national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

COMMENTS MATRIX

RESPONSES TO COMMENTS RECEIVED ON THE LONG-TERM INSURANCE REGULATIONS

This document sets out the National Treasury's formal response to comments submitted by stakeholders on the version of the Long-Term Insurance Act, 1998: Proposed amendment of Regulations published on 23 December 2016.

This document must be read in conjunction with the document titled "Responses to Key Issues" published together with the final Regulations.

This document was also submitted to Parliament 2 November 2017.

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LIST OF COMMENTATORS

No	Agency/ Organisation	Contact Person
1.	Association For Savings & Investment SA (ASISA)	Anna Rosenberg
2.	Banking Association South Africa (BASA)	Adri Grobler
3.	Clientèle Life (Clientèle)	Yurika Pistorius
4.	Financial Intermediaries Association (FIA)	Lizelle van der Merwe
5.	Hollard Life Assurance Company Limited (Hollard)	Nyeleti Shirilele
6.	PSG Konsult	Ronald King
7.	Liberty Group (Liberty)	Tienie Hamman
8.	TD Administrative Services (TD Admin)	Ian Doak
9.	The Unlimited (Unlimited)	Wayne Mann
10.	Western Cape Provincial Treasury (Treasury WC)	Maxwell Petersen

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PART 1: INTERPRETATION			
No comments received.			
PART 2: LIMITATION ON ASSETS			
2.1	ASISA	The definition of “equity shares” in the current Regulations refers to Section 1 of the Companies Act. However, the Companies Act no. 71 of 2008 does not define equity shares. It is suggested that the amendments to the Regulations address this by including a definition of “equity shares” in part 1 along the same lines as what was contained in the old Companies Act no. 61 of 1973. Proposed amendments: **“equity shares”** ~~means shares as defined in section 1 of the Companies Act~~. in relation to a company, means shares, excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;	Agreed. Proposed amendment accepted.
2.1	ASISA	The current Regulations contain an outdated reference to the Financial Markets Control Act of 1989 (“FMCA”) to define “rules of SAFEX” but the FMCA was repealed by the Securities Act which, in turn, was repealed by the Financial Markets Act. However, the Financial Markets Act does not mention the “rules of SAFEX”. This would be a good opportunity to correct this reference.	Agreed. Definition amended.
PART 3: REMUNERATION			
PART 3A - LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY – POLICIES OTHER THAN POLICIES TO WHICH PART 3B APPLIES			
Deletion of definition of “**administrative work**”	ASISA	Overall ASISA members support this proposal that commission for “administrative work” for credit life insurance policies is removed, as previously commented on in ASISA’s comments on the RDR Phase 1 proposals. However as stated in these comments this will mean that policies with low premiums will generate very little commission at the proposed cap	Disagree. As communicated in the Retail Distribution Review, 2014 (“RDR”) and various RDR updates (the last being issued in December 2016), the amendment address the existing anomaly where there is a risk that additional commission is payable over and above a binder or outsourcing fee, in

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		(7.5%) which is inadequate for the work involved. It is submitted that the cap may need adjustment and that more work is required to establish what the appropriate commission rate should be for this sub-set of policies.	conflict with the principle that an intermediary should not be remunerated twice for the same activity. Lacking more substantiated information on why the reduced commission is inadequate for the work involved, specifically considering that binder activities and outsourcing can be remunerated separately, we hold the view that the proposed commission cap is appropriate. Notwithstanding, a 12 month transitional period before this amendment takes effect will be provided for.
3.1 – definition of **“”Premium”**	ASISA	It is not always the policyholder who pays the premium, and we suggest that the wording is changed, as suggested, to take account of the fact that in some instances a premium payer can be someone other than the policyholder. Proposed amendments: **“”Premium”** in relation to a premium period, means the premium which is payable by or in respect of a policyholder and received under that policy in respect of every separately identifiable benefit component of that policy.	Agree. The definition will be amended to refer to “the premium payable under a policy”.
	PSG	Please note that premiums on a policy are not necessarily payable by the policyholder. In the case of a fund policy the premium is payable by the member.	See response directly above.
3.1 - definition of “**services as intermediary**”	ASISA	• This definition should rather be after “secondary commission” to follow alphabetically. • It is noted that the definition of “underwriting manager” in regulation 6.1 refers to a “potential policyholder”, whereas the definition of “services as intermediary” only refers to a policyholder, although paragraph (a) of the latter definition could relate to a potential policyholder. • Reference is made to ‘administrative services’ within the definition of ‘services as intermediary’ but there is no definition of ‘administrative services’. This is important in order to distinguish this from outsourcing or incidental activities under binder functions. For instance the functions	• Definition has been changed back to “rendering services as intermediary” as the status quo will be retained. Definition is therefore in the correct place. • It is necessary to include the term “potential policyholder” in the definition of “underwriting manager” to clarify that an underwriting manager cannot sell policies to the public. • Noted. However, the grammatical meaning of the term applies. Any administration services remain part of intermediary services for the time being. Further, this is an existing term and therefore no changes are proposed. It

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		performed by a broker consultant may constitute intermediary services because of the broad definition. If they are, the proposals under RDR to prohibit outsourcing to intermediaries will become problematic.	will therefore not affect a broker consultant or any other broader support.
	Clientèle	We agree with the LTIA definition being aligned to the STIA definition of "services as an intermediary". This creates certainty to the definition and consistency across the different Insurance Laws. We would like to request clarity on the word "administrative services" under section 4(h)(b)(iv). What types of services will be included in administrative services?	See response directly above. Please note that the definition of "services as intermediary" has been changed to revert back to the existing definition.
	FIA	Noted that it is intended to align this definition to that as appears in the FAIS Act once all RDR changes have been made; we trust that this will include the proposal that Premium Collection should be regarded as an "Outsourced" service if this is decided. We would mention that despite the exclusion of "policy data administration services", the industry finds sections of the definition unclear particularly with regards the meaning behind use of the words "directed towards". This definition requires absolute clarity in order to differentiate "services as intermediary" from other services performed by a broker. It would be deemed essential to define "Advice" for the sake of clarity in the context of "product specific" (advice as specifically related to the policy) and "general" advice such as comparative product advice, personal recommendations, risk management and professional advice per the definition in the FAIS Act as provided by the independent intermediary as the term "advice" is used throughout the regulations, PPR, RDR and FAIS CoBR. We would recommend that the definitions include clarity on the intention of the various tranches of remuneration being commission, client and Insurer fees. 2(h)(b)(iii) Insert the high-lighted words <u>"directed towards</u> receiving, submitting or processing claims under, or of ". The actions comprising the processing of claims fall within the Binder domain (or outsource service if no claims settlement mandate is held). This point is also taken up in terms of the PPR Chapter 7, Rule 19.4.3 where it states that receipt of a claim by an	As per our comment on Annexure C that was published with the draft Regulations, this term <u>has not</u> been aligned to similar terms in the FAIS Act. The intention was only to align the term in the STIA and LTIA Regulations. However, due to comments received the definitions have been changed to revert back to the current definitions. Please note that delineation of activities is one of the objectives of the RDR which will be implemented in phase 2 and 3 of the RDR. Pending these phases no amendments will be made. In addition, the phrase "directed towards" is the existing terminology used in the definition and has not presented significant interpretation challenges as far as we are aware. We confirm that the intention is to exclude premium collection from the scope of "intermediary services", but this will only take place at a later stage once appropriate operational standards for premium collection have been set. For the time being, premium collection therefore remains within the scope of "intermediary services". Where the term "advice" is used in the Regulations it is linked to "'advice" as defined in the FAIS Act. To the extent that future phases of RDR require any changes to the definition of "advice" or the recognition of different forms of advice, this

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		intermediary is deemed to be receipt by the insurer, a point which we do not concur with. 2(h)(b)(iv) Insert the high-lighted words "providing administration services towards entering into other than policy data administration…… ". Clarity is required on what is meant and or intended by "other than policy data administration services"?	will be done through appropriate amendments to the FAIS provisions. The phrase "directed towards" was not inserted; it is in the current definition. The processing of claims is not a binder function. The settling of claims is a binder function. The processing of claims is part of "services as intermediary" as defined in the LTIA Regulations. Any administration services remain part of intermediary services for the time being.
	Hollard	Rendering "services as an intermediary" excludes the provision of financial planning advice – i.e. identifying and quantifying financial needs. Does this mean that this can be remunerated for outside of the commission limitations?	It is unclear why it is stated that rendering "services as intermediary" would exclude the provision of financial planning advice. In our opinion this may not be the case in all instances, e.g. where the financial planning is done with a product recommendation. Notwithstanding, the definition of "services as intermediary" has been changed to revert back to the current definition and therefore the current position will prevail for now.
	The Unlimited	The word *"directed'* is not clear enough in our respectful submission relative to the actual act of entering into a policy, as such term is defined. We accordingly propose that the definition be amended as follows: *[a) directed towards entering into, varying or renewing an insurance policy —* ***but excludes the actual act* of entering *into a policy (being a binder function)*;** (our emphasis added).	Disagree. In our opinion the distinction is clear enough. This is the existing wording and has not resulted in any interpretational challenges as far as we are aware. An act directed towards entering into is distinctly different from the actual act of entering into.
	PSG	Not in correct order	Definition has been changed back to "rendering services as intermediary" as the status quo will be retained. Definition is therefore in the correct place.
3.1 – definition of **"replacement risk policy"**	ASISA	The PPR amendment refers to the definition of "replacement" in the FAIS General Code of Conduct but this is not there yet. A draft definition has been provided to ASISA by the FSB on 16 February 2017. This is so close to the deadline for comment that it does not allow sufficient time to comment on	Noted.

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		this definition and the accompanying provisions on risk replacements in these regulations and we appreciate the extension of time which has been granted to do so.	
3.1 – definition of **“’representative’**	ASISA	Although RDR includes proposals around adviser categorisation that would apply to all advisers across industry, these have not yet been finalised. It is therefore not yet known what the final categorisation model may be and when that model may be fully implemented. The proposed change through (c) and (d) will in the immediate future introduce limitations for those advisers who are “tied” to long-term insurers i.e. those who are “representatives”, as opposed to “independent intermediaries” in terms of the Long-term Insurance Act. It is submitted that it is not administratively fair to introduce these limitations to a specific sub-set of advisers at this time. It would be much better to finalise the full categorisation model, so as to allow advisers and product suppliers to understand and evaluate the potential legal structures that would exist in the future and to structure their operations in the most suitable manner. Making short-term regulatory changes could result in inappropriate short-term industry response including, by way of example, unnecessary and costly restructuring of groups and licences to avoid what may be deemed unfair arbitrage. As an example, advisers who form part of another large product supplier group, but simply happen to be doing so from a FAIS licence held by an entity in the group that is not a long-term insurer, will not be similarly limited. For avoidance of doubt the understanding of ASISA members is that a person may in terms of the LTIA only render “services as an intermediary” as either a “representative” or an “independent intermediary”. To be a “representative”, a person has to employed or mandated by a long-term insurer (“First Insurer”) in a manner that matches the definition of “representative”. Currently, that means that such a person may, inter alia, render services as an intermediary in respect of policies entered into by another insurer which has entered into a written agreement with the First Insurer. Should the proposed amendments to the definition of “representative” be	✐ On the prosed amendment: Agreed. The definition will be amended as proposed. It has always been communicated that RDR will be implemented in phases. Proposal V was identified as a Phase 1 proposal. Proposal V, through the change to the definition of “representative” is fully consistent with the proposed broader two-tier adviser categorisation model to be implemented at a later stage of the RDR rollout. It is also fully consistent with the underlying rationale of drawing a clear distinction between tied and non-tied advice models. The fact that the final model may refine and expand elements of adviser categorisation (such as introducing new terminology and extending the principles to other industry sectors) is no reason to delay implementation of this component of the final model. The intended effect of limiting long-term insurer tied agents to the long-term insurance products of their home insurer / group only, will not change in the final model. Put another way, there is nothing that will need to be done as a result of the change to the definition of “representative” that will need to be “undone” when the broader model is introduced. The long-term insurance sector is currently and has historically been the only financial services sector where a regulatory distinction is drawn between tied and non-tied distribution models (through the respective definitions of “representative” and “independent intermediary”), and where the general agency scenario therefore arises. It follows that the proposed change to the definition of “representative” is specific to long-term insurers. This does not constitute unfair targeting of a particular type of adviser – the specific issues simply do not arise outside of the long-term insurance sector.

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		made, then according to our understanding, to remain recognised as a "representative", the terms of employment/mandate will need to be altered to comply with a more limiting set of criteria. These new criteria will, with the exception of the proposed grandfathering proposals and limited gap filling, stop the "representative" from rendering services as an intermediary in respect of policies issued by long-term insurers outside of the group of companies that the First Insurer belongs to. Seeing as it is not practical or desirous for most "representatives" to become "independent intermediaries" especially without fully understanding the future RDR categorisation model and related impacts, this change in definition effectively leaves "representatives" with no choice other than to agree to a more limited mandate. ASISA members therefore propose not implementing these limitations now but to rather finalise RDR adviser categorisation discussions and then implement a comprehensive all-inclusive set of reforms at one future date. A further consideration is that the licence categories under the Insurance Bill are much more detailed than under the current Act which would mean that the allowance for "gap filling" where the insurer does not have the relevant licence would be much more meaningful. Currently the licence categories are so wide that it would have a negligible effect. The FSB said in the RDR Status update of Dec 2016 that they are considering one or two possible deviations from the strict approach to 'gap filling'. They will consult further on the possibility of allowing for an exception in respect of highly commoditised products where the product pricing is the only real product differentiator, e.g. fixed interest compulsory annuities. These types of products of different suppliers are identical other than as to their publicly available annuity rate from time to time. The risk of conflict of interest is therefore minimal. This amendment to the definition of 'representative' however does not provide for any exceptions. It is an absolute prohibition and creates a very unfortunate limitation in the interim until such time as the RDR phase 2/3 exceptions are implemented. By analogy to the proposed exception above, another exception could be a product with a fixed bond underwritten by another insurer as underlying investment. The rationale is very similar to the	The effect of the proposed change to the definition of "representative" will mean that (using current terminology) advisers who are contracted to an insurer as representatives will be limited to marketing the policies of that insurer, while advisers who are contracted to the insurer as independent intermediaries will not. That is the intention. That will also be the case in the final RDR model – other than that the terminology used to describe the respective channels will differ. The concern is raised that, in light of the fact that the impacts of the final adviser categorisation model are not yet fully understood, the decision to become an independent intermediary (an RFA in the future model) is less viable. Although we accept that there are certain aspects of the model that are not finalised, the key features and objectives of the model are clear. Particularly where the distribution of long-term insurance policies is concerned, there are few material "unknowns" regarding the future status of a Registered Financial Adviser as compared to a Product Supplier Agent. Therefore, in our opinion there is no reason why we cannot implement Proposal V in Phase 1 as initially proposed. We do however note your concern about "exceptions" and for this reason paragraph (c) of the definition has been amended to read that the Registrar can determine certain classes or types of policies that may be used for gap filing.

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		argument above for fixed interest annuities. Given that these proposed exceptions are very likely to be adopted for the reason acknowledged above e.g. the risk of conflict of interest being minimal, ASISA members request that these kinds of exceptions should be provided for simultaneously with the proposed amendment to the definition. • An amendment to refer in (c) and (d) to the effective date rather than 1 May 2017 is proposed as indicated. ASISA members will need about 6 months from when the regulations are final to implement this change which includes planning, budgeting, communication and restructuring of arrangements with advisers who are impacted. • As a drafting comment reference is made to paragraphs (i) and (ii) in par (c) of the definition. Presumably this should be (a) and (b) as shown. • Proposed amendments: **"'representative'** means a person employed or mandated by a long-term insurer to render services as intermediary only in relation to policies – (a) entered into or to be entered into by that insurer; (b) entered into or to be entered into by another insurer which is also part of the same group of companies that the insurer is part of; (c) entered into or to be entered into on or after ~~1 May 2017~~ the effective date by another insurer which has a written agreement with that insurer in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to a class of policies of that other insurer which none of the insurers referred to in paragraphs (a) ~~(i)~~ and (b) ~~(ii)~~ are registered to underwrite; or (d) entered into prior to 1 May 2017 by another insurer which concluded a written agreement with that insurer prior to 1 January 2017 in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to that other insurer's policies;";	
	Hollard	There is a second (ii) and (iii) – which seems as though, should have been deleted by the insertion of the new clauses (ii), (iii) and (iv). Likewise	Comment is unclear. It is assumed that the comment refers to paragraph (c) in the definition that erroneously refers to paragraphs (i) and (ii) instead of (a) and (b). This error will be

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		numbering of (b) to be removed.	corrected.
	PSG	We believe the reference in paragraph c of the definition of representative should refer to (a) and (b) and not (i) and (ii) (which was the reference in the replaced definition) as is currently the case.	✎ Agreed. The error will be corrected.
	BASA	There is no (i) and (ii) in this regulation. Replace (i) and (ii) with (a) and (b). "…of that other insurer which none of the insurers referred to in paragraphs (i) (a) and (ii) (b) are registered to underwrite. The definition of "representative" refers to conditions of employment or engagement complying with the principle of "Equivalence of Reward"….as determined by the Registrar… Regulation 4A states "No remuneration or consideration shall, directly or indirectly, be provided to or accepted by or on behalf of, a representative for rendering services as intermediary, otherwise than in accordance with the principle of "Equivalence of Reward" as determined by the Registrar under paragraph (5) below." Regulations 3(2)(5) and 3(11)(2) also refers to "Equivalence of Reward". The term "Equivalence of Reward" is not defined. Since no determination has been made in this regard, it is difficult for the industry to implement remuneration and consideration for intermediaries with confidence that it fully complies with legislation. We recommend that the Registrar give this matter urgent attention. Addressing this matter as part of implementation of phase 2 or 3 may delay the guidance sought and the confusion or misinterpretation will remain in the industry.	✎ Agreed. The error will be corrected. The existing definition of "representative" refers to the equivalence of reward principle. The proposed amendments to the Regulations remove this principle from the definition and insert a substantive requirement in the body of the regulations (i.e. regulation 3.2(4A)) in respect of equivalence of reward. Regulation 3.2(5) which states that the Registrar may determine particular forms of remuneration or consideration as not complying with the principle of equivalence of reward is an existing provision. Therefore, essentially nothing has changed. The principle of equivalence of reward must be interpreted as it has always been interpreted (as it is an existing requirement). As noted in the RDR proposals, the intention is for additional standards relating to equivalence of reward to be developed in due course. ✎ Notwithstanding, regulation 3.2(4A) will be amended to clarify what the principle of Equivalence of Reward entails (similar to the existing wording in the Regulations) and that it applies even if no determination has been made by the Registrar.
3.2(4)(b)	ASISA	5.2.1 is in relation to term cover only for an individual and the table currently does not allow secondary commission to be paid.	✎ Agreed. Reference to 5.2.1 in Regulation 3.2(4)(b) will be deleted.

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Amendment 4(m)	Hollard	Allowance for secondary commission on 5.2.1 contradicts the table which shows that no secondary commission is permitted in terms of this section.	See response directly above.
3.2(4A) Amendment 4(n)	PSG	As this paragraph currently stands an intermediary cannot charge a client a fee for services rendered instead of or in addition to the commission charged. See the Booysen case for the impact of such a prohibition.	The amendment does not impact or relate to the Booysen case. The amendment relates to the remuneration that a representative may receive for rendering "services as intermediary" as defined.
3.2(5) Amendment 4(o)	ASISA	It is understood that the purpose of this amendment and the related amendment to Regulation 3.2(4A) is to enable the Registrar to make a determination and that the consequence of a failure to comply will change to become a clear contravention of the Regulations. However there is a problem with the way this provision is worded as on our reading the way this now means that the Registrar must make a determination in terms of subpar (5) before representatives can be remunerated in accordance with the principle of EoR. Put another way, if the Registrar fails to determine whether particular forms of remuneration comply with the principle of EoR then no remuneration on the basis of EoR will be allowed. A drafting change has been suggested below to deal with this problem: (5) The Registrar may by notice determine that particular forms of remuneration or consideration, whether in cash or in kind, ~~comply or~~ do not comply with the principle of "Equivalence of Reward".	✎ Agree with principle. Regulation 3.2(4A) will be amended.
3.3(1)(b) Amendment 4(p)	Hollard	Allowance of primary commission before first premium on 3.2.1 and 5.2.1 contradicts the table which shows that this section does not apply and therefore that commission is only payable after the start of the first premium period	✎ Agreed. In the commission Table under 3.2.1 the last three columns will be amended. Also, reference to 5.2.1 in Regulation 3.3(1)(b) will be deleted.
3.4(1)(b)	Hollard	Allowance for upfront commission on 3.2.1 and 5.2.1 contradicts the table which shows that these benefit component types limit on upfront commission is Nil	See response directly above.
3.9 - Amendment 4(u)	ASISA	Following the implementation of the proposed legislation all new investment policies will fall under part 3B (as stipulated in 5.9). It will therefore not be possible to issue new replacement investment policies under part 3A of the	Noted. However, we are concerned that there might be unintended consequences if this regulation is removed.

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		legislation. The paragraph will hence not be applicable after implementation of the regulations and should be removed. (Replacement investment policies are covered in 3.18 for part 3B). Definition of level percentage does not appear and it is unclear what is meant by this phrase.	
3.9A(1)(a) Amendment 4(v)	ASISA	Comments on this part will still be made in line with the extension granted as it hasn't been possible to assess the implications of this part without having a definition of "replacement risk policy" included in the draft amendments as indicated in our general comments. The only comment which can be made at this stage is regarding (1) (a). The term "managing executive of the insurer" is defined in the Act as "the chief executive officer of a long-term insurer and every manager of that long-term insurer who reports directly to that chief executive officer". It is submitted that for practical reasons the term "managing executive of the insurer" should include a person to whom the particular function is duly delegated, provided however, ultimate responsibility and accountability shall vest in the managing executive. ASISA members submit that a transitional period is required for this requirement, especially if this includes a prescribed format for the replacement advice record. This will have system implications and therefore require at least 12 months for implementation. Members can also only evaluate the time needed once they have seen the content of the amended PPR and what the replacement advice record will entail.	Noted. No additional comments were received. With regards to sign-off by the executive, please note that the wording in the Regulations have been changed to merely refer to a replacement contemplated in the PPRs. The requirements regarding sign-off is therefore now only dealt with in the PPRs and your comments will be considered when considering further amendments to the PPRs. Your concern relating to a transitional period is noted. We acknowledge that a transitional period will be required. However, it is our view that a transitional period of 6 months should be sufficient considering the nature of the procedures that will have to be put in place to meet this requirement. The format for the replacement advice will be published on or shortly after the Regulations are promulgated.
	FIA	The "managing executive" is not the correct channel nor that s/he would be able to cope with the volume within the required timeframes.	See comment directly above.
	PSG	**Sign-off on replacement risk policies** While we understand the motivation in the Long-Term Regulations to have the Record of Advice signed off where risk policies are being replaced, we question whether this is operationally achievable. We submit that the proposed Regulations are not possible to execute. In the larger insurers (if not all) the managing executives are operational in	See comment directly above relating to sign-off by the "managing executive". The comment on the confirmation required from the "new" insurer is noted. This requirement flows from RDR proposal OO and is introduced as an interim alternative to the original proposal which proposed an overall prohibition on

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		nature and have little to no knowledge or expertise about the advice process and what is required. It is for this purpose that the FAIS Act has required companies to appoint key individuals. These key individuals are not the managing executives of the business. However even the knowledge of the key individuals of an insurer does not pertain to the advice provided by intermediaries. Replacing their subjective opinion for that of the intermediary will lead to an impossible position. The objective criteria about disclosure would have been easier to meet and the appointed person would be able to determine whether the disclosures of the new product is met. Requiring that person to know whether the disclosures of the previous insurer is met is impossible as that would require an in depth knowledge of the product of the competitor. This can therefore only be achieved if insurers are required to provide all the relevant information about the cost structures and benefits of their products when requested. Most insurers will however admit that they cannot provide you with that full detail. Due to the possible definition of replacement it is important to note that the number of transactions that will be captured in this net will be significant. Where a client has a 10-year old life policy for R200 000 and after a thorough review of his needs a new policy for R5 000 000 is issued while cancelling the old, this will also qualify as a replacement. We therefore believe that the number of sign-offs that will therefore be required by the managing executive will be of such a nature that it is impossible for one person to do and that the Regulations will need to allow for the delegation of this power to address some of the concerns. It must also be noted that it is quite possible for an existing policy to be cancelled prior to or after the new policy was issued without the intermediary being aware of the cancellation. In such a case the intermediary would not have provided the relevant record of advice or made the necessary disclosures. The proposed process does not provide the insurer with the ability to determine 'fault' before reporting the matter to the Regulator. We therefore request that the sign-off be restricted to an objective review of the disclosures with a requirement on the replaced insurer to provide those	commission on replacement policies. Additional controls and accountability of the "new" insurer is required in the replacement process and we maintain that this requirement is necessary. Please see the response document to comments made on the proposed replacement of the Policyholder Protection Rules that addresses the confirmation required from the "new" insurer.

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		disclosures to the intermediary. We also request that the reference to a managing executive be changed to a key individual who is provided the right to delegate the work but not the liability and that such a person has the ability to assess the reason for non-compliance.	
	BASA	Regulation 3(9)(A)(1)(a) and (b) refers to "managing executive" We suggest that the term be defined.	The term is defined in the Long-term Insurance Act.
3.9A(2) Amendment 4(v)	ASISA	Comments on this part will be made at a later date in line with the extension granted. ASISA members submit that a transitional period is required for this requirement, especially if this includes a prescribed format for the replacement advice record. This will have system implications and therefore require at least 12 months for implementation. Members can also only evaluate the time needed once they have seen the content of the amended PPR and what the replacement advice record will entail.	Noted. No additional comments were received. Your concern relating to a transitional period is noted. We acknowledge that a transitional period will be required. However, it is our view that a transitional period of 6 months should be sufficient considering the nature of the procedures that will have to be put in place to meet this requirement. The format for the replacement advice will be published on or shortly after the Regulations are promulgated.
	BASA	The section should read: "…, whether due ***to the*** fact that the long-term insurer was not aware at the time of payment that the policy in question was a replacement risk policy…"	Comment not understood. The draft Regulations published for public comment indeed include "to the".
3A; Annexure 1 Amendment 4(w)	ASISA	• 3.1.2.1: It is not clear why this is restricted to 85% - clarity is requested on this limitation. Should this not be marked "not applicable" as for 3.2.2.1? • 3.2.1: This was 85.0 previously and the change to "nil" appears to be an error. If it is intentional, then this amendment will have a major impact on individual credit life policies that may currently pay 85% upfront	• Agreed. Correction has been made. The commission structure of group schemes will be aligned the commission structure of group schemes that provide term cover only. • The changes will not affect the exiting commission levels, except for credit life group schemes "with administrative work", and therefore no transitional requirements are

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		commission. Clarity is sought regarding calculating the change in the maximum commission amounts when this change in the regulations becomes effective. The effective date of the amendment is proposed to be 1 May 2017. If this date falls in the middle of a scheme year, must the insurer apply the previous maximum commission table for the first part of the year and the amended table for the second part thereof, or should the change be applied differently?	required. However, a transitional period of 12 months will be provided for in respect of the aforementioned credit life group schemes.
	Hollard	The table omits to specify to what the percentage is applied to get the maximum commission. For example if the premium is R800, is the commission 10% of the all the future premiums expected on the policy subject to the limit for a health policy specified in the Table; or is the 10% applied to each monthly premium and payable only when the premium is paid.	The comment is not understood. Regulation 3.4 clearly provides how the percentages in the Table should be applied to the policy premium to calculate the maximum commission payable. Further, please note that no amendments were made to the Table that changes the manner in which the Table applies. The amendments relates only to the types of policies and the commission structure. The Table must therefore be applied in the same manner as the Table has been applied to date.
PART 3B - LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY – INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009			
3.11(2)(a) Amendment (bb)	Hollard	Need to have more clarity on equivalence of reward as this will impact sales staff and the remuneration paid to them. How will this impact conditions of employment for current staff as employment negotiations will be required and what is the view on this.	See response to ASISA comment under Regulation 3.2(5) above. It is currently a requirement that representatives must be remunerated on the basis of the Principle of Equivalence of Reward. As discussed in previous RDR Updates, the Equivalence of Reward requirement has simply been moved from the definition of "representative" to the body of the Regulations - no additional requirements have been added. Any additional requirements relating to Equivalence of Reward that the Registrar may require will be subject to consultation.
	PSG	As this paragraph currently stands an intermediary cannot charge a client a fee for services rendered instead of or in addition to the commission	See response to PSG comment under Regulation 3.2(4A)

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		charged. See the Booysen case for the impact of such a prohibition	above.
3.11(2)(b) Amendment (bb)	BASA	The existing regulation stipulates that "notice in the Government Gazette". The sub-regulation is being amended to remove "Government Gazette" We request clarity as to where the Notice be published.	✎ Noted. Regulation 3.11(2)(b) will be amended.
PART 3C - LIMITATION ON REMUNERATION FOR OUTSOURCING			
3.19(1)	ASISA	As this Part 3C only applies to two types of outsourcing (activities performed in respect of a binder agreement and policy data administration services") which are already defined, it is suggested that it is not necessary to include a definition for "outsourcing" and that this provision is amended as indicated below: This Part 3C applies to ~~the outsourcing by an insurer of a~~ binder functions or policy data administration services.	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.
3(19)(2) – definition of **"cell structure"**	ASISA	What is the significance of distinguishing between "places or insures" in paragraph 3.19(2) (c)? Our interpretation is that "places" would refer to a third party cell and "insures" would refer to a first party cell. Is this correct?	✎ The reference to "insures" will be removed.
	BASA	It is not clear what is meant by "places or insures" in respect of Cell Captive Structures. Is this: Limited to policies concluded under a binder agreement? Limited to policies concluded as intermediary of the insurer?	See response directly above. It will include policies placed with the insurer, regardless of whether through a binder agreement or intermediary services only.
3.19 (2) – definition of **"Outsourcing"**	ASISA	For the reason given in our comment above, it is suggested that this definition is deleted. ~~**"Outsourcing"** means any arrangement of any form between an insurer and another person, whether that person is regulated or supervised under any law or not, in terms of which that party performs a function that is integral to the nature of the insurance business that an insurer provides, which would otherwise be performed by the insurer itself in conducting long-term insurance business, and includes rendering services under a binder~~	Please refer to our response to your comment above.

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		~~agreement and rendering policy data administration services, but excludes rendering services as intermediary;~~	
3.19(2) – definition of **"policy data administration services"**	ASISA	The inclusion of this definition appears to be aimed at services performed by FSP's and if this is the intention it should be made clear and we have suggested the insertion as indicated below: **"policy data administration services"** means the managing, recording and updating of policy and policyholder data of an insurer on behalf of that insurer by an FSP in a manner that – (a) ensures complete integration between the information technology system of the insurer and the person that provides the services; and (b)enables the insurer to have continuous access to accurate, up-to-date, complete and secure policy and policyholder data Our understanding is that the purpose of this new definition is to facilitate the implementation of Proposals Z & AA of RDR Phase 1, which are the proposals relating to strengthening the standards and remuneration caps for binder and outsourcing arrangements between product suppliers and financial advisers and that it should not be construed to include any service that is a "material function" as provided for in Directive 159Ai and/or any intra-group outsourcing arrangement. However the view of ASISA members is that the definition is wide enough to cover these. Should our understanding of the purpose of the definition be correct and this wide interpretation is an unintended consequence then we submit it should be amended as shown. As it stands it is very problematic as shown in the following scenarios: • Cloud based service models –these include Infrastructure-as-a-Service, Platform-as-a-Service and Software-as-a-Service. The insurer would access the infrastructure, platform or software of the 3rd party but the insurer is the entity that "manages", "records" or "updates" policyholder data, via the cloud, whilst the service provider is responsible for the infrastructure, platform or service, but not the recording or updating of policyholder data. • "Multi-sourcing" where rather than making use of a single provider	Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.

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		performing all functions in terms of a single agreement, functions can be split and performed by different suppliers in terms of parallel agreements. The definition does not appear to take this eventuality into account. • Outsourcing of aspects, such as the client servicing component e.g. the capturing of changed personal information on the insurer's systems by a third party whilst retaining all other aspects in-house. In this example the third party would not "manage", but would record and update certain things, on the insurer's systems.	
	Hollard	Will an additional separate agreement be required for this?	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.
	PSG	We note that the integration requirement for policy data administration services is stricter than those required under a binder agreement. This would result in intermediaries opting for a sec 49A(1)(a) binder agreement rather than the policy data administration services. It is unsure whether that is the intention.	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.
	The Unlimited	What is meant by *"complete integration"?* If the intent is to enable the insurer to have continuous access to complete and up to date policyholder data then, in our respectful submission, sub-regulation (a) is redundant (provided the insurer has access to that data as provided for in sub-regulation (b)).	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations. Comment therefore no longer relevant in as far as it relates to "policy data administration". However see comments and responses relating to "integration" under Part 6 below.
3.20(1)	Clientèle	• The fee referred to in section 3.20(1) must not exceed 2% of the total premium payable by policyholders in respect of policies to which the policy data administration services relate; • It seems as if the policy data administration services (outsourcing fee) limit of 2% applies to the total premiums payable over the terms of the	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.

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		policy. • Can the policy data administration services fee be paid to the outsource services provider on date of capturing of the policy data administration? • In instances where limits are being set as a percentage of premiums, we would recommend that the FSB take cognizance of the fact that there is a significant difference between the impact on small premium business and large premium business. For instance, 2% of a R500 per month premium could be considered meaningful (R10), whereas 2% of a R100 per month premium (R2) may not. If this is not taken into account, it becomes very difficult for insurers to do certain activities, i.e. outsourcing on small premium products. The small premium products should be the type of products that insurers are encouraged to sell in South Africa, seeing that this part of the market is often not adequately serviced and is in desperate need of cover. It is recommended that commission can be paid in the form of the greater of Rand amount and the percentage. • Can a single payment be made at the time of the policy data administration services being rendered, rather than regular payments as and when premiums are received? • In the event that an upfront payment will be allowed for the policy administration services, will this outsource fee be subject to claw back if the maximum is exceeded? • How will this fee be applied to whole of life policies?	
3.20(2)	ASISA	• If the intention is that policy data administration services is not restricted to these being provided by an FSP, then a 2% fee cap based on premiums is not appropriate and we would request an opportunity to provide proposals on fee arrangements. For example outsourcing contracts of policy data administration services are not constructed with reference to the "premium payable by policyholders". In fact, the fee for outsourced services is typically determined after a robust process and with reference to a host of factors and objectives, which vary on a case-by-case basis. Such factors can include service levels, complexity of servicing transactions, time spent, infrastructure availability, etc.	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.

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		Another example is a long term insurer that only issues investment policies and outsources the data administration services to a third party. A widely used billing mechanism in the industry is bps x assets under administration ("AUA") (e.g. 10bps per annum x AUA). It is not calculated by reference to premiums collected.
		• Based on the definition which we have proposed, some concerns arise with this provision because:
		  • the same amount of work is involved, irrespective of the premium payable by a policyholder which particularly presents a problem in the low income market where premiums are much lower than in the higher income markets. In this regard ASISA members recommend that a sliding scale capping arrangement be put into place that takes average premium ranges into account as per ASISA's previous comments on Proposal Z & AA (ASISA comments on RDR Review, Phase 1 dated 1 February 2016) ;
		  • the "premium payable by policyholders" varies on a day-to-day basis because of business "in" and business "out" so more certainty is required on the method of calculation of the total premium.
		Proposed amendments:
		(2) The fee referred to in paragraph ~~(a)~~ (1) must not exceed 2% of the total premium payable by policyholders in respect of the policies to which the policy data administration services relate.	

3.20(2)	BASA	The reference to "paragraph (a)" in this regulation is incorrect and should be replaced with "paragraph 3.20(1)".	Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.
3.20(3)	BASA	Regulation 3.20(3) Use of the following wording: "policy data management services" and "policy data administration services"	Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. Policy data administration services have been removed from the Regulations.

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		We suggest that the same terminology be used.	
3.21(2) and the table	ASISA	The 2% limit in respect of fees for binder holders will not be sufficient in some cases but the ability to apply for an exemption in these cases will assist here. The biggest concern of AISA members with the proposed caps is that 2% of premium payable can for example result in unfairness depending on market type i.e. the same concern as mentioned in the comment above on policy data administration fees and they are in support of the same recommendation here.	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. We are of the view that the ability to apply for an exemption from the caps addresses the concern raised.
	BASA	See our comments on binder fees in the STPPR - Part 5B, Limitation on Remuneration for Outsourcing, 5.7 (2).	Noted.
	FIA	Unlike in the Short-Term market, binders are not that common in the Long-Term field and are mainly applicable to assistance business, where premiums tend to be low. We believe that the level of capping expressed as a percentage of the premium results in a maximum fee which is infeasible, which would mean that intermediaries would have to close their binder agreements. The practical implications of this on handling the business would be serious.	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations. We are of the view that the ability to apply for an exemption from the caps addresses the concern raised.
	Hollard	3.21(2)(a) - Is a NMI not providing advice not limited to the table? In addition would an NMI also not associated to someone who is giving advice?	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.
	PSG	3.21(2)(a) - The proposed Binder Regulations prohibits an insurer from concluding binder functions with non-mandated intermediaries registered to provide advice where that binder function pertains to the underwriting of policies (Sec49A(1)(b) – (d) of the Long-Term Insurance Act and Sec48A(1)(b) to (d) of the Short-Term Insurance Act respectively). The comments provided states that the Regulator is questioning the value of such binder agreements. No further reasons for this prohibition is provided. We submit that questioning the value of the service is not a sufficient ground for prohibiting the service. Our experience has shown that both the underwriting process and the provision of advice can to a large extent benefit	✎ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.

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		from each other. Understanding and providing underwriting under a binder agreement leads to significantly better advice being provided to a client and ensures the intermediary can negotiate the best outcome for the client. The advice and interaction with the client also provides the necessary insight to underwrite the correct risks more appropriately. This prohibition could furthermore not have been proposed on the basis of conflict of interest as it has no more of a conflict than any of the other binder functions. The only probable reason for this prohibition could therefore be the risk of incorrect underwriting. This risk is however not dependent upon the fact whether the non-mandated intermediary is providing advice or not, but whether the intermediary has the capabilities to execute the relevant function properly. Requiring the insurer to have systems in place to properly monitor these capabilities together with the insurer's right to decide whether it will issue and underwriting binder or not, will address this risk sufficiently. As questioning the value of this service doesn't form sufficient ground for this prohibition and as no other grounds can exist, we request the removal of this prohibition from the Regulations.	
	PSG	**Limitation on binder fees** The comments of the Regulator on this matter is again indicative of the fact that the process has not been completed and that these Regulations are also premature. The Regulations refer to fees that are reasonably commensurate with the actual costs incurred. With the 2% cap on each of the three binder functions it would however seem that this rule is being ignored by the Regulator. With each of the binder functions differing significantly in their nature and types of activities, the proposed fee and split is not in line with this principle and seems arbitrary to have an equal cap (2%) on all three levels of binder activities. We want to state that PSG currently operates its platform business (where we have several binders) at a financial loss. This is with current binder fee levels in excess of the proposed max of 6%. This is done to ensure that PSG delivers an optimal service to its clients and PSG advisers. But if fee levels are to drop to the proposed maximums, it will become significantly uneconomical to continue with the binder functions, ultimately to the	✐ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.

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		detriment of PSG clients. Our understanding is that a number of FIA members opened their binder business to the scrutiny of the Regulator and proved that they were subsidising their binder functions at the current rates, levels that are already in excess of the proposed. It would be totally uneconomical to operate binders at the proposed 6% max fee. The fact that the Regulator is aware that these fees are not commensurate with the cost is further carried out by the ability of other binder agreements to charge a higher fee than the maximum 6%. Such a distinction can only be argued if non-mandated intermediaries providing advice are able to provide these services cheaper, a position which is clearly not the case. If the public available financial results of insurers are studied it is clear that the costs of the functions included in the binder varies between 15% and 25% of premium income. In discussions with many of these insurers 6.5% was the level used as the costs for claims only. All indications are that the proposed regulatory activities required to perform these functions have not been clearly defined in the necessary detail to assign costs to them. Therefore any fees proposed lack substance. The Regulator also regularly refers to efficiencies and argued that with binders there is a duplication of costs and that only those functions that aren't duplicated could be outsourced under a binder. This is a total misconception of the purpose of binders. Although there are areas where costs efficiencies are achieved, it is the control over the underwriting and more importantly the claims process that benefits the end consumer. Even if the possibility exists that the activities could be performed cheaper by the insurer, the quality and the speed will be less. If the insurer wishes to increase the speed and quality to the level of the binder holder it would almost certainly lead to increased costs. Efficiencies should therefore be done in collaboration with speed, effectiveness and overall quality and value for money for the insured. We therefore submit that the current proposed 6% in fees is significantly below the cost of providing these services and it appears that the Regulator utilised the capping of fees to address issues that could be more effectively addressed in a different manner that would lead to an enhanced outcome for the policyholder. If this is not the case a more accurate level of fees needs to	

<table>
<tr><th>SECTION</th><th>REVIEWER</th><th>ISSUE</th><th>RESPONSE</th></tr>
<tr><td></td><td></td><td>be determined. To assist in determining this level of binder fees, we request the Regulator to provide the detailed information from its Thematic Review as well as the basis for its calculations of the fee split 2/2/2.

As the process around the setting of the fees is not yet completed, the proposed fees are not commensurate with the cost of the services. The impact of these levels will have dire implications for existing binder holders. We request that these limitations are withdrawn until the Regulator has completed its fee assessment work, and a correct fee limit is determined.</td><td></td></tr>
<tr><td></td><td>TD Admin</td><td>Despite requiring that any Binder Agreement between an Insurer and a binder-holder must make provision for fees that are reasonably commensurate based on actual costs incurred, the Regulations then prohibits fees from exceeding the value listed in the table below under Part 5B, paragraph 5.8 (2) (b) – Short Term or Part 3B paragraph 3.21 (1) (b) – Long Term, where that binder holder is a non-mandated intermediary or an associate of another non mandated intermediary that is authorised to render “advice” as defined in the FAIS Act.

We administer, the majority of our book attracts a premium under R100.00; but we do have products that have been costed as little as R11.50 (gross, per month). To appreciate what effect the capping of fees will do, consider the following:

<table><tr><th>Product</th><th>Monthly Premium</th><th>Proposed Fee (%)</th><th>Proposed Fee (R)</th></tr><tr><td>Survivor Level 1</td><td>R20.00</td><td>6%</td><td>R1.20</td></tr></table>
As indicated earlier, just the debit order cost amounts to R1.40. Clearly this indicates that to maintain these policies is not a viable proposition.
No analysis was done, no transparency was given and no explanation was provided as to how the Minister arrived at the maximum percentage payable as a fee for each of the binder functions.
The proposed fees do not take cognisance of the fact that some products are more labour intensive to administer (claims and policy</td><td>Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.</td></tr>
</table>

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		administration) than others – no allowance has been made to cater for this. As a result we have suggested that the fees be determined between the Insurer and the Binder Holder who are in possession of all the facts. • Due consideration in other parts of the Regulations was given to maximum fees payable to intermediaries whereby such fees seem more commensurate for the services provided. Of note is that the Minister takes into consideration the probable Rand value when dealing with other fees which have low maximum commission values. The Minister then includes a tiered table that increases the percentage of the maximum commission values proportionately as the value of the premium decreases. • The unfair declaration of Binder fees reason together with Part 6, Paragraph 6(i) of these Regulations renders these Regulations unfair and against the letter and spirit of the National Development Plan. The Minister must consider that many of these binder holders provide two key aspects that give rise to the intentions of the National Development Plan and South African transformation in general; one being that very often innovation is provided by such binder holders and two, that it is these very binder holders who provide services in all South African languages. It is these products and services that typically have a low premium value.	
	The Unlimited	The maximum binder fees (2%) set out in the Table are unreasonable given the fact that the premiums payable for many products, in particular those aimed at lower LSM customers, are relatively low. For example, the premium for R 30,000 death cover is R 23.00 per month for the principal insured and spouse. In the circumstances a binder holder would be restricted to earning no more than R 1.38 per month in binder fees in respect of such a product. The proposed cap will, in respect of such products, not be commensurate with the service provided by binder holders, taking into account the administrative and regulatory requirements that must be complied with including, inter a/la, those set out in the Financial Advisory and Intermediary Services Act, 2002, including TCF. The proposed cap will ultimately prejudice the consumer as it is likely that these products will no longer be commercially viable and will be taken off the shelves not be feasible for	✐ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.

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		intermediaries to market and service these policies. This will ultimately frustrate Treasury's attempts to improve access to financial services. In the circumstances we recommend that a sliding scale be set along the lines of what was implemented in the Demarcation Regulations, potentially as follows: Monthly premium band — Maximum Binder Fee Above R 1,200 — 2% per binder function R 601 to R 1,200 — 8% per binder function R 300 to R 600 — 15% per binder function R 301 to R 100 — 20% per binder function Less than R 100 — 30% per binder function Ultimately it is critical that the fees payable in respect of low premium products provide for a reasonable rate of return in accordance with the principle of being commensurate with the function performed.	
3.21(3)	TD Admin	**DISPENSATION** Whilst we acknowledge that the amendments to the regulations (Part 5B Paragraph 5.8 (3) i.r.o Short Term and Part 3 C paragraph 3 i.r.o Long Term); allows for an insurer to apply to the Registrar to grant dispensation to increase fees, we feel that in order to create a stable environment the decision to allow a Binder Holder to charge higher fees should be determined by the Insurer – they have, after all, determined the actuarial cost of the product and are aware of the risks and the costs involved and what specific skills and infrastructure it would take to administer the product. In the event that a policy is priced with too high a margin for administration costs, this product will ultimately be uncompetitive – a fact that the insurer will take into account when pricing a particular product. • Part 5B, paragraph 5.8 (3) provides that on application by the Insurer, the Registrar may grant dispensation to increase fees. Such is on condition that: • such a fee is appropriate taking into account the nature, scale and complexity of the insurance business to which the relevant binder	✐ Please refer to the restructured regulations as well as the Response to Key Issues document published together with the final Regulations.

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		function relates; and • such a fee will not impede the fair treatment of policyholders; • no conflict of interest or potential conflict of interest exists; or • any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders. This provision for dispensation does not guarantee that a law-abiding, fit and proper, reliable binder-holder who is paid a commensurate fee, and provides innovative insurance solutions will always survive these regulations. This is so even if: • Such insurance solutions that can only be classified as "right insurance products available and accessible to all South Africans"; and • Such insurance solutions support the National Development Plan, because they are model products that transform the sector into a more inclusive one. I hereby declare that many such binder holders personify South Africans who should be able to participate in the insurance sector as suppliers. • The provision allowing for dispensation is dependent on the Insurer deciding to apply for such dispensation and the Registrar approving such application whereby the listed criteria for allowing such dispensation can only be regarded as final and therefore ultra-virus.	
3.21(5) Amendment 4(dd)	ASISA	Are we correct in assuming that the definition of "incidental" must be read together with Information Letter 3 of 2013? The reference to regulation 6.2(1)(g) should read 6.3(1)(g). See proposed amendment: 5) Any fee referred to under regulation 3.20 or this regulation 3.21, payable to a non-mandated intermediary that is a binder holder, must be disclosed to a policyholder, which disclosure must be included in the disclosures contemplated under regulation 6.~~2~~3(1) (g).	• Definition of "incidental" has been deleted as well as Regulation 6.3(1)(cA). The existing approach in the Regulations insofar as it relates to incidental activities has been retained. Please note that Information Letter 3 of 2013 is not law and cannot be enforced as such. Despite this, Information Letter 3 of 2013 may provide guidance on what are incidental activities as it sets out how the Registrar will interpret the Regulations for regulatory purposes. • Agreed. Reference has been corrected.

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	Hollard	Should other fees payable to those that aren't non-mandated intermediaries e.g. providing policy data administration services, not be disclosed?	As the Part dealing with policy data administration services has been deleted this comment is no longer relevant.
	BASA	The reference to "regulation 6.2(1)(g)" in this regulation is incorrect and should be replaced with "regulation 6.3(1)(g)". Further, it is not clear if the exact fee amount must be disclosed to the policyholder or if it can simply be disclosed that the non-mandated intermediary earns a binder fee for services rendered (where the amount of the fee is not stipulated). Kindly clarify.	• Agreed. Reference has been corrected. • Regulation 3.21(5) provides that "any fee ……….. must be disclosed.". Merely disclosing the fact that a fee is earned will therefore not suffice for purposes of this regulation.
3.22(2)	Hollard	Will this option be exercised by most binder holders that are limited by the 2% fee to increase their remuneration structures? Therefore insurers that are allowed to enter into cell captive arrangement will benefit greatly from this.	We do not foresee this as a significant risk given the corporate finance and long term implications of entering into a cell arrangement. In addition, future reforms in respect of cell insurance could further mitigate this risk.
PART 3D – GENERAL PRINCIPLES FOR DETERMINING REMUNERATION			
3.24(1)(b)	The Unlimited	We understand this sub-regulation to mean that a person cannot be paid more than once for the same function rendered by that person, for example, in its capacity as an independent intermediary and in terms of an outsource arrangement. We also understand that this does not prohibit a person from being paid on an on-going basis for services rendered, for example in its capacity as a binder holder in renewing a policy. Please can this be clarified as the current wording is open to misinterpretation.	Disagree that the wording is unclear. Notwithstanding, slight amendments have been made.
PART 4: LIMITATION ON PROVISIONS OF CERTAIN POLICIES			
4.1 – definition of **"policy"** Amendment 5(c)	ASISA	• Although there is no current definition for a conventional life annuity in the Income Tax Act, provision should also be made for its exemption. It might seem that sub regulation 4.2(2) covers such annuities to be exempted from the restriction period annuities that are for instance inflation-linked or deferred annuities might fall foul of the 20% increase restriction in the said sub regulation 4.2(2). We suggest that paragraph 4.2(2) be extended to also exempt inflation-linked and deferred	• Not agreed. While conceptually we agree that there could be a scenario where an inflation-linked or deferred annuity might fall foul of the 20% increase restriction, in the current inflation environment this is a remote possibility that does not justify the proposed amendment.

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		annuities. • Definition of "policy" should also exclude a member owned policy purchased by a retirement fund. It is anomalous that a fund member policy, but not a member owned policy, is excluded in the definition of "policy" in regulation 4.1. This has the effect that the limitations of regulation 4.2, and especially the fact that annuities may not increase by more than 20%, apply to a member owned pension but not to a fund owned pension. This is prejudicial for persons receiving member owned pensions, especially guaranteed pensions. It can be illustrated by means of the following two scenarios: Scenario A: The fund purchases an inflation linked annuity policy in the name of the fund for each of its pensioners. Each fund member policy provides an annuity with guaranteed increases in accordance with CPI, plus 5%. Since the policy is a fund member policy, annuity increases are not subject to the 20% limit. Scenario B: The facts are the same as in Scenario A, but the fund transfers its business to the insurer concerned in terms of section 14 of the Pension Funds Act, where after the insurer issues member owned annuity policies to the pensioners. These policies are not policies as described in the definition of "policy" in Part 4. Therefore the insurer is compelled to limit increases to 20%, which would obviously be detrimental to pensioners if CPI plus 5% should exceed 20%. It is submitted that there is no reason why, unlike in Scenario A, annuity increases should be limited to 20% in the case of Scenario B. It should be borne in mind that in both Scenarios the compulsory annuity is provided for life and may not be surrendered. An appropriate amendment to the definition of "policy" in order to limit any prejudicial treatment of member owned compulsory annuities, as shown below, is therefore requested: **"policy"** means a long-term policy, whether entered into before or after the	• Part (c) of the definition is restricted to a fund member policy in the "build up" phase, therefore the comment about including member owned policies purchased by a retirement fund is not relevant.

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		commencement of this Act, excluding - (a) a reinsurance policy; (b) a fund policy; (c) a fund member policy, or a member owned policy purchased by a fund in respect of a member upon or after the retirement of that member ~~for as long as no right under the policy is transferred by the fund to a life insured under the policy, or is transferred to any person except another fund for the direct or indirect benefit of a life insured under the policy;~~ or (d) a living annuity as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);	
4.1 – definition of **"policy benefit"**	ASISA	It is proposed that the definition of policy benefit should reference the definition of policy with its exclusions. This is because Regulation 4.2(3) only uses the definition of policy benefit when dealing with annuities. This regulation should not apply to living annuities as a living annuity can breach (c) and particularly (c)(i) if an annuitant increases the drawdown from the minimum to the maximum allowed. If this were to happen then the limitation set out in 4.2(1)(a) begins to apply to the living annuity. This could result in an annuitant entering into an extended restriction period if any further retirement benefits are added into the living annuity or more than one living annuity is combined into a single policy. In this case no annuity payments (benefits) could be paid. Proposed amendments: **"policy benefit"** means one or more sums of money, services or other benefits, including an annuity, but excluding a living annuity and a loan in respect of a policy or consideration upon the surrender of a policy;	Regulation 4.2(1)(a) provides that an insurer shall not undertake to provide a policy benefit under a policy during an extended period of time. As a living annuity is already excluded from the definition of "policy", this regulation does not refer to living annuity policy benefits.
4.2 (2)	ASISA	ASISA members welcome the inclusion of "retrenchment". It is suggested that a definition of retrenchment may need to be included in Part 4 such as: "his or her employer having ceased to carry on or intending to cease carrying on the trade in respect of which he or she was employed or appointed; or that person having become redundant in consequence of his or her employer having effected a general reduction in personnel or a reduction in personnel	The provision has been amended to refer to "loss of income".

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		of a particular class: or under circumstances described in section 189 or 189A of the Labour Relations Act”	
PART 5: REQUIREMENTS AND LIMITATIONS REGARDING THE VALUES AND BENEFITS OF POLICIES			
PART 5A: POLICIES OTHER THAN POLICIES TO WHICH PART 5B APPLIES			
PART 5A- Inclusion of definition of **“causal event charge”**	ASISA	ASISA members request that allowance is made for an administration fee on Part 5A policies. To this end, the definition of “causal event charge” in Part 5A could be aligned to the “causal event charge” definition in Part 5B by using the same definition of “ ‘causal event charge’ i.e. a charge, other than an administration charge contemplated in regulation 5.12(3), occasioned by and pertaining to a causal event”.	✎ Agreed. A similar provision to that provided for in Part 5B will be included in Part 5A.
5.1 - Definition of “**universal life policy**”	ASISA	The definition of a universal whole of life policy and Part 5.4 (6) of the Act refers: • There are very few policies that will be impacted by this definition as almost all policies with material risk components will be captured under the “excluded policy” definition • Further, policies with a risk premium of at least 85% of the total premium *at inception* have a high probability of exhausting their fund values (i.e. crashing), negating the need for a causal event charge • The view is thus that the introduction of this definition will have a negligible impact and the administrative cost of implementing this test will be unnecessarily onerous for minimal benefit. In practice, almost none of the universal lifestyle-type legacy risk policies in the industry have a premium allocated towards the risk benefits in excess of 85%, which would not already be excluded under the definition of an “excluded” policy. An ASISA member who has a very large portion of policies (not excluded) still on their books is most impacted by this definition and will make an individual submission on this. If an appropriate change can’t be agreed on, then ASISA members would rather have the definition of a universal whole of life policy, and the corresponding part of the act [Regulation 5.4 (6)] dealing with these	✎ Agreed. Definition will be amended.

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		policies removed.	
	Liberty	As mentioned in our letter of 18 October 2016 (copy included in the delivery of this message to you for ease of reference) we would like to reiterate that the purpose of the purchase of these policies was the provision of risk cover. We acknowledged that there is a savings element built into the design of these universal whole of life policies but to treat this class of policies the same as pure investment products is inappropriate. Although we appreciate the intended effect of the different treatment of those universal whole of life policies where the risk premium is more than 85% of the total premium payable by the policyholder, in reality very few, if any, policies will be captured by this definition. The reason for this is that the risk premium as a percentage of the total premium will not pass the 85% test. To put this into context, even for a pure term policy that provides ONLY risk cover (i.e. with NO investment component), the proportion of the total premium that is allocated towards the risk benefits is roughly 50%. To the extent that an investment component is added to a universal whole of life policy, the percentage of the total premium that is allocated to the provision of risk will decrease, making it highly unlikely for a universal whole of life policy to pass this 85% test. We propose that the universal whole of life policy definition be changed to allow for *all* universal whole of life policies to be included in the reduction of causal event charges as contemplated in par 5.4 (6). Alternatively, should this proposal not fully satisfy the intended need to give further protection on exit charges to universal whole of life policyholders, the current wording could be changed to: "universal whole of life policy" means a policy other than a fund member policy that is a whole-life policy that is not an excluded policy and (a) That provides risk benefits and has an investment value or materially equivalent value referred to in regulation 5.2.(2) (b); and (b) In respect of which the underlying actuarial basis of the policy, whether or not the actuarial basis has been expressly incorporated in the policy, provides that, at inception of the policy, less than fifty	See response directly above.

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		percent (50%) of the total premium payable by the policyholder over the expected lifetime of the policy, is allocated towards investment benefits;	
5.1 – Definitions of " **variable premium increases**"	ASISA	ASISA members believe that the intention is that this change applies to any changes made after the effective date and request that 5.9 be amended by the addition of the word "added" for the sake of certainty and that it refer to effective date instead of 1 May 2017: The definition of " **variable premium increases**" on investment policies Section 5.9 should add the words: "despite anything contained in this Part, or the regulations, any variable premium increase added on or after the effective date ~~1 May 2017~~ …"	Disagree. It is not feasible to refer to "effective date" because the term is defined in Part 5B as 1 December 2006. Further, it is not necessary to add the word "added". ✎ Agree to amend Regulation 5.9 to read as follows: *Despite anything contained in this Part or the regulations, any variable premium increase on or after 1 January 2018~~1 May 2017~~ in respect of a policy to which this Part applies is subject to Part 3B and Part 5B and must be regarded as constituting a separate policy for purposes of the application of those Parts.*
5.4(5)	Liberty	We propose that the current wording be changed to read "Where a causal event occurs in respect of a policy other than a fund member policy, but that is not a universal whole of life policy, …" This will ensure that Table A applies to universal policies that are not whole of life policies as defined.	✎ Agreed. The term "*universal life policy"* will be amended to read *"universal whole of life policy"*.
PART 5B: INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009			
Part 5B 5.12(3)(a)	ASISA	The R300 limit has been fixed since the introduction of part 5B. An increase in the maximum permitted administration charge to allow for inflation is requested Proposed amendments: The insurer may, in addition to causal event charges, deduct in respect of any causal event, either during or after the charge term, an administration charge of not more than ~~R300~~ R500.	✎ Agreed. The amount will be increased from *"R 300"* to *"R 500"*.
PART 5C – PRINCIPLES FOR CALCULATION OF CAUSAL EVENT CHARGES			
5.1	ASISA	The numbering should continue as is the case in the other parts, i.e. continue from the numbering in Part 5B; i.e. 5.1 should be 5.14.	✎ Agreed. Correction will be made.

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Amendment 6(j)		PART 5C PRINCIPLES FOR CALCULATION OF CAUSAL EVENT CHARGES ~~5.1~~ 5.14 General principles for the calculation of causal event charges	
	BASA	The numbering after addition of Part 5C does not flow, e.g. 5.1 already exists earlier in the document and the number is now repeated in this new Part 5C. Review the numbering and amend accordingly.	See response directly above.
5.9	Liberty	We would like to propose that variable premium increases on universal policies, where the premium increase is the result of an increase in sum assured, be excluded from this requirement. Otherwise the wording may have the unintended consequence that ad hoc sum assured increases can no longer be offered on these policies. As mentioned in the commentary to this paragraph in the draft regulations, the purpose of this paragraph is to give effect to proposal PP that deals with commission on **investment products.** As we have argued earlier, universal policies offer both risk and investment and hence we believe it is appropriate to apply this paragraph only to those variable increases that increase the investment component, and not to those variable increases that are a result of increases in life cover.	✏ Agreed. Amendment made to read as follows: Despite anything contained in this Part or the regulations, any variable premium increase on or after 1 January 2018~~April 2017~~ in respect of – (a) a policy other than a universal whole of life policy to which this Part applies; (b) the investment component of a universal whole of life policy; is subject to Part 3B and Part 5B and must be regarded as constituting a separate policy for purposes of the application of those Parts.
	BASA	Whilst the draft amendments proposes the insertion of a new Regulation 5(9) it is silent on what happens with the existing Regulation 5(9) which deals with "Disclosure". We request clarity required on the existing Regulation 5(9) which deals with "Disclosure"	✏ It will be clarified that the new Regulation 5.9 replaces the existing Regulation 5.9.
PART 6: BINDER AGREEMENTS			
6.1 - definition of **"Associate"**	BASA	The proposed new definition does not make sense. We request a review of the current wording.	✏ Definition has been amended slightly to clarify the intention.

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	FIA	This definition of associate does not take into account the intricate nature of certain business structures that operate independently of each other with no conflict of interest. This could be particularly inherent in large Group structures where potential conflicts can be identified and mitigated the appropriate disclosures to the FSB? The current FAIS and TCF regimens should adequately mitigate any potential conflicts. We do not recommend that changes be made to the current definition which then keeps it consistent and in alignment with that of the definition in the FAIS Act and avoids any confusion.	The amended definition is necessary to limit potential conflicts of interests inherent in certain binder agreements identified through supervision. Where no conflict of interest exists or an existing conflict of interest may be appropriately mitigated, an exemption from this limitation may be sought under Regulation 6.5.
6.1 - definition of **“incidental”**	FIA	We submit that the intention and application of this definition needs to be reviewed as “incidental (meaning having a minor role/not essential”) means any activity that is necessary or expedient…” is a contradiction in terms and for example, the policy issuance and despatch which may be deemed to incidental is anything but that. Perhaps “ancillary services” describes this better. We also request that a cost activity exercise be carried out in order to calculate the accurate costing of “incidental” activities versus that of the act of “enter into”.	✎ Definition of “incidental” has been deleted as well as Regulation 6.3(1)(cA). The existing approach in the Regulations in as far as it relates to incidental activities has been retained.
	PSG	We understand that the definition should not be too prescriptive to allow room for a flexible interpretation. It is however clear that the interpretation of incidental will also lead to significant legislative uncertainty. Should the current definition remain we request that the Regulator provides interpretation notes in future to provide the necessary clarity.	See response to comment directly above.
6.1 – definition of “**underwriting manager**” Amendment 7(k)	ASISA	It is noted that this definition includes references to a “*potential policyholder*”, whereas par (a) of the definition of “*services as intermediary*” in part 3A does not. The two definitions should be consistent in this regard. Please see comment above on the definition of “services as intermediary”. The reference to section 49A should be included as proposed below: “**underwriting manager**” means a person that- (a) performs one or more of the binder functions referred to in <u>section 49A</u> (1)(a) to (e) <u>of the act</u>; and	It is necessary to include the term “potential policyholder” in the definition of “underwriting manager” to clarify that an underwriting manager cannot sell policies to the public. ✎ Agreed. “Binder function” has now been defined with reference to section 49A of the Act. Therefore, paragraph (a) will read: “performs one or more binder function”.

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		(b) if that person renders services as an intermediary as defined in Part 3A of the Regulations,- (i) does not perform any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder…..”	
	Hollard	Not clear whether an Insurer performing binder functions on behalf of another insurer is an underwriting manager for the purpose of this Part. (c) Definition of relationship is required	An insurer that performs a binder function on behalf of another insurer must comply with the Regulations. An insurer is “a person” and insurers are not exempted from the Regulations in respect of binder functions. Disagree; the grammatical meaning of the term “relationship” suffices.
6.2(3) Amendment 7(l)	ASISA	The meaning of “may not conduct any business” is unclear and open to interpretation as an underwriting manager by the nature of its business interacts with intermediaries and this could be seen as ‘conducting business”. Please could this be clarified.	This is the current wording in the Regulations. The prohibition only relates to “a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary, or an administrative FSP that is an associate of that underwriting manager”. The prohibition as is, is clear as it relates to the underwriting manager’s binder functions performed on behalf of an insurer.
6.3(1)(cA)	ASISA	The very broad definition of incidental and inclusion of service levels will make drafting binder agreements very difficult, particularly if Information Letter 3/2013 is withdrawn. Clearly a binder holder must meet the overarching service level for the binder function and in order to perform that function must also perform all incidental activities necessary. The concern however is that inadvertently some incidental activities could be left out of agreements or service levels could be set incorrectly at the start of the agreement without the benefit of experience and an opportunity to assess over time the work done. It is therefore requested that these requirements are removed as shown below: (1) A binder agreement must, in addition to those matters provided for under section 49A(2) - (cA) ensure that the binder holder undertakes to also perform any incidental	✎ Definition of “incidental” has been deleted as well as Regulation 6.3(1)(cA). The existing approach in the Regulations insofar as it relates to incidental activities has been retained.

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		activities necessary or expedient for the performance of a binder function ~~specify the activities that are incidental to the performance of the binder function or functions, and the level and standard of service that must be rendered in respect of such activities~~ **"incidental"** means any activity that is necessary or expedient for the performance of a binder function; If this is not accepted, then we would like to ask for confirmation that Information Letter 3/2013 will remain in place.	
6.3(1)(p)	ASISA	• A key question which ASISA members have here is does "providing the insurer at least every 24 hours" mean an actual transfer of data from the binder holder to the insurer? Or will up-to-date access to data that will enable the insurer to meet regulatory requirements be sufficient? It is submitted that it should be the latter, because with cloud-based systems, as pointed out in the comment on policy data administration fee caps, third parties are providing platforms and the insurer and binder holder can have simultaneous access. • The proposed change from a 90 day requirement to a 24 hour requirement is dramatic and will require a long implementation period. Meeting this requirement will involve huge change management and education exercises, contract amendments and system changes. It is suggested that as an interim measure, the current requirement of 90 days is shortened to 30 days and that the 24 hour requirement becomes effective two years after the effective date. • It is also submitted that requiring the binder holder to provide the insurer with data every 24 hours would not add value in a compulsory group scheme environment. It would be more meaningful to be provided with data on every payroll of the month, reflecting the accurate position at that time. This would not be to the detriment of the insured. For example where an employer, who has taken out a policy for the benefit of its employees and their beneficiaries, employs another employee (insured) during the course of a month, such person will be covered by the insurance policy because the policy provides that all new employees	✎ Access (which would include amongst other things actual data transfer and access to the IT platform of the binder holder) will suffice if such access meets the integration requirements contained in Regulation 6.2A(2). This will include providing an insurer with unfettered access to a cloud-based system. See amendment. Noted. However, we maintain that the change from 90 days to 24 hours is necessary due to undesirable outcomes that have occurred in the past. Data in respect of funeral and assistance policies will need to be provided monthly. ✎ A 24 month transitional period has been provided for in Regulation 8.3(f). In addition, the requirement relates to access to data as between the binder holder and the insurer, not as between the employer and the binder holder. If the employer only submits changes to the binder holder on a monthly basis, this should not be an obstacle to the binder holder providing the insurer with or granting the insurer access to the (most current) data on a 24 hour basis. Access to data in respect of funeral and assistance policies will need to be provided monthly.

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		are automatically covered.	
	Hollard	With regard to Group Policies, data is received from the employer. Such data is received on a monthly basis therefore there are no daily changes that occur. Therefore such data integration will not be possible due to the reliance on other parties for data. Will not add value to the business.	See response directly above.
	TD Admin	Part 6, paragraph 6.3 (p) (Long Term) forces the Binder Holder to "provide the insurer at least every 24 hours with timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements;". • It is of concern that in the event data is not provided within 24 hours we will be in breach of the Act, even if the cause of this breach was as a result of Force Majeure. • To try and achieve this milestone will take a significant amount of time (years, not months); expense (both in system related costs and development; additional staff costs and broadband development – to facilitate the transfer of this data) and would probably involve the employment of a specialist to manage and oversee this project. Whilst we concur that it is essential that the insurer is in possession of meaningful data, and this does form part of our administration and binder agreements with the insurers, the above obligation is un-necessary. What is of great interest to us is that in one section of the proposed amendment revenue streams are to be reduced to unrealistic figures yet the same proposed amendment suggests that we need to incur significant (and in our opinion un-necessary) expenditure to comply with the regulations.	The Regulations prescribe what must be provided for in the binder agreement and places a positive obligation on insurers to ensure compliance with binder agreements. Part of the requirements is contingency requirements. The latter should address force majeure circumstances. ✎ Please note – • an exception will be made for funeral and assistance policies; • a transitional period of 24 months will be provided before this requirement becomes effective.
	The Unlimited	If the insurer has access to policyholder data held by the binder holder, then this requirement is irrelevant. In such an event we propose that the obligation to provide the insurer with the specified data be no more than every calendar month.	See response to ASISA above on this Regulation 6.3(1)(p).
6.3A(2)	Hollard	What time period is regarded as regularly? How detailed must this assessment be? Specifically relating to the binder agreement and the binder	Please refer to revised Regulation dealing with binder governance (Regulation 6.2A). Reference to "regular" has

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		function being performed or the entire binder holder. (b) Does this refer to the fit and proper requirements?	been removed. Notwithstanding, it is in the discretion of the insurer to assess what is appropriate in the context of its particular arrangements. Please note that the governance and oversight requirements align to similar requirements in Directive 159.A.i. An insurer will have to demonstrate that regular appropriate and sufficiently detailed assessments have been done.
6.5 Amendment 7(r)	ASISA	It is not clear what the effect is of the "and" at the end of paragraph (b). It is not clear whether the intention is for this to mean that: - Paragraph (a) or both paragraphs (b) and (c); or - Paragraph (a) or paragraph (b) or paragraph (c); or - Both paragraphs (a) and (c) or both paragraphs (a) and (b), are necessary in order to qualify for an exemption. Please see suggested change to clarify this: Exemption Despite regulation 6.2(1A), (2) or (3), the Registrar may on application from an insurer referred to in regulation 6.2(1A), (2) or (3) or an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(1A), (2) or (3), exempt, subject to such conditions as the Registrar may impose, the insurer or such person from regulation 6.2(1A), (2) or (3), if the Registrar is satisfied that– (a)(i) no conflict of interest or potential conflict of interest exists; or (~~b~~)(ii) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders; and (b)~~(c)~~ the person has the operational and financial capability to perform the binder function or to conduct such business.	Amended to clarify intention.
	PSG	**Exemption** The Regulations were amended to extend the matters for which exemptions may be given, but placed it mainly in the hands of the Insurer. We need	The criteria or basis on which exemption may be granted are set out in paragraphs (a) – (c) of Regulation 6.5.

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		significantly more clarity on when exceptions will be permitted by the Regulator as this is currently subjective with no clear criteria that will be applied by the Regulator to permit or not.	
	The Unlimited	The ability to apply for an exemption must not be restricted to an insurer. It should also be available to the other affected parties, i.e. an intermediary or underwriting manager – provided the insurer is notified of the application. The interests of such affected parties should be catered for in accordance with the principles of administrative justice.	Disagree. The insurer that is a party to the binder agreements must be convinced that an exemption should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. In addition, please note that the binder holder acts as the agent of the insurer and it is the insurer that is accountable for compliance with the Regulations. As such, only the insurer is able to apply for this exemption. There is nothing stopping an intermediary or UMA motivating to the insurer why it believes is should earn a higher fee and requesting the insurer to motivate the exemption to the Registrar, but only the insurer can apply for the exemption.
PART 7: TITLE AND COMMENCEMENT			
7.2	ASISA	It is suggested that rather than referring to the publication of the amendment to the regulations in the Gazette a date of say, I January 2017 is used as in Reg 3. There is also an error in referring to 1 April rather than 1 May. Alternatively it is proposed that the wording for 7.2 is changed as follows: An insurer must, in respect of the amendment to these regulations the effective date of which is 1 ……….2017, ensure that - (a) any agreements or arrangements relating to matters addressed in Part 3 concluded - (i) before the effective date are aligned with the regulations as amended by no later than 9 months after the effective date; (ii) on or after the effective date are aligned with the regulations as amended by no later than 3 months after the effective date; A transitional period in addition to those mentioned already in our	✐ Please refer to new transitional requirements. Please note that on numerous occasions in the past we have witnessed that between the publication date of draft legislation and the effective date of such legislation there is an influx of new agreements/arrangements to ensure that such arrangements are captured under the existing law to avoid that such arrangements being subject to the new laws. For this reason measures have been put in place to address the potential for such regulatory arbitrage. On Regulation 5, where illustrative surrender calculations cannot be system generated these must be done manually.

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		comments is also needed in respect of the following: Regulation 5.3(5) and 5.4(5)- Although the new lower limits on causal events only come into effect on 1 January 2018 members would need to apply these limits to illustrative surrender calculations (where future fund and surrender value projections are performed) after the effective date. They would not be ready in time to do this and therefore need transitional arrangements to allow for the new limits to also only be reflected in projection calculations after 1 January 2018.	
	FIA	Should there not also be a reference to Part 5?	No. The amendments to Part 5 become effective on the effective date of the Regulations, no transitional provisions are necessary (apart from those already captured in the substance of Part 5).
	PSG	**Transition time-frame** Most of the proposed Regulations require complex changes to existing structures and businesses. Some of the practical implications include complex and time-consuming renegotiations with product providers, policy holders, employees, system providers and several other stakeholders. The business needs to be repositioned and would incur severe financial losses as investments made to date will need to be written off due the ongoing unsustainability of the business as a result of the current proposed Regulations. To implement these Regulations without sufficient phasing in will be unfeasible from a practical and financial view point resulting in significant hardship to all involved. We therefore request that the Regulation that is ultimately introduced be phased-in over at least a 24 month period.	No phasing-in proposals were made by the commentator. A general 24 month transitional period is not appropriate. Notwithstanding, please refer to new transitional requirements which provides various transitional provisions for various new requirements.
	Treasury WC	It is the understanding that the original agreements or arrangements relating to matters addressed in Part 3 and 6 will be valid until the amendments of the regulations come into operation. The agreements or arrangements aligned with the amended regulations will come into effect on the date that the amended regulations come into	Specific transitional requirements apply to agreements/arrangements relating to matters addressed in Part 3 and 6 - please see new transitional requirements contained in Part 8.

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		operation.	
GENERAL COMMENTS			
General comment	ASISA	ASISA members appreciate the consultation process followed by National Treasury (NT) and the Financial Services Board (FSB) in respect of the proposed amendments to the Regulations under the Long Term Insurance Act (LTIA). The consideration of the amendments and comment process is complicated due to the linkages with the Insurance Bill which has not been finalised yet and with the Retail Distribution Review project (RDR) and the new version of the Policyholder Protection Rules (PPR) which is currently out for comment. These all need to be taken into account. We appreciate the extension of time given to comment on the definition of a "replacement risk policy" and the associated regulations. In the view of ASISA members the "general" effective date of 1 May 2017 is not realistic as it only allows just over 2 months after the comment deadline to review the comments and finalise the regulations and members need a reasonable time for implementation once the regulations are final in cases where no specific transitional arrangements are provided for. In addition, although the regulations provide specific transitional provisions to some extent, they do not do so sufficiently and comments on specific transitional provisions have been included in our comments. The changes to Part 5 to reduce causal event charges over time on "legacy products" are far reaching and significant. They will be costly for ASISA members and will be resource and time intensive. ASISA members are nevertheless committed to these changes and hopeful that they will result in renewed confidence in the long term savings industry.	• The effective date mentioned in the draft regulations will be changed to align with any possible delays. • During the industry workshops that were held in Cape Town and Pretoria we specifically requested detailed inputs on transitional arrangements, i.e. highlighting which specific provisions in the regulations require transitional provisions and for how long. Proposals relating to transitional arrangements were made in respect of Part 3 and Part 5 only and these proposals have to an extent been given effect to in Part 7 of the Regulations. Notwithstanding, we have proposed various transitional provisions for various new requirements - please refer to the new transitional requirements contained in Part 8.
General	PSG	We have a number of concerns that we believe goes to the core of the Regulations and as a result places the RDR Review in jeopardy. These overarching concerns will need to be addressed to ensure the final sets of Regulations are to the benefit of the end consumer as well as the financial services industry as a whole. No one party should be jeopardised to the benefit of the other.	• **Incomplete process and consultation:** Noted. We assume you are referring to the binder fee and policy administration fee caps as these are the only aspects where further technical work needed to be finalised. In this regard please refer to the Response to Key Issues document published together with the final Regulations.

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		Incomplete process and consultation Our main concern would be the haste with which the Regulations have been published. The comments provided in Annexure C to the Regulations clarifies the purpose and intent of the Regulations. A couple of these comments however clearly indicate that consultation and work on important parts of the Regulations have not yet been completed. Publishing them in the proposed Regulations and even enacting them before the process is completed, begs the question whether the consultations with industry were done with the proper intent. This will attack the legitimacy of the Regulations. **Financial impact assessment** The implementation of the proposed Regulations will lead to significant hardship, job losses and have economic consequences to the intermediated market in South Africa. To date no proof has been provided that the intended benefit of the Regulations will outweigh the costs. No result of an economic / social impact study was released. Our understanding is that a number of members of the FIA had made presentations to the Regulator in which they indicated that they were currently subsidising their binder agreements. This is done as the subsidy is outweighed by the benefit of a better underwriting and claims experience by the end consumer. In addition the Thematic Review done by the Regulator would clearly have indicated the costs associated with these binders. It is also common knowledge that the cost for the large insurers to perform these functions is way in excess of the fees proposed by the FSB. It seems that the intention of the fees proposed only allows for operational costs to be covered. It does not allow for the binder holder to invest in the business such as improving systems, processes, upskill staff and enhance efficiencies. In addition it also does not allow for the binder holder to earn a return on capital invested and earn a reward for the risk assumed. It is therefore difficult to believe that the Regulator is not clearly aware of the fact that it is not possible to operate the binders at the proposed level of fees. This creates a distinct risk that the credibility of the methodology and basis followed to determine the proposed fee will be questioned.	• **Financial impact assessment:** It appears as if this comment is driven by one particular aspect of the regulations, this being the binder fee (and potentially policy data administration fee) caps. In this regard please refer to the Response to Key Issues document published together with the final Regulations. • **Level playing field:** It appears as if this comment is driven by one particular aspect of the regulations, this being the binder fee (and potentially policy data administration fee) caps. In this regard please refer to the Response to Key Issues document published together with the final Regulations. • **Balance of power:** The current reality is that the balance of power, to a large extent, sits with the intermediary when determining outsourcing fees (including binder fees). We have seen little evidence that Intermediaries act in the interest of policyholders when negotiating these fees. On the contrary, commercial interests appear to dominate. Insurers accept higher fees with the view of getting more business from that intermediary. This creates an untenable conflict of interest, the exact situation the RDR (through the amendments to the Regulations) is trying to address. The proposed amendments to the regulations relating to binder functions aim to mitigate such conflicts.

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		It appears (from own admission by the FSB) that the real and bigger issue to address is the skill set and capabilities of the binder holders to ensure these functions are performed efficiently to the benefit of the policy holder and in a manner which contributes to the overall efficiency of the process. It is our opinion that this should not be addressed through limiting binder fees. A better way to achieve this objective is to clearly define the activities, set minimum requirements to perform these activities and assign more oversight responsibilities to the product providers. We acknowledge that this will require more time to implement but we firmly believe this would result in an improved outcome to the real concerns and potential risks that the Regulator wish to address. **Level playing field** Various interpretations of the Regulations are that it favours the large insurers to the detriment of all. This is apparent after discussions with a number of medium and smaller insurers about the Short-Term Regulations. These Regulations will lead to an oligopoly that will in the long run be to the detriment of the end consumer. Our own reading of the Regulations clearly shows that the Regulations pertaining to binders does not address the real issues at the heart of the risks the Regulator wishes to address. We believe this violates the principle that prohibits legislation from benefitting one economic group to the detriment of another. The current binder regulations create a distinct risk that consolidation will occur. This will naturally lead to reduction of competition and in the long run is to the detriment of the end consumer and economy as a whole. **Balance of power** Finally it is also important to note that the balance of power between insurer and intermediary is extremely important for the ultimate benefit of the client and to ensure product providers operate efficiently. A focus by the Regulator purely on the fees of binders, clearly underestimates the balance of power it creates. In a post Regulations environment, it is envisaged by the Regulator that the intermediary, together with the consumer, will negotiate with the insurer on an individual level. This will place the client at a significant disadvantage relative to the power of the insurer. Examples of this could be provided upon request. The only counter to this power is to bulk or	

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		aggregate clients. This is currently providing significant success in reducing asset management fees to the direct benefit of consumers. The same position is achieved through the binders within the short-term environment. PSG has ample proof where it has negotiated better outcomes for clients through its binder arrangements. It will be impossible to negotiate better tariffs, better service or claims management on a one-on-one basis, ultimately benefitting insurers to the detriment of better outcomes for clients. Even the proposed exemption application process in the Regulations are giving the power to the Insurer as they are the one to decide whether they will be applying for exemption or not.	
General	TD Admin	The State, if it passes the proposed Insurance Regulations, will not be achieving the progressive realisation of the National Development Plan; it is rewinding transformation. It is considered by many “Bias” in favour of the large corporates and against the smaller Financial Services Provider. A fair and commensurate fee must be considered for administrative and or Binder function that are performed by the binder holders. The current proposed fee cannot be considered fair where the premium is low. Much consideration by the Minister must be given to the onerous requirements in both the General Code of Conduct and the current regulations before a fair and commensurate method for calculating fee is regulated. It is evident, and this fact is supported by comments from numerous “binder holders” that there is a concerted effort being made by the Minister to side line, or eradicate totally the binder holder industry by legislating a totally unacceptable remuneration package. It is inconceivable that a binder holder will be able to maintain an acceptable business model, with our current service profile, at a maximum fee of 6% of premium – this would not only be unsustainable, but severely impact on our service levels, including the ability to Treat Customers Fairly It is inconceivable that the Minister can dictate a level of remuneration without being privy to the extent of services, expenses and expertise that the Binder Holder provides not only to the Insurer, but to the Insured (both of which are clients of the Binder Holder). Remuneration for services rendered should be a discussion and agreement between the two parties (Insurer and	This comment is very general in nature and the assertion is not supported by any facts. Please also refer to the Response to Key Issues document published together with the final Regulations. The comment that the insurer is a “client” of the binder holder displays a fundamental misunderstanding of the role of a binder holder. The binder holder acts as agent of the insurer.

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		Binder Holder) based on agreed tasks and service levels. The current suggested levels of remuneration, particularly for premiums of less than R100.00 does not make any economic sense, bearing in mind that the cost to administer (debit order costs, IT costs, staff costs etc.) are the same notwithstanding the gross premium cost. The allowance for dispensation does not guarantee that the result will be anything other than the downfall of these South African small Financial Services Providers as the onus is on other parties (Registrar and Insurer) to secure such dispensation, and that the conditions can only be considered as unwavering and thus unfair. In addition, the process will become protracted, cumbersome and does not allow for objections. Finally, a Regulation that requires a 24 hour data transfer without any regard as to how this can be achieved without any interruption ever is beyond comprehension, and whilst we agree that insurers must receive meaningful data, we believe that this legislation is totally both unreasonable and unrealistic. In addition, if for any reason outside our control (force majeure) we are unable to fulfil this, we would be in breach of the Act,	