

## STATEMENT ON PROPOSED AMENDMENTS TO THE POLICYHOLDER PROTECTION RULES MADE UNDER THE LONG-TERM INSURANCE ACT, 1998 AND THE SHORT-TERM INSURANCE ACT, 1998

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### 1. INTRODUCTION

This statement is published in relation to the proposed amendments to the Policyholder Protection Rules (“PPRs”) made under the Long-term Insurance Act, 1998 (“LTIA”) and the Short-term Insurance, 1998 (“STIA”) (“proposed amendments”), respectively published for public comment by the Registrar Long-term insurance and Short-Term insurance on 2 March 2018.

The statement provides an overview of and the rationale for the proposed amendments to the PPRs. It also explains the need for, and the intended operation and expected impact of the proposed amendments to the PPRs.

The proposed amendments to the PPRs as published for public comment are available on the Financial Services Board’s website at <https://www.fsb.co.za>. Tracked changes versions of the existing PPRs highlighting the proposed amendments are also available on the Financial Services Board’s website.

### 2. THE SCOPE OF THE PROPOSED AMENDMENTS TO THE PPRs

The proposed amendments to the PPRs are necessary to –

- align the PPRs with the Insurance Act, 2017 (Act No.18 of 2017) (“Insurance Act”);
- provide for certain conduct of business related requirements that will be repealed from the LTIA and the STIA through Schedule 1 to the Insurance Act, once the latter Act commences, as these conduct requirements are better placed in subordinate legislation; and
- provide for microinsurance product standards by giving effect to the National Treasury’s Microinsurance Policy Document (“Policy Document”) released in July 2011, which is available on the National Treasury’s website <https://www.treasury.gov.za>.

### 3. THE PROPOSED AMENDMENTS

#### 3.1 Alignment with the Insurance Act

The Insurance Act was enacted on 18 January 2017. The Insurance Act provides the prudential legislative framework for insurers. The commencement date of the Insurance Act is still to be determined by the Minister of Finance, but it is envisaged that this date will be 1 July 2018.

Schedule 1 to the Insurance Act repeals all prudential requirements currently provided for in the LTIA and the STIA. The remaining sections in the LTIA and the STIA will remain in force in order to provide for an interim conduct of business legislative framework for insurers, pending phase two of the ‘Twin Peaks’ process and the implementation of the envisaged Conduct of Financial Institutions Act.

The Insurance Act introduces, amongst other things, new authorisation classes of insurance business. These authorisation classes are significantly more granular than the current “classes” or types of policies provided for under the LTIA and the STIA.

The Insurance Act also defines various concepts in a manner that differs from how such concepts are currently defined in the LTIA and the STIA. To ensure alignment between the LTIA, the STIA and the Insurance Act, Schedule 1 to the Insurance Act amended the LTIA and the STIA by differentiating between registered insurers and licensed insurers and defining the respective “classes” of insurance business in the context of both of these insurers. Put differently, the existing terminology in the LTIA and STIA will apply to registered insurers, and the Insurance Act terminology will apply to licensed insurers. This same approach as adopted in the LTIA and STIA has been perpetuated in the PPRs. For this reason, some of the definitions in the PPRs have been amended.

It is envisaged that the alignment of terminology between the LTIA and the STIA and the Insurance Act, as provided for in the proposed amendments, will not have a significant regulatory impact. The intention is for existing requirements to be perpetuated into the new regulatory framework under the Insurance Act. The proposed amendments will not create any new regulatory obligations on insurers. Instead it will ensure that licensed insurers, which are subject to the Insurance Act, are able to interpret the PPRs under the LTIA and the STIA with reference to Insurance Act terminology. This will in turn support consistency across the insurance regulatory framework and ensure a smooth transition for regulated insurers under the current regulatory framework to licensed insurers under the Insurance Act at the time of the conversion of their registrations.

### 3.2 Conduct of business related sections repealed from the LTIA and STIA, and provided for in the PPRs

The Insurance Act also amends the LTIA and the STIA by repealing some of the existing conduct of business provisions in these Acts. The repealed conduct of business requirements are incorporated into the proposed amendments to the PPRs as these requirements are better placed in subordinate legislation. The Table below sets out the provisions that will be repealed from the LTIA and the STIA and the proposed rule in the PPRs that will incorporate these requirements in the PPRs:

LTIA		
Section	Heading	Rule in the proposed amendments to the PPRs
48	Summary, inspection and copy of policy	Rule 11: Disclosure
52	Failure to pay premiums	Rule 15A: Payment of Premiums
53	Option for payment of policy benefits in money	Rule 2: Product Design
56	Voidness of certain provisions of agreements	Rule 7: Void provisions
59	Misrepresentation and failure to disclose material information	Rule 21: Misrepresentation and non-disclosure
60	Validity of contracts	Rule 7: Void provisions
STIA		
Section	Heading	Rule in the proposed amendments to the PPRs
47	Copy of policy and inspection of policy records	Rule 11: Disclosure
51	Voidness of certain provisions of agreements	Rule 7: Void provisions
53	Misrepresentation and failure to disclose material information	Rule 20 : Misrepresentation and non-disclosure

54	Validity of contracts	Rule 7: Void provisions
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Given that these proposed amendments emanate from existing requirements set out in the LTIA and the STIA, it is envisaged that the proposed amendments will not have a significant regulatory impact. The proposed amendments will ensure that the requirements that prescribe the conduct of business requirements for insurers in their interaction with policyholders and underpin fair outcomes for policyholder are all appropriately provided for in the PPRs. This will ensure legal certainty in the interpretation of the legislative framework.

### 3.3 The introduction of the microinsurance and funeral policy product standards

The microinsurance regulatory framework proposed in the National Treasury (“NT”) Policy Document aims to create a dedicated microinsurance license that will promote financial inclusion, encourage entrance of new providers into the market and enhance consumer protection through appropriate prudential and business conduct regulation.

The NT Policy Document makes provision for the introduction of a proportionate and appropriate regulatory and supervisory framework for microinsurers. This framework includes prudential requirements suited to the risk profile of microinsurers and the development of product standards to ensure that products are designed in an appropriate manner to support an improved understanding of these products by policyholders. These product standards will be given effect as follows:

- the conduct of business requirements for microinsurance products will be incorporated into the PPRs, and
- the prudential requirements for microinsurance products will be set out in Prudential Standards to be made by the Prudential Authority under the Insurance Act<sup>1</sup>.

The NT Policy Document makes a number of proposals on the microinsurance product standards and all of these proposals were considered in drafting the proposed microinsurance product standards in the PPRs. However cognisant of the fact that the NT Policy Document was published in 2011 and the insurance landscape has changed over the past 7 years, some of the proposals were adapted in consultation with NT to more appropriately provide for the current insurance landscape.

#### 3.3.1 Application of the product standards

In terms of the NT Policy Document, product standards should only apply to microinsurance policies offered by microinsurers conducting microinsurance business. According to the definition of “microinsurance business” in the Insurance Act, a microinsurer can only conduct business in the following classes of life and non-life insurance business as referred to in Schedule 2 of the Insurance Act, subject to the insurance obligations (policy benefits) under such policies not exceeding the prescribed amounts:

CLASSES OF LIFE INSURANCE BUSINESS
Risk
Credit Life
Funeral

<sup>1</sup> The draft Prudential Standards to be published shortly for public comment will provide that a microinsurer may not, without the approval of the Prudential Authority, issue a life insurance policy or a non-life insurance policy that provides for a loyalty benefit, no-claim bonus or rebate in premiums. For purposes of this standard, “loyalty benefit” and “no-claim bonus” have the meaning assigned in the Policyholder Protection Rules made under the Long-Term Insurance Act, 1998 and the Short-term Insurance Act, 1998, respectively.

Reinsurance (in as far as it relates to the above life classes of insurance business)
<b>CLASSES OF NON-LIFE INSURANCE BUSINESS</b>
Motor
Property
Agriculture
Legal expense
Consumer credit
Accident and health
Liability (in as far as it relates to the above non-life classes of insurance business)
Reinsurance (in as far as it relates to the above non-life classes of insurance business)

It is envisaged that the policy benefits under a microinsurance policy will be capped by the Prudential Authority at R60 000 for life insurance and R120 000 for non-life insurance in Prudential Standards to be made under the Insurance Act.

The NT Policy Document also proposes that life and non-life policies designed for low income earners, with similar features as microinsurance policies and are offered by traditional insurers<sup>2</sup> will not be subject to the product standards.

However, consideration was given to the fact that funeral policies are generally not complex and in many instances funeral cover is also taken up by low income earners. It is envisaged that the maximum benefit for funeral policies offered by both microinsurers and traditional insurers will be capped by the Prudential Authority at R 60 000 in Prudential Standards to be made under the Insurance Act.

The FSB with the support of the NT therefore proposes that the product standards should apply to all funeral policies regardless of whether they are underwritten by a microinsurer or by a traditional insurer. This will ensure a level playing field between microinsurers and traditional insurers in respect of funeral policies. Subjecting all funeral policies to the same products standards will ensure that policyholders are afforded the same protections.

### 3.3.2 *The use of the word “microinsurance” and “funeral policy”*

In terms of the proposed amendments, only microinsurers will be allowed to use the word “microinsurance” or any derivative thereof in respect of a policy or in any advertisement in respect of a policy. This is meant to avoid confusion in the market by clearly distinguishing between microinsurers and traditional insurers, as well as their product offering.

The product standards further prohibit the use of the term “funeral policy”<sup>3</sup> or any suggestion to create the impression that policy benefits are intended to cover the costs associated with a funeral or a funeral service, other than for a funeral policy. This prohibition is meant to avoid regulatory arbitrage whereby insurers advertise life risk policies as funeral policies in order to circumvent compliance with the product standards that apply to funeral policies.

### 3.3.3 *Structure of the policy benefits*

The proposed product standards include requirements relating to the structure of the policy benefits.

<sup>2</sup> These are insurers other than microinsurers.

<sup>3</sup> A funeral policy” means a life insurance policy entered into by an insurer underwritten under the Funeral class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act

In the PPRs made under LTIA, it is proposed that microinsurance policies and funeral policies only provide risk benefits with no surrender value or investment elements. This is to ensure that these policies are uncomplicated and easily understandable.

In terms of the PPRs made under STIA, a microinsurance policy may not make any of its policy benefits subject to the principle of average.

In line with the proposal in the NT Policy Document, it is proposed that microinsurance policies (and funeral policies underwritten by traditional insurers) should have a contract term of up to, but not exceeding, 12 months. To facilitate uninterrupted cover, the proposed amendments also propose that microinsurance policies and funeral policies should be automatically renewable at the end of the contract term. Upon the expiry of the contract term the policy must either be automatically renewed (subject to insurer meeting the prescribed disclosure requirements on renewal set out in Rule 11 of the PPRs) or terminated in accordance with the requirements in the PPRs on termination.

#### *3.3.4 Variation and renewals of microinsurance policies*

In terms of the proposed amendments, variation of the terms and conditions of microinsurance policies is prohibited unless under exceptional circumstances where the insurer can demonstrate that reasonable actuarial grounds exists to justify the variation or change, and that the variation will benefit the policyholder or member concerned. In addition to these requirements, all the requirements prescribed regarding disclosures when varying a policy as set out in the rule on disclosures will equally apply to such microinsurance policies.

Where microinsurance policies are underwritten on a group basis it is proposed that insurers should not be able to selectively cancel (i.e. to refuse to renew) individual policies within the group. Should the insurer no longer find the level of risk acceptable, it must decline to renew the policies for the whole group or increase the premiums for the whole group.

#### *3.3.5 Waiting periods*

The product standards relating to waiting periods are intended to discourage adverse selection by policyholders while at the same time ensuring the protection of policyholders against insurers imposing unreasonable waiting periods. The product standards propose that the waiting period for microinsurance policy and funeral policy be restricted to a quarter of the contract term for death or disability due to natural causes. Given that the risk of adverse selection falls away in the case of accidental death or disability, it is proposed that no waiting period be allowed for policies covering these risks. Given the nature of credit life insurance policies, it is also proposed that no waiting period be allowed for these policies.

The imposition of a waiting period could adversely affect policyholders, should they move between insurers. The proposed product standards acknowledge this potential adverse impact. Therefore no waiting period may be imposed when a policyholder cancels a policy with one insurer in favour of a policy providing similar cover with another insurer.

#### *3.3.6 Exclusions*

The requirements and limitations relating to exclusions in the proposed product standards differ between life and non-life microinsurance policies. To ensure consistency and fair treatment of consumers across product offerings, the proposed amendments to PPRs made under LTIA, propose that no exclusions should be allowed for pre-existing health conditions for funeral policies and credit life insurance policies. The proposal in the NT Policy Document was that no exclusions should be allowed for pre-existing health condition, however considering the adverse impact such a limitation may have on the cost of underwriting such policies it is proposed that this prohibition only apply to funeral and credit life classes of microinsurance policies.

It is also proposed that exclusions for suicide will be allowed for a period not exceeding 12 months from inception of the policy regardless of whether a microinsurance policy or a funeral policy has been renewed during the 12 month period.

The proposed amendments to the PPRs made under the STIA, it is proposed that a microinsurance policy may not impose any exclusion other than the exclusions allowed for in the description of short-term insurance personal lines in the FAIS Board Notice 194 of 2017: Determination of Fit and proper requirements for FSPs. Exclusions that will be allowed for non-life microinsurance products include:

- exclusions relating to unlawful conduct;
- special risks referred to in the Conversion of the SASRIA Act, No. 134 of 1998;
- exclusions relating to the condition of any asset insured at inception of the policy, other than exclusions relating to the wear and tear of the asset;
- exclusions relating to the maintenance and usage of the insured asset under a policy that insures against unforeseen mechanical or electrical component failure; and
- exclusions relating to consequential loss.

This alignment is also intended to facilitate the intermediation dispensation as referred to in the NT policy document.

### 3.3.7 Excesses

The product standards on excesses will only apply to non-life microinsurance policies. It is proposed that a non-life microinsurance policy may only impose one standard excess per risk event covered. This is intended to ensure uncomplicated excesses that are easily understandable. It is further proposed that no excess may exceed 10% of the value of the policy benefits payable for the risk event, or R 1000, whichever is the lower amount.

### 3.3.8 Claims

With regard to claims, the proposed amendments propose that all valid microinsurance policies and funeral policies claims should be paid within a period of 48 hours after the insurer received all the requisite documentation. This is common practice in the current funeral insurance market and short-term insurance personal lines market and therefore this product standard is reasonable.

The product standards on claims also provides for an adapted version of the so-called “non-contestable rule” which is applied in some other jurisdictions. It is proposed that a claim should not be repudiated under a microinsurance policy on the basis that the policyholder or member of a group scheme did not disclose information, if the microinsurer did not specifically request the policyholder or member of a group scheme to disclose that information before the inception of the policy.

### 3.3.9 Reinstatement

To ensure that policyholders are not unduly disadvantaged when their microinsurance policies or funeral policies lapse as a result of non-payment of premium, the product standards propose that where an insurer reinstates a policy after it lapsed due to non-payment it must be reinstated on at least the same terms as the policy that had lapsed. Such reinstated policies may not impose a waiting period on policy benefits.

It is however not mandatory that an insurer must reinstate a policy when it has lapsed due to non-payment. The insurer and policyholder may choose to rather enter into a new policy instead



of reinstating the lapsed policy. If such a new policy is entered into within 6 months of the previous policy lapsing the insurer may not impose a waiting period.

#### *3.3.10 General standards*

It is proposed that a microinsurance policy may not provide that a policy benefit payable as a sum of money is payable directly to a service provider. This means that a policy may not prescribe that benefits are payable to a service provider. This does not preclude a policyholder to at claim stage request that the insurer pay the benefit over to the service provider of the policyholder's choice. Further, the charging of any administration or similar fee when providing a service as a policy benefit under a microinsurance policy will be prohibited. This is aligned to the general rule in the PPRs on determining premium.

#### *3.3.11 Reporting of new product*

To facilitate effective supervision of compliance with the microinsurance product standards, insurers are required to submit all proposed new microinsurance policies and funeral policies to the FSB / FSCA at least 31 days before launching the policies.

### **4. ENVISAGED EFFECTIVE DATE**

It is expected that the proposed amendments to the PPRs will come into operation on 1 July 2018 to coincide with the expected commencement date of the Insurance Act and Prudential Standards to be made under that Act.