

REPUBLIC OF SOUTH AFRICA

INSURANCE LAWS AMENDMENT BILL

*(As amended by the Portfolio Committee on Finance (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 26B—2008]

ISBN 978-1-77037-284-9

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Long-term Insurance Act, 1998, so as to substitute certain definitions; to amend certain definitions; to delete certain definitions; to insert certain definitions; to substitute obsolete references; to further regulate the special provisions concerning the powers of the Registrar of Long-term Insurance; to further regulate the appointment of and reporting by an auditor; to further regulate reporting by a statutory actuary, and to make further provision in respect of the attendance of meetings by a statutory actuary; to further regulate the audit committee; to regulate certain acts in respect of providing financial assistance to purchase shares; to further regulate the maintenance of a financially sound condition; to further regulate the holding of assets; to make provision in respect of the kinds and spread of assets; to further regulate investment in derivatives; to provide for reports by experts on returns; to further regulate the awarding of bonuses or similar benefits to policyholders; to further regulate remuneration to intermediaries and to regulate binder agreements; to further regulate limitations on the provisions of certain policies; to further regulate the option for payment of assistance benefits in money; to further regulate the special provisions concerning long-term insurers that are not public companies; to amend the power of the Minister to make regulations; and to amend Schedules 1 and 3 to the Act; to amend the Short-term Insurance Act, 1998, so as to substitute certain definitions; to amend certain definitions; to delete a definition; to insert certain definitions; to substitute obsolete references; to further regulate the special provisions concerning the powers of and reporting by the Registrar of Short-term Insurance; to further regulate the conditions of registration; to further regulate the appointment of and reporting by an auditor; to make provision in respect of the appointment and removal of and reporting by a statutory actuary; to further regulate the audit committee; to regulate certain acts in respect of providing financial assistance to purchase shares; to make provision in respect of the maintenance of a financially sound condition; to further regulate the holding of assets; to make provision in respect of the kinds and spread of assets; to amend the arrangements regarding liabilities; to further regulate investment in derivatives to provide for reports by experts on returns; to amend and further regulate remuneration to intermediaries and binder agreements; to make textual alterations; to further regulate the special provisions concerning short-term insurers that are not public companies; to amend the powers of the Minister to make regulations; to amend Schedules 1, 2 and 3 to the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 52 of 1998, as amended by section 2 of Act 17 of 2003

1. Section 1 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the insertion after the definition of “**assistance policy**” of the following definition: 5
 “**‘Auditing Profession Act’** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);”;
- (b) by the substitution for the definition of “**auditor**” of the following definition: 10
 “**‘auditor’** means an auditor registered in terms of the [Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991),] Auditing Profession Act and appointed in terms of section 19(1) or 21(1)(a) of this Act;”;
- (c) by substituting for the definition of “**fair value**” of the following definition: 15
 “**‘fair value’** has the meaning assigned to it in financial reporting standards;”;
- (d) by the insertion after the definition of “**fair value**” of the following definitions: 20
 “**‘financial reporting standards’** has the meaning assigned to it in section 1(1) of the Companies Act;
‘financial statements’ has the meaning assigned to it in section 1(1) of the Companies Act;”;
- (e) by the substitution for the definition of “**fund**” of the following definition: 25
 “**‘fund’** means—
 (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956);
 (c) a medical scheme as defined in section 1 of the Medical Schemes Act, [1967 (Act No. 72 of 1967)]; and 30
 [(d) a permanent fund, established *bona fide* for the purpose of providing benefits to members in the event of sickness, accident or unemployment, or of providing benefits to surviving spouses, children, dependants or nominees of deceased members, or mainly for those purposes; and 35
 (e)] (d) any other person, arrangement or business prescribed by the Registrar;”;
- (f) by the substitution for the definition of “**health policy**” of the following definition: 40
 “**‘health policy’** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, [but excluding any contract—
 (a) of which the contemplated policy benefits— 45
 (i) are something other than a stated sum of money;
 (ii) are to be provided upon a person having incurred, and to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and
 (iii) are to be provided to any provider of a health service in return for the provision of such service; or
 (b) (i) of which the policy-holder is a medical scheme registered 50 under the Medical Schemes Act, 1967;
 (ii) which relates to a particular member of the scheme or to the beneficiaries of such member; and
 (iii) which is entered into by the scheme to fund in whole or in part its liability to such member or beneficiaries in terms of 55 its rules;

- and includes a re-insurance policy in respect of such a contract;]** and includes a reinsurance policy in respect of such a contract—
- (a) excluding any contract—
 - (i) that provides for the conducting of the business of a medical scheme referred to in section 1(1) of the Medical Schemes Act; or
 - (ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act, and which contract—
 - (aa) relates to a particular member of the scheme or to the beneficiaries of that member; and
 - (bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but
 - (b) specifically including, notwithstanding paragraph (a)(i), any contracts identified by the Minister by regulation under section 72(1A) as a health policy;”;
 - (g) by the deletion of the definition of **“market-related policy”**;
 - (h) by the insertion after the definition of **‘market-related policy’** of the following definition:

“‘Medical Schemes Act’ means the Medical Schemes Act, 1998 (Act No. 131 of 1998);”;
 - (i) by the substitution for the definition of **“Minister”** of the following definition:

“‘Minister’ means the [Minister of Finance or any other Minister to whom the administration of this Act may be assigned from time to time] Cabinet member responsible for finance;
 - (j) by the substitution for the definition of **“public company”** of the following definition:

“‘public company’ means a company with a share capital which is a public company under section 19 of the Companies Act;”;
 - (k) by the substitution for the definition of **“Registrar”** of the following definition:

“‘Registrar’ means the Registrar or the Deputy Registrar of Long-term Insurance referred to in section [2(1)] 2;”;
 - (l) by the insertion after the definition of **“subsidiary”** of the following definition:

“‘this Act’ includes any regulation made, or matter prescribed under this Act;”.
 - (m) 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.”.

Substitution of section 2 of Act 52 of 1998

2. The following section is hereby substituted for section 2 of the Long-term 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, shall be the Registrar and the Deputy Registrar of Long-term Insurance, respectively.”.

Amendment of section 4 of Act 52 of 1998, as amended by section 3 of Act 17 of 2003

3. Section 4 of the Long-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection:

“(4) (a) The Registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply.

(b) A directive issued in terms of paragraph (a) may—

 - (i) apply generally; or

- (ii) be limited in its application to a particular person or kinds of persons, which may, for purposes of this subsection, be defined either in relation to categories, types or in any other manner.
- (c) A directive issued in terms of paragraph (a) takes effect on the date determined by the Registrar in the directive.
- (d) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.
- (e) The Registrar may amend or revoke any issued directives.
- (f) The Registrar may, where a directive is issued to ensure the protection of the public in general, publish the directive in the *Gazette* and any other media that the Registrar deems appropriate.”;
- (b) by the substitution in subsection (7)(b) for subparagraph (iii) of the following subparagraph:
- “(iii) notwithstanding paragraph (a), be exempted from the provisions of the regulations to the extent determined by the Registrar.”.

Amendment of section 7 of Act 52 of 1998

4. Section 7 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (d) of the following paragraph:
- “(d) a medical scheme registered under the Medical Schemes Act, [1967 (Act No. 72 of 1967)], if and in so far as it acts in accordance with that Act.”; and
- (b) by the substitution in subsection (2) for paragraph (g) of the following paragraph:
- “(g) an agricultural co-operative [**or special farmers’ co-operative formed and incorporated**] registered under the Co-operatives Act, [1981 (Act No. 91 of 1981)] 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 **provides under a scheme or arrangement in terms of its statutes,** conducts long-term 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.”.

Amendment of section 10 of Act 52 of 1998, as amended by section 5 of Act 17 of 2003

5. Section 10 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for paragraph (h) of the following paragraph:
- “(h) reasonably necessary to ensure that the long-term insurance business concerned is carried on soundly [**and in a manner whereby the long-term insurer will have assets with a fair value of not less than its liabilities and capital adequacy requirement**] in compliance with section 29(1).”.

Amendment of section 19 of Act 52 of 1998

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 at all times have, one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a widely-held company.”;
- (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 appointment 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 and the board of directors of the long-term insurer, without delay, in writing of any matter relating to the business, of the long-term insurer of which the auditor becomes aware in the performance of the auditor’s functions as auditor and which, in the opinion of the auditor, constitutes a contravention of 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) or any other section of this Act, which 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) 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, the Act under which that insurer is incorporated and **[under which that insurer is incorporated]** the **[Public Accountants’ and Auditors’ Act, 1991]** Auditing Profession Act, and in addition to those duties must—

(a) in relation to a statement forming part of the returns in respect of which the auditor is required to submit in terms of section 36, examine that statement or part thereof and satisfy himself, herself or itself that it is properly 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, has in all material respects been prepared in accordance with **[section 20]** Chapter IV of the **[Public Accountants’ and Auditors’ Act, 1991]** Auditing Profession Act; and

(b) carry out the other duties prescribed by the Minister.”.

Amendment of section 20 of Act 52 of 1998

7. Section 20 of the Long-term Insurance Act, 1998, is hereby amended—

(a) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) (i) without delay, report in writing to the board of directors of the long-term insurer any matter relating to the business of the long-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, constitutes a contravention of section 29(1) or any other section of this Act relating to the duties of the statutory actuary, or in future may 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, which report must give a description of the matter and must include such other particulars as the statutory actuary considers appropriate: Provided that the report must be

- submitted without delay also to the Registrar where, in the opinion of the statutory actuary, the matter—
- (aa) materially prejudices the insurer’s ability to comply with any of these sections;
 - (bb) does not materially prejudice the insurer’s ability to comply with these sections, but the statutory actuary is of the opinion that immediate remedial action must be taken 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 [, he or she shall forthwith report the matter to] within 30 days after the date of the report, without delay inform the Registrar.”;
- (b) by the substitution in subsection (8) for paragraph (b) of the following paragraph: 15
- “(b) be entitled to—
- (i) attend and speak at a general meeting of the long-term insurer; and
 - (ii) receive the notices and other communications relating to a general meeting which a member of that long-term insurer is entitled to receive;[and 20
 - (iii) **be heard at a general meeting on the business of the meeting which concerns him or her as statutory actuary.]”;** and
- (c) by the addition to subsection (8) of the following paragraph: 25
- “(c) (i) attend and be entitled to speak at any meeting 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 code of professional practice; and 30
- (ii) receive the notices and other communications relating to any meeting referred to in subparagraph (i) which a member of the board of directors is entitled to receive.”.

Amendment of section 23 of Act 52 of 1998

8. Section 23 of the Long-term Insurance Act, 1998, is hereby amended— 35
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The board of directors of a long-term insurer shall appoint an audit committee of at least three members of whom at least two shall be [members of that board] independent non-executive directors within the meaning of section 269A(4)(b) and (c) of the Companies Act.”; 40
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words :
- “(3) The functions of the audit committee **[shall, inter alia, be], in addition to the functions referred to in section 270A(1) of the Companies Act, are—”;** 45
- (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 functions referred to in subsection (3).”; and
- (d) by the substitution for subsection (4) of the following subsection: 50
- “(4) If the appointment or composition 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).”.
- 55

Amendment of section 24 of Act 52 of 1998, as amended by section 8 of Act 17 of 2003

9. Section 24 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the following words: 5
 “[A] Notwithstanding the provisions of the Companies Act, a long-term insurer shall not—”;
- (b) by the substitution in paragraph (a) for subparagraph (ix) of the following subparagraph: 10
 “(ix) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 89 of the Companies Act[.];”;
- (c) by the addition to paragraph (a) of the following subparagraph: 10
 “(x) conclude a transaction contemplated in section 38(2A) of the Companies Act.”.

Amendment of section 25 of Act 52 of 1998 15

10. Section 25 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20
 “(a) to or in the name of a trustee or custodian of a **[unit trust]** collective investment scheme as defined in section 1 of the **[Unit Trusts Control Act, 1981 (Act No. 54 of 1981)]** Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or **[of]** a **[nominated company]** representative of **[the]** such trustee or custodian **[approved by the Registrar]** appointed in terms of section 68(6)(a) of the **[Unit Trust Companies] Collective Investment Schemes Control Act, 2002;**”;
- (b) by the substitution in subsection (2) for paragraphs (c) and (d) of the following paragraphs: 25
 “(c) for a period of not more than six months, to or in the name of **[a stockbroker]** an authorised user or a **[company]** nominee floated 30
 by **[a stockbroker]** an authorised user for the purposes contemplated in section **[12(1)(s)]** 18(2)(l), read with section 36(1)(a), of the **[Stock Exchanges Control Act, 1985]** Securities Services Act, 2004 (Act No. 36 of 2004), or to or in the name of a company 35
 controlled by a long-term insurer or an employee of the long-term insurer, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares;
- (d) to or in the name of a **[person acting as a depositary institution by virtue of an authorisation under]** participant as defined in section **[2] 1** of the **[Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992)]** Securities Services Act, 2004, or of a **[company]** nominee 40
 contemplated in section **[12(1)(s)(i)]** 36(1)(b), read with section 39(2)(g), of the **[Stock Exchanges Control Act, 1985]** Securities Services Act, 2004: Provided that the **[person]** participant or 45
[member] nominee concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;”.

Amendment of section 29 of Act 52 of 1998, as amended by section 10 of Act 17 of 2003 50

11. Section 29 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution for subsections (2) and (3) of the following subsections: 55
 “(2) A long-term insurer shall be deemed to have failed to comply with subsection (1) if **[it does not have]**—
- (a) it does not have assets as required by section 30; **[or]** 55
 (b) it does not have in the Republic assets as required by section 31[.];
 or

(c) it has not made provision for the liabilities and the capital adequacy requirement referred to in sections 30 and 31 in accordance with the requirements of those sections and Schedule 3.

(3) A long-term insurer which fails to comply with subsection (1) shall, **[within 30 days after becoming aware of it]** without delay, notify the Registrar of the failure and furnish the reasons therefor.”; and

(b) by the addition of the following subsections:

“(4) A long-term insurer shall not declare or pay a dividend to its shareholders—

(a) while it fails or is likely to fail to comply with subsection (1);

(b) if the declaration or payment would result in it failing or being likely to fail to comply with subsection (1); or

(c) if, after the declaration or payment, the aggregate value of assets required by section 30 would be less than the aggregate value of its liabilities, issued share capital and non-distributable reserves.

(5) A long-term insurer shall not declare or pay a dividend to its shareholders unless its statutory actuary has certified that the declaration or payment will not be contrary to subsection (4).”.

Amendment of section 30 of Act 52 of 1998, as amended by section 11 of Act 17 of 2003

12. Section 30 of the Long-term Insurance Act, 1998, is hereby amended by the deletion of subsections (2) and (3).

Amendment of section 31 of Act 52 of 1998, as amended by section 12 of Act 17 of 2003

13. Section 31 of the Long-term Insurance Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) which have an aggregate value which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which have to be met in the Republic, and **[minimum]** its capital adequacy requirement, when the values of those assets are calculated by reference to their fair value and the values of those liabilities, other than the said linked liabilities, and **[minimum]** capital adequacy requirement, are calculated as set out in Schedule 3; and”;

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) which have a fair value which, when expressed as a percentage of the aggregate value of its liabilities and **[minimum]** capital adequacy requirement referred to in paragraph (a), does not exceed the percentage specified in the regulations in respect of particular kinds or categories of those assets, unless the Registrar otherwise approves either in advance or at any time after having received the notice referred to in section 29(3)—

(i) in a particular case;

(ii) for the specified period; and

(iii) subject to such conditions as the Registrar may determine.”; and

(c) 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 value for purposes of this Act, the Registrar may—

(a) appoint another person, at the cost of the insurer, to place a reasonable value on that asset, which value so determined will be deemed to be the value of the asset; or

(b) direct a 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.”.

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 not invest in derivatives other than [-] for one or more of the following reasons: 5
- (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); 10
 - (c) for the purpose of efficient portfolio management;
 - (d) for the purpose of reducing investment risk: 10
- Provided that—
- (i) in respect of paragraphs (a), (b) and (c), 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. 15
 - (ii) in respect of paragraph (d), the statutory actuary has in writing agreed thereto.”. 15

Amendment of section 36 of Act 52 of 1998, as amended by section 15 of Act 17 of 2003 20

15. Section 36 of the Long-term Insurance Act, 1998, is hereby amended by the addition of the following subsection:

- “(3) If the Registrar is satisfied that a statement forming part of the returns furnished by the long-term insurer in terms of subsection (1) or (2) requires further investigation, the Registrar may by notice direct the long-term insurer to furnish him or her by a specific date or within a specific period with a report— 25
- (a) in the medium and form; and
 - (b) containing the required information, 30
- compiled by a person nominated by the Registrar at the cost of the long-term insurer.”. 30

Substitution of section 46 of Act 52 of 1998

16. The following section is hereby substituted for section 46 of the Long-term Insurance Act, 1998:

“Policy to be actuarially sound” 35

- 46. (1)** A long-term insurer shall not—
- (a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof are actuarially sound;
 - (b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or 40
 - (c) award a bonus or similar benefit to a policyholder unless— 45
 - (i) it is done in accordance with the principles and practices of financial management of the long-term insurer; and
 - (ii) the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose.
- (2) For the purposes of subsection (1)(c)(i) ‘principles and practices of financial management’ means a statement approved by the board of directors of the long-term insurer setting out the discretion retained by the board of directors and the parameters within which that discretion must be exercised in respect of long-term policies where the long-term insurer has to exercise its discretion in awarding a bonus or similar benefit.”. 50

Substitution of section 49 of Act 52 of 1998

17. The following section is hereby substituted for section 49 of the Long-term Insurance Act, 1998:

“Limitation of remuneration to intermediaries

49. 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 commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.”. 5

Insertion of section 49A in Act 52 of 1998

10

18. The following section is hereby inserted after section 49 of the Long-term Insurance Act, 1998:

“Binder agreements

49A. (1) A long-term insurer may, in terms of a written agreement only, and in accordance with any requirements, limitations or prohibitions that may be prescribed by regulation, allow another person to do any one or more of the following on behalf of that insurer: 15

(a) Enter into, 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; 20

(c) determine premiums under a long-term policy;

(d) determine the value of policy benefits under a long-term policy;

(e) settle claims under a long-term policy.

(2) A written agreement referred to in subsection (1) must—

(a) set out which of the activities referred to in subsection (1) that other person may perform and the particular kinds of long-term policies in respect of which those activities may be performed; 25

(b) set out the particular kinds of long-term policies which may be entered into, varied or renewed by that other person;

(c) state if that other person is authorised to determine the wording of the policies referred to in paragraph (b), and if authorised, the extent to which and the circumstances under which the wording may be determined; 30

(d) state if that other person is authorised to determine premiums in respect of the policies referred to in paragraph (b), and if authorised, the gross premiums or the basis for the calculation of gross premiums that may be determined, and the extent to which and the circumstances under which the premiums may be determined; 35

(e) 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 long-term policy referred to in paragraph (b), and the extent to which and the circumstances under which the benefits may be determined; 40

(f) state if that other person is authorised to settle claims under the policies referred to in paragraph (b), and if authorised, the extent to which and the circumstances under which the claims may be settled; 45

(g) state the basis on which that other person will be remunerated for services rendered in terms of paragraphs (b) to (f), which basis must be consistent with any requirements, limitations or prohibitions as may be prescribed by regulation; 50

(h) oblige that other person to—

- (i) disclose to policyholders of policies referred to in paragraph (b)—
 - (aa) the name of the relevant long-term insurer, and the fact that that other person is acting in terms of an agreement contemplated in this section; and
 - (bb) any remuneration payable to that other person in terms of an agreement contemplated in this section;
 - (ii) include the name of the long-term insurer underwriting the long-term policy in any advertisement, brochure or similar communication which relates to the long-term policy referred to in paragraph (b);
 - (iii) keep and maintain proper books of account and other records in respect of the policies referred to in paragraph (b) and allow the long-term insurer, its statutory actuary and its auditors full and unfettered access to those books of account and records; and
 - (iv) make available to the long-term insurer, its statutory actuary and its auditors the policies referred to in paragraph (b) and any information relating thereto, including the names, identity numbers and contact details of policyholders, insured persons and beneficiaries, upon request;
 - (i) prohibit that other person to delegate, assign or subcontract any of the functions referred to in paragraphs (b) to (f) to another person; and
 - (j) 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), subject to any requirements, limitations or prohibitions as may be prescribed by regulation—
- (a) may not authorise that other person to add an amount to any gross premium referred to in subsection (2)(d);
 - (b) may not authorise that other person to deduct any amount from any claims referred to in subsection (2)(f); or
 - (c) may provide or prohibit that person to directly or indirectly participate in the profits attributable to the policies referred to in subsection 2(b).
- (4) A person that entered into an agreement contemplated in subsection (1) with a long-term insurer may—
- (a) render the services contemplated in subsection (1)(a) to (e) in respect of any kind of long-term policy issued by that long-term insurer identified in the agreement only in accordance with any requirements, limitations or prohibitions as may be prescribed by regulation; and
 - (b) not render any of the services contemplated in subsection (1)(a) to (e) in respect of any kind of long-term policy issued by that long-term insurer not identified in the agreement.
- (5) Despite any term to the contrary contained in an agreement contemplated in subsection (1) the long-term insurer 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 any information and documentation relating to the policies contemplated in the agreement, which must, upon termination of the agreement, be returned to the long-term insurer.
- (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.”.

Substitution of section 53 of Act 52 of 1998

19. The following section is hereby substituted for section 53 of the Long-term Insurance Act, 1998:

“Option for payment of policy benefits in money

53. (1) [Notwithstanding] Despite the terms of an assistance policy entered into before 1 June 2009, the policyholder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money in which case the sum of money must be equal in value to the cost the long-term insurer would have incurred had the policy benefit been provided otherwise than as a sum of money. 5 10

(2) Where an assistance policy that provides for a policy benefit expressed otherwise than as a sum of money is entered into on or after 1 June 2009, that policy must—

- (a) provide that the policyholder is entitled to demand 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 15
- (b) state the amount of the policy benefit that is to be provided as a sum of money. 20

(3) 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.”. 25

Amendment of section 54 of Act 52 of 1998

19A. The following section is hereby substituted for section 54 of the Long-term Insurance Act, 1998: 25

“Limitation on provisions of certain policies

54. (1) A long-term insurer may not— 30

- (a) undertake to provide policy benefits, or provide policy benefits, under;
- (b) provide consideration upon the surrender of; or
- (c) make a loan upon the security of, 35

a long-term policy contemplated in the regulations, otherwise than in accordance with the requirements and limitations set out in the regulations.

(2) The requirements and limitations set out in regulations made under subsection (1) apply from the inception of a policy, if the regulation so provide, irrespective of the fact that the policy was entered into before or after the commencement of this Act or the regulations.”. 35

Amendment of section 66 of Act 52 of 1998

20. Section 66 of the Long-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: 40

“(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, 49 or 49A;”.

- (b) by the substitution for subsection (2) of the following subsection: 45

(2) A person, other than a long-term 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. 50

Amendment of section 67 of Act 52 of 1998

21. Section 67 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(2), (3) or (4), 22(1) or (2), 27(1), 31(1), 35(1) or (2)(a) or 36(2);
- (b) contravenes or fails to comply with a provision of section 7(1)(b), 8(2), 16(1), 17, 18, 23(1) or (2), 25(1), 29(3), 36(1), 44(1), 45, 48(1), 49, 49A, 54 or 55(1);”.

Amendment of section 71 of Act 52 of 1998

22. Section 71 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the insertion after subsection (2) of the following subsection:
- “(2A) No exemption granted under any law under which a long-term insurer is incorporated or registered shall constitute an exemption from the provisions of this Act.”; and
- (b) by 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 be drawn up and presented in accordance with **[Generally Accepted Accounting Practice]** financial reporting standards applicable to a widely-held company.”.

Amendment of section 72 of Act 52 of 1998

23. Section 72 of the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the insertion after paragraph (g) in subsection (1) of the following paragraph:
- “(gA) prescribing in respect of section 49A, requirements, limitations or prohibitions relating to—
- (i) the agreements contemplated in section 49A(1);
 - (ii) any additions to gross premiums or deductions from claims in respect of policies referred to in the agreements contemplated in section 49A(1);
 - (iii) any consideration that may be offered or provided from, by or on behalf of a long-term insurer to a person that enters into an agreement contemplated in section 49A(1) with a long-term insurer;
 - (iv) any participation or sharing in the profits attributable to the policies referred to in the agreements contemplated in section 49A(1); and
 - (v) the circumstances under which a person who has entered into an agreement contemplated in section 49A(1) may render services in respect of a policy not referred to that person by the relevant insurer or an independent intermediary.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Regulations made under this section may—

 - (a) differentiate between different kinds of insurers, policies, agreements or contracts, which may, for the purposes of this section, be defined either in relation to categories, types or kinds of insurers or policies or in any other manner;
 - (b) be limited in its application to a particular kind of insurer, policy, agreement or contract, which may, for the purposes of this section, be defined either in relation to categories, types or kinds of insurers or policies or in any other manner; and
 - (c) prescribe a fine or a period of imprisonment not exceeding one year for a contravention of or a failure to comply with a provision of the regulations.”; and

(c) by the insertion after subsection (2) of the following subsections:

“(2A)(a) The Minister, despite the definition of “business of a medical scheme” in section 9(1) of the Medical Schemes Act, may make regulations identifying a kind, type or category of contract as a health policy.

(b) Regulations under paragraph (a)—

- (i) must be made only—
 - (aa) in consultation with the Minister of Health;
 - (bb) after consultation between the National Treasury, the Registrar and the Registrar of Medical Schemes established under the Medical Schemes Act; and
 - (cc) after having regard to the objectives and purpose of the Medical Schemes Act, including the following principles entrenched therein—
 - (A) community rating;
 - (B) open enrolment; and
 - (C) cross-subsidisation within medical schemes; and
 - (ii) must provide for a long-term insurer to submit specified information on any product within a kind, type or category of contract referred to in paragraph (a) to the Registrar and the Registrar of Medical Schemes within any specified timeframes;
 - (iii) may provide for matters relating to the design and marketing of any product within a kind, type or category of contract referred to in paragraph (a).
 - (c) Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as a health policy in the regulations, is subject to this Act and not the Medical Schemes Act.
- (2B) Before regulations in terms of this Act are promulgated, the Minister must publish the draft regulations in the *Gazette* for public comment and submit the regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.”.

Amendment of Schedule 1 to Act 52 of 1998, as amended by section 21 of Act 17 of 2003

24. Schedule 1 to the Long-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution in paragraph 1 for the definition of “**derivatives**” of the following definition:
 - “**derivatives**” means—
 - (a) an option contract [as contemplated in the definition of “**securities**” in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)];
 - (b) a futures contract [and an option contract as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]; and
 - (c) a contract for differences;”;
 - (b) by the insertion in paragraph 1 after the definition of “**derivatives**” of the following definition:
 - “**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;”;

- (c) by the substitution in paragraph 1 for the definition of “margin” of the following definition:
 “margin”, in relation to a stock exchange [referred to in item 16(5)(a)(aa) of the Table to this Schedule] outside the Republic, means the margin as defined in the regulations issued or approved by the appropriate authority of the [state] country in which the stock exchange is situated or which is required by that stock exchange;”;
- (d) by the substitution in paragraph 1 for the definition of “margin deposit” of the following definition:
 “margin deposit” means a margin with SAFEX and a stock exchange [referred to in item 16(5)(a)(aa) of the Table to this Schedule] outside the Republic;”;
- (e) by the substitution in paragraph 1 of the definition of “margin with SAFEX” for the following definition:
 “margin with SAFEX” means the margin as defined in the rules of the South African Futures Exchange referred to in [section 17 of the Financial Markets Control Act, 1989] section 18 of the Securities Services Act, 2004 (Act No. 36 of 2004);”;
- (f) by the insertion in paragraph 1 after the definition of “n.e.s.” of the following definition:
 “option contract” means a standardised contract the effect of which is that a person acquires the option—
 (a) to buy from or to sell to 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;”;
- (g) by the substitution in the Table for item 2 of the following item:
 “2. A credit balance in an account with, or a deposit, including a negotiable deposit or a bill accepted by, or a promissory note issued by, an institution [finally] registered under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993).”;
- (h) by the substitution in the Table for item 7 of the following item:
 “7. Securities issued by, and loans made to, the Local Authorities Loans Fund Board under the repealed Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984).”;
- (i) by the substitution in the Table for item 17 of the following item:
 “17. [Units] Participatory interests in a [unit trust] collective investment scheme registered in terms of the [Unit Trusts Control Act, 1981 (Act No. 54 of 1981)] Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”;
- (j) by the substitution in the Table for sub-item (b) of item 20 of the following sub-item:
 “(b) a person in the Republic, excluding premiums due and payable to the long-term insurer in respect of long-term insurance business carried on in the Republic; and”;
- (k) by the addition in the Table after item 20 of the following item:
 “21. Premiums due and payable to the long-term insurer in respect of long-term insurance business carried on in the Republic.”.

Amendment of Schedule 3 to Act 52 of 1998, as amended by section 23 of Act 17 of 2003

25. Schedule 3 to the Long-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution in paragraph 4(b) for sub-item (i) of the following sub-item: 5
- (i) (aa) an amount, excluding a premium in respect of a long-term reinsurance policy, which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;
- (bb) any amount of premium that is due and payable, including a premium debited to an intermediary or a deferred instalment of a premium that remains unpaid to an insurer (irrespective of whether or not the premium has been paid to an intermediary), after the expiry of a period of 90 days from the date on which it became due and payable in terms of the long-term policy, but excluding a premium in respect of a long-term reinsurance policy;” and 10 15
- (b) by the substitution in paragraph 7 for subparagraph (1) of the following subparagraph: 20
- “(1) The liabilities of a long-term insurer, other than its contingent liabilities under long-term policies, shall be determined in accordance with [South African Statements of Generally Accepted Accounting Practice] financial reporting standards applicable to widely-held companies.”.

Amendment of Arrangement of Sections of Act 52 of 1998, as amended by section 1 of Act 17 of 2003 25

26. The Arrangement of Sections in Part VII of the Long-term Insurance Act, 1998, is hereby amended by the insertion after item 49 of the following item:

“49A. Binder agreements”.

Amendment of section 1 of Act 53 of 1998, as amended by section 25 of Act 17 of 2003 30

27. Section 1(1) of the Short-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution for the definition of “**accident and health policy**” of the following definition: 35
- “**‘accident and health policy’** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if a disability, health or death event contemplated in the contract as a risk event occurs, and includes a reinsurance policy in respect of such a contract—
- (a) excluding any contract— 40
- (i) that provides for the conduct of the business of a medical scheme referred to in section 1(1) of the Medical Schemes Act; or
- (ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act and which contract— 45
- (aa) relates to a particular member of the scheme or to the beneficiaries of such member; and
- (bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but 50
- (b) specifically including, despite paragraph (a)(i), any category of contracts identified by the Minister by regulation under section 70(2A) as an accident and health policy;”;
- (b) by the insertion after the definition of “**approved reinsurance policy**” of the following definition: 55
- “**‘Auditing Profession Act’** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);”;

- (c) by the substitution for the definition of “**auditor**” of the following definition:
 “**‘auditor’** means an auditor registered in terms of the [**Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)**] Auditing Profession Act and appointed in terms of section 19(1) or 20(1) of this Act;”;
- (d) by the insertion after the definition of “**engineering policy**” of the following definitions:
 “**‘fair value’** has the meaning assigned to it in financial reporting standards;
‘financial reporting standards’ has the meaning assigned to it in section 1(1) of the Companies Act;
‘financial statements’ has the meaning assigned to it in section 1(1) of the Companies Act;”;
- (e) by the insertion after the definition of “**managing executive**” of the following definition:
 “**‘Medical Schemes Act’** means the Medical Schemes Act, 1998 (Act No. 131 of 1998);”
- (f) by the substitution for the definition of “**Minister**” of the following definition:
 “**‘Minister’** means the [**Minister of Finance or any other Minister to whom the administration of this Act may be assigned from time to time**] Cabinet member responsible for finance;”;
- (g) by the deletion of the definition of “**Public Accountants’ and Auditors’ Act**”;
- (h) by the substitution for the definition of “**public company**” of the following definition:
 “**‘public company’** means a company with a share capital which is a public company under section 19 of the Companies Act;”;
- (i) by the substitution for the definition of “**Registrar**” of the following definition:
 “**‘Registrar’** means the Registrar or the Deputy Registrar of Short-term Insurance referred to in section 2;”;
- (j) by the insertion after the definition of “**short-term reinsurance policy**” of the following definition:
 “**‘statutory actuary’** means an actuary appointed in accordance with section 19A(1) or 20(1);”;
- (k) by the insertion after the definition of “**survival benefit**” of the following definition:
 “**‘this Act’** includes any regulation made, or matter prescribed under this Act;”.
- (l) 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;”.

Substitution of section 2 of Act 53 of 1998

28. The following section is hereby substituted for section 2 of the Short-term Insurance Act, 1998:

“Registrar of Short-term Insurance

2. The executive officer and a deputy executive officer mentioned in section 1 of the Financial Services Board Act, shall be the Registrar and the Deputy Registrar of Short-term Insurance, respectively.”.

Amendment of section 4 of Act 53 of 1998, as amended by section 26 of Act 17 of 2003

29. Section 4 of the Short-term Insurance Act, 1998, is hereby amended by—

- (a) the substitution for subsection (4) of the following subsection:
 “(4) (a) The Registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply;

- (b) A directive issued in terms of paragraph (a) may—
- (i) apply generally; or
 - (ii) be limited in its application to a particular person or kinds of persons, which may, for purposes of this subsection, be defined either in relation to categories, types or in any other manner;
- (c) A directive issued in terms of paragraph (a) takes effect on the date determined by the Registrar in the directive;
- (d) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure;
- (e) The Registrar may amend or revoke any issued directives;
- (f) The Registrar may, where a directive is issued to ensure the protection of the public in general, publish the directive in the *Gazette* and any other media that the Registrar deems appropriate.”;
- (b) the substitution in subsection (7)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) conditions determined by the Registrar.”.

Amendment of section 7 of Act 53 of 1998

30. Section 7 of the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution in subsection (2) for paragraphs (d), (f) and (g) of the following paragraphs:
 - “(d) a medical scheme registered under the Medical Schemes Act, [1967 (Act No. 72 of 1967)] if and in so far as it acts in accordance with that Act;
 - (f) an agricultural co-operative [**or special farmers’ co-operative formed and incorporated**] registered under the Co-operatives Act, [1981 (Act No. 91 of 1981)] 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 [**provides, under a scheme or arrangement in terms of its statutes**], as part of its main objectives, conducts 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;
 - (g) the unemployment insurance fund established by the Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No. 63 of 2001), if and in so far as it acts in accordance with that Act; or”.

Amendment of section 10 of Act 53 of 1998

31. Section 10 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for paragraph (h) of the following paragraph:
- “(h) reasonably necessary to ensure that the short-term insurance business concerned is carried on soundly [**and in a manner whereby the short-term insurer will have assets with a fair value of not less than its liabilities and capital adequacy requirement**] in compliance with section 28(1).”.

Amendment of section 19 of Act 53 of 1998

32. Section 19 of the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) A short-term insurer shall at all times have, one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a widely-held company.”;
 - (b) by the deletion of subsection (3);
 - (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 [**Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)**] Auditing Profession Act), the Registrar’s last approval of the appointment 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 of the firm, after the change, were members 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 short-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 short-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 and the board of directors of the short-term insurer, without delay, in writing of any matter relating to the business of the short-term insurer of which the auditor becomes aware in the performance of the auditor’s functions as auditor and which, in the opinion of the auditor, constitutes a contravention of section 28(1) or any other section of this Act, or in future may prejudice the insurer’s ability to comply with section 28(1) or any other section of this Act which information must give a description of the matter and must include such other particulars as the auditor considers appropriate.”;

(e) by the substitution for subsection (7) of the following subsection:

“(7) The auditor of a short-term insurer must carry out the duties assigned to the auditor of a short-term insurer by **[the]** this Act, the Act under which that insurer is incorporated and **[under which that insurer is incorporated]** the **[Public Accountants’ and Auditors’ Act, 1991]** Auditing Profession Act, and in addition to those duties must—

(a) in relation to a statement forming part of the returns in respect of which the auditor is required to submit in terms of section 35, examine that statement or part thereof and satisfy himself, herself or itself that it is properly 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, has in all material respects been prepared in accordance with **[section 20]** Chapter IV of the **[Public Accountants’ and Auditors’ Act, 1991]** Auditing Profession Act; and

(b) carry out the other duties prescribed by the Minister.”; and

(f) by the addition of the following subsections:

“(8) Without derogating from an auditor’s right to do so in respect of anything which is material to the carrying out of the auditor’s duties, an auditor shall not be required to examine or express an opinion in relation to a statement forming part of a return, report or certificate or to the particulars thereof, in respect of which a statutory actuary is required, in terms of this Act to make an examination, give an attestation or express an opinion.

(9) An auditor may rely on the work performed by the statutory actuary in relation to the financial affairs of a short-term insurer, when the auditor expresses an opinion in relation to the financial affairs of that short-term insurer in terms of this Act or any other law, subject to compliance with the prevailing auditing standards.”.

Insertion of section 19A in Act 53 of 1998

33. The following section is hereby inserted after section 19 of the Short-term Insurance Act, 1998:

“Statutory actuary

19A. (1) A short-term insurer shall from time to time appoint, and at all times have, a statutory actuary under those circumstances determined by the Registrar, either generally or in a particular case.

(2) A short-term insurer may appoint an alternate to act in the place of its statutory actuary during his or her absence for any reason.

(3) No person other than a natural person who is permanently resident in the Republic, is a Fellow of the Actuarial Society of South Africa and has, as an actuary, appropriate practical experience relating to short-term insurance business, shall be appointed as a statutory actuary or his or her alternate.

(4) No appointment of a statutory actuary or his or her alternate shall take effect unless it has been approved by the Registrar.

(5) The statutory actuary of a short-term insurer shall—

(a) submit to the Registrar, if his or her appointment is for any reason terminated, a statement of what he or she believes to be the reasons for that termination; and

(b) (i) without delay, report in writing to the board of directors of the short-term insurer any matter 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, constitutes a contravention of section 28(1) or any other section of this Act relating to the duties of the statutory actuary, or in future may prejudice the short-term insurer’s ability to comply with section 28(1) or any other section of this Act relating to the duties of the statutory actuary, which report must give a description of the matter and must include such other particulars as the statutory actuary considers appropriate: Provided that the report must be submitted without delay also to the Registrar where, in the opinion of the statutory actuary, the matter—

(aa) materially prejudices the insurer’s ability to comply with any of these sections;

(bb) does not materially prejudice the insurer’s ability to comply with these sections, but the statutory actuary is of the opinion that immediate remedial action must be taken by the short-term insurer; and”.

(ii) if steps to rectify the matter are not taken by the board of directors of the short-term insurer to the satisfaction of the statutory actuary within 30 days after the date of the report, without delay inform the Registrar.

(6) (a) The furnishing, in good faith, by a statutory actuary of a report or information in terms of subsection (5) shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which he or she is subject.

(b) The failure, in good faith, by a statutory actuary to furnish a report or information in terms of this section shall not confer upon any person a right of action against the statutory actuary which, but for that failure, that person would not have had.

(7) In addition to duties assigned to the statutory actuary by any other law or a code of professional practice, the statutory actuary shall—

(a) in relation to a statement forming part of the returns in respect of which he or she is required to submit in terms of section 35, examine that statement and satisfy himself or herself that it is properly drawn up so as to comply with the requirements of this Act and attest or, as the case may be, express an opinion in connection with that statement; and

(b) carry out the other duties provided for in this Act or prescribed by the Minister.

(8) A statutory actuary shall—

(a) have the right of access at all times to the accounting records and other books and documents of the short-term insurer and be entitled to

- require from the directors or officers of that insurer the information, and explanations he or she deems necessary for the carrying out of his or her duties;
- (b) be entitled to—
- (i) attend and speak at a general meeting of the short-term insurer;
 - (ii) receive the notices and other communications relating to a general meeting referred to in subparagraph (i) that a member of the short-term insurer is entitled to receive; and
- (c) (i) attend and be entitled to speak at any meeting of the board of directors of the short-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 code of professional practice; and
- (ii) receive the notices and other communications relating to any meeting referred to in subparagraph (i) which a member of the board of directors is entitled to receive.”.

Substitution of section 20 of Act 53 of 1998

34. The following section is hereby substituted for section 20 of the Short-term Insurance Act, 1998:

“Appointment of auditor or statutory actuary by Registrar 20

20. (1) If a short-term insurer for any reason fails to appoint an auditor or statutory actuary, the Registrar may, notwithstanding sections 269(4) and 271(1) of the Companies Act, but subject to section 19 or 19A of this Act, appoint an auditor or statutory actuary for that short-term insurer.

(2) A person or firm appointed under subsection (1) as auditor or statutory actuary of a short-term insurer shall be deemed to have been appointed by the short-term insurer in accordance with this Act.”.

Amendment of section 21 of Act 53 of 1998

35. Section 21 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 30

“(1) The Registrar may by notice require a short-term insurer to terminate the appointment of a director, managing executive, public officer~~[or]~~, auditor or statutory actuary of that short-term insurer, if the person or firm concerned is not fit and proper to hold the office concerned.”.

Amendment of section 22 of Act 53 of 1998 35

36. Section 22 of the Short-term Insurance Act, 1998, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The board of directors of a short-term insurer shall appoint an audit committee of at least three members of whom at least two shall be **[members of that board]** independent non-executive directors within the meaning of section 269A(4)(b) and (c) of the Companies Act.”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) The functions of the audit committee, in addition to the functions referred to in section 270A(1) of the Companies Act, shall **[inter alia]**, be—”;

(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 short-term insurer to advise or assist it in the performance of the functions referred to in subsection (3).”;

(d) by the substitution for subsection (4) of the following subsection:

“(4) If the appointment or composition 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 short-term insurer concerned from the requirements of subsection (1).”.

Amendment of section 23 of Act 53 of 1998, as amended by section 31 of Act 17 of 2003

37. Section 23 of the Short-term Insurance Act, 1998, is hereby amended— 5
- (a) by the substitution for the words preceding paragraph (a) of the following words: 5
- “[A] Despite the provisions of the Companies Act a short-term insurer shall not—”;
- (b) by the substitution in paragraph (a) for subparagraph (ix) of the following subparagraph: 10
- “(ix) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 89 of the Companies Act[.];”;
- (c) by the addition to paragraph (a) of the following subparagraph: 15
- “(x) conclude a transaction contemplated in section 38(2A) of the Companies Act:”.

Amendment of section 24 of Act 53 of 1998

38. Section 24 of the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20
- “(a) to or in the name of a trustee or custodian of a **[unit trust]** collective investment scheme as defined in section 1 of the **[Unit Trusts Control Act, 1981 (Act No. 54 of 1981)]** Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or **[of]** a **[nominated company]** representative of **[the]** such trustee or custodian **[approved by the Registrar]** appointed in terms of section 68(6)(a) of the **[Unit Trust Companies] Collective Investment Schemes Control Act, 2002;**”;
- (b) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 30
- “(d) to or in the name of a **[person acting as a depositary institution by virtue of an authorisation under]** participant as defined in section **[2] 1** of the **[Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992)]** Securities Services Act, 2004 (Act No. 36 of 2004), or of a **[company] nominee** contemplated in section **[12(1)(s)(i)] 36(1)(b)** read with section 39(2)(q) of the **[Stock Exchanges Control Act, 1985]** Securities Services Act, 2004: Provided that the **[person] participant** or **[member] nominee** concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;”.

Substitution of section 28 of Act 53 of 1998

39. The following section is hereby substituted for section 28 of the Short-term Insurance Act, 1998:

“Maintenance of financially sound condition

- 28.** (1) A short-term insurer shall at all times maintain its business in a financially sound condition by— 45
- (a) having assets;
- (b) providing for its liabilities and capital adequacy requirement; and
- (c) generally conducting its business, 50
- so as to be in a position to meet its liabilities and capital adequacy requirement at all times.
- (2) A short-term insurer shall be deemed to have failed to comply with subsection (1) if—
- (a) it does not have assets as required by section 29;
- (b) it does not have in the Republic assets as required by section 30; or 55

- (c) it has not made provision for the liabilities and the capital adequacy requirement referred to in [section] sections 29, 30 and 32 in accordance with the requirements of [that section] those sections and Schedule 2.
- (3) A short-term insurer which fails to comply with subsection (1) shall, **[within 30 days after becoming aware of it]** without delay, notify the Registrar of the failure and furnish the reasons therefor.
- (4) A short-term insurer shall not declare or pay a dividend to its shareholders—
- (a) **[if, and for as long as,]** while it **[fails]** fails or is likely to fail to comply with subsection (1)[, or];
- (b) if **[the declaration or payment of the dividend]** the declaration or payment would result in it failing or being likely to fail to comply with subsection (1)[.]; or
- (c) if, after the declaration or payment the aggregated value of assets required by section 29 would be less than the aggregate value of liabilities, issued share capital and non-distributable reserves.”.

Substitution of section 29 of Act 53 of 1998

40. The following section is hereby substituted for section 29 of the Short-term Insurance Act, 1998:

“Assets

29. (1) A short-term insurer shall have assets the aggregate value of which, on any day, is not less than **[the aggregate of—**
- (a) the aggregate value on that day of its liabilities[;] and its capital adequacy requirement
- [(b) the additional amount calculated as prescribed by regulation],** when the values of those assets, **[and]** liabilities and capital adequacy requirement are calculated in accordance with Schedule 2.
- (2) A short-term insurer shall, subject to section 31, have assets in the Republic of the kinds specified in Schedule 1, the aggregate value of which on any day is not less than **[the aggregate of—**
- (a) the aggregate value on that day of those of its liabilities which are to be met in the Republic[;] and its capital adequacy requirement in respect of those liabilities
- [(b) the additional amount calculated as prescribed by regulation,]** when the values of those assets, **[and]** liabilities and capital adequacy requirement are calculated in accordance with Schedule 2.”.

Amendment of section 30 of Act 53 of 1998

41. Section 30 of the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Subject to section 31 and subsection (2), the assets which a short-term insurer is required in terms of section 29(2) to have in the Republic shall, at their fair value, in respect of the particular kinds or categories of assets specified by regulation, when expressed as a percentage of the aggregate value of the liabilities and the **[additional amount]** capital adequacy requirement referred to in section 29(2), not exceed the percentage specified by regulation in relation to those kinds or categories of assets.”; and

(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 value for purposes of this Act, the Registrar may—

(a) appoint another person, at the cost of the insurer, to place a reasonable value on that asset, which value so determined will be deemed to be the value of the asset; or

(b) direct the short-term insurer to calculate the value in a manner which the Registrar determines, which value so calculated will be deemed to be the value of the asset.”.

Amendment of section 32 of Act 53 of 1998

42. Section 32 of the Short-term Insurance Act, 1998, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (c); and

(b) by the substitution for subsections (2) and (3) of the following subsections:

“(2) If an unexpired risk provision is considered to be necessary, the insurer shall determine the amount thereof in consultation with its auditor and, where a statutory actuary has been appointed, its statutory actuary.

(3) For the purposes of subsection (1), an approved reinsurance policy entered into with an insurer as contemplated in paragraph (d) of the definition of ‘approved reinsurance policy’ in section 1, shall not be deemed to cover the liabilities of a short-term insurer calculated in terms of subsection (1)(a)[,] and (b) [and (c)], to an amount exceeding the amount of the security referred to in that paragraph.”.

Amendment of section 33 of Act 53 of 1998, as amended by section 33 of Act 17 of 2003

43. Section 33 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A short-term insurer shall not invest in derivatives other than for one or more of the following reasons:

(a) Derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the short-term insurer’s liabilities under short-term policies and capital adequacy requirement in terms of section 29;

(b) for the purpose of reducing investment risk; or [; and]

(c) [in such a manner] for the purpose of efficient portfolio management, Provided that the short-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.”.

Amendment of section 35 of Act 53 of 1998

44. Section 35 of the Short-term Insurance Act, 1998, is hereby amended by the addition of the following subsection:

“(3) If the Registrar is satisfied that a statement forming part of the returns furnished by the short-term insurer in terms of subsection (1) or (2) requires further investigation the Registrar may by notice direct the short-term insurer to furnish him or her by a specific date or within a specific period with a report—

(a) in the medium and form; and

(b) containing the required information,

compiled by a person nominated by the Registrar at the cost of the short-term insurer.”.

Substitution of section 48 of Act 53 of 1998

45. The following section is hereby substituted for section 48 of the Short-term Insurance Act, 1998:

“[Intermediaries: remuneration and binder agreements] Independent intermediaries: remuneration

5

48. No consideration 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, other than commission or remuneration contemplated in the regulations and for rendering services as intermediary otherwise than in accordance with the regulations.”

10

Insertion of section 48A in Act 53 of 1998

46. The following section is hereby inserted after section 48 of the Short-term Insurance Act, 1998:

“Binder agreements

15

48A. (1) A short-term insurer or a Lloyd’s underwriter may, in terms of a written agreement only, and in accordance with any requirements, limitations or prohibitions that may be prescribed by regulation, allow another person to do any one or more of the following on behalf of that insurer:

20

- (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;
- (c) determine premiums under a short-term policy;
- (d) determine the value of policy benefits under a short-term policy;
- (e) settle claims under a short-term policy.

25

(2) A written agreement referred to in subsection (1) must—

- (a) set out which of the activities referred to in subsection (1) that other person may perform and the particular kinds of short-term policies in respect of which those activities may be performed;
- (b) set out the particular kinds of short-term policies which may be entered into, varied or renewed by that other person;
- (c) state if that other person is authorised to determine the wording of the policies referred to in paragraph (b), and if authorised, the extent to which and the circumstances under which the wording may be determined;
- (d) state if that other person is authorised to determine premiums in respect of the policies referred to in paragraph (b), and if authorised, the gross premiums or the basis for the calculation of gross premiums that may be determined, and the extent to which and the circumstances under which the premiums may be determined;
- (e) 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 (b), and the extent to which and the circumstances under which the benefits may be determined;
- (f) state if that other person is authorised to settle claims under the policies referred to in paragraph (b), and if authorised, the extent to which and the circumstances under which the claims may be settled;
- (g) state the basis on which that other person will be remunerated for services rendered in terms of paragraphs (b) to (f), which basis must be consistent with any requirements, limitations or prohibitions as may be prescribed by regulation;
- (h) oblige that other person to—
 - (i) disclose to policyholders of policies referred to in paragraph (a)—

30

35

40

45

50

55

- (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 the fact 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, in the case of Lloyd's underwriters, the term 'certain underwriters at Lloyd's' underwriting the short-term policy in any advertisement, brochure or similar communication which relates to the short-term policy referred to in paragraph (b);
- (iii) keep and maintain proper books of account and other records in respect of the policies referred to in paragraph (b) 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 (b) and any information relating thereto, including the names, identity numbers and contact details of policyholders, insured persons and beneficiaries, upon request;
- (i) prohibit that other person to delegate, assign or subcontract any of the functions referred to in paragraphs (b) to (f) to another person;
- (j) 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), subject to any requirements, limitations or prohibitions as may be prescribed by regulation—
- (a) may not authorise that other person to add an amount to any gross premium referred to in subsection (2)(d);
- (b) may not authorise that other person to deduct any amount from any claims referred to in subsection (2)(f); or
- (c) may provide or prohibit that person to directly or indirectly participate in the profits attributable to the policies referred to in subsection 2(b).
- (4) A person that entered into an agreement contemplated in subsection (1) with a short-term insurer or Lloyd's underwriter may—
- (a) render the services contemplated in subsection (1)(a) to (e) in respect of any kind of short-term policy issued by that short-term insurer or Lloyd's underwriter identified in the agreement only in accordance with any requirements, limitations or prohibitions as may be prescribed by regulation; and
- (b) not render any of the services contemplated in subsection (1)(a) to (e) in respect of any kind of short-term policy issued by that short-term insurer or Lloyd's underwriter not identified in the agreement.
- (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 any information and documentation relating to the policies contemplated in the agreement, which must, upon termination of the agreement, be returned to the short-term insurer or Lloyd's underwriter.
- (6) Any party to a written agreement referred to in subsection (1) must on request make a copy of that agreement available to the Registrar.”

Amendment of section 57 of Act 53 of 1998

47. Section 57 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) The Lloyd’s representative shall comply, with the necessary changes—
 (a) with section 19(1), (2), (3) and (5) in respect of the Lloyd’s Trusts as if he or she were a short-term insurer[.]; and
 (b) with section 19A in respect of the Lloyd’s Trusts as if he or she were a short-term insurer.”.

Amendment of section 63 of Act 53 of 1998

48. Section 63 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) (a) Section 19(5), (6), [and] (7), (8) and (9) shall apply with the necessary changes in relation to the auditor appointed by virtue of section 57(5)(a) in respect of each of the Lloyd’s Trusts as if the reference to section 28(1) in section 19(5)(c) were a reference to section 60 and the reference to section 35 in section 19(7)(a) were a reference to section 58(1) and paragraph 7 of Schedule 3.
 (b) Section 19A shall apply with the necessary changes in relation to the statutory actuary appointed by virtue of section 57(5)(b) in respect of each of the Lloyd’s Trusts as if the reference to section 28(1) in section 19A(5)(b)(i) were a reference to section 60 and the reference to section 35 in section 19A(7)(a) were a reference to section 58(1) and paragraph 7 of Schedule 3.”.

Amendment of section 64 of Act 53 of 1998

49. Section 64 of the Short-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) 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), 21(2) or 26(2);
 (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, 48 or 48A;”.
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) A person, other than a short-term insurer, who contravenes or fails to comply with a provision of section 7(1)(a) or (b), 8(2), 19A(5)(b), 25(1) or (2) or 49(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.”.

Amendment of section 65 of Act 53 of 1998

50. Section 65 of the Short-term Insurance Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

- “(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2), (3) or (4), 21(1) or (2), 26(1), 34(2)(a) or 35(2);
 (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 or 48A;”.

Amendment of section 69 of Act 53 of 1998

51. Section 69 of the Short-term Insurance Act, 1998, is hereby amended by—

- (a) the insertion after subsection (2) of the following subsection:
 “(2A) No exemption granted under any law under which a short-term insurer is incorporated or registered shall constitute an exemption from the provisions of this Act.”; and
 (b) the substitution for subsection (3) of the following subsection:
 “(3) The financial statements of a short-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with **[Generally Accepted Accounting**

Practice] financial reporting standards applicable to a widely-held company.”.

Amendment of section 70 of Act 53 of 1998

- 52.** Section 70 of the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the deletion in subsection (1) of paragraph (d); 5
- (b) by the insertion after paragraph (g) in subsection (1) of the following paragraph:
- “(gA) prescribing in respect of section 48A, requirements, limitations or prohibitions relating to—
- (i) the agreements contemplated in section 48A(1); 10
- (ii) any additions to gross premiums or deductions from claims in respect of policies referred to in the agreements contemplated in section 48A(1);
- (iii) 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 contemplated in section 48A(1) with a short-term insurer or Lloyd’s underwriter; 15
- (iv) any participation or sharing in the profits attributable to the policies referred to in the agreements contemplated in section 48A(1); and 20
- (v) the circumstances under which a person who has entered into an agreement contemplated in section 48A(1) may render services in respect of a policy not referred to that person by the relevant insurer, Lloyd’s underwriter or an independent intermediary.”; 25
- (c) by the substitution for subsection (2) of the following subsection:
- “(2)Regulations made under this section may—
- (a) differentiate between different kinds of insurers, policies, agreements or contracts, which may, for the purposes of this section, be defined either in relation to categories, types or kinds of insurers or policies or in any other manner; 30
- (b) be limited in its application to a particular kind of insurer, policy, agreement or contract, which may, for the purposes of this section, be defined either in relation to categories, types or kinds of insurers or policies or in any other manner; and 35
- (c) prescribe a fine or a period of imprisonment not exceeding one year for a contravention of or a failure to comply with a provision of the regulations.”; and
- (d) by the insertion after subsection (2) of the following subsections:
- “(2A)(a) The Minister, despite the definition of ‘business of a medical scheme’ in section 9(1) of the Medical Schemes Act, may make regulations identifying a kind, type or category of contract as a health policy. 40
- (b) Regulations under paragraph (a)—
- (i) must be made only— 45
- (aa) in consultation with the Minister of Health;
- (bb) after consultation between the National Treasury, the Registrar and the Registrar of Medical Schemes established under the Medical Schemes Act; and
- (cc) after having regard to the objectives and purpose of the Medical Schemes Act, including the following principles entrenched therein— 50
- (A) community rating;
- (B) open enrolment; and
- (C) cross-subsidisation within medical schemes; and 55
- (ii) must provide for a short-term insurer or Lloyd’s underwriter to submit specified information on any product within a kind, type or category of contract referred to in paragraph (a) to the Registrar and the Registrar of Medical Schemes within any specified timeframes. 60

- (iii) may provide for matters relating to the design and marketing of any product within a kind, type or category of contract referred to in paragraph (a).
- (c) Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as a health policy in the regulations, is subject to this Act and not the Medical Schemes Act. 5
- (2B) Before regulations in terms of this Act are promulgated, the Minister must publish the draft regulations in the *Government Gazette* for public comment and submit the regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.”. 10

Amendment of Schedule 1 to Act 53 of 1998, as amended by section 36 of Act 17 of 2003

53. Schedule 1 to the Short-term Insurance Act, 1998, is hereby amended— 15
- (a) by the substitution in paragraph 1 for the definition of “derivatives” of the following definition: 15
- “**‘derivatives’** means—
- (a) an option contract [as contemplated in the definition of “securities” in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)]; 20
- (b) a futures contract [and an option contract as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]; and
- (c) a contract for differences;” 25
- (b) by the insertion in paragraph 1 after the definition of “derivatives” of the following definition: 25
- “**‘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 30
- (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— 35
- (aa) an asset;
- (bb) 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;
- (cc) currency; 40
- (dd) rate of interest; or
- (ee) any other factor,
- is higher or lower before or on that future date than the pre-arranged value or price;”;
- (c) by the substitution in paragraph 1 for the definition of “margin” of the following definition: 45
- “**‘margin’**, in relation to a stock exchange [referred to in item 16(5)(a)(aa) of the Table to this Schedule] outside the Republic, means the margin as defined in the regulations issued or approved by the appropriate authority of the country [state] in which the stock exchange is situated or which is required by that stock exchange;” 50
- (d) by the substitution in paragraph 1 for the definition of “margin deposit” of the following definition: 50
- “**‘margin deposit’** means a margin with SAFEX and a stock exchange [referred to in item 16(5)(a)(aa) of the Table to this Schedule] outside the Republic;” 55
- (e) by the substitution in paragraph 1 for the definition of “margin with SAFEX” of the following definition: 55
- “**‘margin with SAFEX’** means the margin as defined in the rules of the South African Futures Exchange referred to in [section 17 of the 60

Financial Markets Control Act, 1989] section 18 of the Securities Services Act, 2004 (Act No. 36 of 2004);”;

- (f) by the insertion in paragraph 1 after the definition of “**n.e.s.**” of the following definition:
- “**‘option contract’** means a standardised contract the effect of which is that a person acquires the option—
- (a) to buy from or to sell to 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—
- (aa) an asset;
- (bb) 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;
- (cc) currency;
- (dd) rate of interest; or
- (ee) any other factor,
- is higher or lower before or on that future date than the pre-arranged value or price;”;
- (g) by the substitution in the Table for item 2 of the following item:
- “**2.** A credit balance in an account with, or a deposit, including a negotiable deposit and a bill accepted by, or a promissory note issued by, an institution [**finally**] registered under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993).”;
- (h) by the substitution in the Table for item 7 of the following item:
- “**7.** Securities issued by, and loans made to, the Local Authorities Loans Fund Board under the repealed Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984).”;
- and
- (i) by the substitution in the Table for item 17 of the following item:
- “**17.** [**Units**] Participatory interests in a [**unit trust**] collective investment scheme registered in terms of the [**Unit Trusts Control Act, 1981 (Act No. 54 of 1981)**] Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”.

Amendment of Schedule 2 to Act 53 of 1998, as amended by section 37 of Act 17 of 2003

- 54.** Schedule 2 to the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution for paragraph 2 in Part I of the following paragraph:
- “**Calculation of values**
- 2.** The value of[—
- (a) a Kruggerand coin referred to in item 1, shall be the price which the South African Reserve Bank is prepared to pay for it on the date as at which its value is calculated;
- (b) a credit balance, deposit or margin deposit referred to in items 2, 3, 10, 16(5)(b) and (d) and 18, shall be the amount thereof;
- (c) an asset referred to in item 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 or 16(1), (2), (3), (4) or (5)(a) or (c) which is listed on a stock exchange and for which a closing price was quoted on that stock exchange on the date as at which the value is determined, shall be the closing price or the closing price last so quoted;
- (d) an asset referred to in items 16(5)(c) and 17, shall be the price at which the unit would have been repurchased by the unit trust management company on the date as at which the value is calculated, and in the case of a property unit trust, the market value, and if it is listed on a stock exchange and for which a closing price was quoted on that stock exchange on the date as at which

- the value is determined, the closing price, or the closing price last so quoted;
- (e) a futures contract referred to in items 16(5)(d) and 18, shall be determined by the mark-to-market as defined in the rules of the South African Futures Exchange referred to in section 17 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
 - (f) an option contract referred to in items 16(5)(d) and 18 for which a price was quoted on a stock exchange on the date on which the value is calculated, shall be that quoted price;
 - (g) an asset referred to in item 21, shall be the amount of premiums less—
 - (i) the amount or estimated amount of any commission which the short-term insurer owes or for which it is likely to become liable in connection with the premiums;
 - (ii) a provision of 7,5 per cent of that amount, to cover the risk of loss arising from non-receipt by the insurer of any premiums;
 - (h) an asset referred to in item 14, 15, 19 or 20(b) or (c), or an asset not otherwise specified in this paragraph, shall be an amount not exceeding that which could have been obtained on the sale of the asset between a willing seller and a willing buyer, acting at arm's length and in good faith, as estimated by the insurer;
 - (i) an asset referred to in item 20(a), shall be the amount which would be payable to the policyholder upon the full surrender of the policy on the day on which the value is calculated;
 - (j) a derivative not mentioned in subparagraph (e) or (f) shall be calculated as determined by the Registrar from time to time.]
- assets, liabilities and capital adequacy requirement shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.”;
- (b) by the substitution for paragraph 3 in Part I of the following paragraph:

“[Savings] Registrar may reject certain values

3. [(1)] Notwithstanding [paragraphs 1 and] paragraph 2, if the Registrar is not satisfied that the value of an asset, a liability or capital requirement[, when] calculated in [accordance with paragraph 2, does not reflect] terms of this Schedule reflects a proper value the Registrar may—
- (a) direct the insurer to appoint another person, at the cost of the insurer, to place a proper value on that asset or liability or capital requirement;
 - or
 - (b) [the Registrar may] direct the short-term insurer to calculate the value in another manner which the Registrar determines and which will produce a proper value [for that asset].
- [(2) An asset in respect of which no basis of valuation is prescribed in paragraphs 1 and 2 shall be valued in accordance with Generally Accepted Accounting Practice]”;
- (c) by the deletion of paragraphs 4, 5 and 6 in Part II; and
 - (d) by the substitution for subparagraph (1) of paragraph 7 in Part II of the following subparagraph:
 - “(1) For the purposes of section 29, the value of the liabilities of a short-term insurer, other than those prescribed by the Registrar and referred to in [paragraphs 5 and 6] paragraph 2, shall be determined in accordance with [Generally Accepted Accounting Practice] financial reporting standards applicable to widely-held companies.”.

Amendment of Schedule 3 to Act 53 of 1998 as amended by section 38 of Act 17 of 2003

55. Schedule 3 to the Short-term Insurance Act, 1998, is hereby amended—
- (a) by the substitution for paragraph 4 of the following paragraph:

“Amount of security

4. [(1)] The value of the minimum amount of the security to be provided by or on behalf of a Lloyd’s underwriter shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations. [is an amount equivalent to—
- (a) the estimated amount payable by the underwriter in respect of claims which have been incurred under South African short-term insurance policies and reported but not yet paid; less
- (b) an allowance in respect of reinsurance cover held, which allowance shall be a percentage of the amount contemplated in item (a), calculated by the formula—

$$\frac{A-B \times 100}{A}$$

in which formula—

- A represents the premium income received by all Lloyd’s underwriters under all short-term insurance policies underwritten by them less brokerage and commission; and
- B represents the amount of A less all premiums paid for reinsurance cover held by those underwriters,
- during, in the case of both A and B, the latest calendar year prior to the calculation as reported in the most recent published Global Results of Lloyd’s available at the time and approved by the Registrar; plus
- (c) a provision for claims incurred but not yet reported equal to 7% of the total net amount of the premiums under South African short-term insurance policies received by or on behalf of the underwriter at Lloyd’s Policy Signing Office during the year ended on the last day of the quarter concerned.
- (2) For the purpose of item (c) of subparagraph (1) ‘net amount’ means the net amount after deduction of the aggregate of—
- (a) the same percentage of such total premiums as the percentage contemplated in item (b) of subparagraph (1), in respect of reinsurance cover held;
- (b) the aggregate of the refunds made by or on behalf of the underwriter during the year in respect of premiums under South African short-term insurance policies;
- (c) brokerage and commissions in respect of the premiums concerned; and
- (d) any tax payable on the premiums concerned, other than taxes payable on net income:

Provided that only premiums received and refunds made on or after the date of commencement of section 60 shall be taken into account for that purpose.]”;

- (b) by the substitution in paragraph 6 for subparagraph (2) of the following subparagraph:

“(2) Subject to section 63(6), the aggregate value of the assets referred to in subparagraph (1) shall, in respect of each particular kind or category specified by regulation, when expressed as a percentage of the aggregate minimum amount required to be held in the trust at that time in accordance with this Schedule [2], not exceed the percentage specified by regulation in relation to that kind or category of asset.”; and

- (c) by the substitution in paragraph 6 for subparagraph (4) of the following subparagraph:

“(4) For the purposes of paragraph 5 and subparagraphs (1) and (2) assets shall be [valued in accordance with] deemed to have been calculated in terms of this Schedule [3] if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.”.

Amendment of Arrangement of Sections of Act 53 of 1998, as amended by section 24 of Act 17 of 2003

56. The Arrangement of Sections of the Short-term Insurance Act, 1998, is hereby amended—

- (a) by the insertion after item 19 of the following item: 5
 “**19A. Statutory actuary**”;
- (b) by the substitution for the heading of item 20 of the following heading:
 “Appointment of auditor or statutory actuary by Registrar”;
- (c) by the substitution in Part VII for item 48 of the following item: 10
 “**48. [Intermediaries: remuneration and binder agreements] Inde-**
 pendent intermediaries: remuneration”; and
- (d) by the insertion in Part VII after item 48 of the following item:
 “**48A. Binder agreements**”.

Short title and commencement

57. (1) This Act is called the Insurance Laws Amendment Act, 2008, and takes effect 15 on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may in terms of subsection (1) be determined for different provisions of this Act.

**MEMORANDUM ON THE OBJECTS OF THE INSURANCE LAWS
AMENDMENT BILL, 2008**

1. BACKGROUND TO BILL

- 1.1 The Insurance Laws Amendment Bill, 2008 (hereinunder referred to as the Bill), proposes amendments to the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (hereinunder referred to as the Long-term Insurance Act), and the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (hereinunder referred to as the Short-term Insurance Act). The amendments are contained in one Bill as many of these amendments are made to both the said Acts and substantially correspond as regards content.
- 1.2 The proposed amendments to the abovementioned Acts are required in order to update existing legislation, to close regulatory gaps identified in existing statutes and to effect improvements to certain provisions.

2. OBJECTS OF BILL

The primary objective of the Bill is to strengthen the legislative framework for a sound and well-regulated insurance services industry and to provide financial market stability to industry players as well as consumers.

3. SUMMARY OF BILL

- 3.1 The Bill amends the Long-term Insurance Act and the Short-term Insurance Act.
- 3.2 In summary, the amendments which relate to both the Long-term Insurance Act and the Short-term Insurance Act are:
 - 3.2.1 To add and expand certain definitions in order to update outdated references to applicable legislative provisions, to cross-reference to the Companies Act, 1973 (Act No. 61 of 1973) (hereinunder referred to as the Companies Act), as amended by the Corporate Laws Amendment Act, 2006 (Act No. 47 of 2006) (hereinunder referred to as the Corporate Laws Amendment Act), and to achieve more precise demarcation between the Long-term Insurance and Short-term Insurance Acts and the Medical Schemes Act, 1998 (Act No. 131 of 1998);
 - 3.2.2 to extend the powers of the Registrar by empowering the latter to issue directives and determine the demarcation of a policy as a health policy;
 - 3.2.3 to empower the Registrar to impose a condition of registration necessary to ensure that a long-term or short-term insurer will maintain a financially sound condition;
 - 3.2.4 to align the requirements for the appointment of an auditor of a long-term and short-term insurer with the requirements in the Companies Act, as amended by the Corporate Laws Amendment Act, and to extend the matters on which the auditor must report to the Registrar;
 - 3.2.5 to align the requirements for the appointment of an audit committee of a long-term or short-term insurer to the requirements in the Companies Act, as amended by the Corporate Laws Amendment Act;
 - 3.2.6 to regulate the giving of financial assistance for the purchase of or subscription for shares of the long-term insurer or short-term insurer or its holding company, as this impacts on the financial soundness condition of the insurer;

- 3.2.7 to streamline the holding of assets by long-term and short-term insurers;
 - 3.2.8 to amend the kinds and spread of assets regarding the capital adequacy requirement and to require long-term and short-term insurers to value their assets for spreading purposes on fair value as determined in financial reporting standards, adjusted as the Registrar may require;
 - 3.2.9 to further regulate the investment in derivatives;
 - 3.2.10 to empower the Registrar to request a report or peer review of a statement forming part of statutory returns;
 - 3.2.11 to further regulate the limitation on remuneration to intermediaries by clearly distinguishing between the remuneration for services as an intermediary that an independent intermediary renders which are commissionable and services which are rendered by a person (which may also be an independent intermediary) in terms of a binder agreement with the long-term or short-term insurer, which are not subject to commission limits;
 - 3.2.12 to amend and regulate binder agreements between long-term or short-term insurers or Lloyd's underwriters and other persons by holding the insurer or Lloyd's underwriter liable for the actions of the persons in terms of a binder agreement;
 - 3.2.13 to further regulate the special provisions concerning long-term and short-term insurers that are not public companies;
 - 3.2.14 to amend the powers of the Minister to make regulations;
 - 3.2.15 to make technical amendments to Schedule 1 of both Acts regarding the kinds of assets that long-term and short-term insurers may hold; and
 - 3.2.16 to update certain outdated provisions and effect a number of technical and editorial amendments.
- 3.3 The amendments which are specific to the Long-term Insurance Act are:
- 3.3.1 To further regulate reporting by the statutory actuary by extending the matters on which the actuary must report to the Registrar;
 - 3.3.2 to provide for the statutory actuary to attend and speak at meetings of the long-term insurer and its board of directors;
 - 3.3.3 to further regulate the award of a bonus or similar benefit by requiring the long-term insurer to have in place principles and practices of financial management for purposes of awarding a bonus or similar benefit to a policyholder to ensure fair and equitable treatment of policyholders eligible for bonuses or similar awards;
 - 3.3.4 to further regulate the option for assistance policy benefits to be paid as a sum of money *in lieu* of the benefit; and
 - 3.3.5 to amend Schedule 3 relating to the calculation of the values of assets, liabilities and capital adequacy requirement.
- 3.4 The amendments which are specific to the Short-term Insurance Act are:
- 3.4.1 To amend the duties of the auditor;

- 3.4.2 to make provision for the appointment of a statutory actuary by a short-term insurer under circumstances determined by the Registrar, either generally or in a particular case, for the purposes of financial condition reporting;
- 3.4.3 to make provision for the appointment of a statutory actuary by the Registrar where a short-term insurer fails to appoint one;
- 3.4.4 to make provision for the Registrar to remove a statutory actuary who is not fit and proper to hold the office concerned;
- 3.4.5 to amend the arrangements regarding the liabilities of a short-term insurer by removing the obligation on a short-term insurer to hold a contingency reserve, in view of the introduction of financial condition reporting;
- 3.4.6 to amend the provisions for the appointment of the Lloyd's representative and the application of other provisions of the Short-term Insurance Act to Lloyd's in view of the introduction of financial condition reporting;
- 3.4.7 to amend and adjust Schedule 2 regarding the method of calculating of the value of assets and liabilities to incorporate all the requirements which are necessary for the introduction of financial condition reporting. The detail requirements of the Schedule will be incorporated in a notice issued by the Registrar. This approach allows for alignment with the Long-term Insurance Act and more flexibility in an ever-changing environment and to keep up to date with international developments and standards; and
- 3.4.8 to amend Schedule 3 to provide for calculating the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter and the value of investments of the Lloyd's South African Trust, based on financial condition reporting, and to incorporate such requirements in a notice to be issued by the Registrar.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The proposed amendments were made available for public comment for a period of 30 days. *Ad hoc* consultations with affected industry participants prior to submission of the Bill to Cabinet were also undertaken. The Bill was revised where considered necessary in the light of comments received.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will have no organisational and personnel implications for the FSB.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77037-284-9