
**SAIA KEYNOTE ADDRESS TO THE STANDING COMMITTEE ON FINANCE:
FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012**

Good morning/afternoon ladies and gentlemen of the Standing Committee on Finance, as well as those of you representing other stakeholders. We thank the Chair and the Members of the Standing Committee for the opportunity to present the short-term insurance industry's position on the Financial Services Laws General Amendment Bill ("Omnibus Bill") of 2012 to you today.

My name is Lelo Ntshalintshali, the Stakeholder Relationship Manager at the South African Insurance Association or SAIA. I would like to present the other members of our team who are here today. Suzette Strydom is our General Manager: Technical and our CEO Barry Scott are also present here today.

The SAIA represents the short-term insurance industry in South Africa. We have 60 members. This represents 93% of the market measured by premium income. Most of those short-term insurance companies that do not belong to the SAIA are captives or companies in run-off. The SAIA has been in existence for 105 years. Our vision is to promote and represent the interests of the short-term insurance industry, while leading and enhancing the efforts of the industry to become recognised and trusted as an important contributor to the South African economy and society. Please refer to our mission on the screen.

The SAIA and its members are committed to effective self-regulation. This is evidenced by a new, more onerous Code of Conduct which was implemented in March 2010 and is regularly updated. Before this, we had a general Code of Good Business Practice. Our Code of Conduct sets standards for members in all areas of business which include but are not limited to market conduct, communication with our customers, underwriting and claims, behaviour of contracted parties, advertising, and much more. It provides for a complaints handling process which starts with the insurance company itself and ends with the Complaints Committee, which is an independent Committee with representatives from the Ombudsman for Short-term Insurance, the Financial Services Board and a consumer representative.

Specific reference has been made to a certain motor insurance product of which the name and benefits were understood by consumers as comprehensive cover. The SAIA in collaboration with the Ombudsman for Short-term Insurance, alongside the Financial Services Board intervened in view of protecting consumers in this instance where the product design

may have been to the detriment of consumers. This proactive intervention resulted in a positive outcome in that the product was changes as well as the name.

In 1989 the SAIA was instrumental in setting up an alternative dispute resolution mechanism to enable consumers to complain about the rejection of their claims in a fair, efficient and affordable manner. The Ombudsman for Short-term Insurance (or OSTI) handles complaints from consumers in an open, transparent way, applying the principles of equity and fairness. The OSTI is funded on a fee per complaint model, so that those insurers with the most complaints end up paying the most fees to the OSTI.

The more than R60 million spend on consumer financial literacy education in the low income communities, assists in empowering people to use financial products to their advantage. In addition, our efforts in collaboration with Business Against Crime South Africa ("BACSA") in the fight against crime which has resulted in an overall reduction of vehicle theft in South Africa by 62% since the beginning of our involvement, our current talks with Government and Eskom to replace electric geysers with green geysers going forward, and a potential public private partnership to provide affordable agricultural insurance to South African farmers, big and small, are further examples of our contribution to a sustainable economy and a better life for all South Africans.

In addition, the SAIA and its members are committed to transformation. We took a lead role in negotiations of the Financial Sector Charter, which has now been gazetted as the Financial Sector Code. However, the industry still has challenges in the transformation process, especially since it is yet to be seen by prospective job hunters as an attractive employer. It is also difficult to find and retain people at top management level and our sub-sector finds it difficult to compete with banks and life insurers for scarce skills.

We do have our challenges as an industry. In a country with very high accident rates, as well as higher than most crime levels, and many challenges regarding the cost of vehicle repairs, motor insurance is as a result expensive.

In addition, with no compulsory third party motor property insurance in place, the insurance industry effectively carries the full burden of damage to our insured vehicles, while only around 35% of the vehicles on our roads are directly insured. Many individuals cannot afford motor insurance, and yet they use the road infrastructure. Motor insurers are struggling to make profits in order to remain financially viable. As motor insurance represents more than 40% of short-term insurance business, this is an extremely important area to address. We are also mindful that insurance is necessary when applying for finance in order to purchase a new vehicle. We continue to engage with the FSB and National treasury on the need to introduce compulsory third party motor property insurance in South Africa as we believe that ultimately it will be good for the economy as well as the general insuring public. A number of SADC countries have compulsory 3rd party motor property insurance in place.

Despite the industry having designed many products aimed at the low income market with the objective of growing the market and providing better access to products, constraints have limited our success in certain areas including legislation that hampers distribution of products to this market and makes such products costly.

Lastly the short-term insurance industry is an important one for the sustainability of our economy: Insurance assists individuals in their daily lives by covering their losses when they are most in need. In addition, the role of insurance and the insurance industry in the economy is crucial. Insurance is a key component of an efficient economy. Not only does the insurance industry provide more than 100 000 jobs, it also contracts the services of many other arms of the economy, such as builders, plumbers, motor body repairers, and many more, indirectly providing work for many. It should be noted that most businesses such as construction and building would not be able to operate without insurance. This is particularly appropriate with the construction of large new infrastructure projects. . There are many more examples but I will now hand over to my colleague, Suzette Strydom, to deal with the actual proposed Bill that is under discussion today.

Any comments raised here today must be taken in light of the fact that SAIA supports National Treasury's objectives of creating a safer and more sound operating environment and one of trust by all stakeholders, addressing potential risks to the financial system and promoting financial stability for the benefit of all. The SAIA is committed to enhanced consumer protection, the highest standard in market conduct practices in the short-term insurance sector as well as the Treating Customers Fairly project. We aim to remain relevant as an industry, inspire confidence in stakeholders and consumers alike and offer products and solutions within the South African market in such a way as to promote and not harm the environment and the communities we support. With these objectives in mind, it is appropriate that legislation is drafted to address the objectives of the Bill and to align South Africa with international best practice.

Our comments are submitted to ensure that the application of the legislation is correct and effective, so we urge you to view them in this spirit. We confirm that the SAIA supports the repeal of the Advisory Committees and the introduction of a Code of Engagement in their place as part of rationalising the consultation process. We support a process of broader consultation with industry bodies as opposed to the current regime which limits it to representatives on the Advisory Committees, which ultimately reflects the opinion of individuals or a few select companies bound by confidentiality. It is however proposed that Clause 56 should be amended to impose an obligation to prescribe a code of engagement, consultation and communication for the Financial Services Board rather than providing for this Code as optional.

The SAIA supports the phased-in approach provided for in the Bill, affording the Honourable Minister the right to determine different dates for the enactment of the different provisions of

the Act, once promulgated. This will facilitate the process of regulating certain definitions such as “*independent intermediary*”, “*representative*”, and “*services as intermediary*” and considering the approach of intermediaries receiving policy fees from clients in the Regulations as part of the retail distribution review planned for later this year.

We welcome the requirement of the FSB Board to submit an annual report including a list of all directives and exemptions issued under Financial Services Board legislation during the reporting period and providing for the report to indicate that the directives and exemptions are available on the FSB’s official web site.

The SAIA supports the role of compliance officers as part of the Regulator’s review of regulated financial institutions in its ongoing supervisory activities.

Whilst recognising the objectives of the Bill, it is important to comment on the potential unintended consequences and practical challenges that may impact the short-term insurance sector, its customers and other stakeholders.

Limitation of liability clause

The SAIA recognises that it is appropriate that the Regulator is empowered in the discharging of its functions to limit its liability in order to ensure critical supervision. This is in line with the International Association of Insurance Supervisors (“IAIS”) Insurance Core Principles (“ICP”), to which our Financial Services Board and the SAIA subscribe. ICP number 2.9 provides for:

“The supervisor and its staff have the necessary legal protection against lawsuits for actions taken in good faith while discharging their duties, provided they have not acted illegally. They are adequately protected against the costs of defending their actions while discharging their duties.”

Nevertheless, the concern remains that the removal of the words “*but not grossly negligent*” will result in extending FSB immunity from liability further than is reasonable in the circumstances.

In the event that the qualification “*but not grossly negligent*” provided for in Clause 67 is retained, it will provide clarity and certainty that the Regulator is required to demonstrate good faith as well as reasonableness in carrying out a duty or performing a function so as to ensure a high standard of care. It is accordingly proposed that the deleted words “*but not grossly negligent*”, should be restored. This will result in a more balanced approach in ensuring the quality of supervision and the protection of the reputation of the Regulator, which should not be open to attack through a lack of accountability in fulfilling its public interest mandate. In addition, consumers and insurers alike will be in a position to take recourse when the Regulator acts recklessly without giving consideration to the consequence of its actions or acting with a total disregard of duty. This will be particularly relevant in times of crisis when

the consumer looks to the Regulator for responsible actions affecting the livelihoods of so many.

This approach will also ensure that the Regulator has the necessary redress available where it may wish to act against its employees or agents who exceed their mandate.

Publish/prescribe

The SAIA considers it appropriate for the Honourable Minister rather than the Registrar to decide on the immediate publication of a Rule “*if circumstances necessitate*” to ensure appropriate checks and balances are in place, in addition to ensuring compliance with the separation of powers principle embedded in our Constitution.

We support the enhancement of market conduct practices in the financial sector and enhanced policy holder protection, which principles are entrenched in the National Treasury Policy Document entitled “*A Safer Financial Sector to serve South Africa better*” published in February 2011.

At the heart of the principle of separation of powers is a desire to enhance democracy, increase accountability and efficiency and protect the fundamental rights enshrined in the Constitution from abuse. It is suggested that in the event that circumstances necessitate the immediate publication of a rule, this decision must be made by the Minister.

The implementation of Rules without first submitting them for public comment is also not supported. We should ensure that the *audi alteram partem* rule of natural justice is not only followed but also seen to be followed.

In addition, the Minister should review the draft rule in light of any submissions made.

Directives, Exemption Notices and Board Notices

The SAIA finds it difficult to support any provisions that depart from the Promotion of Administrative Justice Act, 2000 (“PAJA”) in the issuing of Directives, even with a condition that a statement to this effect and the reasons for the departure are included in the Directive (which may be found in clause 201 of the Bill). The SAIA remains of the view that the Registrar must not only follow fair administrative procedure but must also be seen to follow fair administrative procedure, including a right of review or internal appeal.

Publication on the FSB’s website

Although the SAIA appreciates the intention of National Treasury to reduce costs by replacing gazetting with publishing via the official website of the FSB, we believe that the benefits of the gazetting process for all stakeholders outweigh the potential cost saving on the website. In addition, the FSB website as the only communication method may prejudice both insurers and consumers alike. Alternatively, it is suggested that the enactment of the provisions in the

Bill affording the right of the Regulator to publish them on the FSB's official website should be delayed in anticipation of the completion of the FSB's project to upgrade its website infrastructure, expected to be completed by September 2013. This will be achievable through clause 259 that provides for the staggered implementation of the Act.

Medical Schemes Act, 1998

We submit that the proposed amendment to the definition of "*business of a medical scheme*" will result in an unreasonably broad application of the Act, in that it will apply to any person rendering a health service in return for the payment of a premium, and not just a person intentionally undertaking the actual business of a medical scheme. The result of the Omnibus Bill amendment will be to extend the ambit of the Medical Schemes Act to all medical insurance products. Regulations are to be promulgated to allow only certain categories of medical insurance products. These Regulations are still the subject of discussion and we therefore propose that it would be appropriate for the implementation of this Section to be delayed until such time as the Demarcation Regulations are law.

Closing remarks

In closing, we urge you to consider the importance of ensuring that the short-term insurance industry survives and thrives in an environment in which it can serve individuals and businesses in South Africa, as well as the economy at large. The insurance industry is a well regulated industry which is committed to playing an important role in the lives of individuals, communities, businesses, Government and the economy. It also has several self-regulatory mechanisms in place which will continue to ensure that consumers are treated fairly.

We thank you for your time, and are willing to answer any questions. We will also endeavour to remain for the duration of the debate on this important Bill, and are willing to consult at any time during and after this process.