa Limited
6 Glenrand M·I·B Ltd
7 Financial Intermediaries Association of Southern Africa
8 The Linked Investment Services Providers Association
9 Actuarial Society of South Africa
10 Pricewaterhouse Coopers
11 Board of Healthcare Funders
12 The South African Institute of Chartered Accountants
13 South African Underwriting Managers Association
14 Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA) of South Africa
15 Council for Medical Schemes

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	LONG-TERM INSURANCE ACT		
1; 4; 5; 8; 9; 12; 15	**CLAUSE 1 (Amends section 1 of the principal Act)**		
1; 4 8	Definition of "this Act" The suggested change is far-reaching as it presumes to give directives, notices and requests the same standing as legislation. The validity of this definition needs to be duly considered from a perspective of constitutional law. The inclusion of the regulations, directives, notices and requests in the definition of "this Act" creates unnecessary and confusing circular references in the Act.	It is proposed that the definition of "this Act" be redefined.	**1.** Section 1 of the Long-term Insurance Act, 1998, is hereby amended— *(k)* by the insertion after the definition of **"subsidiary"** of the following definition: " **'this Act'** includes any regulation made~~, directive issued, notice prescribed or request made~~ under this Act;".
1	Definition of "fair value of an asset" (c) by the substitution in subsection (1) for the definition of **"fair value of an asset"** of the following definition: "(xii) **"fair value"**, in relation to ~~of~~ an asset**,"** has the meaning assigned to it in the financial reporting standards;"; Comment: In the Act, for example in section 31(1)(a), the expression used is "fair value" only, and not "fair value of an asset".	It is proposed that the comments be accepted with the exclusion of the reference to "an asset". The reason is that this expression is used throughout the Act in relation to an asset.	" **'fair value [of an asset]'** has the meaning assigned to it in the financial reporting standards;
1	Definition of "fund" (e) by the substitution in subsection (1) for the definition of **"fund"** of the following definition: "(xiv) **"fund"** means- (c) a medical scheme as defined in section 1 of the Medical Schemes Act~~,~~ **[1967 (Act No. 72 of 1967)]**; ~~1998 (Act No. 131 of 1998);~~ and	A separate definition for the Medical Schemes Act to be inserted, as it is referred to multiple times in the Act.	

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1 15	Definition of "health policy" As the Act is read and interpreted in its entirety, and as the purport here evidently is the same as in the corresponding provision in the definition "fund policy", "exclusively" should be used here also.] to a particular member of the medical scheme or to the beneficiaries of that member. (1) The addition regarding a reinsurance policy should appear at the end of this definition. (2) A concern with the proposed new definition of "health policy" is that it in effect leaves the long-term insurance industry in the hands of the Department of Health in deciding on demarcation. (3) It needs to be made clear that any change from time to time to the definition "business of a medical scheme" would apply only prospectively to products to be developed and provided in the future, and not also retrospectively. Retain proposed amendments to the definitions of "health policy" in the LTI Act [section 1(f) of the Bill] and "accident and health policy" in the STI Act [section 27(a) of the Bill].	Extensive and rigorous consultation with the LOA, SAIA, Department of Health and Council for Medical Schemes were undertaken. Revised wording has been proposed.	Refer to separate document
1; 8	New definition of "Medical Schemes Act" Comment: As the Medical Schemes Act is referred to numerous times, it is proposed that it be defined – as follows: (g) by the insertion in subsection (1) after the definition of **"managing executive"** of the following definition: **"Medical Schemes Act"** means the Medical Schemes Act, 1998 (Act No. 131 of 1998);	It is proposed that this suggestion is accepted.	**"Medical Schemes Act"** means the Medical Schemes Act, 1998 (Act No. 131 of 1998);
1	Definition of "market-related policy" *(h)* by the deletion in subsection (1) of the definition of **"market-related policy"**; Comment: We agree with this deletion. However, it then is necessary to define "market-related policy" where it is used in the regulations and board notices.	Amendments will be made to regulations and board notices where necessary.	

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1	Definition of "Registrar" *(j)* by the substitution in subsection (1) for the definition of **"Registrar"** of the following definition: "(xxxiiiA) **"Registrar**" means the Registrar or the Deputy Registrar of Long-term Insurance referred to in section 2 ~~(1)~~;"; and Comment: Because of the proposed new section 2, there no longer will be a subsection 2(1).	This technical amendment is already reflected in the published version of the Bill.	
1; 8; 9 12	New definition of "widely held company" It appears necessary to insert a definition of "widely held company". This expression is used numerous times. It could be defined along the following lines: "widely held company" has the meaning assigned to it in section 1(6) of the Companies Act. The references to 'widely-held' companies, brought in by the most recent amendments to the Companies Act, may become outdated once the Companies Bill is finalised. In the most recent drafts of the Companies Bill the references to 'widely held' and 'limited-interest' companies fall away. References to specific sections on the Companies Act may also change in the future.	It is proposed that that a new definition of "widely held company" be inserted. It is proposed that consequential amendments be made to the Insurance Acts when the Companies Bill is promulgated.	"by the insertion after the definition of "**unborn"** of the following definition: "**widely held company**" has the meaning assigned to it in section 1(6) of the Companies Act."
5	New definition of "binder agreement" The long title to the Draft Bill and the new Section 49A contain the term "binder agreement". This term does not appear to be defined and we suggest that such definition be included in the Draft Bill.	It is proposed that the comment not be accepted. This term is only mentioned in the heading. The content of the section sets out the core functions of a binder agreement.	
1; 4; 8	**CLAUSE 2 (Amends section 2 of the principal Act)**		
1; 4; 8	Registrar of Long-term Insurance **2.** The following section is hereby substituted for section 2 of the Long-term	This technical amendment is already reflected in the published	

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	Insurance Act, 1998: "**Registrar of Long-term Insurance** **2.** The executive officer and a deputy executive officer mentioned in section 1 of the Financial Services Board Act~~, 1990 (Act No. 97 of 1990),~~ shall ~~also~~ be the Registrar and the Deputy Registrar of ~~Pension Funds~~ Long-term Insurance~~,~~ respectively.". Comment: Financial Services Board Act is defined.	version of the Bill.	
1; 4; 8; 15	**CLAUSE 3 (Amends section 4 of the principal Act)**		
1; 4; 8	Issuing of directives Comment: The proposed amendment is unconstitutional. Section 43 of our Constitution (Act 108 of 1996) sets out the spheres of government in which legislative authority vests. Although Parliament may delegate powers, such delegation must be subject to the principles enunciated by the Constitutional Court in the case of Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others 1995 (10) BCLR 1289 (CC). It is therefore submitted that paragraph (b) be deleted and that paragraphs (c) to (f) be renumbered. The difference between "cancel" and "revoke" in paragraph (e) is not clear. "cancel" on its own, it is submitted, is sufficient. It is not clear what is meant by "previously issued" in paragraph (e). "issued in terms of paragraph (a)" need not be said in paragraphs (b) and (c). It in any event is not said in paragraph (d).	Comment already addressed by proposed change to the definition to "this Act". It is proposed that the word "cancel" be deleted. It is proposed that the word "previously" be deleted.	(e) The Registrar may ~~cancel,~~ amend or revoke any ~~previously~~ issued directives.

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	The constitutionality of paragraph (d) needs to be duly considered. Our Constitution provides the right to administrative action that is lawful, reasonable and procedurally fair. The proposed wording of paragraph (d) seems to infer that the Registrar may by-pass this as long as he or she provides reasons. If a directive, and that applies equally to a request, were to be given "legislative" standing as the definition of "this Act" seemingly seeks to do, it should adhere to the same processes as an Act or regulation has to adhere to in respect of notably adequate notice and reasonable opportunity to make representations. This would apply equally to a cancellation or amendment in terms of paragraph (e). (f) ~~The Registrar may, W~~~~w~~here the directive applies generally as contemplated in paragraph (a), or where the purpose of the~~a~~ directive is ~~issued~~ to ~~ensure the~~ protect~~ion~~ policyholders ~~of the members and~~or the public in general, the Registrar must ~~,~~ publish ~~the directive~~ it in the *Gazette* as well as on the internet website of the Board, and may publish it also in any other media that ~~the Registrar~~ he or she deems appropriate."; Comment: (1) It is not clear what is meant by "members". (2) For the same reason as a regulation needs to be published in the Gazette [as required by section 72(3)] it should be obligatory that such a direction of general application be published in the Gazette. s29f provides that these can be published. Would it be possible to alter this so that it provides that the company allegedly committing the offence is first consulted, please? We presume appeal is provided for elsewhere		
4			
1	**Prescription in respect of health policies** Amendment of section 7 of Act 52 of 1998 (1) The language of paragraph (aa) is not altogether clear. It is, for example, not clear what is meant by "part of … a contract". (2) Paragraph (bb) grammatically does not follow on the introductory words of subsection (7), being "The Registrar may -".		
15	**Propose product pre-approval required by both FSB and CMS.** Reviewable product certification. Certification requires satisfaction by both Registrar of Long-term Insurance and	Extensive and rigorous consultation with the LOA, SAIA, Department	Provision to be deleted

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	Registrar of Medical Schemes that the policy falls within category regulations designed to ensure that the policy will not (a) create an incentive in the market for medical schemes to offer less comprehensive benefits to their beneficiaries; (b) encourage younger or healthier people to opt out of medical schemes or to buy less comprehensive medical scheme benefits; or (c) contribute towards an increase in the cost of, or decrease in the availability of, medical scheme benefits for older or less healthy persons; or (d) in any other way undermine the policy objectives of the Medical Schemes Act	of Health and Council for Medical Schemes were undertaken. It is proposed that this subsection be removed to give effect to the agreement reached between DoH, NT and the relevant Registrars.	
1	**CLAUSE 4 (Amends section 7 of the principal Act)**		
1	Co-operatives Replace "undertakes" with "conducts" in section 7(2)(g).	It is proposed that the comment be accepted. The expression "conducts" is more appropriate.	"(g) an agricultural co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005), or allowed to continue to operate in terms of section 97 of that Act, if and in so far as it **[undertakes]** conducts insurance business as part of its main objectives, and provides benefits, the amount of which is not guaranteed and in respect of which its liability is limited to the amount standing to the credit of a fund specially maintained for that purpose."
1; 10; 14	**CLAUSE 6 (Amends section 19 of the principal Act)**		
1	**Auditor** **6.** Section 19 of the Long-term Insurance Act, 1998, is hereby amended- *(a)* by the substitution for subsection (1) of the following subsection: "(1) A long-term insurer shall ~~from time to time appoint, and~~ at all times have one or more auditors appointed by it in accordance with the provisions of the Companies Act pertaining to the appointment of an auditor by a ~~applicable~~	It is proposed that the suggested change of wording of subsection (1) be accepted.	**6.** Section 19 of the Long-term Insurance Act, 1998, is hereby amended- (a) by the substitution for subsection (1) of the following subsection: "(1) (a) A long-term insurer shall **[from time to time**

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	~~to~~ widely held company~~ies~~."; *(b)* by the deletion of subsection (3); *(c)* by the substitution for subsection (4) of the following subsection: "(4) If an auditor of a long-term insurer is a firm ~~(~~as contemplated in the **[Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991)]** Auditing Profession Act~~)~~, the Registrar`s last approval of ~~the Registrar for~~ the appointment ~~there~~of that firm as auditor shall not lapse by reason of a change in the membership of the firm if at least half of the members, after the change, were members of the firm when the appointment of the firm was last approved by the Registrar."; *(d)* by the substitution for subsection (5) of the following subsection: "(5) Notwithstanding anything to the contrary in any law contained, the auditor of a long-term insurer shall- (a) whenever the auditor furnishes copies of a report or other document or particulars contemplated in section **[20(5)(b)]** 45(1)(a) and (3)(c) of the **[Public Accountants' and Auditors' Act, 1991]** Auditing Profession Act, also furnish a copy thereof to the Registrar; and (b) if the auditor's appointment is terminated for any reason- (i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and (ii) if the auditor would, but for that termination, have had reason to submit **[to the long-term insurer]** a report contemplated in section **[20(5)(a)]** 45(1)(a) and (3)(c) of the **[Public Accountants' and Auditors' Act, 1991]** Auditing Profession Act, submit such a report to the Registrar; and (c) inform the Registrar, without delay, in writing of any matter or incident relating to the affairs of the long-term insurer of which the auditor became aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, may prejudice the insurer's ability to comply with section 29(1) or which, in the opinion of the auditor, constitutes a contravention of ~~and~~ any ~~other~~ section of this Act, and which information must give a description of the matter or incident and must include such other particulars as the auditor considers appropriate."; and Comment: (1) Paragraph (c), as it is proposed to be amended, does not make sense. Paragraph (c) was designed and formulated to apply in conjunction with	It is proposed that the suggested change of wording of subsection (4) be accepted. It is proposed that the change of wording of subsection (5) be accepted.	**appoint, and]** at all times have**[,]** one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to **[widely held companies]** a widely held company. (c) by the substitution for subsection (4) of the following subsection: "(4) If an auditor of a long-term insurer is a firm **[(]** as contemplated in the Auditing Profession Act **[)]**, the Registrar's last approval of **[the Registrar for]** the appointment **[thereof]** of that firm as auditor shall not lapse by reason of a change in the membership of the firm if at least half of the members, after the change, were members of the firm when the appointment of the firm was last approved by the Registrar."; (d) by the substitution for subsection (5)(c) of the following subsection: (c)(i) inform the Registrar and the board of directors of the long-term

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	section 29(1), which pertains to the financial ability of the insurer. It was not designed and formulated to apply in conjunction with other provisions of the Act that do not pertain to the financial ability of the insurer 2) It is not clear why the auditor should without delay inform the Registrar that the insurer`s ability has been prejudiced to comply with section 29(1) somewhere in the future, but the auditor is not required to inform the Registrar when the insurer already and actually is not complying with section 29(1). (3) The same goes for other sections of the Act (4) See also the comments below regarding section 20(5)(b).		insurer, without delay, in writing of any matter or incident relating to the affairs of the long-term insurer of which the auditor became aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, is contravening 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) and any other section of this Act, and such information must give a description of the matter and must include such other particulars as the auditor considers appropriate."; and (e) by the substitution for subsection (7) of the following subsection: "(7) **[In addition to]** The auditor of a long-term insurer must carry out the duties assigned to the auditor of a long-term insurer by **[the]** this Act, by the Act under which that insurer is incorporated **[or]** and by the **[Public**

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			Accountants' and Auditors' Act, 1991] Auditing Profession Act~~, 2005~~, and in addition to those duties the auditor shall- (a) in relation to a statement forming part of the returns in respect of which the auditor is required to do so in terms of section 36, examine that statement or part thereof and satisfy himself, herself or itself that it is properly **[drawn up]** prepared so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any annexure thereto, **[presents fairly the matters dealt with therein]** has been properly prepared, in all material respects, in accordance with the provisions of the Act as contemplated in **[section 20]** Chapter IV of the **[Public Accountants' and Auditors' Act, 1991]** Auditing Profession Act~~, 2005~~; and (b) carry out the other duties

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			provided in this Act or prescribed by the Minister.”.
1	*(e)* by the substitution for subsection (7) of the following subsection: “(7) ~~In addition to~~ The auditor of a long-term insurer must carry out the duties assigned to the auditor ~~of a long-term insurer~~ by **[the]** this Act, by the Act under which that insurer is incorporated ~~or~~ and by the **[Public Accountants' and Auditors' Act, 1991]** Auditing Profession Act, and in addition to those duties the auditor shall- Comment: The language is not clear.	It is proposed that the suggested change of wording of subsection (7) be accepted.	
1	(b) carry out ~~the~~ any other duties ~~provided in this Act or~~ prescribed by the Minister.”.	It is proposed that the change not be accepted. The current wording is clear.	
10; 14	The reporting requirement in section 29(1) of the LTIA and section 28(1) of the STIA deals with the solvency of insurers and is in our view appropriate. However, the amendment establishes the requirement to report without delay and on any matter which may prejudice the ability of the insurer to comply with regards to any other section in the Acts. We are concerned that this will require the auditor to report on instances where noncompliance has not yet occurred as well as many other instances of non-compliance which may not be material, but still requires reporting without delay. We believe that the "without delay" reporting requirement should only be with regard to material or important matters on non-compliance. The Bill should not require the impractical reporting of trivial matters and potential non-compliance due to matters that affect the insurers ability to comply with the Act. We propose that a threshold (e.g, material in the auditor's judgement) be considered for reporting "without delay" and that all other non-compliance matters be reported after the audit. We recommend that the wording of the Bill for Section 19(7) of the LTIA and STIA be amended to align the wording of the Acts with the International Standard on Auditing 800 The Independent Auditor's Report on Special Purpose Audit Engagements. We therefore recommend that the sections refer to the statement being properly "prepared" (not "drawn up") and that it "has been properly prepared, in all material respects, in accordance with the	Possible future contraventions and current contraventions must be reported. A contravention of the Act is a serious issue, regardless of whether or not it is material (in terms of an audit scope).	

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	provisions of the Act" (and not "presents fairly the matters dealt with therein"). 6. Section 19 of the Long-term Insurance Act, 1998, is hereby amended – (e) by the substitution for subsection (7) of the following subsection: "(7) In addition to the duties assigned to the auditor of a long-term insurer by this Act under which the insurer is incorporated or by the Auditing Profession Act, the auditor shall – (a) in relation to a statement forming part of the returns in respect of which the auditor is required to do so in terms of section 36, examine that statement or part thereof and satisfy himself, herself or itself that it is properly prepared ~~drawn up~~ so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any annexure thereto, has been properly prepared, in all material respects, in accordance with the provisions of the Act ~~presents fairly the matters dealt with therein~~ as contemplated in Chapter IV of the Auditing Profession Act; and (b) carry out the other duties provided in this Act or prescribed by the Minister" Reason for change: To align the wording of the Act with the International Standard on Auditing (ISA) 800, The Independent Auditor's Report on Special Purpose Audit Engagements.	The auditor's scope is wider than only the financial soundness of the insurer – the auditor's work is viewed as an extension of that of the regulator. However, we agree that the report in accordance with the Auditing Profession Act would only comprise of material issues.	
1; 8	**CLAUSE 7 (Amends section 20 of the principal Act)**		
1; 8; 9	**Statutory actuary** **Amendment of section 20 of Act 52 of 1998** The statutory actuary, in his statutory role, performs a part of the actuarial supervision of long-term insurers. By requiring the statutory actuary to report any matter which may prejudice the insurer`s ability to comply with also "any other section of this Act", which on a literal interpretation would include also provisions of the Act that bear no relation to the actuarial supervision of the insurer, the function of the statutory actuary is being extended beyond the realm and parameters of actuarial supervision. This is not appropriate. The public officer of the insurer already is tasked to ensure that the insurer complies with the Act. There does not appear to be a need, and it does not appear to be	The intention is not to "create another compliance officer" but to get information from the statutory actuary should s/he become aware of contraventions in the course of his/her duties. However, it is agreed that the scope could be limited to those sections in the Act that the statutory actuary is	**7.** Section 20 of the Long-term Insurance Act, 1998, is hereby amended- (a) by the substitution for paragraph (b) of subsection (5) of the following paragraph: "(b) (i) report in writing and without delay to the board of directors of the long-term insurer **[and to the Registrar]** any matter or

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	meaningful, to drag the statutory actuary directly into matters of compliance outside the realm and parameters of the actuarial supervision of the insurer. The statutory actuary should receive all documents regarding general meetings. However, he or she should have the discretion whether to attend and speak at these meetings. The statutory actuary should not be compelled to attend every meeting of the board of directors. He or she should have the discretion whether to attend. Some of the meetings may have no bearing on his or her function as statutory actuary. It may happen also that he or she may not be able to attend a board meeting. However, the statutory actuary must receive all documents regarding these meetings. We believe that it is appropriate for the report to be provided to the board without delay and in writing. We are not convinced that it is always necessary to also provide this report to the Registrar, as the current wording appears to include normal risk management reports about potential issues which may possibly prejudice the insurer's financial soundness in future. Such reports may also not require immediate rectification. It would however be appropriate for the report to be provided to the Registrar and for immediate rectification to take place, if the issue was a current threat rather than a potential future risk.	currently responsible for and that this could be made clearer. It is also agreed that it may not be practical for the statutory actuary to be compelled to attend all board meetings. It is proposed that the requirement to report directly to the Registrar be removed.	incident relating to the business of the long-term insurer of which he or she **[became]** becomes aware in the performance of his or her functions as statutory actuary and which, in **[the]** his or her opinion **[of the statutory actuary]**, currently contravenes or prejudice the long-term insurer's ability to comply with section 29(1) or any other section of this Act relating to the duties of the statutory actuary, or in the future may prejudice the long-term insurer's ability to comply with section 29(1) and any other section of this Act relating to the duties of the statutory actuary and which report must give a description of the matter or incident and must include such other particulars as the statutory actuary considers appropriate**[,]**: Provided that such report must be submitted without delay also to the Registrar where in the opinion of the statutory actuary the matter or incident in question currently and materially prejudices the insurer's ability to comply with any of these sections, or where the matter or incident in question does not so

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			prejudice the insurer's ability to comply, but in the opinion of the statutory actuary nevertheless requires immediate remedial action by the long-term insurer; and (ii) if steps to rectify the matter are not taken by the board of directors of the long-term insurer to the satisfaction of the statutory actuary within 30 days after the date of the report, without delay inform the Registrar."; (b) by the substitution for paragraph (b) of subsection (8) of the following paragraph: "(b) be entitled to - (i) attend and speak at **[a]** general meetings of the long-term insurer; and (ii) receive the notices and other communications **[relating to a general meeting]** regarding these meetings which a member of that long-term insurer is entitled to receive." (c) by the insertion after paragraph (b) of subsection (8) of the following paragraph:

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			"(c) (i) attend and **[is]** be entitled to speak at meetings of the board of directors of the long-term insurer on the business of the meeting which concerns the duties conferred on or assigned to him or her as statutory actuary by or under this Act and by any other law or a code of professional practice; and (ii) receive the notices and other communications relating to **[any meeting referred to in subparagraph (i) which a board member]** these meetings which a member of the board of directors is entitled to receive."
1: 12; 14	**CLAUSE 8 (Amends section 23 of the principal Act)**		
1	Audit committee **Amendment of section 23 of Act 52 of 1998** **8.** Section 23 of the Long-term Insurance Act, 1998, is hereby amended- *(a)* by the substitution for subsection (1) of the following paragraph: "(1) The board of directors of a long-term insurer shall appoint an audit	It is proposed that the	

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	committee **[of at least three members of whom at least two shall be members of that board]** in accordance with the provisions of the Companies Act pertaining to the appointment of an audit committee ~~applicable to~~ by a widely held compani~~es~~y."; *(b)* by the substitution for the introductory wording of subsection (3) of the following wording: "(3) The functions of ~~an~~the –audit committee, in addition to the functions referred to in section 270A(1) of the Companies Act, are-";" *(c)* by the insertion after subsection (3) of the following subsection: "(3A) The audit committee may appoint an advisor or request any employee of the long-term insurer to advise or assist it in the performance of ~~the~~its functions referred to in subsection (3)."; and *(d)* by the substitution for subsection (4) of the following subsection: "(4) ~~(a)~~ If the appointment or constitution 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).". Comment: It is not clear why this subsection is renumbered as subsection 4(a). There appears to be no subsection 4(b).	wording for subsection (1) not be accepted because the bill changed from the original version that was sent out for comment. It is proposed that the wording for subsection (3) be accepted. The numbering of subsection 4 was corrected in the final bill.	**8.** Section 23 of the Long-term Insurance Act, 1998, is hereby amended— ''(3) The functions of **[an]** the audit committee, in addition to the functions referred to in section 270A(1) of the Companies Act, are—';
12	Consideration should be given to including specific requirements for persons appointed to audit committees of insurance companies (such as a requirement that they have adequate knowledge of the insurance industry).	It is proposed that the Registrar should not be prescriptive in this regard. The insurer It is good corporate governance to appoint people with appropriate and relevant experience.	
14	We are concerned that there may not be sufficient skilled resources in South Africa to provide for two independent non-executive directors to be appointed to	Subsection (4) makes allowance to exempt a	

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	the number of audit committees that will be required in the industry. We suggest some transitional provisions be made to allow for the phasing in over a period of two to three years to identify and train suitable candidates. Presently there are no transitional provisions in the proposed amendments	particular insurer from the appointment or constitution of an audit committee as contemplated in subsection (1), subject to certain conditions. This should give an insurer additional time to constitute an audit committee if the required skills are not available immediately.	
1	**CLAUSE 11 (Amends section 29 of the principal Act)**		
1; 9	Maintenance of a financially sound condition It is not clear what is meant by "not made provision for". If it means that the insurer has not provided sufficient assets for the liabilities and CAR, paragraph (c) merely repeats what is required by paragraphs (a) and (b), and should be deleted (to avoid confusion). However, if it means that the liabilities and CAR have not been calculated in accordance with the requirements of sections 30 and 31 and Schedule 3, paragraph (c) should be amended along the lines proposed above. It is not clear what is meant by "deemed to" in paragraphs (a) and (b). This provision until now was contained in section 30, but without the qualification of "deemed to". A normal interpretation of this would be that the lawmaker intends the new wording to have a purport different to that of the wording of the present provision in section 30. It is not clear when an insurer will be deemed to fail or who would do this deeming.	It is proposed that the section remains unchanged as "provided for" is clear. It is proposed to replace "deemed to fail" with "likely to fail within a reasonable period".	(4) A long-term insurer **[shall]** may not declare ~~a dividend~~ or pay a dividend to its shareholders- (a) while it ~~is deemed to have~~ fails to comply or is likely to fail to comply within a reasonable period with subsection (1) as contemplated in subsection (2); (b) if ~~that~~ the declaration or payment would result in it ~~to be deemed to be have~~ failing to comply or likely to fail to comply within a reasonable period with subsection (1) as contemplated in subsection (2); or (c) if, after ~~such~~ the declaration or payment, ~~it~~ would have assets as

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			~~required by section 30~~ the aggregated value of assets required by section 30 ~~which~~ would be less than the aggregate value of its liabilities, issued share capital and non-distributable reserves. (5) A long-term insurer ~~shall~~ may not declare ~~a dividend~~ or pay a dividend to its shareholders unless its statutory actuary has certified that the declaration ~~and~~ or payment ~~thereof~~ will not be contrary to subsection (4).".
1; 8; 9; 10; 14	**CLAUSE 13 (Amends section 31 of the principal Act)**		
1; 8; 9; 14	Kinds and spread of assets "(3) Despite the requirement in subsection (1) that ~~an~~ assets must be valued at their fair value, if ~~if~~ the Registrar is satisfied that the fair value of an asset is not ~~when calculated in accordance with financial reporting standards~~a ~~does not reflect a proper~~ value that is actuarially sound, even though it was calculated correctly in accordance with the financial reporting standards, he or she ~~, the Registrar may direct a long-term insurer to~~ (a) may request the long-term insurer to satisfy the Registrar that the fair value is a value that is actuarially sound; and~~appoint another person, at the cost of the insurer, to place a proper value on that asset, which value so determined will be deemed to be the value of the asset; or~~ (b) if the insurer fails so to satisfy the Registrar of this, may request the insurer, which request must be accompanied by appropriate reasons, to have the value of the asset recalculated at the cost of the insurer ~~calculate the value~~ in a manner determined by the Registrar by a person approved by the Registrar and the insurer, which value then ~~so calculated~~ will be deemed to be the fair value of the asset.".	It is proposed that some of the wording be accepted. The proposal for a value to be "actuarially sound" is not the correct usage in this context. Rather that the words "reasonable value for the purposes of this Act" be used to make the intention clear. It is proposed that the proposal that the appointment of an independent person must be done in consultation with the insurer must not	**13.** Section 31 of the Long-term Insurance Act, 1998, is hereby amended- *(c)* by the addition of the following subsection after subsection (2): "(3) Despite the requirement in subsection (1) that an asset must be valued at fair value, if the Registrar is satisfied that the value of an asset when calculated in accordance with financial reporting standards does not reflect a **[proper value]** reasonable value for purposes of this Act, the

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
9	It is not clear why, as contemplated in paragraph (b), another person needs to be appointed to do the revised valuation. It is not clear what is meant by "proper value". This is not a generally used accounting or actuarial term. It is not clear on what grounds the Registrar may determine that the value of an asset is not a "proper value". The correct approach for legal certainty would be to include an appropriate definition or criteria of what "proper value" is required in this regard. Before directing that the value of the asset be recalculated, the insurer must first be given an opportunity to discuss the valuation with the Registrar and to satisfy the Registrar that the value already calculated is appropriate and adequate. Where the Registrar appoints another person to place a "proper value" on the asset, the question arises as to whether, if this is another auditor, there are implications for the registered auditor responsible for the audit, and the other auditor, in terms of the IRBA Circular 1 of 2006, *Second Opinions*. The proposed subsection (3) authorizes the Registrar to "direct". Will this constitute a "directive" as contemplated in the proposed definition "this Act" and in the proposed new section 4(4)? It is submitted that "request" is more appropriate. Furthermore, we are concerned by the retrospective nature, in that it only happens once the statutory actuary has submitted the annual returns, which is some time after results have been published.	be accepted. In general, independent parties (for other purposes of this Act, e.g. section 37 transfers) are not appointed in consultation. Referring to section 3 of the Act – any determination/ decision by the Registrar will only be valid if it is in writing. If a person is aggrieved by a decision taken by the Registrar, that person may appeal to the Board of Appeal established by section 26 of the FSB Act. It is not the intention to change the values as published in the annual financial statement, it only concerns values used for the statutory valuation basis as reported in the annual statutory returns to the Registrar.	Registrar may – (a) by notice direct the long-term insurer to appoint another person, at the cost of the insurer, to place a reasonable value, for purposes of this Act, on that asset, which value so determined will be deemed to be the value of the asset; or (b) direct the long-term insurer to calculate the value in a manner determined by the Registrar, which value so calculated will be deemed to be the value of the asset.".
1	**CLAUSE 14 (Amends section 34 of the principal Act)**		
1; 9	Investment in derivatives	It was not the intention to	**14.** Section 34 of the Long-term

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	Amendment of section 34 of Act 52 of 1998, as amended by section 14 of Act 17 of 2003 **14.** Section 34 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection: "(2)A long-term insurer ~~shall~~may ~~-~~not invest in derivatives, ~~other than~~ except in one or more of the following derivatives- (a) derivatives designated as an asset ~~in respect of~~ for a linked policy; (b) derivatives acquired out of or in respect of assets ~~that are~~ in excess of the assets ~~required to meet~~ the long-term insurer ~~'s liabilities under long-term policies and capital adequacy requirement~~is required to have in terms of section 30(1); or (c) derivatives acquired for the purpose of reducing investment risk or for the **purpose of ~~necessary [or] for~~ efficient portfolio management: [; or** Comment: (1) The language is not clear. (2) Paragraph (c) deals with two different purposes, which must not be merged. **(d) in such a manner]** Provided that the long-term insurer at the settlement date of the derivative instrument will have, or reasonably expects ~~to~~that it then will ~~,~~ have, the one or more assets ~~at the settlement date of the derivative instrument which~~to matches the obligations under that instrument ~~and~~ from which it can discharge those obligations.". Comment: Section 32(4) presently permits derivatives to be acquired for the purpose of reducing investment risk. The proposed amendment will make this subject to the insurer having at the derivative settlement date the assets to discharge the insurer`s obligations under the derivatives. This seemingly would prevent insurers from investing for this purpose in derivatives with an open position. Given that insurers provide guarantees (puts), this proposed curtailment appears to stop insurers from acquiring derivatives to hedge such positions. The existing Act allows insurers to invest in derivatives "for the purpose of reducing investment risk". The proposed changes allow insurers to do this	stop insurers investing in any derivative that has an open position which would cause them not to be able to hedge embedded derivatives, i.e. guarantees offered as part of policy benefits. However, open-ended derivative investments are still considered to be speculative and the Registrar would only allow these for the purpose of reducing investment risk in the policyholder portfolios, with the consent of the statutory actuary.	Insurance Act, 1998, is hereby amended (a) by the substitution for subsection (2) of the following subsection: "(2) A long-term insurer shall not invest in derivatives other than one or more of the following- (a) derivatives designated as an asset in respect of a linked policy; (b) derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the long-term insurer's liabilities under long-term policies and capital adequacy requirement in terms of section 30(1); (c) for the purpose of **[reducing investment risk or for]** efficient portfolio management: **[; or** **(d) in such a manner]** Provided that the long-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches the obligations under that instrument and from which it can discharge those obligations. (b) by the insertion of subsection (3) of the following subsection: (3) A long-term insurer may invest

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	subject to having "the asset at the settlement date of the derivative instrument which matches the obligations under that instrument and from which it can discharge those obligations." The proposed change appears to stop insurers investing in any derivative that has an open position. This should be reconsidered.		in derivatives for the purpose of reducing investment risk with the written agreement of the statutory actuary.
1	**CLAUSE 15 (Amends section 36 of the principal Act)**		
1; 9	*Addition of section 36 (3) regarding conducting of an investigation and the production of a report by a person nominated by the Registrar.* We believe that these powers are potentially too wide, and need to be subject to certain conditions. If the Registrar believes that something requires further investigation, then this should first be discussed with the insurer, and the insurer should be provided with an opportunity to address the Registrar's concern. Thereafter, if the Registrar is still not satisfied, then an external investigation can be conducted at the Registrar's request, provided appropriate reasons are provided for this and if the nominated person is acceptable to the insurer.	In practice, the Registrar would first consult with the insurer. It is not agreed that the appointment of the independent party should be in consultation with the insurer. Referring to section 3 of the Act – any determination/ decision by the Registrar will only be valid if it is done in writing and if a person is aggrieved by a decision taken by the Registrar, that person may appeal to the Board of Appeal established by section 26 of the FSB Act.	
1	**CLAUSE 16 (Amends section 46 of the principal Act)**		
1; 9	It is proposed that "principles and practices of financial management" be defined in section 1(1) of the Act.	Not accepted. The expression is used in section 46 only.	

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
1; 8	**CLAUSE 17 (Amends section 49 of the principal Act)**		
1 8	Limitation of remuneration to intermediaries As presently worded, section 49 covers only remuneration to independent intermediaries, and not also remuneration to intermediaries who are not independent intermediaries. The regulations (Part 3), however, deal also with remuneration to intermediaries who are not independent intermediaries. (2) It is proposed that the recommendations of the LOA Commission of Enquiry into Credit Life be taken into account and that the concept of equivalence of reward be referred to in the Act.. The proposed amendment contains a duplicated reference to "other than commission". The following rewording is suggested: "No consideration shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer or accepted by any independent intermediary for rendering services as intermediary as referred to in the regulations, other than remuneration referred to in section 49A(2) or commission contemplated in and in accordance with the regulations."	It is proposed that the removal of the word "independent" requires further consultation. The removal of remuneration referred to in section 49A(2) is required as a result of changes to section 49(A) Proposal not accepted as the current wording is sufficient.	**49.** No consideration **[, other than remuneration referred to in section 49A(2),]** shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer or accepted by any independent intermediary for rendering services as intermediary as referred to in the regulations, other than commission or remuneration contemplated in the regulations and 50 otherwise than in accordance with the regulations.".
1; 8; 12; 14	**CLAUSE 18 (Amends section 49A of the principal Act)**		
1; 8; 12	(a) Profit sharing The binder agreement may not provide for the third party to directly or indirectly participate in the profits attributable to the policies concerned. Various practical situations, long-term insurance policies are entered into on a group basis. Advantages of these group schemes is that they provide for cost-effective administration on a group basis, reduced medical underwriting requirements, and cheaper risk premiums due to risk being costed on a cross subsidised	Extensive and rigorous consultation with the LOA was undertaken. Revised wording has been proposed.	Refer to comparable wording in Clause 46 with respect to the Short-term Insurance Act

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	basis. Administration of these schemes is often outsourced. In some cases, a profit sharing agreement is entered into between the insurer and the administrator, whereby the administrator shares in the profitability of the group of policies concerned. The LOA accepts that there may be scope for conflicts of interest if these inter-relationships are not structured appropriately. Profitability can equally be enhanced by fair and proper administration of policies – proper claims assessment, improved quality of insurance risk, reducing fraud, etc. Effective administration can lead to reduced costs which can be passed on to or equitably shared with consumers. Instead, alternative market conduct regulatory mechanisms should be considered to reduce the scope for abuse, rather than shutting down a potentially beneficial business model altogether. The proposed section 49A(3)(c) banning profit participation in such agreements overlooks the importance and necessity of these arrangements in ensuring a responsible, risk-conscious approach to underwriting by the holders of such binders. We are concerned that wholly remunerating binders on another basis, such as on the level of premiums or claims, might encourage a less responsible, more self-interested approach to underwriting because the binder is wholly insulated from the risk-related implications of their decisions. By analogy, reinsurers often build profit commission arrangements into reinsurance treaties to encourage and reward insurers for responsible underwriting. Similarly, this is important for insurers with binder arrangements. (b) Relationships The third party and any independent intermediary involved, may not directly or indirectly have shareholdings or other interests in one another, be debtors or creditors of one another, or be close family members of one another. It is submitted that there is no harm in a group of companies engaging other companies within the same group to undertake certain activities on their behalf. Examples are call-centre activities, FICA checks, payment systems, etc. It would appear that this section intends to prevent LISPs from taking in direct business in respect of underwritten products. This will be of concern to		

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	members of the public who wish to deal with a LISP directly and not through an insurance agent or an independent broker. It is submitted that this proposal is not desirable as it limits the right of the consumer to deal directly. If this is not the intention, then the section needs to be amended to reflect its true intention		
8	Outsourced functions It is LISPA's view that it is in the interests of policyholders that the governance principles that are proposed in respect of the "binder" arrangements be extended to apply to all arrangements where insurers outsource their administration, where the party to whom the administration is outsourced markets and/or distributes the long-term insurance product. In such cases it is often not at all clear from the documentation made available to investors that there is an insurer involved at all, and in some cases, policy documents are never issued to policyholders.		
8	Sub-paragraph (1) The wording suggests that the only activities that may be outsourced by a long-term insurer are those listed in the section. We believe that this cannot have been the intention as there are many day-to-day activities that are outsourced by insurers. We therefore suggest that the wording be amended to clarify the intention, as follows: "(1) A written agreement must be entered into where a long-term insurer mandates another person to do any one or more of the following –" Functions		
8	Sub-paragraph (1) In addition to the activities listed, there are several other activities that are outsourced by long-term insurers in "white-labeled" arrangements. We therefore suggest the following amendments in order to more comprehensively cover these arrangements: (a) enter into, issue, vary or renew, a long-term policy, other than a long-term reinsurance policy, on behalf of that insurer; (b) determine the wording of a long-term policy contemplated in paragraph (a);		

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	(c) charge or collect premiums under a long-term policy contemplated in paragraph (a); (d) determine the investment options available under and/or carry out investment instructions in respect of a long-term policy contemplated in paragraph (a); (e) marketing or distributing long-term policies contemplated in paragraph (a); (f) determine or calculate the value of policy benefits under a long-term policy contemplated in paragraph (a); (g) settle or pay claims under a long-term policy contemplated in paragraph (a); (h) terminate a long-term policy contemplated in paragraph (a); (i) general administration in respect of a long-term policy contemplated in paragraph (a).		
8	Prohibitions **Sub-paragraph 3** The following amendment is suggested: (b) authorise that other person to deduct any amount from any claims referred to in subsection (2)(e), *except any taxes or other imposts required by law*; or		
8 8	Information and records **Sub-paragraph 5** The insurer is not the owner of the policy. The policyholder (the client) is the owner, and keeps the policy in his/her possession. If it is the intention to refer to “assets”, then the section should be amended as follows: (c) the owner of the assets underlying the policies and any information relating to such assets and to the policies, which assets and information, upon termination of the agreement, must be returned to the long-term insurer. ***Sub-paragraph 6*** It is strongly recommended that it should be mandatory that this agreement is		

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	lodged with the Registrar before the services may be rendered in terms thereof.		
10; 14	Implementation Some of the matters now specifically prohibited by the proposed sections are common practice in the industry at present. Should the amendments be implemented with immediate effect, this will result in the auditor, in terms of the Auditing Profession Act, 2005 ("APA"), having to report a significant amount of Reportable Irregularities in terms of Section 45(1)(a) and (3)(c) of the APA. We recommend that transitional provisions be included in the proposed amendments to allow time for compliance by the administrators.		
1	**CLAUSE 19 (Amends section 53 of the principal Act)**		
1	**Option for payment of policy benefits in money** (1) The wording should be consistent. For example, in subsection (1) it stated that a "party" to the policy (that is the insurer or the policyholder) may make the request. In subsection (2), on the other hand, it is stated that a "person" may make the request. (2) The request in subsection (1) probably never will include that the monetary benefit must be "equal in value to the cost that would have been incurred by the long-term insurer had the non-monetary benefit been provided". Subsection (1) therefore should rather provide that the request must be merely that the policy benefit be provided as a sum of money – in which case the benefit, as prescribed by subsection (1), then will be equal to what the cost of the benefit would have been to the insurer had the benefit not been provided otherwise than as a sum of money.	It is proposed that the wording be accepted for clarity.	Amend clause 19 of the Insurance Laws Amendment Bill, 2008 by amending section 53 to read as follows- "**Option for payment of policy benefits in money** **53.** (1) Despite the terms of an assistance policy entered into before 1 June 2009, either party thereto may request that a policy benefit expressed otherwise than in a sum of money **[shall]** be provided as a sum of money, in which case the sum of money must be equal in value to the cost **[that]** the long-term insurer would have **[been]** incurred **[by the long-term insurer had the non-monetary benefit been provided]** had the policy benefit been provided otherwise than as a sum of money. (2) Where an assistance policy that provides for a policy benefit expressed otherwise than in a sum of money is entered into on or after 1 June 2009, that policy must -

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			(a) provide that a **[person]** party thereto may request that the policy benefit be provided as a sum of money in lieu of the benefit on the occurrence of the event insured against; and (b) state the **[sum of money payable to a person should a person make a request referred to in paragraph (a)]** amount of the policy benefit that is to be provided as a sum of money. (3) **[For the purposes of this section a benefit which is expressed otherwise than in a sum of money when provided as a sum of money shall]** Where a policy benefit expressed otherwise than in a sum of money is provided as a sum of money, the amount of that policy benefit may not exceed the maximum amount referred to in the definition of "assistance policy" in section 1(1) of this Act.".
1	**CLAUSE 20 (Amends section 66 of the principal Act)**		
1	Offences by persons other than long-term insurers **Amendment of section 66 of Act 52 of 1998** **20.** Section 66 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs - "(a) contravenes or fails to comply with a **[provision of a notice, directive or request referred to in section 4(3), (4) or (5)(a)(i), 22(2) or 27(2)]** regulation made, directive issued, notice prescribed or request made under this Act; (b) contravenes or fails to comply with **[a]** any other provision, other than ~~the~~ a provision referred to in subsection (2), of **[section 8(1)(a) or (b),**	Through consultation, the point was made that it is inappropriate to regard every contravention of whatever nature as contained in the Act and subordinate regulation as a criminal offence. Proposal is to retain the current wording in the Act and include the newly proposed inserted 49A	(1) A person, other than a long-term insurer, who- (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(3), (4) or (5)(a)(i), 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, **[or]** 49, or 49A; (2) A person, other than a long-term

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	16(2), 23(1), 28(1), 44(1), 45, 47 or 49] this Act;".	on binder agreements. Also to be included is section 20(5)(b) – the reporting duty of the statutory actuary.	insurer, who contravenes or fails to comply with a provision of section 7(1)(a), 8(3), 20(5)(b) 26(1) or (2) or 50(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.
1	**CLAUSE 22 (Amends section 71 of the principal Act)**		
1	Special provisions concerning long-term insurers that are not public companies **22.** Section 71 of the Long-term Insurance Act, 1998, is hereby amended by - *(a)* the insertion after subsection (2) of the following subsection: "(2A) ~~No~~An –exemption granted under a~~ny~~ law other than this Act under which a long-term insurer is incorporated or registered ~~shall constitute an~~ does not exempt~~ion~~ the long-term insurer from ~~the~~any -provisions of this Act."; and *(b)* the substitution for subsection (3) of the following subsection: "(3) The financial statements of a long-term insurer, other than the financial statements drawn up by the statutory actuary, ~~shall~~must –be drawn up and presented in accordance with **[Generally Accepted Accounting Practice]** the financial reporting standards applicable to widely held companies.". Comment: As has been proposed, "widely held company" should be defined in section 1 of the Act.	Disagree, current wording sufficient. It was proposed in clause 1 that the definition of "widely held company" be included.	
1; 11; 15	**CLAUSE 23 (Amends section 72 of the principal Act)**		
1	Demarcation between health insurance and medical schemes (1) It needs to be made clear whether the Minister of Heath has to be consulted (a) regarding only the identification of such a contract as a health policy, or (b) regarding also the design and marketing of such a health policy. (2) It needs to	Extensive and rigorous consultation with the LOA, SAIA, Department of Health and Council for Medical Schemes were	Refer to separate document

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	be stated that the prescriptions regarding the design and marketing of such a health policy are to be contained in the regulations in question. If this is not stated, such prescriptions could, in accordance with the definition "prescribe" in section 1 of the Act, be contained in separate notices – which is not appropriate. (3) "Kind", "type" and "category" in this context essentially have the same meaning. It is proposed that only "kind" be used. It is proposed that a timeline be added for the issuing of regulations to be made by the Minister.	undertaken. Revised wording has been proposed.	
11	The amendments have the effect of creating uncertainty as to the when, whether and if an insurance company is doing the business of a medical scheme or not. It also effectively creates a jurisdiction for the Minister of Finance over medical schemes business that was previously exclusively that of the Minister of Health.		
15	It is proposed that Section 72 is amended as follows: Propose product pre-approval required by both FSB and CMS. Reviewable product certification. Certification requires satisfaction by both Registrar of Long-term Insurance and Registrar of Medical Schemes that the policy falls within category regulations designed to ensure that the policy will not (a) create an incentive in the market for medical schemes to offer less comprehensive benefits to their beneficiaries; (b) encourage younger or healthier people to opt out of medical schemes or to buy less comprehensive medical scheme benefits; or (c) contribute towards an increase in the cost of, or decrease in the availability of, medical scheme benefits for older or less healthy persons; or (d) in any other way undermine the policy objectives of the Medical Schemes Act		
1	**CLAUSE 24 (Amends schedule 1 of the principal Act)**		
1	Kinds of assets Definition of: "futures contract"	It is proposed that the suggestion be accepted.	**24.** Schedule 1 of the Long-term Insurance Act, 1998, is hereby amended- *(b)*

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	Suggest to detele “that” in subparagraph (b).		**“”futures contract”** means a standardised contract the effect of which is that- (a) a person agrees to deliver to or receive from another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or (b) **[that]** an amount of money will be paid to or received from another person before or on a future date according to whether the pre-arranged value or price of – (i) an asset; (ii) an index as a means of indicator that reflects changes in the value of one or more groups of shares or securities on one or more exchanges; (iii) currency; (iv) rate of interest; or (v) any other factor is higher or lower before or on that future date than the pre-arranged value or price;”;
1	Insertion of new item for unlisted securities Comment: Under the new dispensation of foreign investment limits for institutional investors, it is necessary to provide in the Table for investment by long-term insurers in also foreign securities and shares that are not listed. This can be achieved by simply inserting in item 16(5) the new paragraph (e) shown below. An appropriate prudential limit can then be placed on these investments in Part 2 of the regulations under the Act. “(i) by the insertion in the Table after paragraph (d) of item 16(5) of the following	It is proposed that the insertion of the wording regarding item 16(5) of the table to schedule 1 not be accepted. The FSB, in conjunction with Exchange Control Department of SARB has been tasked to put in place the necessary regulatory framework	

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	paragraph: (e) Unlisted securities and shares issued by an institution incorporated outside the Republic."	during the course of this year to enable a movement away from exchange control limitations towards a prudential regulatory environment.	
1	**CLAUSE 25 (Amends schedule 3 of the principal Act)**		
1	Calculation of values of assets, liabilities and capital adequacy requirement **Amendment of Schedule 3 of Act 52 of 1998, as amended by section 23 of Act 17 of 2003** **25.** Schedule 3 of the Long-term Insurance Act, 1998, is hereby amended- *(a)* by the substitution in paragraph 4 for sub-item (i) of item (b) of the following subitem: "(i) an amount, excluding a premium in respect of a long-term policy that is a reinsurance policy, which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;";	It is proposed that the suggested wording not be accepted, as the current wording is sufficient.	
1	**CLAUSE 26 (Amends Arrangement of sections of the principal Act)**		
1	**Amendment of Arrangement of Sections of Act 52 of 1998, as amended by section 1 of Act 17 of 2003** **26.** The Arrangement of Sections of the Long-term Insurance Act, 1998, is hereby amended by the insertion in Part VII after item 49 of the following item: "**49A.** Binder ~~agreements~~arrangements".	It is proposed that the heading "Binder agreements" be kept as it is consistent with the corresponding heading in the STIA.	

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
SHORT-TERM INSURANCE ACT			
2; 3; 4; 12; 15	**CLAUSE 27 (Amends section 1 of the principal Act)**		
2 3 15	Definition of “accident and health policy” It is preferable to have a clear and upfront definition of an Accident and Health policy and not to be dependent on the discretion of the Registrar of Medical Schemes. Lloyd's believes that the proposed definition of an accident and health policy would benefit from further consideration. Lloyd's underwriters believe that restricting the provision of cover ultimately reduces the product and cost options available to South African policyholders. Lloyd's requests that the Registrar take into account the unintended negative impact on South African policyholders that the current amendments may cause. Retain proposed amendments to the definitions of “health policy” in the LTI Act [section 1(f) of the Bill] and “accident and health policy” in the STI Act [section 27(a) of the Bill].	Refer to response under LTIA.	
	Definition of “fair value of an asset”. Refer to comments under LTIA	It is proposed that the comments be accepted with the exclusion of the reference to “an asset”. The reason is that this expression is used throughout the Act in relation to an asset. The change corresponds to the change in the Long-term Insurance Act.	by the insertion after the definition of **‘‘engineering policy’’** of the following definitions: ‘‘ **‘fair value [of an asset]’** has the meaning assigned to it in the financial reporting standards;
4	Definition of “this Act”	Refer to response under LTIA	1. Section 1 of the Short-term Insurance Act, 1998, is hereby amended— (j) by the insertion after the definition of

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	In section 1 a definition of "this Act" has been inserted and states that it includes "any regulation made, directive issued, notice prescribed or request made under this Act". Is it contemplated that the directives, notices and requests referred to will be published in the Government Gazette from time to time?		"survival benefit" of the following definition: (j) " 'this Act' includes any regulation made, ~~directive issued, notice prescribed or request made~~ under this Act;".
12	Widely held company The references to 'widely-held' companies, brought in by the most recent amendments to the Companies Act, may become outdated once the Companies Bill is finalised. In the most recent drafts of the Companies Bill the references to 'widely held' and 'limited-interest' companies fall away. References to specific sections on the Companies Act may also change in the future.	The comments are noted. It is proposed that an amendment be made to define "widely held".	Amend Clause 24 of the Insurance Laws Amendment Bill, 2008 by inserting the following paragraph (k)- "(k) by the insertion after the definition of "**unborn"** of the following definition: "**widely held company**" has the meaning assigned to it in the Companies Act."
2; 4	**CLAUSE 28 (Amends section 2 of the principal Act)**		
2; 4	Registrar of Short-term Insurance The reference to the "Registrar of Pension Funds" under this definition should be deleted. And should refer to the Registrar of Short-term Insurance?	Accepted. The Bill [B26-2008] tabled at PCoF contains the correct reference.	
2; 4; 15	**CLAUSE 29 (Amends section 4 of the principal Act)**		
2; 4	Issuing of directives The Regulator should not be given discretion in publishing its directives. All such directives should be published and thereby be in the public domain, even if they are directed to a specific sector or person. Section 29: Section 4(4) (f) should be revised to state: "The Registrar [may] shall, where a directive is issued … publish the directive in the Gazette …" Because there is no specific provision for consultation in respect of directives and the inclusion of directives in the definition of the Act, and notwithstanding the published draft amendments to the Financial Services Board Act, provision should be made in this	Refer to response under LTIA	

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	Act for a consultative process upfront and an appeal mechanism. The reference to "requests" in the amended definition has no place in statutory terminology and should be removed. Will the issuing of directives or notices be regarded as an "administrative action" as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) Would it be possible to alter this so that it provides that the company allegedly committing the offence is first consulted		
	Refer to comments under LTIA	It is proposed that the expression "conducts" is more appropriate.	Section 7 of the Short-term Insurance Act, 1998, is hereby amended— *(b)* by the substitution of paragraph (g) of subsection (2). of the following paragraph: "(g) an agricultural co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005), or allowed to continue to operate in terms of section 97 of that Act, if and in so far as it conducts short-term insurance business as part of its main objectives **[undertakes short-term insurance business]**, and provides benefits the amount of which is not guaranteed and in respect of which its liability is limited to the amount standing to the credit of a fund specially maintained for that purpose.".
15	Prescription in respect of accident and health policies Refer to comments under LTIA	Refer to response under LTIA	
2; 10; 14	**CLAUSE 32 (Amends section 19 of the principal Act)**		
2; 10;	Auditor	It is proposed that	**32.** Section 19 of the Short-

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
14	The amendment found in this Section "and any other Section of this Act" requires an auditor to report on any infringement of any aspect of the Act as a whole, and is no longer required to report in respect of financial matters. Such a provision is too broad, and auditors cannot be expected to fully "police" every aspect of the Act, as defined. Does the reliance of auditors on the statutory actuary's work imply that the amendment envisages that a statutory actuary must be external/independent? Also refer to comments made under the LTIA.	the section be changed in line with the corresponding section in the Long-term Insurance Act.	term Insurance Act, 1998, is hereby amended- *(a)* by the substitution for subsection (1) of the following subsection: "(1) (a) A short-term insurer shall **[from time to time appoint, and]** at all times have**[,]** one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to **[widely held companies]** a widely held company. (c) by the substitution for subsection (4) of the following subsection: "(4) If an auditor of a short-term insurer is a firm **[(]** as contemplated in the Auditing Profession Act **[)],** the Registrar's last approval of **[the Registrar for]** the appointment **[thereof]** of that firm as auditor shall not lapse by reason of a change in the membership of the firm if at least half of the members, after the change, were members of the firm when the appointment of the firm was last approved by the Registrar.'';

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			(d) by the substitution for subsection (5)(c) of the following subsection: (c)(i) inform the Registrar and the board of directors of the short-term insurer, without delay, in writing of any matter or incident relating to the affairs of the short-term insurer of which the auditor became aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, is contravening 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) and any other section of this Act, and such information must give a description of the matter and must include such other particulars as the auditor considers appropriate."; and (e) by the substitution for subsection (7) of the following subsection: "(7) **[In addition to]** The auditor of a short-term insurer must carry out the duties assigned to the auditor of a short-term

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			insurer by **[the]** this Act, by the Act under which that insurer is incorporated **[or]** and by the **[Public Accountants' and Auditors' Act, 1991]** Auditing Profession Act, ~~2005~~, and in addition to those duties the auditor shall- (a) in relation to a statement forming part of the returns in respect of which the auditor is required to do so in terms of section 36, examine that statement or part thereof and satisfy himself, herself or itself that it is properly **[drawn up]** prepared so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any annexure thereto, **[presents fairly the matters dealt with therein]** has been properly prepared, in all material respects, in accordance with the provisions of the Act as contemplated in Chapter IV of the Auditing Profession Act, ~~2005~~; and

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			(b) carry out the other duties provided in this Act or prescribed by the Minister.".
2	**CLAUSE 33 (Amends section 19A of the principal Act)**		
2	Statutory actuary Clarity needs to be provided as to whether a statutory actuary needs to be appointed at all times or only under those circumstances dictated by the Registrar. An appointed actuary must, as a minimum, at all times be subject to a code of professional conduct, and exemption from such a requirement should be removed. The right to address a meeting of the Board of Directors is adequate. The reference to "attend … any meeting…" should be removed.	The Bill is clear that an actuary only needs to be appointed under circumstances identified by the Registrar. If the Registrar has identified that a short-term insurer must appoint a statutory actuary then such a short-term insurer must at all times have a statutory actuary. The details of the appointment of a statutory actuary will be dealt with during the approval granted by the Registrar. Changes are suggested to make sure that the section on statutory actuaries	The following section is hereby inserted after section 19 of the Short-term Insurance Act, 1998: "**Statutory actuary** 5(b)(i) report in writing and without delay **[report in writing]** to the board of directors of the short-term insurer **[and to the Registrar]** any matter or incident relating to the business of the short-term insurer of which he or she becomes aware in the performance of his or her functions as statutory actuary and which, in his or her opinion **[in the opinion of the statutory actuary],** currently contravenes or **[may]** prejudice the short-term insurer's

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
		in the short-term insurance act is consistent with the provisions of the long-term insurance act. Changes were made to the equivalent section in the Long-term Insurance Act, based on comments received on that section.	ability to comply with section 28(1) or any other section of the Act relating to the duties of the statutory actuary, or in the future may prejudice the short-term insurer's ability to comply with section 28(1) or any other section of the act relating to the duties of the statutory actuary, and which report must give a description of the matter or incident and must include such other particulars as the statutory actuary considers appropriate: Provided that such report must be submitted without delay also to the Registrar where in the opinion of the statutory actuary the matter or incident in question currently and materially prejudices the insurer's ability to comply with any of

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			these sections, of where the matter or incident in question does not so prejudice the insurer's ability to comply, but in the opinion of the statutory actuary nevertheless requires immediate remedial action by the short-term insurer; and 8(b) (i) be entitled to attend and to speak at **[a]** general meetings of the short-term insurer; and (ii) receive the notices and other communications regarding these meetings which a member of that short-term insurer is entitled to receive. 8(c) (i) attend and be entitled to speak at meetings of **[any]** the board of directors of the short-

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			term insurer on the business of the meeting which concerns the duties conferred on or assigned to him or her as statutory actuary by or under this Act and by any other law or a code of professional practice; and (ii) receive the notices and other communications relating to these meetings which a member of the board of directors is entitled to receive."
12	**CLAUSE 36 (Amends section 22 of the principal Act)**		
12	Audit committee Refer to comments under LTIA	Refer to proposals under LTIA	**Amendment of section 22 of Act 53 of 1998** **36.** Section 22 of the Short-term Insurance Act, 1998, is hereby amended— *(b)* by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words: ''(3) The functions of **[an]** the audit committee, in addition to the functions referred to in section 270A(1) of the Companies Act, shall **[inter alia,]** be—'';'
12	Please note that reference to section 23 in the amendments to section 22 and the reference to section 24 in the amendments to section 23 are incorrect.	Noted. The Bill [B26-2008] tabled	

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
		at PCoF contains the correct reference.	
2; 12	**CLAUSE 37 (Amends section 23 of the principal Act)**		
2; 12	Financial assistance for the purchase of or subscription of shares Reference to Section 24 should be a reference to Section 23.	Noted. The Bill [B26-2008] tabled at PCoF contains the correct reference.	
12	**CLAUSE 39 (Amends section 28 of the principal Act)**		
12	Maintenance of a financially sound condition By being specific about the capital adequacy requirement and the obligations attaching thereto in the amendments to section 28 and 29, the implementation of a Solvency II type approach may prove difficult. We recommend being less specific in the Act and referring instead to the requirements in a Directive, Board Notice or Regulation. The amendments do not specifically address insurers' risk management requirements and the regulator's powers in this regard.	It is proposed that the reference will be included in the amendments to Schedule 2. Wording is proposed that is consistent with the LTIA. The risk management requirements are technical detail and would be included in the future Board Notice referred to in the amendments to Schedule 2 of the STIA The proposed amendments are	(4) A short-term insurer **[shall]** may not declare or pay a dividend to its shareholders— *(a)* **[if, and for as long as,]** while it fails to comply or is likely to fail to comply within a reasonable period **[is deemed to have failed to Comply]** with subsection (1) as contemplated in subsection (2)**[, or]**; *(b)* if the declaration or payment [such action] would result in it failing **[being deemed to have failed]** to comply or likely to fail to comply within a reasonable period with subsection (1) as contemplated in subsection (2)**[.]**; or *(c)* if, after **[such]** the declaration or payment the aggregated value of assets required by section 29 would be less than the aggregate value of its liabilities, issued share capital and non-distributable reserves.''.

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
		to bring the amendments to the LTIA in line with the amendments to the STIA.	
12	**CLAUSE 40 (Amends section 29 of the principal Act)**		
2	Assets The words “its capital adequacy requirement in respect of those liabilities” ought to be deleted to make it align with similar use in the rest of the Bill.	It is proposed that the wording not be accepted as it specifically only relates to the capital adequacy requirements of a short-term insurer’s liabilities in the RSA.	
14	**CLAUSE 41 (Amends section 30 of the principal Act)**		
14	Refer to comments under LTIA	The same comments were received for these amendments to the LTIA. The proposed wording accepted in the amendments to the LTIA has also been adopted in the STIA to bring the two Acts in line with one another. Referring to	**Amendment of section 30 of Act 53 of 1998** *(b)* by the addition of the following subsection: ‘‘(3) Despite the requirement in subsection (1) that an asset must be valued at fair value, if the Registrar is satisfied that the value of an asset, when calculated in accordance with financial reporting standards, does not reflect a reasonable **[proper]** value for purposes of this Act, the Registrar may **[direct a short-term insurer]** to— *(a)* by notice direct the short-term insurer to appoint another person, at the cost of the insurer, to place a **[proper]**

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
		section 3 of the Act – any determination/ decision by the Registrar will only be valid if it is done in writing and if a person is aggrieved by a decision taken by the Registrar, that person may appeal to the Board of Appeal established by section 26 of the FSB Act. It is not the intention to change the values as published in the annual financial statement, it only concerns values used for the statutory valuation basis as reported in the annual statutory returns to the Registrar.	reasonable value, for purposes of this Act on that asset, which value so determined will be deemed to be the value of the asset; or *(b)* ***[*the Registrar may]** direct the short-term insurer to calculate the value in a manner determined by **[which]** the Registrar **[determines]**, which value so calculated will be deemed to be the value of the asset.''.
2	**CLAUSE 45 (Amends section 48 of the principal Act)**		
2	**Independent intermediaries: remuneration**	The removal of remuneration	**48.** No consideration, other than [**remuneration referred to in section**

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	Refer to comments received on clause 17	referred to in section 48A(2) is required as a result of changes to section 48(A)	**48A(2) or]** commission or remuneration prescribed by the Minister, shall be offered or provided by a short-term insurer or a Lloyd's broker or a representative of such insurer or broker or any person on behalf of such insurer or broker, or accepted by any independent intermediary for rendering services as intermediary otherwise than in accordance with the regulations."
3; 4; 10; 12	**CLAUSE 46 (Amends section 48A of the principal Act)**		
4	**Binder Agreements** In section 48 of the Short-term Act reference is made to section 48A(2). However, the next section in the Bill under the heading "binder agreements" is section 49A(2). I assume that this is an error. I believe the problem arose because both Acts have the same provisions.	Noted. The Bill [B26-2008] tabled at PCoF refers to the correct subsection.	
10	The inclusion of Section 49A in the LTIA and Section 48A in the STIA respectively, addresses an area of significant divergence in interpretation of the existing legislative requirements of the Acts. Some of the matters now specifically prohibited by the proposed sections are common practice in the industry at present. Should the amendments be implemented with immediate effect, this will result in the auditor, in terms of the Auditing Profession Act, 2005 ("APA"), having to report a significant amount of Reportable Irregularities in terms of Section 45(1)(a) and (3)(c) of the APA. We recommend that the implementation date for the sections on binder agreements be set in a manner that affords the industry players sufficient lead time to change their current business models and restructure existing business relationships.	Extensive and rigorous consultation with SAIA, SAUMA and FIA was undertaken. Revised wording has been proposed.	**48A** (1) A short-term insurer or a Lloyd's underwriter may in terms of a written agreement only allow another person to do any one or more of the following: (a) Enter into, vary or renew a short-term policy, other than a short-term reinsurance policy, on behalf of that insurer or Lloyd's underwriter; (b) determine the wording of a short-term policy ~~contemplated in paragraph (a)~~; (c) charge premiums under a short-term policy ~~contemplated in paragraph (a);~~ (d) determine the value of policy benefits under a short-term policy ~~contemplated in paragraph (a)~~;

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			(e) settle **[or pay]** claims under a short-term policy ~~contemplated in paragraph (a).~~ <u>otherwise than in accordance with the requirements and limitations set out in regulations.</u>
3	Disclosure of name of insurer Lloyd's is concerned that the proposed amendments under s 49A(g){i)and (ii) do not accurately reflect the true nature of Lloyd's underwriting members' coverage of South African risks. As currently drafted, the amendments could require several hundred underwriting members to be disclosed. or named in communication which would be subject to annual changes. Lloyd's instead proposes that for clarity the following language is used: s49A(g)(i)(aa) 'the name of the relevant short-term insurer, or in the case of Lloyd's underwriters, the term 'certain underwriters at Lloyd's', and that the other person is acting in terms of an agreement contemplated in this section. s 49A(g)(ii) 'include the name of the short-term insurer, or in the case a Lloyd's underwriter, the term 'certain underwriters at Lloyd's', in any advertisement.'		(2) A written agreement referred to in subsection (1) must – (a) set out the particular kinds of short-term policies which may be entered into, varied or renewed by that other person; (b) state if that other person is authorised to determine the wording of the policies referred to in paragraph (a), and if authorised, the extent to which and the circumstances under which the wording may be determined; (c) state if that other person is authorised to charge premiums in respect of the policies referred to in paragraph (a), and if authorised, the gross premiums or the basis for the calculation of gross premiums that may be charged, and the extent to which and the circumstances under which the premiums may be charged;
12	Remuneration – profit-sharing In section 49A(2)(f) of the Short-term Act (should be 48A(2)(f)) and section 49A(2)(f) of the Long-term Act it refers to the basis on which a person will be remunerated for services (presumably other than by way of commission) rendered in terms of paragraphs (a) to (e). Does this mean that the intermediary can only be remunerated, in addition to commission, for the services referred to in paragraphs (a) to (e) and for no other services? While it is important that binder agreements be carefully regulated the proposed section		(d) state if that other person is authorised to determine the value of policy benefits, and if authorised, the maximum value of the policy benefits that may be determined under each kind of short-term policy referred to in paragraph (a), and the extent to which and the circumstances under which the benefits may be determined;

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	49A(3)(c) banning profit participation in such agreements overlooks the importance and necessity of these arrangements in ensuring a responsible, risk-conscious approach to underwriting by the holders of such binders.		(e) state if that other person is authorised to settle or pay claims under the policies referred to in paragraph (a), and if authorised, the extent to which and the circumstances under which the claims may be settled or paid; (f) state the basis on which that other person will be remunerated for services rendered in terms of paragraphs (a) to (e); (g) oblige that other person to-
13	2. There are three noteworthy limitations under s 48A(3). The binder holder may not be authorised by the insurers to: 2.1 "add an amount to any gross premium" charged by it; 2.2 "deduct any amount from any claims which it settles or pays under the agreement"; or 2.3 participate "directly or indirectly" in the profits attributable to the policies which it enters into, varies or renews. 3. Expert underwriting managers' earnings currently include the following: 3.1 An administration fee payable by the insurer; 3.2 A debit order fee payable by a policyholder who pays premiums periodically by way of debit order rather than annually; 3.3 Participation in the insurer's profits with the prior consent of the principal. 4. The administration fee will be part of the remuneration payable by the insurer. 5. The policyholder fee is for financing the premium and doing the extra administration involved by reason of the premium being pad monthly. It is not part of the premium. 6. Provision should be made in s 48A(3)(a) for the binder holder to charge debit order fees. 7. The principal concern is the way in which expert UMAs will have to change their way of business namely: 7.1 The prohibition on participating "directly or indirectly" in profits attributable to the policies; and 7.2 The obligation of the binder holder to disclose to policyholders any remuneration		(i) disclose to policyholders of policies referred to in paragraph (a), - (aa) the name of the relevant short-term insurer or Lloyd's underwriter, and that, that other person is acting in terms of an agreement contemplated in this section; and (bb) any remuneration payable to that person in terms of an agreement contemplated in this section; (ii) include the name of the short-term insurer or Lloyd's underwriter underwriting the short-term policy in any advertisement, brochure or similar communication which relates to the short-term policy referred to in paragraph (a); (iii) keep and maintain proper books of account and other records in respect of the policies

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	payable to the binder holder in terms of the agreement. 8. There are two ways that an insurer can go about its business. The insurer can do the business itself and have all the expertise on its own staff. Alternatively, the insurer can decide not to employ experts in a particular field and can outsource the entire function to an expert underwriting manager. 9. It is discriminatory that in the first case the insurer can earn all the profits from the business and has no duty to disclose its profits or earnings. On the other hand the binder holder (who is in effect the alter ego of the insurer for the specific purpose) cannot share in the success of the business.		referred to in paragraph (a)and allow the short-term insurer or Lloyd's underwriter, its statutory actuary, if appointed, and its auditors full and unfettered access to those books of account and records; (iv) make available to the short-term insurer or Lloyd's underwriter, its statutory actuary, if appointed, and its auditors the policies referred to in paragraph (a) and any information relating thereto, including the names, identity numbers and contact details of policyholders, insured persons and beneficiaries, upon request;
13	Classes of persons The new regime does not provide for an underwriting manager in the pure sense of an expert independent party performing service that would otherwise be performed by the insurer itself. The proposed new section will allow anyone who is a party to a written agreement with an insurer to enter into policies and/or determine the wording of the policies and/or charge premiums and/or determine the value of policy benefits and/or settle or pay claims for a negotiated remuneration. 10. It is necessary to differentiate between underwriting managers who have a specific expertise that insurers do not wish to acquire, and ordinary binder holders who do outsource functions merely because they have a specific group of insured persons. 11. It is submitted that the Act should create a class of binder holders similar to the true underwriting manager who is the expert in managing a particular type of business. Such an underwriting manager could be exempted from the profit share and disclosure provisions on the basis that it is the exert arm of the insurer.		(h) prohibit that other person to delegate, assign or sub-contract any of the functions referred to in paragraphs (a) to (e) to another person; (i) state the circumstances under which the agreement will lapse or may be terminated, and the necessary steps that must be taken to ensure the effective and efficient termination of the agreement taking into account the interests of policyholders. (3) A written agreement referred to in subsection (1) ~~may not~~ (a) <u>may not</u> authorise that other person to add an amount to any gross premium referred to in subsection (2)(c);

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			(b) may not authorise that other person to deduct any amount from any claims referred to in subsection (2)(e); or (c) may subject to the requirements and limitations set out in regulations provide for or prohibit that person to directly or indirectly participate in the profits attributable to the policies referred to in subsection (2)(a).
			(4) A person that entered into an agreement contemplated in subsection (1) with a short-term insurer or Lloyd's underwriter may not render the services contemplated in subsection (1)(a) to (e) **[-** **(a)]** in respect of any kind of short-term policy issued by that short-term insurer or Lloyd's underwriter not identified in the agreement.**[;** **(b) to an independent intermediary-** **(i) in whom that person holds, directly or indirectly, shares or any other interest;** **(ii) that holds, directly or indirectly, shares or any other interest in that person;** **(iii) who is a debtor or creditor of that person;** **(iv) who is a close family member of that person; or** **(c) in respect of a short-term policy not referred to that person by the relevant short-term insurer or Lloyd's underwriter or an**

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			independent intermediary.] (5) Despite any term to the contrary contained in an agreement contemplated in subsection (1) the short-term insurer or Lloyd's underwriter that entered into the agreement remains - (a) responsible for compliance with this Act; (b) liable for any claims relating to policies included in the agreement, including any claims that may arise because of the failure of that other person to comply with the agreement; and (c) the owner of ~~policies and~~ any information and documentation relating ~~thereto, which~~to the policies contemplated in the agreement, which policies and information, upon termination of the agreement, must be returned to the short-insurer or Lloyd's underwriter. (6) Any party to a written agreement referred to in subsection (1) must make a copy of that agreement available to the Registrar on request. **As a consequential change, the following is proposed:** Section 70 be amended by the insertion of the following subsection (i) - "(i) prescribing the following criteria

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
			contemplated in section 49A - (a) different kinds, types or categories of agreements; (b) limiting or prohibiting any consideration that may be offered or provided from by or on behalf of a short-term insurer or Lloyd's underwriter to a person that enters into an agreement with a short-term insurer or Lloyd's underwriter for the various kinds, types or categories of agreements; (c) that a specific kind, type or category of agreement may or may not participate in the profits attributable to the policies referred to in the agreement; and (d) whether or not it will be acceptable for a person of a specific kind, type or category of agreement, to render services in respect of a short-term policy not referred to that person by the relevant insurer or an independent intermediary."
3	CLAUSE 47 (Amends section 57 of the principal Act)		
2; 3	Application of other provisions of the Act to Lloyd's The words "subsection (4) of the following subsection" should be a reference to subsection 5.	Noted. The Bill [B26-2008] tabled at PCoF refers to the correct subsection.	
2; 3	CLAUSE 49 (Amends section 64 of the principal Act)		
2; 3	Offences by persons other than short-term insurers	In subsequent	by the substitution for paragraph (b) of

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
	This wording is too broad. Any punitive measures must be specifically related to a particular section of the Act.	consultation the point was made that it is inappropriate to regard every contravention of whatever nature as contained in the Act and subordinate regulation as a criminal offence. Proposal is to retain the current wording in the Act but to reflect the correct numbering. The reporting responsibility of the statutory actuary is added to ensure consistency with the LTIA.	subsection (1) of that section of the following paragraph: "(b) contravenes or fails to comply with a provision of section 8(1)(a) or (b) or (5), 16(2), 22(1), 27(1), 43(1), 44, 45, 46, **[or]** 48**[(1)]** or 48A(**[3]**2);";
3	CLAUSE 50 (Amends section 65 of the principal Act)		
3	Offences by short-term insurers This wording is too broad. Any punitive measures must be specifically related to a particular section of the Act	In subsequent consultation the point was made that it is inappropriate to regard every contravention of whatever nature as contained in the Act and subordinate	by the substitution for paragraph (b) of subsection (1) of that section of the following paragraph: "(b) contravenes or fails to comply with a provision of section 16(1), 17, 18, 19A(5)(b), 22(1) or (2), 24(1), 35(1), 43(1), 44, 45, 46, 47, 48**[(1)]**, **[or]** 48A(**[2]**1) or 50; or";

Commentators	Issue	Treasury/FSB Response	Amendment for consideration
		regulation as a criminal offence. Proposal is to retain the current wording in the Act but to reflect the correct numbering.	
2; 11; 15	**CLAUSE 52 (Amends section 70 of the principal Act)**		
2, 11, 15	Demarcation between health insurance and medical schemes Refer to comments under LTIA.	Refer to response under LTIA	Refer to separate document
3	**CLAUSE 55 (Amends schedule 3 of the principal Act)**		
3	Lloyd's security The Bill as currently drafted provides for the provisions relating to Lloyd's (contained within Schedule 3) to be transferred from legislation into regulation. It is our understanding that the intention behind this is not to make changes to Lloyd's provisions, but simply to effect greater regulatory flexibility and rectify the current need for changes to be reflected in amendments to legislation.	The regulations would need to be drafted and the industry would be properly consulted.	