Short-Term Insurance Act, 1998 (Act No. 53 of 1998)


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Introduction

Notice No. 1191
23 September 1998

(English text signed by the Acting President.)
(Assented to 15 September 1998)

It is hereby notified that the Acting President has assented to the following Act, which is hereby published for general information:

To provide for the registration of short-term insurers; for the control of certain activities of short-term insurers and intermediaries; and for matters connected therewith.

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

1. Definitions

1) In this Act, unless the context otherwise indicates-

"accident and health policy"
means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if a disability event; health event; or death event, contemplated in the contract as a risk event occurs, and includes a reinsurance policy in respect of such a contract—
a) excluding any contract—
i) that provides for the conduct of the business of a medical scheme referred to in section 1(1) of the Medical Schemes Act; or
ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act and which contract—
   aa) relates to a particular member of the scheme or to the beneficiaries of such member; and
   bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but
b) specifically including, despite paragraph (a)(i), any category of contracts identified by the Minister by regulation under section 70(2A) as an accident and health policy;

"Advisory Committee"
[Definition deleted by section 109(a) of Act No. 45 of 2013];

"approved reinsurance policy"
means any proportional short-term reinsurance policy in terms of which the reinsurer is liable for the liabilities of a short-term insurer under short-term policies and any non-proportional short-term reinsurance policy which remains in force until the liabilities under short-term policies have expired, entered into by the short-term insurer with—

a) another short-term insurer, if the policy benefits under that short-term reinsurance policy are to be provided in the Republic;

b) an insurer by virtue of section 2 of the Export Credit and Foreign Investments Reinsurance Act, 1957 (Act No. 78 of 1957);

c) Lloyd’s underwriters in accordance with Part VIII; or

d) an insurer under a reinsurance policy ill terms of which the reinsurer furnishes security in the form of—

i) money in the Republic with the short-term insurer by which such reinsurance was entered into and on which the short-term insurer has a prior charge and lien; or

ii) an irrevocable guarantee or a letter of credit issued by a bank and in the form prescribed by the Registrar,

against losses which may be occasioned by the failure of the reinsurer to discharge its obligations under the said policy or by the termination of such policy for any reason;

"Auditing Profession Act"
means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"auditor"
means an auditor registered in terms of the Auditing Professions Act, and appointed in terms of section 19(1) or 20(1) of this Act;

"bank"
means a bank registered otherwise than provisionally in terms of the Banks Act, 1990 (Act No. 24 of 1990);

"Board"
means the Financial Services Board established by section 2 of the Financial Services Board Act;

"Companies Act"
means the Companies Act, 2008 (Act No. 71 of 2008);

[Definition amended by section 109(b) of Act No. 45 of 2013]

"company"
means a company incorporated in accordance with, and registered under, the Companies Act, or deemed to have been so incorporated and registered;

"Court"
means the High Court of South Africa;

"death event"
means the event of the life of a person or an unborn having ended;

"director"
includes a person who is a member or alternate member of a body performing, in relation
to an entity that is not a company, functions similar to those performed by a board of
directors in relation to a company;

"disability event"
means the event of the functional ability of the mind or body of a person or an unborn
becoming impaired;

"engineering policy"
means a contract in terms of which a person, in return for a premium, undertakes to
provide policy benefits if an event contemplated in the contract as a risk relating to--
\[a)\] the possession, use or ownership of machinery or equipment, other than a motor
vehicle, in the carrying on of a business;
\[b)\] the erection of buildings or other structures or the undertaking of other works; or
\[c)\] the installation of machinery or equipment,
occurs; and includes a reinsurance policy in respect of such a policy;

"fair value"
has the meaning assigned to it in financial reporting standards;

"financial reporting standards"
has the meaning assigned to it in section 1 of the Companies Act;
[Definition amended by section 109(c) of Act No. 45 of 2013]

"financial statements"
has the meaning assigned to it in section 1 of the Companies Act;
[Definition amended by section 109(c) of Act No. 45 of 2013]

"Financial Services Board Act"
means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

"fit and proper requirements"
includes such qualities of competence, integrity and financial standing as may be
prescribed by the Registrar by notice in the Gazette.
[Definition inserted by section 109(d) of Act No. 45 of 2013]

"guarantee policy"
means a contract in terms of which a person, other than a bank, in return for a premium,
undertakes to provide policy benefits if an event, contemplated in the policy as a risk
relating to the failure of a person to discharge an obligation, occurs; and includes a
reinsurance policy in respect of such a policy;

"health event"
means an event relating to the health of the mind or body of a person or an unborn;

"holding company"
means a holding company as defined in section 1 of the Companies Act;

"independent intermediary"
[Definition deleted by section 109(e) of Act No. 45 of 2013];
"liability policy"
means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the incurring of a liability, otherwise than as part of a policy relating to a risk more specifically contemplated in another definition in this section, occurs; and includes a reinsurance policy in respect of such a policy;

"Lloyd’s"
means the association of persons generally known as Lloyd’s which is incorporated by the Lloyd’s Act of 1871 (34 Vict. c21), passed by the Parliament of the United Kingdom of Great Britain and Northern Ireland;

"Lloyd’s broker"
means a person permitted by the Lloyd’s Council to perform acts as a broker at Lloyd’s;

"Lloyd’s correspondent"
means a person who is approved by Lloyd’s and authorised by a Lloyd’s broker or Lloyd’s underwriter to act in the Republic as an agent for or on behalf of such broker or underwriter;

"Lloyd’s representative"
means the person referred to in section 57;

"Lloyd’s underwriter"
means an underwriting or non-underwriting member of Lloyd’s;

"long-term insurer"
means a person registered or deemed to be registered as a long-term insurer under the Long-term Insurance Act, 1998;

"managing executive"
means the chief executive officer of a short-term insurer and every manager of that short-term insurer who reports directly to that chief executive officer;

"Medical Schemes Act"
means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

"Minister"
means the Cabinet member responsible for finance;

"miscellaneous policy"
means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to any matter not otherwise defined in this section, occurs; and includes a reinsurance policy in respect of such a policy;

"motor policy"
means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the
possession, use or ownership of a motor vehicle, occurs; and includes a reinsurance policy in respect of such a policy;

"official web site"
means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board;
[Definition inserted by section 109(f) of Act No. 45 of 2013]

"personal lines business"
means short-term insurance business in respect of which the policyholder is a natural person;

"policy benefits"
means one or more sums of money, other than an annuity, or services or other benefits;

"policyholder"
means the person entitled to be provided with the policy benefits under a short-term policy;

"premium"
means the consideration given or to be given in return for an undertaking to provide policy benefits;

"prescribe"
means to determine from time to time by notice on the official web site, unless notice in the Gazette is specifically required under a provision of this Act;
[Definition amended by section 109(g) of Act No. 45 of 2013]

"property policy"
means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk other than a risk more specifically contemplated in another definition in this section relating to the use, ownership, loss of or damage to movable or immovable property occurs; and includes a reinsurance policy in respect of such a policy;

"proportional reinsurance"
means the reinsurance of a part of a liability under a short-term policy, where premiums are shared in the same proportion as losses between the reinsurer and the short-term insurer;

"Public Accountants' and Auditors' Act"
[deleted by the Insurance Laws Amendment Act, 2008 (Act No. 27 of 2008)];

"public company"
means a public company as defined in section 1 of the Companies Act, and includes a state-owned company as defined in section 1 of that Act;
[Definition amended by section 109(h) of Act No. 45 of 2013]

"publish"
means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the Registrar, seeks to bring any information to the attention of any person, or all or part of the public.

[Definition inserted by section 109(i) of Act No. 45 of 2013]

"Registrar"
means the person referred to in section 2;

[Definition amended by section 109(j) of Act No. 45 of 2013]

"regulation"
means a regulation under section 70;

"repealed Act"
means the Insurance Act, 1943 (Act No. 27 of 1943);

"representative"
[Definition deleted by section 109(k) of Act No. 45 of 2013]

"risk"
means a possibility that a particular event may occur during the period for which a short-term policy is operative;

"services as intermediary"
[Definition deleted by section 109(l) of Act No. 45 of 2013]

"short-term insurance business"
means the business of providing or undertaking to provide policy benefits under short-term policies;

"short-term insurer"
means a person registered or deemed to be registered as a short-term insurer under this Act;

"short-term policy"
means an engineering policy, guarantee policy, liability policy, miscellaneous policy, motor policy, accident and health policy, property policy or transportation policy or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is renewed or varied;

"short-term reinsurance policy"
means a reinsurance policy in respect of a short-term policy;

"statutory actuary"
means an actuary appointed in accordance with section 19A(1) or 20(1);

"subsidiary"
has the meaning determined in accordance with section 3 of the Companies Act;

[Definition amended by section 109(m) of Act No. 45 of 2013]
"survival benefit" means a policy benefit which is to be provided in the event of the life of a person or an unborn continuing or having continued for a period;

"this Act" includes any regulation made, or matter prescribed under this Act;

"transportation policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft or for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed, occurs; and includes a reinsurance policy in respect of such a policy;

"unborn" means a human foetus conceived but not born.

"widely-held company" [Definition deleted by section 109(n) of Act No. 45 of 2013].

2) For the purposes of entering into a short-term policy the life of an unborn shall be deemed to begin at conception.

Part I Administration of Act

2. Registrar and Deputy Registrar of Short-term Insurance

(1) The person appointed as executive officer in terms of section 13 of the Financial Services Board Act is the Registrar of Short-term Insurance and has the powers and duties provided for by or under this Act or any other law.

(2) The person appointed as deputy executive officer in terms of section 13 of the Financial Services Board Act is the Deputy Registrar of Short-term Insurance.

(3) The Deputy Registrar of Short-term Insurance exercises or carries out the powers and duties of the Registrar of Short-term Insurance to the extent that such powers have been delegated to the Deputy Registrar under section 20 of the Financial Services Board Act and to such extent that the Deputy Registrar has been authorised under section 20 of the Financial Services Board Act to perform such duties.

[Section 2 substituted by section 110 and amended by section 145(a) of Act No. 45 of 2013]
3. General provisions concerning Registrar

1) An approval of, or a determination or decision by, or a notice to be given by or to, the Registrar, shall, without derogating from legal rules on the making known or publication thereof, be valid only if it is in writing.

2) Whenever the approval of, or a determination or decision by, or the performance of any other act by the Registrar, is sought by a person under this Act or any other law, application therefor shall be made in writing to the Registrar and the application shall—
   a) be made in the form the Registrar requires; and
   b) be accompanied by—
      i) the fees prescribed by the Registrar; and
      ii) the information or documents which the Registrar requires.

3) If a person with an interest in the matter is aggrieved by a determination made, decision taken or act performed in the exercise or carrying out of the powers or duties of the Registrar, that person may appeal to the board of appeal established by section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section.

4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, which are held by the Registrar under this Act in relation to a short-term insurer, Lloyd’s underwriter or an intermediary, or obtain a copy of or extract from any such document.  
   [Subsection 4 amended by section 111 of Act No. 45 of 2013]

5) A document which purports to be certified by the Registrar as a document held in the Registrar’s office or to be a copy of such a document, shall be prima facie proof of the content of such a document or copy, and shall be admissible in evidence in any proceedings.

4. Special provisions concerning Registrar and his or her powers

1) When anything is required or permitted to be done under this Act within a particular period, the Registrar may, before the expiry of that period, extend it.

2) The Registrar may by notice direct a short-term insurer to furnish the Registrar, within a specified period, with specified information or documents required by the Registrar for the purposes of this Act.

3) [Subsection 3 deleted by section 112(a) of Act No. 45 of 2013]

4) a) The Registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply:
   b) A directive issued in terms of paragraph (a) may—
      i) apply generally; or
be limited in its application to a particular person or kinds of persons, which may, for purposes of this subsection, be defined either in relation to categories, types or in any other manner.

c) A directive issued in terms of paragraph (a) takes effect on the date determined by the Registrar in the directive.

d) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.

e) The Registrar may amend or revoke any issued directives.

f) The Registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the Registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.

[Subparagraph (f) amended by section 112(b) of Act No. 45 of 2013]

5) a) If a person contravened or is contravening section 7(1)(a) of this Act, the Registrar may—

i) by notice direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under short-term policies already entered into by that person; or

ii) apply to the Court for the sequestration or liquidation of that person, whether he, she or it is solvent or not, in accordance with—

aa) the Insolvency Act, 1936 (Act No. 24 of 1936);

bb) the Companies Act;

cc) the Close Corporations Act, 1984 (Act No. 69 of 1984); or

dd) the law under which that person is incorporated, as the case may be.

b) In deciding an application contemplated in paragraph (a)(ii), the Court—

i) may take into account whether the sequestration or liquidation of the person concerned would be in the interests of the policyholders concerned;

ii) may make an order concerning the manner in which claims may be proven by policyholders; and

iii) shall (if necessary) appoint as trustee or liquidator a person nominated by the Registrar.

6) [Subsection 6 deleted by section 112(c) of Act No. 45 of 2013]

7) The Registrar may—

a) determine that a policy or policies shall form part of a particular class of policies defined in section 1 of this Act or in section 1 of the Long-term insurance Act, 1998, if a short-term insurer has not classified that policy or policies correctly into the appropriate class, and when the Registrar so determines, the policy or policies concerned shall be deemed to form part of the class of policies so determined for the purposes of, and subject to, the provisions of the said Act relating to that class of policies; or

b) upon application of a short-term insurer, determine that a policy or policies forming part of any class of policies defined in section 1 of this Act or in section 1 of the Long-term Insurance Act, 1998, shall form part of a different class of policies defined in the said section 1 of this Act, and when the Registrar so determines, that policy or policies shall for the purposes of this Act, be deemed to form part of the class of
policies so determined and it or they shall be subject to all the—
i) provisions of this Act relating to that class of policies; and
ii) conditions determined by the Registrar:
Provided that the Registrar shall not make a determination under this subsection if the Registrar is satisfied that the determination will be prejudicial to any person or will defeat any object of this Act.

(8)

(a) The Registrar may—
   (i) conduct an on-site visit under Chapter 1A of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); or
   (ii) instruct an inspector to conduct an inspection under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).

(b) After an on-site visit or inspection has been carried out in terms of paragraph (a), the Registrar may, in accordance with section 4(2), direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

[Subsection 8 inserted by section 112(d) of Act No. 45 of 2013]

5. Annual report

1) The Registrar shall submit to the Minister a report on the Registrar’s activities under this Act during each year ending 31 December, and shall furnish any additional information relating to anything done by the Registrar under this Act that the Minister may require.

2) A copy of the report submitted to the Minister in terms of subsection (1) shall be tabled in Parliament within 30 days after receipt of the report if Parliament is then in session or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

6. Advisory Committee on Short-term Insurance (REPEALED)

[Section 6 repealed by section 113 of Act No. 45 of 2013]

Part II Registration of short-term insurers

7. Registration required in order to carry on short-term insurance business

1) No person shall carry on any kind of short-term insurance business, unless that person—
a) is registered or deemed to be registered as a short-term insurer, and is authorised
to carry on the kind of short-term insurance business concerned, under this Act; or
b) is authorised under section 56 to do so, and carries on that business in accordance with this Act.

2) Subsection (1) shall not apply to—
   a) a pension fund organisation registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), or exempted under section 2(3)(a) of that Act from the requirement to be so registered, if and in so far as it acts in accordance with that Act;
   b) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or exempted under section 3(2) of that Act from the requirement to be so registered, if and in so far as it enters into short-term policies in respect of any of which the value of the policy benefits to be provided, does not exceed R5 000 per member or another maximum amount prescribed by the Minister;
   c) a fund established in terms of an agreement referred to in section 23 of the Labour Relations Act, 1995 (Act No. 66 of 1995), if and in so far as it acts in accordance with the provisions of such agreement;
   d) a medical scheme registered under the Medical Schemes Act, if and in so far as it acts in accordance with that Act;
   e) a long-term insurer, if and in so far as it enters into a long-term policy which it is entitled to enter into by virtue of its registration as a long-term insurer;
   f) an agricultural co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005), or allowed to continue to operate in terms of section 97 of that Act, if and in so far as it, as part of its main objectives, conducts short-term insurance business, and provides benefits the amount of which is not guaranteed and in respect of which its liability is limited to the amount standing to the credit of a fund specially maintained for that purpose;
   g) the unemployment insurance fund established by the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), if and in so far as it acts in accordance with that Act;
   h) the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act No. 13 of 1944), if and in so far as it acts in accordance with that Act.

3) For the purposes of this section a person shall, in the absence of evidence to the contrary, be deemed to be carrying on short-term insurance business in the Republic if that person performs any act in the Republic—
   a) the object or result of which is that another person will enter into or enters into, or offers to enter into, renew or vary a short-term policy, other than a short-term reinsurance policy, in terms of which the first-mentioned person undertakes to provide policy benefits to the other person; or
   b) in relation to a short-term policy, other than a short-term reinsurance policy, in terms of which that person has undertaken to provide policy benefits, and which act is aimed at—
      i) maintaining, servicing or otherwise dealing with the short-term policy;
      ii) collecting or accounting for premiums payable under the short-term policy; or
      iii) receiving or submitting of, or assisting or otherwise dealing with the settlement of, a claim under the short-term policy.
8. Prohibition on use of certain words, or performance of certain acts, by certain persons

1) No person shall—
   a) subject to section 8(1)(a) of the Long-term Insurance Act, 1998, without the approval of the Registrar apply to his, her or its business or undertaking a name or description which includes the word "insure", "assure" or "underwrite" or any derivative thereof, unless such person is a short-term insurer or a Lloyd's underwriter;
   \[Subparagraph (a) amended by section 114(a) of Act No. 45 of 2013\]
   b) perform any act which indicates that he, she or it carries on or is authorised to carry on short-term insurance business, unless he, she or it is a short-term insurer authorised to carry on that business or a Lloyd's underwriter.
   c) publish any advertisement, brochure or similar communication which relates to the business of a short-term insurer or a Lloyd's underwriter, or to a short-term policy, and which is misleading or contrary to the public interest or contains an incorrect statement of fact; or
   \[Subparagraph (c) inserted by section 114(b) of Act No. 45 of 2013\]
   d) publish any advertisement, brochure or similar communication which relates to a short-term policy that does not prominently include the name of the short-term insurer or Lloyd's underwriter underwriting the short-term policy.
   \[Subparagraph (d) inserted by section 114(b) of Act No. 45 of 2013\]

2) Subject to this Act, no person shall render services as intermediary in relation to a short-term policy unless—
   a) short-term insurers are the only underwriters in terms of the short-term policy concerned;
   b) such person is a Lloyd’s correspondent and Lloyd’s underwriters are the only underwriters in terms of the short-term policy concerned;
   c) short-term insurers and Lloyd’s underwriters through a Lloyd’s correspondent are collectively the only underwriters in terms of the short-term policy concerned; or
   d) such person does so with the approval of the Registrar.

3) The Registrar may from time to time by notice on the official web site or, in the case of any particular person, by notice to such person, subject to such conditions as the Registrar determines—
   a) and specifies in the notice, grant to persons, generally or to any particular person or category of persons the approval contemplated in subsection (2)(d) to such extent as may be specified by the Registrar in the notice; and
   b) at any time withdraw or amend any such approval to such extent as may be determined by the Registrar.
   \[Subsection 3 amended by section 114(c) of Act No. 45 of 2013\]

4) Subsections (2) and (3) shall not apply in the case of a short-term reinsurance policy unless and to the extent that the Minister so determines by notice in the Gazette.

5) \[Subsection 5 deleted by section 114(d) of Act No. 45 of 2013\].

6) No short-term insurer which is liable under a short-term insurance policy may refer to or
use in any such policy or advertisement, brochure or similar communication the term ‘funeral’ or ‘burial’ or any derivative thereof.

9. Application for registration

1) A person who wishes to carry on short-term insurance business shall apply to the Registrar for registration as a short-term insurer.

2) Subject to subsection (3), the Registrar—
   a) may grant an application made in terms of subsection (1) on such of the conditions contemplated in section 10 as the Registrar may determine; and
   b) shall, if the Registrar grants such application, register the person concerned as a short-term insurer and issue to that person a certificate of registration, in such form as may be prescribed by the Registrar, authorising that person to carry on the short-term insurance business concerned and specifying the conditions contemplated in paragraph (a).

3) An application referred to in subsection (1) shall not be granted by the Registrar—
   a) unless the applicant—
      i) is a public company and has the carrying on of short-term insurance business as its main object; or
      ii) is incorporated without a share capital under a law providing specifically for the constitution of a person to carry on short-term insurance business as its main object;
   b) if—
      i) the applicant does not have the financial resources, organisation or management that is necessary and adequate for the carrying on of the business concerned;
      ii) any person who is, or will, from the date of proposed registration, be a director or managing executive of the applicant is not fit and proper to hold the office concerned;
      iii) the direct or indirect control of the applicant by another person, whether by virtue of shareholding, voting power, the power to appoint directors, or in any other manner, will be contrary to the interests of policyholders;
      iv) the applicant is not, or will not be, able to comply with this Act; or
      v) the registration is contrary to the public interest;
   c) if the proposed name of the applicant, or a translation, shortened form or derivative thereof, is unacceptable because it—
      i) is identical to that of another short-term insurer or a long-term insurer;
      ii) so closely resembles that of another short-term insurer or a long-term insurer that the one is likely to be mistaken for the other;
      iii) is identical to that under which another short-term insurer or a long-term insurer was previously registered and reasonable grounds exist for objection to its use by the applicant concerned; or
      iv) is misleading or undesirable,

unless the applicant has undertaken to adopt, within such period as the Registrar may determine, another name which is acceptable to the Registrar.
10. Conditions of registration

The conditions contemplated in section 9(2)(a) may include conditions—

a) authorising the short-term insurer to enter into only certain short-term policies determined by the Registrar;

b) authorising the short-term insurer to enter into short-term policies other than certain short-term policies determined by the Registrar;

c) authorising the short-term insurer to enter into certain short-term policies determined by the Registrar only if those policies contain, or do not contain, particular terms or conditions determined by the Registrar;

d) limiting the amount or value of the policy benefits to be provided by the short-term insurer under certain short-term policies determined by the Registrar to an amount or value determined by the Registrar;

e) limiting the amount of the premiums that the short-term insurer may contract to receive, during a period determined by the Registrar, in respect of all or certain short-term policies determined by the Registrar that may be entered into by that short-term insurer during that period;

f) requiring the short-term insurer to enter into short-term reinsurance policies in terms of which that short-term insurer reinsures at least a portion determined by the Registrar of the liabilities incurred by it in terms of all or certain short-term policies determined by the Registrar that may be entered into by that short-term insurer during a period determined by the Registrar;

g) requiring that the provisions of the Memorandum of Incorporation, or equivalent constitution, of the short-term insurer must be suitable to enable it to carry on short-term insurance business; or

[Subparagraph (g) amended by section 115 of Act No. 45 of 2013]

h) reasonably necessary to ensure that the short-term insurance business concerned is carried on soundly in compliance with section 28(1), and different conditions may be determined in respect of different short-term insurers.

11. Variation of registration conditions

1) The Registrar may—

a) upon application of a short-term insurer and having regard, with the necessary changes, to section 9(3)(b);

b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 34(2)(a) in relation to a short-term insurer; or

c) if a short-term insurer has ceased to enter into certain short-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the short-term insurer has been allowed at least 30 days in which to make representations in respect of the matter, by notice to the short-term insurer vary a condition, subject to which the short-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10.

2) The Registrar shall, if a variation referred to in subsection (1) is effected, withdraw the certificate of registration issued in terms of section 9 and issue, as contemplated in that
section, a new certificate of registration to the short-term insurer concerned.

12. Registrar may under certain circumstances prohibit short-term insurers from carrying on business

1) If a short-term insurer—
   a) has not furnished all information which is material to an application made to the Registrar under this Act or has furnished information which is false;
   b) has made a material misrepresentation to members of the public in connection with the short-term insurance business carried on by it;
   (bA) no longer meets the conditions under which it was registered;
   (bB) has failed to comply with any other condition imposed under this Act;
   (bC) has failed to comply with any directive issued under this Act;
   (bD) is in the opinion of the Registrar not managed or owned by persons who are fit and proper; or not managed in accordance with the governance and risk management framework prescribed by the Registrar in the Gazette;
   (bE) has contravened or failed to comply with a provision of this Act; or
   c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in subsection (3),

   the Registrar may give notice to the short-term insurer of the Registrar’s intention, and of the reasons therefor, to prohibit that short-term insurer, with effect from a date specified in the notice, from carrying on the short-term insurance business specified in that notice.

   [Subsection 1 amended by section 116(a), (b) and (c) of Act No. 45 of 2013]

2) When the Registrar has given notice to a short-term insurer in accordance with subsection (1), and has allowed that insurer a reasonable period in which to make representations to the Registrar in respect of the matter, the Registrar may, by notice to the short-term insurer—
   a) withdraw the first-mentioned notice;
   b) act in accordance with section 11; or
   c) prohibit the short-term insurer from carrying on such short-term insurance business, as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.

   [Subsection 2 amended by section 116(d) and (e) of Act No. 45 of 2013]

3) When the Registrar has, in accordance with subsection (2), prohibited a short-term insurer from carrying on certain short-term insurance business, the Registrar may thereafter—
   a) withdraw the prohibition by notice to the short-term insurer;
   b) act in accordance with section 11(1) and thereupon, by notice to the short-term insurer, withdraw the prohibition and authorise the short-term insurer to carry on the short-term insurance business, subject to the conditions determined by the Registrar, specified in the new certificate of registration referred to in section 11(2); or
   c) act in accordance with section 13(2)(c), 40(2) or 41(2), according to whichever provision the Registrar deems most appropriate in the circumstances and in the interests of the policyholders of the short-term insurer.
13. Termination of registration

1) If a short-term insurer fails to commence the carrying on of its short-term insurance business within a reasonable period after being registered to do so, and if, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that the short-term insurer will not commence the carrying-on of such business within a reasonable period thereafter, the Registrar shall, by notice to the short-term insurer, cancel its registration.

2) The Registrar shall—
   a) if a short-term insurer has ceased to enter into short-term policies to an extent which justifies its continued registration as a short-term insurer and, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that it will not resume the entering into of short-term policies to the required extent within a reasonable period thereafter;
   b) if a short-term insurer notified the Registrar of its intention to cease to enter into any more short-term policies and has requested so in writing; or
   c) if the Registrar considers it appropriate to act so in accordance with section 12(3)

by notice direct the short-term insurer concerned, with effect from a date specified in the notice, not to enter into any more short-term policies and require it to make arrangements satisfactory to the Registrar to discharge its obligations under all short-term policies entered into before the specified date and, when the Registrar is satisfied that the short-term insurer concerned no longer has any obligations under any such policy, shall, by notice to the short-term insurer and on the official web site, cancel its registration.

[Subsection 2 amended by section 117(a) of Act No. 45 of 2013]

3) When all of the short-term insurance business of a short-term insurer has been—
   a) discontinued as a result of its amalgamation with, or its transfer to, another short-term insurer as contemplated in Part V; or
   b) wound up as contemplated in Part VI,
the Registrar shall by notice on the official web site cancel its registration.

[Subsection 3 amended by section 117(b) of Act No. 45 of 2013]

14. Deregistration of short-term insurers as companies

For the purposes of section 82(3) of the Companies Act in relation to a short-term insurer, the reference to the Commission in that section shall be construed as a reference to the Commission acting in concurrence with the Registrar.

[Section 14 amended by section 118 of Act No. 45 of 2013]
Part III Business and administration of short-term insurers

15. Limitation on business

1) A short-term insurer shall not carry on such business, other than the short-term insurance business which it is authorised to carry on by virtue of its registration under section 9, as the Registrar has prohibited in relation to—
   a) a particular short-term insurer; or
   b) short-term insurers generally.

2) A short-term insurer shall not carry on such business as the Registrar may determine, other than the short-term insurance business which it is authorised to carry on by virtue of its registration under section 9, otherwise than in accordance with and subject to the limitations and conditions which the Registrar may determine in relation to—
   a) a particular short-term insurer; or
   b) short-term insurers generally.

3) The Registrar may only impose a prohibition or determine a limitation and a condition under subsection (1) or (2) by notice on the official web site—
   a) if it is in the interests of the policyholders of a particular short-term insurer, or short-term insurers in general, to act so;
   b) after giving at least 30 days’ notice of the Registrar’s intention to act so in the case of—
      i) a particular short-term insurer, to that short-term insurer; or
      ii) short-term insurers generally, on the official web site; and
   c) after considering any representations received in respect of the matter.

[Subsection 3 amended by section 119(a) and (b) of Act No. 45 of 2013]

4) A short-term insurer shall not undertake to provide a survival benefit.

5) A short-term insurer, other than an insurer carrying on reinsurance business only, shall not be a long-term insurer as defined in the Long-term Insurance Act, 1998.

15A. Reinsurers carrying on reinsurance business only, authorised to enter into certain sho

The Registrar may, subject to section 11, and notwithstanding business only, to directly enter into short-term policies other than short-term reinsurance policies.

16. Head office and public officer

1) A short-term insurer shall—
   a) have its head office in the Republic;
   b) appoint a natural person who is permanently resident in the Republic as its public
c) notify the Registrar of the address of that head office and of the name of that public officer; and
d) if the address of that head office changes, or if that public officer or the name of that public officer changes, notify the Registrar thereof within 30 days after such change.

2) The public officer shall, as far as it is in his or her power, ensure that the short-term insurer complies with this Act.

3) Process in any legal proceedings against a short-term insurer maybe served at the head office of that insurer or, if no such office is in existence, by service upon the public officer or, if he or she cannot be found or if no person has been appointed as public officer, by service upon the Registrar, which shall be deemed to be service upon the short-term insurer.

17. Financial year and name

A short-term insurer may not change—

a) its financial year; or
b) its name, or a translation, shortened form or derivative thereof without the approval of the Registrar.

18. Notification of certain appointments, terminations and resignations

1) A short-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director or managing executive appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such appointment or termination or resignation, as the case may be, together with the reasons for any such termination or resignation.

2) Any such director or managing executive who resigns or whose appointment has been terminated by a short-term insurer shall, at the request of the Registrar, inform the Registrar in writing of any matter relating to the affairs of that insurer of which the director or managing executive became aware in the performance of his or her duties and which may prejudice the insurer’s ability to comply with this Act.

3) No information furnished by a director or managing executive in terms of subsection (2) may be used in any subsequent criminal proceedings against such director or managing executive.
19. Auditor

1) A short-term insurer shall at all times have, one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a public company.  
[Subsection 1 amended by section 120 of Act No. 45 of 2013]

2) No appointment of an auditor, other than a reappointment not involving a break in the continuity of the appointment, shall take effect unless it has been approved by the Registrar.

3) [Deleted by the Insurance Laws Amendment Act, 2008 (Act No. 27 of 2008)]

4) If an auditor of a short-term insurer is a firm (as contemplated in the Auditing Profession Act), the Registrar’s last approval of the appointment of that firm as auditor shall not lapse by reason of a change in the membership of the firm if at least half of the members of the firm, after the change, were members when the appointment of the firm was last approved by the Registrar.

5) Notwithstanding anything to the contrary in any law contained, the auditor of a short-term insurer shall—
   a) whenever the auditor furnishes copies of a report or other document or particulars contemplated in section 45(1)(a) and 3(c) of the Auditing Professions Act, also furnish a copy thereof to the Registrar; and
   b) if the auditor’s appointment is terminated for any reason—
      i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and
      ii) if the auditor would, but for that termination, have had reason to submit a report contemplated in section 45(1)(a) and 3(c) of the Auditing Professions Act, submit such a report to the Registrar; and
   c) inform the Registrar and the board or directors of the short-term insurer, without delay, in writing of any matter relating to the business of the short-term insurer of which the auditor becomes aware in the performance of the auditor’s functions as auditor and which, in the opinion of the auditor, constitutes a contravention of section 28(1) or any other section of this Act, or in future may prejudice the insurer’s ability to comply with section 28(1) or any other section of this Act, which information must give a description of the matter and must include such other particulars as the auditor considers appropriate.

6) a) The furnishing, in good faith, by an auditor of a report or information in terms of this section shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject.
   b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section shall not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.

7) The auditor of a short-term insurer must carry out the duties assigned to the auditor of a short-term insurer by this Act, the Act under which that insurer in incorporated and the
Auditing Profession Act, and in addition to those duties must—

a) in relation to a statement forming part of the returns in respect of which the auditor is required to do so in terms of section 35, examine that statement or part thereof and satisfy himself, herself or itself that it is properly drawn up so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any annexure thereto, has in all material respects been prepared in accordance with Chapter IV of the Auditing Profession Act; and

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

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

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

19A. Statutory actuary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8) A statutory actuary shall—

a) have the right of access at all times to the accounting records and other books and documents of the short-term insurer and be entitled to require from the directors or officers of that insurer the information and explanations he or she deems necessary for the carrying out of his or her duties;

b) be entitled to—

i) attend and speak at a general meeting of the short-term insurer;

ii) receive the notices and other communications relating to a general meeting referred to in subparagraph (i) that a member of that short-term insurer is entitled to receive; and

c) i) attend and be entitled to speak at any meeting of the board of directors of the short-term insurer on the business of the meeting which concerns the duties conferred on or assigned to him or her as statutory actuary by or under this Act and by any other law or code of professional practice; and

ii) receive the notices and other communications relating to any meeting referred to in subparagraph (i) which a member of the board of directors is entitled to receive.
20. Appointment of auditor or statutory actuary by Registrar

1) If a short-term insurer for any reason fails to appoint an auditor, or statutory actuary, the Registrar may, notwithstanding section 90(1) and 2(c) of the Companies Act, but subject to section 19 or 19A of this Act, appoint an auditor or statutory actuary for that short-term insurer.

[Subsection 1 amended by section 121 of Act No. 45 of 2013]

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

21. Removal of appointees who are not fit and proper

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

2) When the Registrar intends to act as contemplated in subsection (1), the Registrar shall give notice to the short-term insurer concerned, and, unless it is impracticable to do so, to the person or firm concerned, of the Registrar’s intention and the reasons therefor, and the person or firm concerned shall thereupon cease to perform the functions of the office concerned pending the final outcome of any action under subsection (3).

3) When notice has been given to a short-term insurer in terms of subsection (2), that short-term insurer and the person or firm concerned may appeal to the board of appeal established by section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section, and any party shall have a right of appeal to the Court against the decision of that board of appeal as if it were a judgement of a lower court.

22. Audit committee

1) Despite section 94(2) of the Companies Act, the board of directors of a short-term insurer shall appoint an audit committee.

[Subsection 1 amended by section 122(a) of Act No. 45 of 2013]

2) The majority of the members, including the chairperson of the audit committee, shall be persons who are not employees of the short-term insurer.

3) The functions of the audit committee, in addition to the functions referred to in section 94(7) of the Companies Act, are—
a) to assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied by the short-term insurer in the day-to-day management of its business;
b) to facilitate and promote communication and liaison concerning the matters referred to in paragraph (a) or a related matter, between the board of directors and the managing executive, auditor and internal audit staff of the short-term insurer;
c) to recommend the introduction of measures which the committee believes may enhance the credibility and objectivity of financial statements and reports concerning the business of the short-term insurer; and
d) to advise on a matter referred to the committee by the board of directors.

[Subsection 3 amended by section 122(b) of Act No. 45 of 2013]

3A) The audit committee may appoint an advisor or request any employee of the short-term insurer to advise or assist it in the performance of the functions referred to in subsection (3).

4) If the appointment or composition of an audit committee is, in a particular case, inappropriate or impractical or would serve no useful purpose, the Registrar may, subject to such conditions as the Registrar may determine, exempt the short-term insurer concerned from the requirements of subsection (1).

23. Preference shares, debentures, share capital and share warrants

(1) Notwithstanding the provisions of the Companies Act, a short-term insurer shall not without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines—
(a) issue any securities or change the capital structure of the company;
(b) reduce its share capital;
(c) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 48 of the Companies Act; or
(d) conclude a transaction contemplated in section 44 of the Companies Act.

(2) The conditions referred to in subsection (1) may include a new or varied registration condition contemplated in section 10 or 11.

[Section 23 amended by section 123 of Act No. 45 of 2013]

24. Registration of shares in name of nominee

1) A short-term insurer shall not knowingly—
(a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended beneficial shareholder;
(b) register transfer of any of its shares to a person other than the intended beneficial shareholder,
without the approval of the Registrar.
2) Subsection (1) shall not apply to the allotment, issue or registration of the shares of a short-term insurer—
   a) to or in the name of a trustee or custodian of a collective investment scheme as defined in section 1 of the Collective Investments Schemes Control Act, 2002 (Act No. 45 of 2002), or a representative of such trustee or custodian appointed in terms of section 68(6)(a) of the Collective Investment Schemes Control Act, 2002;
   b) to or in the name of an executor of the estate of a deceased shareholder of a company, a trustee of a shareholder whose estate has been sequestrated or an administrator, curator or guardian of a shareholder who is otherwise under disability;
   c) for a period of not more than six months, to or in the name of a company controlled by a short-term insurer or an employee of the short-term insurer, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares;
   d) to or in the name of a participant as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), or of a nominee contemplated in section 36(1)(b) read with section 39(2)(q) of the Securities Services Act, 2004: Provided that the participant or nominee concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;
   e) to or in the name of another person prescribed by the Minister.

25. Limitation on control and certain shareholding or other interest in short-term insurers

1) Subject to this section, no person shall, directly or indirectly, and without the prior approval of the Registrar, acquire or hold shares or any other financial interest in a short-term insurer or a related party of that short-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control over that short-term insurer.
   [Subsection 1 amended by section 125(a) of Act No. 45 of 2013]

2) No person shall, directly or indirectly and without the prior approval of the Registrar, acquire or hold shares in a short-term insurer or a related party of that short-term insurer if—
   a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to 25 per cent or more of the total nominal value of all of the issued shares of the short-term insurer concerned;
   b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to 25 per cent or more of all the shares in a specific class of shares issued by the short-term insurer concerned.
   [Subsection 2 amended by section 125(a) of Act No. 45 of 2013]
(2A) A short-term insurer must inform the Registrar if any person, directly or indirectly, acquires shares or any other financial interests referred to in subsection (1) or (2) in that short-term insurer.

[Subsection 2A amended by section 125(b) of Act No. 45 of 2013]

3) The approval referred to in subsection (2)—
   a) may be given—
      i) subject to the aggregate nominal value of the shares or total number of shares in a specific class of shares or aggregate number of all the shares owned by the person concerned and his, her or its related parties not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;

   [Subparagraph (i) amended by section 125(c) of Act No. 45 of 2013]
   ii) subject to such other conditions as the Registrar may determine;

   b) shall not be given if it would be contrary to—
      i) the public interest; or
      ii) the interests of the policyholders, or of persons who may become policyholders, of the short-term insurer; and

   c) may be refused if the person concerned, alone or with his, her or its related parties, has not already owned shares in the short-term insurer—
      i) of the aggregate nominal value or number of a specific class; and

   [Subparagraph (i) amended by section 125(d) of Act No. 45 of 2013]
      ii) for the minimum period, not exceeding 12 months, that the Registrar may determine.

4) If the Registrar is satisfied that the retention of a particular shareholding by a particular shareholder will be prejudicial to the short-term insurer the Registrar may apply to the Court in whose area of jurisdiction the head office of the short-term insurer is situated for an order—
   a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding 25 per cent of—
      i) the total nominal value or number of all the issued shares of the short-term insurer; or
      iii) all the shares in a specific class of shares issued by the short-term insurer; and

   b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his, her or its shareholding to 15 per cent of the voting rights attached to all the issued shares of the short-term insurer.

[Subsection 4 amended by section 125(e) of Act No. 45 of 2013]

5) For the purposes of this section "related party", in relation to—
   a) a natural person, means—
      i) a person who is recognised in law or the tenets of a religion as the spouse, permanent life partner or civil union partner of that person;
      ii) a child of that person, including a stepchild, an adopted child and a child born out of wedlock;
      iiiA) a parent or stepparent of that person;
      iiiB) a person in respect of whom that person is recognised in law or appointed by a court as the person legally responsible for managing the affairs of or meeting the regular care needs of the first-mentioned person;
      iiiC) a person who is the permanent life partner or spouse or civil union partner of
a person referred to in subparagraphs (ii), (iiA) and (iiB);

(iiD) a person who is in a commercial partnership with that person;

(iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the short-term insurer concerned;

(iv) a juristic person whose board of directors acts in accordance with his or her directions or instructions;

(v) a trust controlled or administered by him or her;

b) a juristic person—

i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;

iii) which is not a company or a close corporation, means another juristic person which would have been its subsidiary or holding company—

aa) had it been a company; or

bb) in the case where that other juristic person, too, is not a company, had both it and that other juristic person been a company;

iv) means any person in accordance with whose directions or instructions its board of directors acts;

v) means another juristic person whose board of directors acts in accordance with its directions or instructions;

vi) means a trust controlled or administered by it.

[Subsection 5 amended by section 125(f), (g) and (h) of Act No. 45 of 2013]

6) For the purposes of this section a person shall be deemed to exercise control over a short-term insurer if that person, alone or with related parties—

a) holds shares in the short-term insurer of which—

i) the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;

ii) the total number of shares represents 25 per cent or more of all the shares in a specific class of shares issued by that short-term insurer;

b) is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or

c) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board.

[Subsection 6 amended by section 125(i) of Act No. 45 of 2013]

26. Furnishing of information concerning shareholders

1) A short-term insurer shall, whenever required to do so by the Registrar, furnish the Registrar with a return, in the form and containing the particulars and information which the Registrar determines, in respect of its shareholders and of any person who directly or
indirectly has the power to require those shareholders to exercise their rights as shareholders in the short-term insurer in accordance with such person’s directions or instructions.

2) A person in whose name shares in a short-term insurer are registered, or who wishes shares in a short-term insurer to be allotted or issued to such person or to be registered in such person’s name, and any person acting on behalf of such person, shall, upon the written request of the short-term insurer concerned, furnish it with the information it may require for the purposes of complying with section 24(1).

27. Effect of registration of shares contrary to Act

1) No person shall, despite any other law—
   a) either personally or by proxy granted to another person, cast a vote attached to; or
   b) receive a dividend payable in respect of,
   a share in a short-term insurer or a related party of that short-term insurer allotted or issued to such first-mentioned person or registered in such person’s name contrary to this Act.
   [Subsection 1 amended by section 126(a) and (b) of Act No. 45 of 2013]

2) The validity of a resolution passed by a short-term insurer or a related party of that short-term insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1)(a).
   [Subsection 2 amended by section 126(c) of Act No. 45 of 2013]

3) A dividend referred to in subsection (1)(b) shall be void.

Part IV Financial arrangements

28. Maintenance of financially sound condition

1) A short-term insurer shall at all times maintain its business in a financially sound condition by—
   a) having assets;
   b) providing for its liabilities and capital adequacy requirement; and
   c) generally conducting its business,
   so as to be in a position to meet its liabilities and capital adequacy requirement at all times.

2) A short-term insurer shall be deemed to have failed to comply with subsection (1) if—
   a) it does not have assets as required by section 29;
   b) it does not have in the Republic assets as required by section 30; or
   c) it has not made provision for the liabilities and the capital adequacy requirement referred to in sections 29, 30 and 32 in accordance with the requirements of those sections and Schedule 2.
3) A short-term insurer which fails to comply with subsection (1) shall, without delay, notify the Registrar of the failure and furnish the reasons therefor.

4) A short-term insurer shall not declare or pay a dividend to its shareholders—
   a) while it fails or is likely to fail to comply with subsection (1);
   b) if the declaration or payment would result in it failing or being likely to fail to comply with subsection (1); or
   c) if, after the declaration or payment the aggregate value of assets required by section 29 would be less than the aggregate value of liabilities, issued share capital and non-distributable reserves.

29. Assets

1) A short-term insurer shall have assets the aggregate value of which, on any day, is not less than the aggregate value on that day of its liabilities and its capital adequacy requirement when the values of those assets, liabilities and capital adequacy requirement are calculated in accordance with Schedule 2.

2) A short-term insurer shall, subject to section 31, have assets in the Republic of the kinds specified in Schedule 1, the aggregate value of which on any day is not less than the aggregate value on that day of those of its liabilities which are to be met in the Republic and its capital adequacy requirement in respect of those liabilities when the values of those assets, liabilities and capital adequacy requirement are calculated in accordance with Schedule 2.

30. Kinds and spread of assets

1) Subject to section 31 and subsection (2), the assets which a short-term insurer is required in terms of section 29(2) to have in the Republic shall, at their fair value, in respect of the particular kinds or categories of assets specified by regulation, when expressed as a percentage of the aggregate value of the liabilities and the capital adequacy requirement referred to in section 29(2), not exceed the percentage specified by regulation in relation to those kinds or categories of assets.

2) The Registrar may, either in advance or at any time after having received a notice referred to in section 28(3), approve the increase of a percentage specified by regulation—
   a) in a particular case;
   b) for the specified period; and
   c) subject to such conditions as the Registrar may determine.

3) Despite the requirement in subsection (1) that an asset must be valued at fair value, if the Registrar is satisfied that the value of an asset, when calculated in accordance with financial reporting standards, does not reflect a reasonable value for purposes of this Act, the Registrar may—
   a) appoint another person, at the cost of the insurer, to place a reasonable value on that asset, which value so determined will be deemed to be the value of the asset;
31. Deeming provisions concerning assets

For the purposes of sections 29 and 30—

a) an asset of the kind specified in item 13, 16(2), (3) or (5) or 20(c) of the Table to Schedule 1, shall, subject to paragraph (b), be deemed to be in the Republic;

b) if there is documentary evidence of the title of a short-term insurer to an asset, that asset shall be deemed not to be in the Republic unless the documentary evidence is in the Republic or is held outside the Republic in such a manner and subject to such conditions as the Registrar may determine; and

c) an asset shall be deemed not to be held by a short-term insurer if it has been encumbered contrary to section 33(1)(a) in favour of another person, or if it is held by another person contrary to section 33(1)(b), unless the person in whose favour it is encumbered, or the person holding that asset is—

i) the Minister of Labour or the Director-General: Labour, or any person acting on behalf of that Minister or Director-General in accordance with the laws of the Republic relating to compensation for occupational injuries and diseases;

ii) the government of any country other than the Republic in which the short-term insurer carries on insurance business or intends to carry on such business, or any person acting on behalf of such government, if the short-term insurer has encumbered those assets in favour of, or transferred those assets into the name of, that government or that person in order to comply with the laws of that country relating to short-term insurance; or

iii) another insurer and the encumbrance or transfer takes place in terms of a short-term reinsurance policy.

32. Liabilities

1) For the purposes of this Act, the liabilities of a short-term insurer shall include the following:

a) The amount which the short-term insurer estimates will become payable in respect of claims incurred under short-term insurance policies—

i) and reported but not yet paid, reduced by the amount which it estimates will be paid in respect of those claims under approved reinsurance policies;

ii) but not yet reported, reduced by the amount which it estimates will be paid in respect of those claims under approved reinsurance policies, being an amount not less than the amount calculated in accordance with Part II of Schedule 2;

b) an unearned premium provision, being an amount not less than the amount calculated in accordance with Part II of Schedule 2;

c) [deleted by the Insurance Laws Amendment Act, 2008 (Act No. 27 of 2008)];

d) an unexpired risk provision if the short-term insurer concerned incurs an underwriting loss in the conduct of its short-term insurance business as reflected in
any prescribed return in terms of this Act, and the insurer, in consultation with its auditor, considers it necessary to defray the possible cost of claims together with the costs to carry on the said business.

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

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

33. Prohibitions concerning assets and certain liabilities

1) A short-term insurer shall not—
   a) encumber its assets;
   b) allow its assets to be held by another person on its behalf;
   c) directly or indirectly borrow any asset;
   d) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons, unless the short-term insurer is registered to provide policy benefits in terms of a guarantee policy and does so in terms of a guarantee policy,
   e) include in its assets, shares directly or indirectly held in its holding company, without the approval of the Registrar, given generally or in a particular case, and subject to such conditions as the Registrar may determine.

2) A short-term insurer shall not invest in derivatives other than for one or more of the following reasons:
   a) derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the short-term insurer’s liabilities under short-term policies and capital adequacy requirement in terms of section 29;
   b) for the purpose of reducing investment risk; or
   c) for the purpose of efficient portfolio management:

Provided that the short-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches the obligations under that instrument and from which it can discharge those obligations.

34. Failure to maintain financially sound condition

1) If a short-term insurer gives notice to the Registrar in terms of section 28(3), or if the Registrar is satisfied that a short-term insurer is failing, or is likely to fail within a reasonable period, to comply with section 28(1), the Registrar may, by notice, direct that short-term insurer to furnish the Registrar, within a specified period, with—
   a) specified information relating to the nature and causes of the failure; and
b) its proposals as to the course of action that it should adopt to ensure its compliance with section 28(1).

2) When the Registrar has received the information and proposals referred to in subsection (1), the Registrar may, without derogating from the Registrar’s powers under section 11 or 12 or any other provision of this Act—
   a) authorise the short-term insurer concerned, by notice, to adopt a course of action, approved by the Registrar after considering those proposals and after consultation with the auditor of the short-term insurer, and which the Registrar is satisfied will reasonably ensure that the short-term insurer complies with section 28(1), and the Registrar may, at that time, or at any time thereafter, after further consultation with the auditor, by notice authorise the modification of that course of action to the extent that the Registrar deems appropriate in the circumstances; or
   b) if it is reasonably necessary in the interests of the policyholders of the short-term insurer, at that time, or at any time thereafter, and notwithstanding any steps already taken by the Registrar in accordance with paragraph (a) or any other provision of this Act, act in accordance with section 40(2) or 41(2).

35. Returns to Registrar

1) A short-term insurer shall furnish the Registrar with returns relating to its business—
   a) in the medium and form;
   b) containing the information; and
   c) by the date or within the period, prescribed by the Registrar, either generally or in relation to a particular insurer.

2) If the Registrar is satisfied that a return furnished to him or her in terms of subsection (1) is incomplete or incorrect, he or she may, by notice—
   a) direct the short-term insurer to furnish the Registrar, within a specified period, with specified information or documents which the Registrar considers necessary to complete or correct the return; or
   b) reject the return and require the short-term insurer to furnish the Registrar, within a specified period, with a new return which is complete and correct.

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

36. Approval of Registrar required for compromise, arrangement, amalgamation or transfer

1) No transaction to which a short-term insurer is a party and which constitutes an agreement by which all or any part of the business of a short-term insurer is transferred to another person, or by which a fundamental transaction or compromise contemplated in Part A of Chapter 5 and section 155 of the Companies Act is effected, or by which a short-term insurer which is not a company having a share capital is to be converted into a public company having a share capital, shall have legal force without the approval of the Registrar.

[Subsection 1 amended by section 127 of Act No. 45 of 2013]

2) Any arrangement entered into between two or more insurers whereby a liability of any short-term insurer towards policyholders is to be substituted for a liability of any other insurer towards such policyholders (whether or not the liability of the short-term insurer is expressed in or created by existing policies or by new policies, or the terms of such new policies are the same as or different from the terms of the original policies), shall be deemed for the purposes of this section to be a scheme for the transfer of the insurance business concerned, unless the Registrar is satisfied that the said policyholders have been or will be made aware of the nature of such substitution and have signified or will signify their consent thereto in writing.

37. Application to Registrar

When application is made to the Registrar for the approval of a transaction referred to in section 36—

a) the parties to the transaction shall jointly—

i) at least 30 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction, which particulars must be provided in such form as the Registrar may require;

[Subparagraph (i) amended by section 128(a) of Act No. 45 of 2013]

ii) at least 30 days before lodging the application, cause a notice, in the form and containing the information required by the Registrar, to be published in such official languages in the Gazette and in such other media as the Registrar may determine;

[Subparagraph (ii) amended by section 128(a) of Act No. 45 of 2013]

iii) upon making the application, provide the Registrar with the application and all other documents relating thereto and supporting the application;

b) a person who has an interest in the matter may, by notice given to the Registrar within 15 days after the publication in the Gazette of the notice referred to in paragraph (a)(iii), submit to the Registrar such representations concerning the transaction as are relevant to his, her or its interests;

c) the Registrar may—

i) appoint a person, at the cost of the parties to the transaction, to enquire into, and report to him or her on, the desirability or otherwise of the transaction;

ii) by notice, direct any party to the transaction to provide the Registrar or that person...
with all information and documents relating to the transaction which the Registrar may require; and

**[Subparagraph (c) amended by section 128(b) and (c) of Act No. 45 of 2013]**

d) any policyholder, shareholder or creditor of the short-term insurer concerned may, within the period referred to in paragraph (b), file affidavits and other documents relating thereto and may appear before the Registrar and be heard in connection therewith.

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**38. Conditions of approval**

Notwithstanding the provisions of the Companies Act, the approval of the Registrar of a transaction referred to in section 36(1) may be granted subject to such conditions as the Registrar may determine and shall not be granted—

a) unless the provisions of this Part have been complied with;

b) if the transaction is inconsistent with this Act or contrary to the interests of the policyholders of the short-term insurer concerned; or

c) unless payment of the costs referred to in section 37(c)(i) has been made or secured.

**[Section 38 amended by section 129 of Act No. 45 of 2013]**

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**39. Approved transaction, and certain exemptions**

1) A transaction referred to in section 36(1) which is approved by the Registrar shall be binding on all persons and shall have effect as approved by the Registrar notwithstanding anything to the contrary contained in the constitution or rules of the parties thereto.

2) Notice of the passing of a special resolution (if any) by the members of a short-term insurer confirming a transaction referred to in section 36(1), together with a copy of the resolution and of the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by the public officer of the short-term insurer to be a true and correct copy, shall be furnished to the Registrar by the short-term insurer concerned within 60 days of the passing of the resolution.

3) a) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 36(1) or 68 shall, upon production by the short-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the approval of the Registrar, and without payment of any duty, tax, registration fee or other charge, make the endorsements upon the bond, title deed or registration certificate and the entries in his or her registers that are necessary to effect the transfer concerned.

   b) The exemption from the payment of any duty, tax, registration fee or charge contemplated in paragraph (a) shall only apply in the case of a transaction resulting from—

   i) a transfer of business compelled by law; or

   ii) the initiative or at the direction of the Registrar under section 34.
Part VI Business rescue and winding-up of short-term insurers

40. Business rescue

1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a short-term insurer whether or not it is a company.

2) The Registrar may make an application under section 131 of the Companies Act in respect of a short-term insurer if the Registrar is satisfied, whether in accordance with section 12(2) or 34(2) of this Act or otherwise, that it is in the interests of the policyholders of the short-term insurer to do so.

3) The following acts are subject to the approval of the Registrar:
   (a) The resolution of a short-term insurer to begin business rescue proceedings;
   (b) the appointment of a business rescue practitioner;
   (c) the adoption of a business rescue plan; and
   (d) the exercise of a power by the business rescue practitioner under the Companies Act.

4) In the application of Chapter 6 of the Companies Act—
   a) a reference to the Commission shall be construed as a reference also to the Registrar;
   b) the reference to creditors shall be construed as a reference also to the policyholders of the short-term insurer.
   c) a reference relating to the inability of a short-term insurer to pay all its debts, shall be construed as relating also to its inability to comply with section 28(1) of this Act;
   d) in addition to any question relating to the business of a short-term insurer, there shall be considered also the question whether any proposed action is in the interests of the policyholders.

5) If an application to a Court for an order relating to the business rescue of a short-term insurer is made by an affected person other than the Registrar—
   a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the Registrar at least 60 days before the application is set down for hearing; and
   b) the Registrar may, if satisfied that the application is not in the interests of the policyholders of the short-term insurer, join in the application as a party and file affidavits and other documents in opposition to the application.

6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a short-term insurer shall not enter into any new short-term policies, unless the practitioner has been granted permission to do so by the Registrar.

[Section 40 amended by sections 131 and 145(d) of Act No. 45 of 2013]
41. Winding-up

1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a short-term insurer, and in such application the Registrar shall be deemed to be a person authorised under the Companies Act to make an application to the Court for the winding-up thereof.

[Subsection 1 amended by section 132(a) of Act No. 45 of 2013]

2) The Registrar may make an application under the Companies Act for the winding-up of a short-term insurer, if the Registrar is satisfied, whether as contemplated in section 12(3) or 34(2) of this Act, or otherwise, that it is in the interests of the policyholders of that short-term insurer to do so.

[Subsection 2 amended by section 132(b) of Act No. 45 of 2013]

3) In the application of sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act as provided by subsection (1)—
   a) a reference which relates to the inability of a short-term insurer to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 28(1) of this Act;
   b) in addition to any question whether it is just and equitable that a short-term insurer should be wound up, there shall be considered also the question whether it is in the interests of the policyholders of that short-term insurer that it should be wound up;
   c) notwithstanding any other provision of sections 79 to 81 and item 9 of Schedule 5, there shall be considered whether a person is acting in contravention of section 7(1) (a) of this Act;
   d) the references to the Master, Registrar of Companies, Panel and Commission shall be construed as a reference also to the Registrar; and
   e) the requirement to give security shall not apply where the Registrar makes the application to Court.

[Subsection 3 amended by section 132(c) and (d) of Act No. 45 of 2013]

4) If an application to the Court for or in respect of the winding-up of a short-term insurer is made by any person other than the Registrar—
   a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the Court may allow on good cause shown, before the application is set down for hearing; and
   b) the Registrar may, if satisfied that the application is contrary to the interests of the policyholders of the short-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

[Section 41 amended by section 145(d) of Act No. 45 of 2013]
42. Voluntary winding-up

(1) No special resolution relating to the winding-up of a short-term insurer as contemplated in sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall be filed or registered under that Act, and no special resolution to that effect in terms of the constitution of a short-term insurer which is not a company shall have legal force—

a) unless a copy thereof has been lodged with the Registrar and he or she has, by notice to the short-term insurer, declared that arrangements satisfactory to the Registrar have been made to meet all liabilities of the short-term insurer under short-term policies entered into by it prior to the winding-up; or

b) if the Registrar, by notice to the short-term insurer, declares that the resolution is contrary to this Act.

(2) Subject to item 9 of schedule 5 to the Companies Act, the reference to a short-term insurer in this section shall for the purposes of the application of sections 79, 80 and 81 of the Companies Act be construed as a reference to a financially sound short-term insurer.

Part VII Business practice, policies and policyholder protection

Business practice

43. Free choice in certain circumstances

1) Subject to subsection (5), if a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or otherwise, that a short-term policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to, make that policy or those policy benefits available shall be entitled, and shall be given prior written notification of that entitlement to a free choice—

a) as to whether he or she wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilise a combination of those options; and

b) if a new policy is to be entered into—

i) as to the short-term insurer with which the policy is entered into and as to the person (if any) who is to render services as intermediary in connection with the transaction; and

ii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of the interest of the creditor; and

2) if an existing policy is to be made available—

i) as to the person (if any) who is to render services as intermediary in connection with the transaction; and

ii) as to whether or not a variation of the policy required for that purpose shall be such as to cause the value of the policy benefits to be provided
thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of the interests of the creditor.

2) The provisions of subsection (1) shall be deemed not to have been complied with unless the policyholder whose policy is to be made available has confirmed in writing, before the policy is used for the purpose of protecting the interests of the creditor concerned, that he or she—
   a) was given prior written notification of his or her entitlement to the freedom of choice referred to in that subsection;
   b) exercised that freedom of choice;
   c) was not subject to any coercion or inducement as to the manner in which he or she exercised that freedom of choice.

3) Any policy benefits that may be provided under a policy referred to in subsection (1) shall accrue and be paid to a creditor only to the value of the interests of the creditor in the subject-matter of the policy, and any surplus shall accrue and be paid to the policyholder whose policy is used for the protection of the interests of the creditor concerned.

4) If the provisions of subsections (1) and (3) are not complied with, the security provided by the policy made available and used for the purpose shall be void and the policy benefits shall be provided to the person who made it available.

5) 
   a) Subsection (1) shall not apply in the case of a short-term policy which is required to be made available in relation to a contract in terms of which money is loaned upon the security of the mortgage of immovable property.
   b) In a case where a new policy is to be entered into, the premiums payable under that policy shall be reasonable in relation to the premiums generally charged by insurers under similar policies.
   c) A certificate by the Registrar that he or she is satisfied that the premiums concerned are reasonable, shall for the purposes of this subsection be sufficient proof of the reasonableness of such premiums.

44. Prohibition on inducements

Unless done in accordance with the rules made under section 55, no person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a short-term policy, other than a short-term reinsurance policy.

[Section 44 amended by section 134 of Act No. 45 of 2013]

45. Collection of premiums by intermediaries

No independent intermediary shall receive, hold, or in any other manner deal with premiums
payable under a short-term policy entered into or to be entered into with a short-term insurer, other than a short-term reinsurance policy, and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums—

a) unless authorised to do so by the short-term insurer concerned, as prescribed by regulation; and

b) otherwise than in accordance with the regulations.

46. Receipt for premium paid in cash

1) When a premium is paid in bank notes or coins, the recipient thereof shall give to the payer a written receipt for it.

2) The receipt shall state the name, address and telephone number of the recipient, the policy number and the name of the short-term insurer on whose behalf the premium is received.

47. Copy of policy and inspection of policy records

1) A person who enters into or varies a short-term policy which constitutes personal lines business, other than a short-term reinsurance policy, shall be provided by the short-term insurer concerned, within 30 days after so entering into or varying the policy, with a copy of the document which embodies the contract of short-term insurance concerned.

2) The policyholder, and the person who entered into the short-term policy, shall be entitled, to be provided, upon request, with a copy of the policy.

48. Limitation of remuneration

No consideration shall be offered or provided by or on behalf of a short-term insurer, a Lloyd’s broker, policyholder or any other person, or accepted by any independent intermediary or any other person, for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.

[Section 48 amended by section 135 of Act No. 45 of 2013]

48A. Binder agreements

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

a) enter into, vary or renew a short-term policy, other than a short-term reinsurance policy, on behalf of that insurer or Lloyd’s underwriter;
b) determine the wording of a short-term policy;
c) determine premiums under a short-term policy;
d) determine the value of policy benefits under a short-term policy;
e) settle claims under a short-term policy.

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

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

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

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

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

    e) state if that other person is authorised to determine the value of policy benefits, and if authorised, the maximum value of the policy benefits that may be determined under each kind of short-term policy referred to in paragraph (a), and the extent to which and the circumstances under which the benefits may be determined;

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

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

    h) oblige that other person to—

       i) disclose to policyholders of policies referred to in paragraph (a)-

          aa) the name of the relevant short-term insurer or, in the case of Lloyd’s underwriters, the term ‘certain underwriters at Lloyd’s’, and the fact that that other person is acting in terms of an agreement contemplated in this section; and

          bb) any remuneration payable to that person in terms of an agreement contemplated in this section;

     ii) include the name of the short-term insurer or, in the case of Lloyd’s underwriters underwriting the short-term policy, the term ‘certain underwriters at Lloyd’s’ in any advertisement, brochure or similar communication which relates to the short-term policy referred to in paragraph (a);

     iii) keep and maintain proper books of account and other records in respect of the policies referred to in paragraph (a) and allow the short-term insurer or Lloyd’s underwriter, its statutory actuary, if appointed, and its auditors full and unfettered access to those books of account and records; and

     iv) make available to the short-term insurer or Lloyd’s underwriter, its statutory actuary, if appointed, and its auditors the policies referred to in paragraph (a)
and any information relating thereto, including the names, identity numbers and contact details of policyholders, insured persons and beneficiaries, upon request;

i) prohibit that other person to delegate, assign or subcontract any of the functions referred to in paragraphs (b) to (f) to another person;

j) state the circumstances under which the agreement will lapse or may be terminated, and the necessary steps that must be taken to ensure the effective and efficient termination of the agreement taking into account the interests of policyholders.

3) A written agreement referred to in subsection (1), subject to any requirements, limitations or prohibitions as may be prescribed by regulation—

a) may not authorise that other person to add an amount to any gross premium referred to in subsection (2)(d):

b) may not authorise that other person to deduct any amount from any claims referred to in subsection (2)(f); or

c) may provide or prohibit that person to directly or indirectly participate in the profits attributable to the policies referred to in subsection 2(a).

4) A person that entered into an agreement contemplated in subsection (1) with a short-term insurer or Lloyd's underwriter may -

a) render the services contemplated in subsection (1)(a) to (e) in respect of any kind of short-term policy issued by that short-term insurer or Lloyd's underwriter identified in the agreement only in accordance with any requirements, limitations or prohibitions as may be prescribed by regulation; and

b) not render any of the services contemplated in subsection (1)(a) to (e) in respect of any kind of short-term policy issued by that short-term insurer or Lloyd's underwriter not identified in the agreement.

5) Despite any term to the contrary contained in an agreement contemplated in subsection (1), the short-term insurer or Lloyd's underwriter that entered into the agreement remains—

a) responsible for compliance with this Act;

b) liable for any claims relating to policies included in the agreement, including any claims that may arise because of the failure of that other person to comply with the agreement; and

c) the owner of any information and documentation relating to the policies contemplated in the agreement, which must, upon termination of the agreement, be returned to the short-term insurer or Lloyd's underwriter.

6) Any party to a written agreement referred to in subsection (1) must on request make a copy of that agreement available to the Registrar.

49. Undesirable business practice [REPEALED]

[Section 49 repealed by section 136 of Act No. 45 of 2013]
Policies

50. Limitation on policy benefits in the event of death of unborn or of certain minors

A short-term insurer shall not undertake to provide, or provide, policy benefits, in terms of an accident and health policy, in the event of the death of an unborn, or of a minor before that minor attains the age of 14 years, the value of which, on its own or when added to the value of policy benefits which to its knowledge are to be provided in that event by a short-term insurer or a long term insurer or a friendly society in terms of any policy, exceeds, in the event of the death—

a) of that unborn, or of that minor before he or she attains the age of six years, R10 000; or
b) of that minor after he or she attains the age of six years but before he or she attains the age of 14 years, R30 000,
or such other amount prescribed by the Minister.

51. Voidness of certain provisions of agreements relating to short-term policies

A provision of an agreement, the purport of which is that—

a) a short-term insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to a short-term policy;
b) the person who has entered into the short-term policy declares or admits that a person who acted on behalf of the short-term insurer in connection with an offer of that person to do so, or with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person;
c) the obligation of a short-term insurer under a short-term policy which constitutes personal lines business, or in relation to any other short-term policy, other than with the written consent or instruction of the insured, is dependent upon the discharging of an obligation of another person under a short-term reinsurance policy; or

d) a person who has entered into a short-term policy, or the insured under a short-term policy, waives a right to which he or she is, by or under this Act, entitled, shall be void.

52. Short-term policies entered into by certain minors

A minor who has attained the age of 18 years may, without the consent of his or her guardian as if he or she has attained majority, enter into or vary, or deal with a short-term policy and pay the premium due under the policy with money which he or she has earned or which is at his or her disposal, and a policy benefit under the policy shall be provided to the minor who may deal with it as he or she thinks fit without the consent of his or her guardian, as if he or she has attained majority.
53. Misrepresentation and failure to disclose material information

1) 

a) Notwithstanding anything to the contrary contained in a short-term policy, whether entered into before or after the commencement of this Act, but subject to subsection (2)—
   i) the policy shall not be invalidated;
   ii) the obligation of the short-term insurer thereunder shall not be excluded or limited; and
   iii) the obligations of the policyholder shall not be increased, on account of any representation made to the insurer which is not true, or failure to disclose information, whether or not the representation or disclosure has been warranted to be true and correct, unless that representation or non-disclosure is such as to be likely to have materially affected the assessment of the risk under the policy concerned at the time of its issue or at the time of any renewal or variation thereof.

b) The representation or non-disclosure shall be regarded as material if a reasonable prudent person would consider that the particular information constituting the representation or which was not disclosed, as the case may be, should have been correctly disclosed to the short-term insurer so that the insurer could form its own view as to the effect of such information on the assessment of the relevant risk.

2) If the age of an insured under an accident and health policy has been incorrectly stated to the short-term insurer, the policy benefits shall, notwithstanding subsection (1), be those which would have been provided under that policy in return for the premium payable had the age been correctly stated: Provided that if the nature of that accident and health policy is such as to render such arrangement inequitable, the Registrar may direct the short-term insurer to apply such different method of adjustment to the policy benefits of that accident and health policy as the Registrar considers equitable in relation to the misstatement of age.

54. Validity of contracts

1) A short-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it.

2) If a person has entered into a short-term policy with a short-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the short-term policy, or with another person who is not a short-term insurer but who has in terms of a short-term policy undertaken an obligation as insurer, that person, by notice in writing to such short-term insurer or other person, or the Registrar by notice to such short-term insurer or other person and on the official web site, may cancel the short-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such short-term insurer or other person as if the policy had been cancelled by that person on account of a breach of contract by such short-term insurer or other person.

[Subsection 2 amended by section 137 of Act No. 45 of 2013]
3) Any contract entered into before the commencement of this Act the entering into of which is contrary to this Act or which contains terms prohibited by this Act, shall not be void nor shall the performance of its terms be unlawful merely because of any such fact.

4) For the purposes of the validity of a short-term policy the payment of a premium under a short-term policy to a person authorised as contemplated in section 45, shall be deemed to be payment to the short-term insurer under that short-term policy.

Policyholder protection

55. Protection of policyholders

1) The Registrar, by notice in the Gazette, may—
   a) make rules not inconsistent with this Act, aimed at ensuring for the purpose of policyholder protection that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;
   b) vary or rescind any such rule; and
   c) determine the period which must elapse before a rule, variation or rescission takes effect after it has been published in the Gazette.

2) Without derogating from the generality of subsection (1)(a), rules may provide—
   a) that provisions with a particular import may not appear in a policy and that they shall be void if they do so appear;
   b) that particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;
   c) that a policyholder may cancel a policy under particular circumstances and within a determined period, and what the legal consequences shall be if he or she does so;
   d) for norms and standards with which policies, short-term insurers or types of short-term insurance business must comply;
   e) for standardised wording, definitions or provisions that must be included in policies;
   f) in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 64(1)(c) or 65(1)(c) shall apply.

3) Rules referred to in subsection (2) may—
   a) apply generally; or
   b) be limited in application to a particular kind or type of policies, short-term insurers or short-term insurance business.

4) (a) Before the Registrar prescribes any rule under this section, the Registrar must—
   (i) publish notice of the release of the proposed rule in the Gazette, indicating that the proposed rule is available on the official web site and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and
   (ii) submit the draft rules to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.
(b) If the Registrar alters a proposed rule because of any comment, the Registrar need not publish the alteration before making the rule.

(c) After consideration of any comments received in response to the publication and tabling of the proposed rule in terms of paragraph (a), the Registrar may publish the final rule in the Gazette.

5) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2013, must be regarded as having been made under this section, and remains valid and enforceable until repealed or amended by the Registrar.

[Section 55 substituted by section 138 of Act No. 45 of 2013]

Part VIII Provisions relating to Lloyd’s

56. General

1) Subject to this Part, Lloyd’s underwriters are authorised to carry on short-term insurance business.

2) If there is—
   a) enacted any law governing Lloyd’s whereby a material change is made in the constitution, powers, rights or obligations of Lloyd’s or of Lloyd’s underwriters; or
   b) made any by-law by Lloyd’s whereby the rights or obligations of Lloyd’s underwriters are materially changed,
   the Registrar may act under section 62(1) of this Act.

3) The Lloyd’s Council shall, within 21 days after the enactment of a law or the making of a by-law contemplated in subsection (2), notify the Registrar accordingly.

4) In this Part "South African short-term insurance policy" has the meaning attached to it in paragraph 1 of Schedule 3.

5) In this Part and Schedule 3—
   "Lloyd’s Council" means the council known as the Council of Lloyd’s established by the Lloyd’s Act, 1982, passed by the Parliament of the United Kingdom of Great Britain and Northern Ireland, to manage and superintend the affairs of Lloyd’s;
   "Lloyd’s South African Transitional Trust" means the trust by that name contemplated in section 60(2)(a);
   "Lloyd’s South African Trust" means the trust by that name contemplated in section 60(2)(b);
   "Lloyd’s Trusts" means the Lloyd’s South African Transitional Trust and the Lloyd’s South African Trust.
57. Appointment of Lloyd’s representative

1) Lloyd’s shall appoint, and at all times have, a natural person permanently resident in the Republic as its representative, and another natural person as deputy representative, to act as representative in the event of the Lloyd’s representative for any reason not being able to perform the functions connected to that office.

2) The appointment of the Lloyd’s representative and the deputy representative shall not take effect unless it has been approved by the Registrar.

3) The Registrar may grant approval for the appointment of the Lloyd’s representative and the deputy representative subject to such conditions as the Registrar may determine.

4) The Registrar shall not grant approval for the appointment of the Lloyd’s representative and the deputy representative if the person concerned is not fit and proper to hold the office.

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

6) The Lloyd’s representative shall, as far as it is in his or her power, ensure that—
   a) Lloyd’s complies with this Act; and
   b) the trustees of the Lloyd’s Trusts comply with the trust deeds of the Lloyd’s Trusts, and shall notify the Registrar forthwith in writing if he or she is unable to cause the remedy of any non-compliance of which he or she becomes aware.

7) The Lloyd’s representative shall—
   a) have his or her principal place of business in the Republic;
   b) notify the Registrar in writing of the address of that principal place of business; and
   c) if that address changes, notify the Registrar in writing thereof within 30 days after such change.

8) The Lloyd’s representative and deputy representative in office at the date of commencement of Part VIII of this Act, shall be deemed to have been appointed with the approval of the Registrar under this section.

58. Returns to Registrar

1) Lloyd’s or the Lloyd’s representative shall furnish the Registrar with returns in respect of the short-term insurance business carried on by Lloyd’s underwriters in the Republic—
   a) in the medium and form;
   b) containing the information; and
   c) by the date or within the period, prescribed by the Registrar, and section 35(2) shall, with the necessary changes, apply
thereto.

2) The Lloyd’s representative shall maintain, and within 30 days after the commencement of this Act, furnish the Registrar with a copy of, a list of the names and addresses of all Lloyd’s correspondents, and shall notify the Registrar of any change in that list within 30 days of such change having occurred.

59. Claims against Lloyd’s underwriters

1) Any claim against any Lloyd’s underwriter under a South African short-term insurance policy shall be cognisable by any competent court in the Republic.

2) In any action or other proceedings instituted under subsection (1), the Lloyd’s representative may be cited, in the name of his or her office, as nominal defendant or respondent, and the summons or application commencing the proceedings may be served on him or her.

3) The Lloyd’s representative may institute and conduct any proceedings in a competent court in the Republic as nominal plaintiff or applicant on behalf of Lloyd’s underwriters in relation to South African short-term insurance policies.

4) Where the Lloyd’s representative is cited as a nominal party, the true party may, at any time before or after judgement, be substituted—
   a) with the leave of the Court; or
   b) on production to the registrar of the High Court or clerk of the magistrate’s court, as the case may be, of an affidavit setting out the true parties and their normal citation, if a copy has previously been furnished to the other party.

60. Security to be furnished by or on behalf of Lloyd’s underwriters

1) Security shall be provided by or on behalf of Lloyd’s underwriters in accordance with Schedule 3 to discharge their obligations under South African short-term insurance policies.

2) There shall be created by Lloyd’s, subject to the Trust Property Control Act, 1988 (Act No. 57 of 1988)—
   a) the Lloyd’s South African Transitional Trust, for the purposes of paragraph 8(1) of Schedule 3;
   b) the Lloyd’s South African Trust, for the purposes of paragraphs 2 up to and including 7 of Schedule 3, after approval of its trustee and trust deed by the Registrar, to provide security as contemplated in subsection (1).

3) The Registrar may, subject to the Trust Property Control Act, 1988, vary or substitute any of the trust deeds of the Lloyd’s Trusts after consultation with Lloyd’s and the trustee concerned.
61. Payment of certain claims against Lloyd's underwriters

Subject to Schedule 3 and the trust deeds referred to in that Schedule, if a Lloyd’s underwriter fails to pay a liability of that underwriter under a South African short-term insurance policy, the Lloyd’s South African Transitional Trust fund or the portion of the Lloyd’s South African Trust fund held in respect of that liability, as the case may be, shall be available to satisfy that claim where—

a) the claimant has a final judgement in respect of the claim after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor;

b) the Lloyd’s South African Transitional Trust or the portion of the Lloyd’s South African Trust concerned is wound up as contemplated in section 63(7); or

c) Lloyd’s so agrees in the circumstances set out in the trust deed of the Lloyd’s Trust concerned.

62. Imposition of prohibition on activities of Lloyd’s underwriters

1) If the Registrar deems it necessary to act as contemplated in section 56(2); or

a) if and for as long as—

i) Lloyd’s or a Lloyd’s representative fails to comply with his, her or its duties in terms of section 57; or

ii) a Lloyd’s underwriter fails to comply with that underwriter’s duties in terms of section 60, Schedule 3 or a trust deed of any of the Lloyd’s Trusts, the Registrar may, subject to subsections (2) and (3), and with the written approval of the Minister, prohibit Lloyd’s underwriters or the underwriter concerned from carrying on short-term insurance business in the Republic.

2) Before exercising the powers contemplated in subsection (1), the Registrar shall give notice in writing to Lloyd’s and the Lloyd’s representative of the Registrar’s intention to do so and the reasons therefor, and allow at least 30 days during which representations may be made in respect of the matter.

3) If the Registrar decides to proceed with the prohibition, the Registrar shall give notice to that effect in the Gazette specifying the date from which the prohibition will take effect.

4) If and for as long as the trustee of either of the Lloyd’s Trusts fails to comply with a provision of Schedule 3 and of the trust deed of the Lloyd’s Trust concerned, the Registrar may, with the written approval of the Minister, and after having given notice to Lloyd’s and the Lloyd’s representative, exercise the powers of the trustee under the trust deed.

5) Whenever the Registrar, with the written approval of the Minister, deems it necessary to satisfy the liabilities of any one or more Lloyd’s underwriters towards the holders of South African short-term insurance policies and after having given notice thereof to Lloyd’s, the Lloyd’s representative and every Lloyd’s correspondent, or when a notice is published in
the *Gazette* in terms of subsection (3), the Registrar may—
a) require Lloyd’s to furnish him or her with such information as the Registrar deems necessary in connection with the liabilities of the Lloyd’s underwriter or underwriters concerned towards the holders of those policies; or
b) act in accordance with section 63(7), whichever the Registrar considers most appropriate in the circumstances and in the interest of the holders of those policies.

6) The Lloyd’s correspondent shall, on receipt of such written notice from the Registrar, within a period of 60 days of the date of the notice, pay into the Lloyd’s South African Trust or the Lloyd’s South African Transitional Trust or partly into the one and partly into the other, as directed by the Registrar, the money owing by him or her to the Lloyd’s underwriter or underwriters concerned.

63. Application of other provisions of Act to Lloyd’s

1) Section 45 shall apply with the necessary changes in relation to a Lloyd’s correspondent as if the Lloyd’s correspondent concerned were an independent intermediary in respect of the Lloyd’s broker concerned and the Lloyd’s broker were a short-term insurer.

2) Section 47 shall apply with the necessary changes in relation to a Lloyd’s correspondent as if the Lloyd’s correspondent concerned were a short-term insurer.

3) Section 21 shall apply with the necessary changes in relation to the Lloyd’s representative or deputy representative and to the trustee of each of the Lloyd’s Trusts as if each such trust were a short-term insurer and as if such representative and trustee were a director of a short-term insurer.

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

5) Section 20 shall apply with the necessary changes in relation to the Lloyd’s representative or deputy representative in respect of the Lloyd’s Trusts as if such representative were a short-term insurer.

6) Sections 31 and 33(1)(a), (b) and (c) and (2) shall, with the necessary changes, apply to the Lloyd’s Trusts, and in such application—
a) each Lloyd’s Trust shall be deemed to be a short-term insurer;
b) the reference to sections 29 and 30 in section 31 shall be construed as a reference
to paragraph 6(1) and (2) of Schedule 3; and

c) section 33(2) shall be deemed to read as follows:
"The Lloyd's Trusts shall not invest in derivatives other than derivatives acquired out of or in respect of assets that are in excess of the aggregate minimum amount required to be held in the trusts at the time in accordance with Schedule 3.".

7) a) Sections 40 and 41 shall apply to the Lloyd’s South African Transitional Trust and each portion of the Lloyd’s South African Trust relating to a Lloyd’s underwriter as if the first-mentioned Lloyd’s Trust or that portion of the latter Lloyd’s Trust were a short-term insurer and its policyholders were the persons who have or may have claims against it.
b) In such application—
   i) the reference in sections 40(2) and 41(2) to sections 12(3) and 34(2) shall be construed as a reference to section 62(5); and
   ii) portions of the Lloyd’s South African Trust relating to more than one underwriter may be included in a single application for the purposes of winding-up.

Part IX Offences and penalties

64. Offences by persons other than short-term insurers

1) A person, other than a short-term insurer, who—
   a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(3), (4) or (5)(a)(i), 21(2) or 26(2);
   b) contravenes or fails to comply with a provision of section 8(1)(a) or (b) or (5), 16(2), 22(1), 27(1), 43(1), 44, 45, 46 or 48 or 48A;
   c) where a rule contemplated in section 55(2)(f) so provides, contravenes or fails to comply with a provision of any rule to the extent so provided; or
   d) furnishes false information in relation to an application referred to in section 9(1) or an application for the approval of the Minister under a provision of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
   [Subsection 1 amended by section 139(a) and (b) of Act No. 45 of 2013]

2) A person, other than a short-term insurer, who contravenes or fails to comply with section 7(1)(a) or (b), 8(2), 19A(5)(b) or 25(1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
   [Subsection 2 amended by section 139(c) of Act No. 45 of 2013]

65. Offences by short-term insurers

1) A short-term insurer which—
a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2), (3) or (4), 21(1) or (2), 26(1), 34(2)(a) or 35(2);
b) contravenes or fails to comply with a provision of section 16(1), 17, 18, 22(1) or (2), 24(1), 35(1), 43(1), 44, 45, 46, 47, 48 or 48A; or
c) where a rule contemplated in section 55(2)(f) so provides, contravenes or fails to comply with a provision of any rule to the extent so provided,

shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million.

[Subsection 1 amended by section 140(a) and (b) of Act No. 45 of 2013]

2) A short-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1) (a), 15(1), (2), (4) or (5), 19(1) or(3), 23, 25(1) or (2), 28(1), (3) or (4) or 33, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million.

[Subsection 2 amended by section 140(c) of Act No. 45 of 2013]

66. Penalty for failure to furnish Registrar with returns etc

1) (a) A person who fails to furnish the Registrar with a return, information or document, as provided by this Act, within the prescribed or specified period or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding R5 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof.

(b) The financial statements of a short-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with financial reporting standards applicable to a public company having a share capital.

[Subsection 1 amended by section 141(a) and (b) of Act No. 45 of 2013]

2) A penalty contemplated in subsection (1) shall be imposed by notice by the Registrar on the person concerned, and such imposition shall be preceded by the procedures prescribed by the Minister to afford such person a reasonable opportunity to be heard, and shall take effect on a date specified in such notice of the Registrar which may be a date prior to the date of the notice.

3) A penalty so imposed shall constitute a debt due to the Board and shall be recoverable by action by the Board in any court having jurisdiction.

Part X Transitional and general provisions

67. Continued registration of existing insurers

1) A person who immediately prior to the commencement of this Act was registered in terms of the repealed Act, and was, by virtue of that registration, authorised to carry on short-term insurance business as defined in that Act, shall be deemed to be registered as a
short-term insurer in terms of this Act and shall, subject to this Act, be authorised, in the
case of a person who was so authorised to carry on the short-term insurance business of
providing or undertaking to provide policy benefits in terms of—
   a) accident and health policies;
   b) engineering policies;
   c) guarantee policies;
   d) liability policies;
   e) miscellaneous policies;
   f) motor policies;
   g) property policies; or
   h) transportation policies,
to carry on that business subject, as if they were conditions contemplated in section 9(2)
(a) of this Act, to the conditions which had been determined in respect of such person in
relation to such person’s registration to carry on that business in terms of the repealed
Act.

2) A person referred to in subsection (1) shall, within a period of six months after the
commencement of this Act, make application to the Registrar in accordance with section
3(2) for the issuing to such person, as contemplated in section 9(2)(b), of a new certificate
of registration in exchange for the certificate of registration issued to such person under
the repealed Act.

3) Upon receipt of an application in terms of subsection (2), the Registrar shall issue the new
certificate of registration specifying the conditions referred to in subsection (1) as if they
had been determined by him or her with the necessary changes in terms of section 9, and
shall not thereupon vary any of those conditions, or determine a new condition, otherwise
than in terms of section 11.

68. Certain existing insurers to cease long-term insurance business or to separate it
   from short-term insurance business

A person referred to in section 67(1), who was, by virtue of such person’s registration under the
repealed Act, authorised to carry on both short-term insurance business and long-term
insurance business, other than reinsurance business only, as defined in that Act, shall, within a
period of six months after the commencement of this Act, make arrangements satisfactory to
the Registrar and in accordance with the appropriate provisions of the Long-term Insurance Act,
1998, which have the result—
   a) that the short-term insurer ceases to carry on that long-term insurance business; and
   b) that the short-term insurance business concerned is carried on by a short-term
      insurer and the long-term insurance business concerned is carried on by a long-term
      insurer.

69. Special provisions concerning short-term insurers that are not public companies

1) Notwithstanding anything to the contrary in any law contained, a short-term insurer which
is not a public company shall be subject to section 20 of the Companies Act with the necessary changes as if it were a public company having a share capital.

[Subsection 1 amended by section 142(a) of Act No. 45 of 2013]

2) The provisions of this Act shall prevail over any provision of a law under which a short-term insurer contemplated in section 9(3)(a)(ii) is incorporated if that provision is inconsistent with this Act.

2A) No exemption granted under any law under which a short-term insurer is incorporated or registered shall constitute an exemption from the provisions of this Act.

3) The financial statements of a short-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with financial reporting standards applicable to a public company having a share capital.

[Subsection 3 amended by section 142(b) of Act No. 45 of 2013]

70. Regulations

1) The Minister may make regulations not inconsistent with this Act—
   a) prescribing all matters which are required or permitted by this Act to be prescribed by regulation;
   b) limiting the amount which and the extent to which a short-term insurer may invest in particular kinds and categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;
   c) authorising the Registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (b);
   d) [deleted by the Insurance Laws Amendment Act, 2008 (Act No. 27 of 2008)];
   e) prohibiting any consideration from being offered or provided, or limiting the consideration which may be offered or provided, from, by or on behalf of a short-term insurer or a Lloyd’s underwriter to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;
   f) prohibiting any consideration from being offered or provided, or prescribing the manner in and conditions on which consideration may be offered or provided, from, by or on behalf of any person other than a short-term insurer or Lloyd’s underwriter to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;
   g) prescribing different or additional requirements for the receipt or retention of, or dealing with money in respect of premiums;
   gA) prescribing in respect of section 48A, requirements, limitations or prohibitions relating to—
      i) the agreements contemplated in section 48A(1);
      ii) any additions to gross premiums or deductions from claims in respect of policies referred to in the agreements contemplated in section 48A(1);
iii) any consideration that may be offered or provided from, by or on behalf of a short-term insurer or Lloyd's underwriter to a person that enters into an agreement contemplated in section 48A(1) with a short-term insurer or Lloyd's underwriter;

iv) any participation or sharing in the profits attributable to the policies referred to in the agreements contemplated in section 48A(1); and

v) the circumstances under which a person who has entered into an agreement contemplated in section 48A(1) may render services in respect of a policy not referred to that person by the relevant insurer, Lloyd's underwriter or an independent intermediary.

vi) prescribing that every short-term insurer shall within a specified period as from the close of each financial year of its short-term insurance business furnish the Registrar with a statement of all changes which occurred during the said year in specified matters in relation to the insurer concerned.

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

2A)  
   a) The Minister, despite the definition of 'business of a medical scheme' in section 9(1) of the Medical Schemes Act, may make regulations identifying a kind, type or category of contract as an accident and health policy.
   b) Regulations under paragraph (a)—
      i) must be made only—
         aa) in consultation with the Minister of Health;
         bb) after consultation between the National Treasury, the Registrar and the Registrar of Medical Schemes established under the Medical Schemes Act; and
         cc) after having regard to the objectives and purpose of the Medical Schemes Act, including the following principles entrenched therein—
            A) community rating;
            B) open enrolment; and
            C) cross-subsidisation within medical schemes; and
      ii) must provide for a short-term insurer or Lloyd's underwriter to submit specified information on any product within a kind, type or category of contract referred to in paragraph (a) to the Registrar and the Registrar of Medical Schemes within any specified timeframes;
      iii) may provide for matters relating to the design and marketing of any product within a kind, type or category of contract referred to in paragraph (a).
   c) Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as a health policy in the regulations, is subject to this Act and not the Medical Schemes Act.

2B) Before regulations in terms of this Act are promulgated, the Minister must publish the
draft regulations in the *Government Gazette* for public comment and submit the regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.

3) The Minister shall publish any regulations made under this section in the *Gazette*.

### 71. Savings

Anything done before the commencement of this Act under, in terms of or by virtue of a provision of the repealed Act by or in relation to persons registered in terms of that Act to carry on short-term insurance business as defined in that Act shall, in so far as it was done lawfully and unless it is clearly inappropriate, be deemed to have been done under, in terms of or by virtue of the corresponding provision of this Act.

### 72. Interpretation of certain references in existing laws

Unless it would in a particular case be clearly inappropriate, a reference in a law in force immediately before the commencement of this Act—

a) to a domestic insurer or a registered insurer, shall be construed as a reference to a short-term insurer or a long-term insurer, as the case may be;

b) to any particular kind of short-term insurance business as defined in the repealed Act, shall be construed as a reference to the kind of short-term insurance business referred to in this Act which constitutes that business.

### 73. Short title and commencement

This Act shall be called the Short-term Insurance Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

### Schedules

1. **Kinds of Assets**

1. Requirement for claim to be asset, and definitions

For the purposes of this Schedule and section 29 a claim qualifies as an asset in the Republic only if it is enforceable in accordance with the law of the Republic and is realisable in the Republic, and—

"contract for differences" means a contract the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of—
a) an asset;
b) income from such asset; or
c) an index of such assets or the income therefrom;

"derivatives" means—
   a) an option contract;
b) a futures contract; and
c) a contract for differences;

"futures contract" means—
a standardised contract the effect of which is that—
   a) a person agrees to deliver to or receive from another person a certain quantity of
corporeal or incorporeal things before or on a future date at a pre-arranged price; or
   
   b) an amount of money will be paid to or received from another person before or on a
future date according to whether the pre-arranged value or price of—
   i) an asset;
   ii) an index as a means of indicator that reflects changes in the value of one or
   more groups of shares or securities on one or more exchanges;
   iii) currency;
   iv) rate of interest; or
   v) any other factor,
is higher or lower before or on that future date than the pre-arranged value or price;

"listed", in relation to an asset referred to in item 16(5) of the Table to this Schedule, means that—
   a) there has been granted and not withdrawn, a listing in respect of that asset on a
stock exchange outside the Republic, and that transactions in the asset are effected
regularly on that stock exchange; or
   b) transactions in that asset are effected regularly on a regulated market;

"margin", in relation to a stock exchange outside the Republic, means the margin as defined in
regulations issued or approved by the appropriate authority of the country in which the stock
exchange is situated or which is required by that stock exchange;

"margin deposit" means a margin with SAFEX and a stock exchange outside the Republic;

"margin with SAFEX" means the margin as defined in the rules of the South African Futures
Exchange referred to in section 18 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"n.e.s." means not elsewhere specified in this Schedule;

"option contract" means a standardised contract the effect of which is that a person acquires
the option—
   a) to buy from or to sell to another person a certain quantity of corporeal or
incorporeal things before or on a future date at a pre-arranged price; or
   
   b) that an amount of money will be paid to or received from another person before or
on a future date according to whether the pre-arranged value or price of—
   i) an asset;
   ii) an index as a means of indicator that reflects changes in the value of one or
more groups of shares or securities on one or more exchanges;
iii) currency;
iv) rate of interest; or
v) any other factor,
is higher or lower before or on that future date than the pre-arranged value or price;

"regulated market" means a market situated outside the Republic which is characterised by—
  a) regular operation; and
  b) the fact that regulations are issued or approved by the appropriate authority of the state where the market is situated to determine conditions—
     i) for the operation of and access to the market; and
     ii) to be satisfied by a financial instrument in order for it to be effectively traded in the market;

"securities" includes bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments prescribed by the Registrar;

"shares" includes share stock.

2. Derivatives

An instrument shall be deemed not to be a derivative for the purposes of this Schedule unless—
  a) it is based on an underlying asset of the kind set out in the Table to this Schedule or has the equivalent effect to such an instrument; and
  b) in the case of—
     i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty for which the relevant criteria have been approved by the Registrar subject to such conditions as he or she may determine;
     ii) an instrument referred to in item 16(5)(d) of the Table to this Schedule, it is listed; or
     iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the Registrar subject to such conditions as he or she may determine.

3. Kinds of assets

The kinds of assets contemplated in section 29(2), are those set out in the following Table:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description of assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bank notes and coins, including Krugerrand coins of all denominations, issued or caused to be issued in terms of the South African Reserve Bank Act, 1989 (Act No.90 of 1989).</td>
</tr>
<tr>
<td>2.</td>
<td>A credit balance in an account with, or a deposit, including a negotiable deposit and a bill, accepted by, or a promissory note issued by, an institution registered under the Banks Act,</td>
</tr>
</tbody>
</table>


5. Securities and loans guaranteed by a Minister of the Republic under section 35 of the Exchequer Act, 1975.

6. Securities issued or guaranteed by, and loans made to or guaranteed by, a body, council or institution under the repealed Provincial Government Act, 1961 (Act No. 32 of 1961).

7. Securities issued by, and loans made to, the Local Authorities Loans Fund Board under the repealed Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984).

8. Securities issued or guaranteed by, and loans made to or guaranteed by, the Rand Water Board under the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950).

9. Securities issued or guaranteed by, and loans made to or guaranteed by, Eskom under the Eskom Act, 1987 (Act No. 40 of 1987).

10. Securities issued or guaranteed by, loans made to or guaranteed by, and deposits with, the Land and Agricultural Bank of South Africa under the Land Bank Act, 1944 (Act No. 13 of 1944).

11. Securities issued or guaranteed, and loans raised or guaranteed, under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989).

12. Securities and loans, n.e.s., which are—
   a) issued by or made to a body corporate established by a law of the Republic; and
   b) approved by the Registrar for the purposes of this Schedule generally by notice in the Gazette subject to the conditions determined by the Registrar and specified in the notice.

13. Securities issued by—
   a) the government of;
   b) a local authority in; or
   c) a body corporate established by a law of, a territory forming part of the Republic, but which territory at any time before 27 April 1994 did not form part of the Republic, which securities have been approved by the Registrar for the purposes of this Schedule generally by notice on the official web site and subject to the conditions determined by the Registrar and specified in the notice.


15. Motor vehicles, furniture and office equipment, including computer equipment, used by the short-term insurer concerned in the course of its business in the Republic.

16.
1) Shares and securities issued by a company incorporated in the Republic.

2) Shares, debentures and depository receipts which are—
   a) issued by an institution incorporated outside the Republic; and
   b) listed on a licensed stock exchange in the Republic.

3) Linked units—
   a) in respect of institutions one or more of which is or are incorporated outside the Republic; and
   b) which are listed on a licensed stock exchange in the Republic.

4) Loan stock listed on a licensed stock exchange in the Republic issued by a company incorporated in the Republic.

5) a) Listed—
    i) securities issued by a government of a country other than the Republic; or
    ii) securities and shares issued by an institution incorporated outside the Republic,

   b) A credit balance in an account with, or a deposit, including a negotiable certificate of deposit, or a bill, accepted by, an institution incorporated outside the Republic which would have been a bank in terms of the Banks Act, 1990, if it were incorporated in the Republic.

   c) Units which are derived from or linked to one or more assets referred to in paragraphs (a) and (b).

   d) Derivatives and margin deposits on the assets referred to in paragraphs (a) and (b).


18. Derivatives and the margin deposit in the Republic.

19. Claims secured by mortgages over immovable property in the Republic.

20. Other claims, n.e.s., against—
   a) a long-term insurer in terms of a long-term policy;
   b) a person in the Republic; and
   c) a body corporate and any stock or shares in a body corporate which is not incorporated and registered in the Republic but which, in the opinion of the Registrar, carries on business in the Republic and which has been approved by the Registrar generally by notice on the official web site and subject to the conditions determined by the Registrar and specified in the notice.


[Paragraph 3 amended by section 143 of Act No. 45 of 2013]
2. Method of calculation of value of assets and liabilities

Part I Valuation of assets

1. Amounts to be disregarded

(Sections 29, 30 and 32)

For the purposes of the calculation of the value of assets contemplated in sections 29 and 30—

a) there shall be disregarded—

i) any amount of premium, excluding a premium in respect of a short-term reinsurance policy, which is due and payable, including a premium debited to an intermediary or a deferred instalment of a premium and which remains unpaid to an insurer, irrespective of whether or not the premium has been paid to an intermediary, after the expiry of a period of 60 days from the date on which it became due and payable in terms of the short-term policy;

ii) an amount, excluding a premium in respect of a short-term reinsurance policy, which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;

iii) an amount representing administrative, organisational or business extension expenses incurred directly or indirectly in the carrying on of short-term insurance business;

iv) an amount representing goodwill or an item of a similar nature;

v) an amount representing a reinsurance contract in terms of which the short-term insurer concerned is the policyholder, except to the extent that it represents a claim against a reinsurer in terms of an approved reinsurance policy; and

vi) an amount representing a prepaid expense or a deferred expense; and

b) the value of the assets mentioned in paragraph 2, in which a reference to an item by number means a reference to the item of the Table to Schedule 1, shall be as specified in that paragraph.

2. Calculation of values

The value of assets, liabilities and capital adequacy requirement shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.

3. Registrar may reject certain values

1) Notwithstanding paragraph 2, if the Registrar is not satisfied that the value of an asset, a liability or capital requirement calculated in terms of this Schedule reflects a proper value, the Registrar may—

a) direct the insurer to appoint another person, at the cost of the insurer, to place a proper value on that asset or liability or capital requirement; or

b) direct the short-term insurer to calculate the value in another manner which the
Part II Valuation of liabilities

1. For the purposes of section 29, the value of the liabilities of a short-term insurer, other than those prescribed by the Registrar and referred to in paragraph 2, shall be determined in accordance with financial reporting standards applicable to public companies.

2. Notwithstanding subparagraph (1), any liability of a short-term insurer in respect of which its creditor has waived any right to have the obligation discharged until all obligations to other creditors have been discharged in full, shall be valued in a manner and for an amount determined by the insurer and approved by the Registrar.

3. Lloyd's security

Lloyd's security

The security to be provided by or on behalf of Lloyd's underwriters in accordance with section 60 shall be as follows:

(Continued on following pages)
1. Definition of "South African short-term insurance policy"

1) In this Schedule "South African short-term insurance policy" means, subject to subparagraphs (2) and (3)—
   a) a short-term policy which relates to—
      i) risks in respect of immovable property, including buildings, fixtures and other fixed improvements, located in South Africa; or
      ii) any other risks where—
         aa) the insured is a natural person resident in South Africa; or
         bb) in any other case, the insured has its registered office or principal place of business in South Africa; and
   b) a short-term reinsurance policy where the reinsured short-term insurer has its registered office in South Africa.

2) In paragraph 8, a South African short-term insurance policy means, subject to subparagraph (3), a short-term policy or short-term reinsurance policy referred to in subparagraph (1) which—
   a) commenced before the date of commencement of section 60;
   b) has commenced on or after the date of commencement of section 60, and—
      i) was accepted under an authority given by the underwriter before that date to another person; or
      ii) commenced as a result of the exercise of a right granted by the underwriter before that date to the insured to determine if and when the risk would commence; or
      iii) was accepted by a person in terms of an agreement dated prior to that date between the underwriter, a Lloyd’s broker and one or more other Lloyd’s underwriters or insurers or both,
   in circumstances in which, in accordance with Lloyd’s accounting practice, the policy is accounted for in any calendar year of account of the underwriter before the date of commencement of section 60.

3) A short-term policy or short-term reinsurance policy referred to in subparagraph (2) shall only be a South African short-term insurance policy if—
   a) the application for the policy was received;
   b) the policy documentation was issued; or
   c) the premiums under the policy are received,
   by any person in South Africa on behalf of the underwriter.

2. Security to be provided to Lloyd’s South African Trust

Subject to paragraph 8 and the approval of the Registrar, the security referred to in paragraph 4 shall be provided to the trustee of the Lloyd’s South African Trust, to be held and administered by the trustee in terms of the trust deed of the Lloyd’s South African Trust.
3. By whom and manner in which security to be provided

The security referred to in paragraph 4 shall be provided by the persons and in the manner set out in the trust deed of the Lloyd’s South African Trust.

4. Amount of security

The value of the minimum amount of the security to be provided by or on behalf of a Lloyd’s underwriter shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.

5. Contributions and withdrawal of surplus

The minimum amount contemplated in paragraph 4 is to be calculated quarterly, and if the minimum amount—

a) exceeds the value at that time of the portion of the Lloyd’s South African Trust Fund relating to the underwriter concerned, the difference shall be paid to the trustee; or

b) is less than that value, the difference may be withdrawn, in accordance with the trust deed of the Lloyd’s South African Trust.

6. Investment of trust funds

1) The funds in the Lloyd’s South African Trust shall be invested in assets of the kinds set out in Schedule 1.

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

3) The Registrar may approve the increase of a percentage specified by regulation—

a) in a particular case;

b) for a specified period; and

c) subject to the conditions he or she may determine.

4) For the purposes of paragraph 5 and subparagraphs (1) and (2) assets shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.
5) The net income or gain or loss arising from the investment of the funds in Lloyd’s South African Trust shall be dealt with in accordance with its trust deed.

7. Returns in respect of Lloyd’s South African Trust

A return in respect of the Lloyd’s South African Trust shall be submitted to the Registrar by Lloyd’s or the Lloyd’s representative—

a) in the medium and form;

b) containing the particulars; and

c) by the date and within the period, as prescribed by the Registrar.

8. Transitional provisions

1) In respect of a policy defined in subparagraph (2) of paragraph 1, paragraphs 2 up to and including 7 shall apply with the following changes:

a) All references to the "Lloyd’s South African Trust" shall be construed as references to the "Lloyd’s South African Transitional Trust";

b) such of the deposit held on the date of commencement of section 60 in respect of a Lloyd’s underwriter under section 60(1)(i) and (j) of the repealed Act as is equal to the minimum amount for that Lloyd’s underwriter calculated as set out in paragraph 4 as at a date agreed with the Registrar, shall be transferred on that date to the Lloyd’s South African Transitional Trust for the credit of that underwriter’s deposit in that trust, and any balance shall be paid to Lloyd’s;

c) in calculating the amount of the security, paragraph 4(c) shall be disregarded; and

d) the reference to "quarterly" in paragraph 5 shall be construed as a reference to "annually or at such other intervals as may be approved by the Registrar from time to time":

Provided that this paragraph shall cease to apply, and the provisions of paragraphs 2 up to and including 7 shall apply from the latter date without change, to—

i) such policy in the event of the reinsurance, as set out in the trust deeds of the Lloyd’s Trusts, of all the obligations under the policy by another Lloyd’s syndicate; or

ii) if the Registrar and Lloyd’s so agree.

2) If the Lloyd’s Trusts have not been created before the date of commencement of section 60, the provisions of section 60(1)(a), (b), (c), (i), (j), (l), (m), (n), (o), (p), (r) and (z), to the extent that they refer to the trust account and assets contemplated in the repealed Act, shall continue to apply until such creation, in lieu of the provisions of this Schedule.
The Registrar of Short-term Insurance hereby gives notice under section 55(3) of the Short-term Insurance Act, 1998 (Act No 53 of 1998), that it is intended to promulgate, under section 55 of the said Act, the Policyholder Protection Rules (Short-term insurance) which are set out in the Schedule hereto, as proposed by the Registrar after consultation with the Advisory Committee on Short-term Insurance established by section 6 of the said Act.

All interested persons are hereby invited to make representations in the format/matrix set out below, on the proposed Rules so as to reach the Registrar within 60 days after the date of publication of this Notice, at the following address:

Attention Mr. M Botha
Financial Services Board
P.O. Box 35655
MENLO PARK
0102

The Rules are available on the Financial Services Board's web site at http://www.fsb.co.za and comments may be e-mailed to the following address: idak@fsb.co.za or telefaxed to (012) 347-8788. Enquiries can be directed to Mr. M Botha at (012) 428-8123.

R G Cottrell
Registrar of Short-term Insurance

Response Paper on consultation on the Policyholder Protection Rules

(Short-Term Insurance)

PREPARED BY THE FINANCIAL SERVICES BOARD

Please complete Part A or Part B of this form and return it to the Financial Services Board.

A

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1. Definitions

In these Rules, "the Act" means the Short-term Insurance Act, 1998 (Act No 53 of 1998), any word or expression to which a meaning has been assigned in the Act, including the regulations promulgated under section 70 of the Act, shall bear that meaning and, unless the context otherwise indicates—

"compliance officer"
in relation to these Rules is the public officer of the insurer or a person appointed as a compliance officer by the public officer;

"direct offering"
in relation to these Rules means, negotiations on or marketing for the entering into or variation of a policy, by or through the mail, telephone, telefax, or any electronic means;

"effective date"
in relation to the entering into or variation of any policy, means the date on which any such policy is entered into or varied;

"ensure"
in relation to a person or body and any matter mentioned in a provision of these Rules, means to take, any necessary steps in order that the clear objective of the provision is achieved;

"enter into"in respect of a policy, includes the renewal of any such policy: Provided that in the case of monthly policies only the renewal after the entering into of the policy effected during every consecutive twelfth month of the currency of the policy shall qualify as a renewal referred to in this definition;

"inspection"
means any inspection contemplated in the Inspection of Financial Institutions Act, 1998 (Act No 80 of 1998);

"insurance party involved"
means any insurer or independent intermediary directly involved in the entering into or variation of a policy with the policyholder concerned;

"insurer"
Policyholder Protection Rules

“Policyholder Protection Rules” means a short-term insurer, and includes any representative of the insurer, any independent intermediary referred to in section 48(2) of the Act;

“policy” means any short-term policy existing on the date envisaged in section 55(5) of the Act or entered into on or after that date, but excludes a reinsurance policy;

“policyholder” means any natural person, close corporation or partnership who or which holds any policy, and includes any such prospective holder of a policy;

“variation” in respect of a policy, means any variation of the premiums or benefits of the policy, excluding any periodic variation in terms of a contractually determined inflation-connected formula, or otherwise in terms of fixed contractually determined provisions.

2. Purpose of the Rules

The purposes of disclosures referred to in this Part are to enable a policyholder to make informed decisions in regard to short-term insurance products, whether by way of comparison or by the weighing up of alternatives, and to ensure that the parties involved conduct business fairly and with appropriate care and diligence, in the bests interests of policyholders and the short-term industry.

3. Summary

3.1) A policyholder who deals directly with an insurer without using an independent intermediary or otherwise asking for advice does so at his own risk and has only limited protection in terms of these Rules, unless such policyholder requests that all rights be maintained. The insurer is obliged to explain to the policyholder what his rights are.

3.2) All independent intermediaries shall disclose this Summary of the Rules to a policyholder at the earliest reasonable opportunity before entering into any initial or additional insurance transaction with that policyholder. The obligation to disclose this Summary does not apply to direct offerings by an insurer and may also be specifically waived by a policyholder.

3.3) All independent intermediaries shall ensure that they disclose at the earliest reasonable opportunity to a policyholder that they deal with, full details of their identity, their qualifications and experience, which insurance products they may sell and which companies they represent and in what legal capacity they operate.

3.4) All policyholders entering into an insurance transaction are entitled to be provided with adequate information about the impact of any decision that they are being asked or elect to make. This includes cost, affordability, impact on their insurance portfolio, flexibility
and contract terms.

3.5) An insurer shall ensure that it communicates at least once with a policyholder to provide details of: its identity; the product being purchased or transaction being undertaken, including, the relevant costs associated with the transaction; the contractual terms and the institutional details for transactions and complaints.

3.6) An insurer shall ensure that it accredits independent intermediaries on the products that those independent intermediaries may sell or service for that insurer, based on appropriate information and training.

3.7) Any policyholder that has a complaint about the conduct of an independent intermediary or insurer in complying with these rules or otherwise must address that complaint to the compliance officer at the insurer or to the short-term insurance ombudsman if applicable or if still unsatisfied to the Registrar at the Financial Services Board.

3.8) Any insurer or independent intermediary that fails to comply with these Rules may be guilty of an offence and liable for prosecution.

3.9) An insurance party involved shall ensure that where a policy is to be entered into or varied, disclosures of particular information are made to each policyholder concerned prior to the relevant effective date of such entering into or variation, in accordance with the provisions of the Rules in Part III.

3.10) All disclosures contemplated in rule 3.9 shall be in writing or, if so made orally or otherwise at the request of the policyholder, be confirmed in writing (any such written document being referred to in these Rules as a disclosure document) within thirty days after such disclosure and shall be furnished to every policyholder.

3.11) The furnishing of any disclosure document shall not prevent a policyholder from lodging a complaint with any insurance party involved or the Registrar or any other appropriate body or person, or from obtaining any other legal redress, on the grounds of misleading or false disclosures, or for any non-disclosure, or on any other ground related to such disclosures or non-disclosures recognised by law for the purposes of such redress.

3.12) The following principles shall apply in regard to disclosures contemplated in Part III:

   a) The onus of compliance with the provisions of this Part shall rest on the insurance party involved: Provided that a responsibility shall vest in the insurer to be satisfied by the taking of reasonable steps that where such onus rests on an independent intermediary, that independent intermediary shall at all times properly comply with the provisions contained in Part III;

   b) disclosure documents must be framed in plain language and in a format designed to promote easy comprehension and to avoid uncertainty or confusion.

4. Principles of disclosures

4.1) The following shall apply to disclosure contemplated in these Rules:
a) The independent intermediary or insurer as applicable shall bear the onus of proving that a disclosure has been made.
b) Disclosure must be in plain language and set out so as to promote easy comprehension and to avoid uncertainty or confusion.
c) Disclosure shall be made at an appropriate time and need only be made in respect of significant or material transaction and may be made in writing, orally, using any appropriate electronic media or by telefax.
d) An insurer or independent intermediary as appropriate shall ensure that they confirm any disclosure to the policyholder in writing where requested or agreed to by the policyholder.
e) Disclosures need not be duplicated or repeated to the same policyholder unless material or significant changes which will affect that policyholder have occurred or the transactions contemplated make it desirable or necessary.
f) Disclosures may be validly made using standard forms or format.

5. Obligatory disclosures

5.1) An independent intermediary before dealing with a policyholder in respect of an insurance transaction shall ensure that at least the following disclosures, where applicable, are made once to the policyholder:
   a) full names, titles or designations, postal and physical addresses of the independent intermediary’s head office and issuing office, and telephonic and electronic numbers, communication details of contact persons;
   b) the status and relationship with the insurer involved and proof of authority or mandate to act, including whether more than 10% shares are held directly or indirectly in the insurer, whether they are affiliated companies and whether more than 30% of business is placed with any particular insurer in any one year;
   c) whether they hold professional indemnity insurance and, if so, the name of the underwriting insurer and the limit (if any) of any such indemnity;
   d) details of required claims notification procedures; and
   e) the amount of the consideration referred to in section 48 of the Act accruing to the independent intermediary in respect of the relevant entering into or variation of the policy concerned, and of any fee contemplated in section 8(5) of the Act (if any);

5.2) An insurer shall ensure that it makes at least the following disclosures to the policyholder, as soon as is practical after an insurance transaction is initiated:
   a) full registered name and abbreviation name, postal and physical addresses of the head office and issuing office, telephonic and electronic numbers, and communication details of contact persons;
   b) details of procedures (if any) for the resolution of complaints by policyholders, including complaints in respect of independent intermediaries or representatives involved;
   c) claims notification procedures;
   d) name, class or type of policy involved;
   e) nature and extent of monetary obligations assumed by the policyholder, manner of payment of premiums and the consequences of non-payment of such premiums;

5.3) As regards the policy involved, an insurer shall ensure that it makes at least the following
disclosures to the policyholder, as soon as is practical after an insurance transaction is initiated, including, where applicable, its variation:

a) name, class or type of policy involved;
b) nature of benefits for the policyholder, manner of deriving or obtaining thereof, and manner of payment or furnishing of benefits, as the case may be;
c) nature and extent of monetary obligations assumed by the policyholder, manner of compliance therewith and consequences of non-compliance;
d) loadings, excesses payable, exclusions or other special terms or conditions.

5.4) A document containing the suggested key features is annexed as Annexure 1 to these Rules.

6. Other disclosures

The provisions of this Part shall not be construed as preventing any insurance party involved in any particular case to make any other or additional disclosures to a policyholder before the effective date, where such disclosures will promote the better achieving of the objects of these Rules and are deemed necessary or expedient in the circumstances of the particular case, or to comply with any other code of business conduct provisions applying lawfully to any such party.

7. Standardised disclosures

Without prejudice to the provisions of Rules 4 and 5, an insurer, or any of its independent intermediaries with the concurrence of the insurer, may draft standardised disclosure documentation in respect of any particular class or type of policy, to be used for the purpose of complying with the provisions of this Part: Provided that—

a) such documentation is current on any relevant effective date; and
b) such use does not exonerate any insurance party involved from compliance with any disclosure requirement of this Part not addressed, or not fully addressed, in such documentation.

8. Consequences of non-compliance

8.1) Where a policyholder considers that a provision of this Part has been contravened or not complied with by any insurance party involved in a policy held by him or her, such policyholder may lodge a written complaint to the insurance party involved and, if such complaint is not resolved to the satisfaction of the policyholder, to the Registrar: Provided that the aforesaid provisions of this rule shall with the necessary changes also apply to any insurer, independent intermediary, representative or any other interested member of the public who or which considers that any provision of this Part has in connection with any policy and in any particular case been contravened or not complied with.

8.2) The Registrar shall, on receipt of any such complaint, require the insurance party involved
by written notice to provide the Registrar within a period determined by the Registrar with a full reply to the complaint.

8.3)  

a) The Registrar may, whether an inspection has been carried out or not, and where a breach of these Rules has been established to the Registrar’s satisfaction, after informing the insurance party or parties involved of the intention so to act and affording them a reasonable opportunity to respond thereto, by written notice require any insurance party involved to take particular corrective steps in accordance with a specified timetable, and the Registrar may take any other step in connection with the breach which is available to the Registrar in law.

b) An insurance party involved to which a notice contemplated in rule 8.2 or paragraph (a) of rule 8.3 has been directed, shall within the period determined by the Registrar in the notice, or within any extended period determined by the Registrar on written application by the party, comply with the requirements stated in the relevant notice.

9. Void provisions

9.1) A provision of a policy of which the effective date of the entering into thereof is a date on or after a date 90 days after the date referred in section 55(5) of the Act, is void to the extent that it provides expressly or by implication-

a) that before a claim under the policy is considered by the insurer, the policyholder must undergo a polygraph, lie detector or truth verification, or any other similar, test or procedure which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer and which is conducted under the control of the insurer or such other person;

b) for an inducement of any nature for a policyholder to voluntarily agree to undergo a test or procedure envisaged in paragraph 9.1(a) where the policyholder submits a claim under the policy;

c) that where a policyholder under other circumstances than those contemplated in paragraph 9.1(b) voluntarily agrees to undergo a test or procedure envisaged in paragraph 9.1(a) where the policyholder submits a claim under the policy, and the policyholder fails to pass such test, the claim will be repudiated or the policy will become void merely as a result of such failure to pass the test or procedure;

d) that in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration.

9.2) Paragraph 9.1 shall not be construed as voiding a provision of a policy that the parties may, after a dispute under the policy has arisen, voluntarily agree to submit the dispute to arbitration or, in the absence of such a provision, as voiding any agreement between the parties to that effect.

10. Format of policies

An insurer involved shall ensure that a policy of which the effective date of the entering into
thereof is a date on or after a date 90 days after the date referred in section 55(5) of the Act, is only issued to a policyholder concerned if the provisions of the policy are recorded, as regards layout, letter types and spacing, in an easily readable manner and if the wording of every provision of the policy has a reasonably precise ascertainable meaning.

11. Additional duties of insurers and independent intermediaries

11.1) Subject to paragraph 11.1(b), an insurer must, where an agreement is to be entered into with an independent intermediary for the rendering of services as independent intermediary, furnish the independent intermediary with a written mandate or authority to act on behalf of the insurer, setting out the terms and conditions of such mandate or authority.

b) An insurer must in the case of an agreement contemplated in paragraph 11.1(a) existing immediately prior to the date referred to in section 55(5) of the Act, and which does not contain any written mandate or authority contemplated in paragraph 11.1(a), within 30 days after the said date furnish such independent intermediary with such written mandate or authority.

11.2) An insurance party involved—

a) shall ensure that any debit order to be signed by a policyholder on or after a date 30 days after the date referred to in section 55(5) of the Act, for the payment of premiums to any such party, shall not be drafted to be in favour of any other person (whether conjointly with the insurance party involved or as an alternative) but such first mentioned party;

b) shall not unilaterally terminate any current debit order signed by a policyholder without having informed the policyholder in writing of the intention so to terminate the debit order at least 30 days before the effective date of such envisaged termination.

11.3) An insurer shall not—

a) unilaterally terminate any policy without informing the policyholder in writing at least 30 days before the date on which such termination is to become effective, of such termination;

b) terminate any policy merely by giving notice thereof to an independent intermediary involved in the policy.

11.4) An insurer shall ensure that where any decision has been made as to the repudiation of any claim under a policy, or as regards the quantum of a claim which is in dispute, the policyholder concerned is in writing informed of the reasons for the decision and that the policyholder may within a period of not less than ninety days after the date of the relevant decision make representations to the relevant insurer in respect of such decision.

11.5) An insurer shall ensure that a policy to be entered into on or after a date 90 days after the date referred to in section 55(5) of the Act, contains a provision for a period of grace for the payment of premiums of not less than 15 days after the relevant due date: Provided that in the case of a monthly policy, such provision must apply with effect from the second month of the currency of the policy.
12. Termination and alteration of certain agreements and relationships

12.1) No termination of any agreement contemplated in rule 11.1(a) and (b) between any insurer and an independent intermediary, irrespective of whether the termination has been mutually agreed upon, or is effected by any one party by notice to the other, shall be effective unless—
   a) all policyholders holding still current policies entered into by that insurer through the intermediation of that independent intermediary, have beforehand been in writing informed of the termination by either the insurer or the independent intermediary, or by both; and
   b) both such insurance parties are beforehand satisfied that all reasonable steps have been taken for such information to reach all such policyholders.

12.2) The provisions of rule 12.1 shall, with the necessary changes, apply in respect of any change occurring in the status or relationship, or authority or mandate, of any independent intermediary, referred to in Rule 5.1(b).

13. Records, monitoring systems and annual reports

13.1) An insurance party involved must in writing or by any appropriate electronic means keep record of all disclosures required to be made by the provisions of these Rules, including the manner of disclosure, in respect of the entering into or variation of any particular policy, which records must be kept available for a period of at least three years for inspection by the Registrar.

13.2) Insurers and independent intermediaries shall within 6 months from the date of coming into operation of these Rules, ensure that they provide:
   a) for monitoring systems to measure compliance with these Rules;
   b) where necessary, for information or training courses for persons employed or contracted in such business, in respect of the implementation by them of these Rules;
   c) for the accreditation of the relevant knowledge, competency and proficiency of such persons in the products that they represent within 6 months of such person becoming active;
   d) for the ongoing recordal of the knowledge, competency and proficiency of accredited persons.

13.3) Every insurer shall, within a period of four months after the end of every financial year, submit a written report to the Registrar, in respect of the period of every such financial year, on-
   a) all steps taken by the insurer to ensure compliance with the provisions of these Rules, and the reasons for any non-compliance which may have occurred;
   b) problems experienced by the insurer and any of its representatives with the interpretation or implementation of these Rules, and suggestions or recommendations for improvements or other amendments; and
c) full details of any complaints received by the insurer in connection with the implementation of these Rules, and of all steps taken in connection therewith.

14. Special duties of Registrar

The Registrar—
   a) may take any step deemed necessary or expedient to inform policyholders and the public in general of the existence, ambit and meaning of these Rules and of available avenues or mechanisms for lodging of complaints;
   b) shall ensure that copies of these Rules and of any guidelines referred to in paragraph 14(c) are readily available at the Registrar's office for distribution at the request of any person at a reasonable fee determined on a non-profit basis by the Registrar to cover costs and expenses;
   c) may from time to time, with the concurrence of the Advisory Committee, issue non-binding—
      i) guidelines on the interpretation and implementation of these Rules; and
      ii) best conduct directives for independent intermediaries and representatives;
   d) shall—
      i) annually compile a compliance review summarising the import of reports referred to in Rule 13.3 and containing advice deemed necessary or expedient in connection with the achieving of the objects of these Rules, including recommendations on the amendment of these Rules or of the Act, including advice not specifically connected to such reports; and
      ii) submit such compliance review to the Advisory Committee for consideration;

15. Waiver of rights

No waiver by any policyholder of any right or benefit granted or furnished to the policyholder by any provision of these Rules, shall be valid and enforceable.

16. Penalties

An insurance party involved who contravenes of fails to comply with a provision of these Rules shall be guilty of an offence and on conviction liable to a penalty or fine referred to in section 64(1)(c) or 65(1)(c), as the case may be, of the Act.

17. Title

These Rules shall be called the Policyholder Protection Rules (Short-term Insurance).
Policyholder Protection Rules, 2004

Notice On Policyholder Protection Rules,

Policyholder Protection Rules (Short-Term Insurance), 2004
The Minister of Finance hereby under section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), promulgates the Policyholder Protection Rules (Short-term Insurance), 2004, as set out in the Schedule.

These Rules come into operation on 30 September 2004.

TA Manuel, MP
Minister of Finance

1. Definitions

In these Rules "the Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), including the regulations promulgated under section 70 of the Act, "the FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including any measure or decision referred to in the definition of "this Act" in section 1(1) of that Act, any word or expression to which a meaning has been assigned in the Act or the FAIS Act, bears, subject to context, that meaning and, unless the context otherwise indicates-

"advertising"
in relation to a direct marketer, means any written, printed, electronic or oral communication (including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such marketer, which is intended merely to call attention to the marketing or promotion of short-term insurance policies offered by the marketer, and which does not purport to provide detailed information regarding any such policy;

"commencement date"
means the date on which these Rules become binding, as determined and published by the Minister in accordance with section 55 (5) of the Act;

"direct marketer"
means an insurer who, in the normal course of business, carries on business in the form of direct marketing;

"direct marketing"
means the marketing of a policy, including the entering into thereof, by way of telephone, internet, media insert, direct or electronic mail to a policyholder, and with mention and implementation of one or more transaction requirements to be met;

"effective date"
in relation to the entering into of any policy, means the date on which any such policy is entered into or varied;

"ensure"
in relation to a person or body and any matter mentioned in a provision of these Rules, means to take any necessary steps in order that the clear objective of the provision is achieved;

"enter into"
in respect of a policy, includes the renewal or variation of any such policy: Provided that in the case of monthly policies only the renewal after the entering into of the policy effected during every consecutive twelfth month of the currency of the policy shall qualify as a renewal referred to in this definition; and "entering into" has a corresponding meaning;

"independent intermediary" or "intermediary"
means a person who qualifies as an independent intermediary in terms of the definition thereof in section 1(1) of the Act, and with whom an agreement has been entered into by an insurer in compliance with Rule 7.1 (a)(i);

"insurance party involved"
means, in relation to the entering into of a policy with the policyholder concerned or any other matter connected with such policy, any insurer or independent intermediary, as the case may be, directly involved in such entering into, or in such other matter;

"insurer"
means a short-term insurer, and includes any representative of the insurer;

"intermediary"
means a person who qualifies as an independent intermediary in respect of a policy in terms of the definition thereof in section 1(1) of the Act, and with whom an agreement has been entered into by an insurer in compliance with Rule 7.1 (a)(i);

"policy"
means any short-term policy where the policyholder is a natural person acting otherwise than solely for the purposes of its own business; but excluding a reinsurance policy;

"policyholder"
includes a prospective policyholder;

"previous Rules"
means the Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in Gazette No. 22084 of 23 February 2001;

"transaction requirement"
means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, an insurer by or on behalf of a policyholder and relating to a policy, including any amendment thereof or variation thereto;

"transaction requirement"
means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, an insurer by or on behalf of a policyholder and relating to a
Policyholder Protection Rules

policy, including any amendment thereof variation thereto;

"variation" in relation to a policy, means any variation of the premiums or benefits of the policy, excluding any periodic variation in terms of a contractually determined inflation-connected formula or, otherwise in terms of fixed contractually determined provisions;

"writing" includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and "written" has a corresponding meaning.

2. Objective and Application of Rules

The objective of these Rules is to ensure that policies as defined in Rule 1 are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest.

3. Application

1) Part III of these Rules only applies to the entering into of a policy in respect of which the effective date is a date on or after the commencement date.

2) No provision of these Rules shall be construed as in any way affecting the duty of any person to comply with any applicable provision of the FAIS Act.

4. Basic Rules for Direct Marketers

1) A direct marketer must at all times render services honestly, fairly, and with due skill, care and diligence.

b) A direct marketer must-
   i) in making contact arrangements, and in all communications and dealings with a policyholder, act honourably, professionally and with due regard to the convenience of the policyholder; and
   ii) at the commencement of any contact, visit or call initiated by the direct marketer clearly explain the purpose thereof

c) Representations made and information -provided to a policyholder by a direct marketer-
   i) must be factually correct;
   ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
   iii) must be adequate and appropriate in the circumstances of the relevant marketing, taking into account the level of knowledge of the policyholder;
iv) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;

v) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably predeterminable, its basis of calculation must be adequately described; and

vi) need not be duplicated or repeated to the same policyholder unless material or significant changes affecting that policyholder occur, or the relevant direct marketing renders it necessary, in which case a disclosure of the changes to the policyholder must be made to the policyholder without delay before a transaction is concluded.

d) The direct marketer must disclose to the policyholder the existence of any of any circumstance which gives rise to an actual or potential conflict of interest in relation to the direct marketer, and take all reasonable steps to ensure fair treatment of the policyholder.

e) Direct marketing must be rendered in accordance with the contractual relationships and reasonable requests or instructions of the policyholder, which must be executed as soon as reasonably possible and with due regard to the interests of the policyholder which must be accorded appropriate priority over any interests of the direct marketer.

f) The direct marketer must not deal in any policy for own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with policyholders, or on any non-public information the disclosure of which would be expected to affect the costs of such policy to the policyholder.

2) A direct marketer must have appropriate procedures and systems in place to-

a) record all verbal and written communications relating to the direct marketing to a policyholder as are contemplated in these Rules;

b) store and retrieve transaction documentation and all other documentation relating to the policyholder; and

c) keep the policyholder records and documentation safe from destruction.

b) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.

c) Disclosure records and documentation pertaining thereto must, in any particular case be kept for a period of at least five years after termination, to the knowledge of the direct marketer, of the relevant policy or, in any other case, after completion of the relevant marketing process and must be available timeously upon request to the registrar for inspection, and copies thereof must at the request of a policyholder be furnished to such holder.

3) A direct marketer must, when rendering direct marketing to a policyholder, furnish the policyholder with the following particulars at the earliest reasonable opportunity but prior to the entering into of the policy, provided that were provided orally, it must be confirmed in writing within 30 days:

a) its business or trade name, and, unless contact was initiated by the policyholder, its telephone contact details;

b) telephone contact details of the public officer of the direct marketer;

c) name, class or type of policy involved and a reasonable and appropriate general explanation of the principles of the relevant contract and any information that would reasonably be expected to enable the policyholder to make an informed
decision;

d) the nature and extent of benefits for the policyholder, manner of deriving or obtaining, or payment or furnishing thereof;

e) any restrictions on or penalties for early termination or withdrawal from the policy, or other effects, if any, of such termination or withdrawal:

f) commission, consideration, fees, charges or brokerages payable to the direct marketer (if any) by the policyholder or by any other person,

g) nature and extent of monetary obligations assumed by the policyholder (including any anticipated or contractual escalations, increases or additions), manner of compliance therewith and consequences of non-compliance;

h) where provision is made for increase of premiums, abbreviated disclosures of such contractual increases;

i) concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;

j) details of manner of instituting claims under the relevant policy; and

k) details of manner of lodging complaints, and particulars of the Short-term Insurance Ombudsman, including that the Ombudsman is available for advice on complaints in respect of claims or other matters which have not been satisfactorily resolved by the relevant direct marketer.

4) A provision of a Rule in this Part is not applicable to a direct marketer in any case where a compliance duty in respect of the same matter is imposed on the direct marketer by, in terms or by virtue of any other law.

5. Rules on Void Provisions and Format

1) A provision of a policy is void to the extent that it provides expressly or by implication -

a) that in connection with any claim made under the policy, the policyholder may be obliged to undergo a polygraph, lie detector or truth verification, or any other similar, test or procedure which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer and which is conducted under the control of the insurer or such other person;

b) for an inducement of any nature for a policyholder to voluntarily agree to undergo a test or procedure envisaged in paragraph (a) of this Rule where the policyholder submits a claim under the policy;

c) that where a policyholder under other circumstances than those contemplated in paragraph (b) of this Rule voluntarily agrees to undergo a test or procedure envisaged in paragraph (a) of this Rule where the policyholder submits a claim under the policy, and the policyholder fails to pass such test, the claim will be repudiated or the policy will become void merely as a result of such failure to pass the test or procedure;

d) that in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration;

e) that an insurer may reject a claim because a premium was not paid on due date, if payment was made during the period of grace referred to in Rule 7.5, whether or not the payment was made prior to the event giving rise to the claim.
2) Rule 5.1 (d) shall not be construed as rendering void a provision of a policy that the parties may, after a dispute under the policy has arisen, voluntarily agree to submit the dispute to arbitration or, in the absence of such a provision, as voiding any agreement between the parties to that effect.

6. General format of policies

1) An insurer shall ensure that a policy is only issued to a policyholder concerned if the provisions of the policy are recorded, as regards layout, letter types and spacing, in an easily readable manner and if the wording of every provision of the policy has a reasonably precise ascertainable meaning.

2) An insurer must within a reasonable period in writing inform a policyholder of a policy issued by the insurer on or after the commencement date, of details of any available internal complaint resolution systems and procedures, as well as full particulars relating to the Short-term Insurance Ombudsman.

7. Agreements

1) a) i) An insurer must, where an agreement has been entered into with a person for the rendering of services as independent intermediary in connection with the insurance products of that insurer, furnish the person with a written copy, setting out the terms and conditions thereof: Provided that an insurer may on or after the commencement date only enter into such an agreement if the person has been issued with a licence for the rendering of intermediary services in terms of section 8 of the FAIS Act, or is where lawfully required a representative as contemplated in that Act of any such licensee.

ii) An agreement referred to in subparagraph (i) which has, been entered into under Rule 10.1 (a) of the previous Rules, as it existed prior to the commencement date, lapses on that date 90 days after that date if the relevant person is not on that date such a licensee or such a representative.

b) Any such agreement also lapses-

i) on any date on which the agreement is lawfully terminated by the parties, irrespective of whether the termination has been mutually agreed upon, or is effected by any one party by notice to the other: Provided that any such lapsing shall not be effective unless-

aa) all policyholders holding current policies entered into by the insurer through the relevant person referred to in paragraph (a)(i) have been given prior written notice of the termination in accordance with Rule 7.3(b) (which apply with the necessary changes) by either the insurer or the person involved, or both; and

bb) both insurer and the relevant person are beforehand satisfied that all reasonable steps have been taken for such information to reach all such policyholders;
Policyholder Protection Rules

ii) on the date when a licence held by the person concerned becomes inoperative by virtue of the application to the person as licensee of any provision of section 9 of the FAIS Act relating to provisional or final suspension of the relevant licence, section 10 of that Act relating to withdrawal of the licence or section 11 of that Act relating to lapsing of the licence; or

bb) in the case of any such person acting as a representative contemplated in the FAIS Act, on the date on which the mandate or authority granted in terms of the FAIS Act to the representative by the licensee concerned, is lawfully terminated, or any such representative becomes debarred by virtue of section 14 of the FAIS Act to act as a representative.

c) An insurance party involved, shall ensure that in the case of any lapsing contemplated in paragraph (a)(ii) or (b)(ii) all policyholders involved-

i) are without delay informed of the lapsing in accordance with paragraph (b)(i) (aa) and (bb), which apply with the necessary changes; and

ii) are so informed on new arrangements made by the insurer whether for the mandating or authorising of another person as intermediary or for servicing the relevant policies itself.

d) An insurer must, within a reasonable time after being requested to do so, provide any person with whom an agreement contemplated in paragraph (a) of this Rule has been entered into, with all information about the insurer or its policies reasonably required by such person to comply with any disclosure or other requirements binding on such person by virtue of any law

2) Debit orders
An insurance party involved
a) shall ensure that any debit order to be signed by a policyholder for the payment of premiums to any such party, shall not be drafted to be in favor of any other person (whether conjointly with the insurance party involved or as an alternative) but such first mentioned party;

b) shall not unilaterally terminate any current debit order signed by a policyholder without having informed the policyholder in writing of the intention so to terminate the debit order at least 30 days before the effective date of such envisaged termination.

2) Unilateral termination of policies
a) An insurer shall not unilaterally terminate any policy without giving notice as set out: in paragraph (b) of this Rule.

b) The insurer may give notice either-

i) direct to the policyholder 30 days prior to the cancellation date: or

ii) by satisfying itself that notice has been given in accordance with subparagraph (i) to the policyholder by the independent intermediary; or

iii) if compliance with subparagraphs (i) or (ii) is not possible, by publication of such notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that relevant policyholders reside, and by forwarding a copy of such notice to the registrar prior to publication.

3) Decisions relating to claims and time limitation provisions for the institution of legal claims
a) An insurer must accept, reject or dispute a claim or the quantum of a claim for a benefit under a policy within a reasonable period after receipt of a claim.

b) An insurer must within 10 days of taking any decision referred to in paragraph (a), in writing, notify the policyholder of its decision.

c) If the insurer rejects or disputes a claim or the quantum of a claim, the notice referred to in paragraph (b) must inform the policyholder -
   i) of the reasons for the decision;
   ii) that the policyholder may within a period of not less than 90 days after the date of receipt of the notice make representations to the relevant insurer in respect of the decision;
   iii) of the right to lodge a complaint under the Financial Services Ombud Schemes Act, 2004 (Act No 37 of 2004) and the relevant provisions of the Act relating to the lodging of such a complaint, in plain understandable language;
   iv) in the event that the relevant policy contains a time limitation provision for the institution of legal action, of that provision and the implications of that provision for the policyholder in an easily understood manner; and
   v) in the event that the relevant policy does not contain a time limitation provision for the institution of legal action, of the prescription period that will apply in terms of the Prescription Act 1969 (Act No. 68 of 1969) and the implications of that provision for the policyholder in an easily understood manner.

d) If a claim is rejected or disputed, or a quantum is disputed as contemplated in paragraph (a) on behalf of an insurer by a person other than the insurer, such other person must provide the notice contemplated in paragraph (b) and include in that notice in addition to the information referred to in paragraph (c), the name and contact details of the insurer and a statement that any recourse or enquiries must be directed directly to that insurer.

e) If the policyholder makes representations to the relevant insurer in accordance with paragraph (c)(ii) the insurer must within 45 days of receipt of the representation, in writing, notify the policyholder of its decision to accept, reject or dispute the claim or the quantum of a claim for a benefit under a policy.

f) If the insurer, despite the representations of the policyholder, confirms the decision to reject or dispute the claim or the quantum of a claim, the notice referred to in paragraph (e) must-
   i) inform the policyholder of the reasons for the decision;
   ii) include the facts that informed the decision; and
   iii) include the information referred to in paragraph (c)(iii) to (v).

g) Any time limitation provision for the institution of legal action that may be provided for in a policy entered into before 1 January 2011 may not include the period referred to in (c)(ii) in the calculation of the time limitation period.

h) Any time limitation provision for the institution of legal action that may be provided for in a policy entered into on or after 1 January 2011-
   i) may not include the period referred to in (c)(ii) in the calculation of the time limitation period; and
   ii) must provide for a period of not less than 6 months after the expiry of the period referred to in paragraph (c)(ii) for the institution of legal action.

i) Despite the expiry of the period allowed for the institution of legal action in a time limitation clause provided for in a policy entered into before or after 1 January 2011, a policyholder may request the court to condone non-compliance with the clause if the court is satisfied, among other things, that good cause exists for the failure to institute legal proceedings and that the clause is unfair to the policyholder.
9. Penalties

An insurance party involved who contravenes or fails to comply with a provision of these Rules shall be guilty of an offence and on conviction liable to a penalty or fine referred to in section 64(1)(c) or 65(1)(c), as the case may be, of the Act.

10. Repeal and transitional provision

1) The previous Rules are hereby repealed.

2) Anything done under, in terms or by virtue of any provision of the previous Rules is deemed, unless clearly inappropriate, to have been done under, in terms or by virtue of a corresponding provision of these Rules.

11. Short title and commencement

These Rules are called the Policyholder Protection Rules (short-term Insurance), 2004, and come into operation on a date as determined and published by the Minister in accordance with section 55(5) of the Act.
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Regulations under the Short-term Insurance Act

The Minister of Finance has under section 70 of the Short-term Insurance Act, 1998, made the regulations set out in the Schedule.

Part 1. Interpretation

1. Definitions

In these regulations "the Act" means the Short-term Insurance Act, 1998, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it, and—

"long-term policy" means a long-term policy as defined in the Long-term Insurance Act, 1998;

"Part" means the applicable Part of these regulations;

"SAFEX" means the South-African Futures Exchange;

"Schedule" means the applicable Schedule to the Act;

"section" means the applicable section of the Act.

Part 2. Calculation of Additional Amounts of Assets

Calculation of Additional Amounts of Assets

(Section 29(1))

1) The additional amount referred to in section 29(1)(b), shall be an amount equal to the greater of the following amounts:

a) R3 000 000 or such smaller amount as the Registrar may, in a particular case and for a determined period, approve; or

b) 15 per cent of the greater of the amount of the premium income of the short-term insurer after deduction of all premiums payable by it in terms of any short-term reinsurance policies entered into by it in respect of any short-term policies—
   i) during the period of 12 months immediately preceding the day on which the
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previous financial year ended; or
ii) during the period of 12 months immediately preceding the day on which the calculation is made.

2) The additional amount referred to in section 29(2)(b), shall be an amount equal to the greater of the following amounts:
   a) R3 000 000 or such smaller amount as the Registrar may, in a particular case and for a determined period, approve; or
   b) 15 per cent of the greater of the amount of the premium income of the short-term insurer in respect of the short-term insurance business carried on by it in the Republic after deduction of all premiums payable by it in terms of any short-term reinsurance policies entered into by it in respect of any short-term policies—
      i) during the period of 12 months immediately preceding the day on which the previous financial year ended; or
      ii) during the period of 12 months immediately preceding the day on which the calculation is made.

Part 3. Limitation on Assets

1. Definitions

For the purposes of this Part and section 30 and, unless the context otherwise indicates—

"asset-holding intermediary" in relation to a short-term insurer, means an undertaking, other than a company the shares of which are listed on a licensed stock exchange in the Republic—
   a) which is a subsidiary of the short-term insurer or would be its subsidiary if that insurer were a company;
   b) the management of the investments of which is under the de facto control of the short-term insurer; and
   c) which has assets which are regarded and dealt with, for all intents and purposes, as if they were the assets of the short-term insurer;

"associated company" means a company—
   a) which is an associate, as defined in section 25(5), of a short-term insurer;
   b) which exercises control, as defined in section 25(6), over a short-term insurer; or
   c) over which a short-term insurer exercises control as defined in section 25(6), other than a company which is an asset-holding intermediary or a property company;

"call option" means an option contract under which the holder of the option contract has the right but not an obligation, in accordance with the terms of the contract, to purchase (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the call option contract;

"convertible debenture" means a debenture which is convertible into equity shares of a company;
“equity shares”
means equity shares as defined in section 1 of the Companies Act;

“linked policy”
means a long-term policy in relation to which the liabilities of the long-term insurer are linked liabilities as defined in section 33(2) of the Long-term Insurance Act, 1998;

“long position”
means long position as defined in the rules of SAFEX;

“market value”
in relation to an asset, means—
  a) in the case of an asset which is listed on a licensed stock exchange and for which a price was quoted on that stock exchange on the date as at which the value is calculated, the price last so quoted;
  b) in the case of an asset which is a long-term policy, the amount which on any day would be payable to the policyholder upon the surrender of the policy on that day;
  c) in any other case, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm’s length, as estimated by the short-term insurer, or by the Registrar if the Registrar is not satisfied with that estimate;

“multiple”
means the futures contract’s unit of trading in its description;

“n.e.s.”
means not elsewhere specified in this Part;

“net loans”
means the positive amount (if any) by which the aggregate amount of loans made by a short-term insurer to its asset-holding intermediary, exceeds the aggregate amount of loans made to it by that asset-holding intermediary;

“property company”
means a company—
  a) whose ownership of—
    i) immovable property; or
    ii) all of the shares in a company—
      aa) whose principal business consists of the ownership of immovable property; or
      bb) which exercises control, as defined in section 25(6), over a company whose principal business consists of the ownership of immovable property; or
    iii) a linked policy, to the extent that the policy benefits thereunder are determined by reference to the value of immovable property, constitutes, in the aggregate, 50 per cent or more of the market value of its assets;
  b) which derives 50 per cent or more of its income, in the aggregate, from—
    i) investments in immovable property;
    ii) investments in another company which derives 50 per cent or more of its
income from investments in immovable property; or
   iii) a linked policy to the extent that the policy benefits thereunder are
determined by reference to the value of immovable property; or
   c) which exercises control, as defined in section 25(6), over a company referred to in
paragraph (a) or (b);

"put option"
means an option contract under which the holder of the option contract has the right but not an
obligation in accordance with the terms of the contract, to sell (or to make a cash settlement in
lieu thereof) the quantity of the underlying asset covered by the put option contract;

"rules of SAFEX"
means the rules of SAFEX referred to in section 17 of the Financial Markets Control Act, 1989
(Act No. 55 of 1989);

"shares"
include share stock;

"short position"
means short position as defined in the rules of SAFEX.

2. General limitation on assets

For the purposes of section 30(1), a short-term insurer shall have assets of the kinds specified in
Schedule 1 having a market value which, when expressed as a percentage of the aggregate value
of the liabilities of the short-term insurer plus additional assets, does not exceed the percentage
specified in column 2 of the Table to this Part in relation to the particular kinds of categories of
assets specified in column 1 of that Table.

3. Assets of asset-holding intermediary

For the purposes of regulation 3.2, the assets of the kinds set out in Schedule 1 of an asset-
holding intermediary of a short-term insurer, other than a claim thereof against that short-term
insurer, shall be deemed to be assets of the short-term insurer—
   a) in place of the net loans made by it to the asset-holding intermediary, to the extent
determined in accordance with the formula—
      \[ \frac{A}{B} \times C \]
   b) in place of its shares, other than equity shares, in the asset-holding intermediary, to
the extent determined in accordance with the formula—
      \[ \frac{A}{B} \times D \]
   c) in place of its equity shares in the asset-holding intermediary, to the extent
determined in accordance with the formula—
      \[ E \times \frac{F}{G} \]
in which formulae—
   \[ A \] represents the market value of each asset or kind or category of assets
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specified in column 1 of the Table to this Part of the asset-holding intermediary;
B represents the aggregate market value of all the assets of the asset-holding intermediary;
C represents the amount of any claim arising from any net loans to the asset-holding intermediary;
D represents the value of shares, other than equity shares, held by the short-term insurer in the asset-holding intermediary, plus or minus the amount to be apportioned to those shares by virtue of the excess or shortfall of the assets of the asset-holding intermediary over its liabilities;
E represents A minus the sum of the amounts determined in accordance with the formula referred to in paragraphs (a) and (b);
F represents the value of the equity shares held by the short-term insurer in the asset-holding intermediary;
G represents the aggregate value of all equity shares of the asset-holding intermediary.

4. Liabilities of asset-holding intermediary

For the purposes of regulation 3.2, the liabilities of an asset-holding intermediary of a short-term insurer, other than a claim of the short-term insurer against that asset-holding intermediary, shall be deemed to be liabilities of the short-term insurer to the extent determined in accordance with the formula—

\[ A \times \frac{B}{C} \]

in which formula—

A represents the aggregate value of those liabilities, plus the value of those of the shares, other than equity shares, in the asset-holding intermediary concerned, which are not owned by the short-term insurer concerned;
B represents the value of the equity shares held by the short-term insurer in the asset-holding intermediary;
C represents the aggregate value of all equity shares of the asset-holding intermediary.

5. Deemed assets

For the purpose of regulation 3.2, there shall be deemed as assets of a short-term insurer, or, where appropriate, its asset-holding intermediary, in place of the market value of an asset thereof which is a linked policy, those assets of the particular kinds or categories specified in Schedule 1 to the extent, in respect of each such particular kind or category, of an amount which bears the same proportion to the market value of the linked policy as each of those kinds or categories of assets by reference to the value of which the policy benefits are to be determined, is stated in terms of the policy (or, if not so stated, is estimated by the long-term insurer which is liable under the policy), bears to the total of all of the assets to which the policy is linked.
6. Futures contracts

1) For the purposes of regulation 3.2, a futures contract shall be deemed to be the asset or kind of asset to which the futures contract relates. The exposure in consequence of concluding a futures contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned, and the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of a purchased futures contract (long position) shall be added, while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced, and the exposure arising from the use of a sold futures contract (short position) deducted from the particular assets or category of assets while the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased.

2) The balance of any margin deposit shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(b) of the Table to Schedule 1.

3) For the purposes of this paragraph "exposure" means the number of contracts x multiple x current price, where the current price shall be the "mark-to-market" as defined in the rules of SAFEX on the reporting date.

7. Option contracts

1) For the purposes of regulation 3.2, an option contract shall be deemed to be the asset or kind of asset to which the option contract relates. The exposure in consequence of concluding an option contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned and the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of an option contract resulting in a positive holding shall be added to the particular asset or category of assets while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced. The exposure arising from the use of an option contract resulting in a negative holding, shall be deducted from the particular asset or category of assets while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased. A positive holding constitutes a call option bought (long call) and a put option sold (short put), and a negative holding constitutes a call option sold (short call) and a put option bought (long put).

2) The balance of any margin shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(b) of the Table to Schedule 1.

3) For the purposes of this regulation "exposure" means the number of contracts x delta x the market value of the underlying asset or category of assets, where "delta" represents the change in the option contract premium associated with one percentage point move in the market price of the underlying asset.
8. Other derivatives

Any derivative in relation to which no basis for valuation has been provided in regulation 3.6 or 3.7 shall be—
  a) deemed to be the asset or kind of asset to which the derivative relates; and
  b) valued as determined by the Registrar.

Categories of Assets

(Regulation 3.2)

In this Table particular items or groups of items referred to in Schedule 1, or particular kinds of assets falling within the more general description of those categories in Schedule 1, are specified in column 1. The maximum permitted holding of those specified assets, calculated according to their market value and expressed as a percentage of the liabilities concerned, is specified in column 2.

<table>
<thead>
<tr>
<th>Asset Limitation Number</th>
<th>Column 1 Relevant Schedule 1 Item</th>
<th>Column 2 Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.</td>
<td>Ex item 1:</td>
<td></td>
</tr>
<tr>
<td>01.01</td>
<td>Krugerrand coins — in the aggregate</td>
<td>10</td>
</tr>
<tr>
<td>02.</td>
<td>Ex items 2 and 18:</td>
<td></td>
</tr>
<tr>
<td>02.01</td>
<td>In the aggregate in respect of any one institution</td>
<td>20</td>
</tr>
<tr>
<td>02.02</td>
<td>In the aggregate in respect of margin deposits held with SAFEX</td>
<td>2,5</td>
</tr>
<tr>
<td>03.</td>
<td>Item 3:</td>
<td></td>
</tr>
<tr>
<td>03.01</td>
<td>In the aggregate</td>
<td>20</td>
</tr>
<tr>
<td>04.</td>
<td>Ex item 6:</td>
<td></td>
</tr>
<tr>
<td>04.01</td>
<td>In the aggregate in respect of any one body, council or institution</td>
<td>20</td>
</tr>
<tr>
<td>05.</td>
<td>Item 7:</td>
<td></td>
</tr>
<tr>
<td>05.01</td>
<td>In the aggregate</td>
<td>20</td>
</tr>
<tr>
<td>06.</td>
<td>Item 8:</td>
<td></td>
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<td></td>
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<tr>
<td><strong>06.01</strong></td>
<td>In the aggregate</td>
<td>20</td>
</tr>
<tr>
<td><strong>07.</strong></td>
<td>Item 9:</td>
<td></td>
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<tr>
<td><strong>07.01</strong></td>
<td>In the aggregate</td>
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<td><strong>08.</strong></td>
<td>Item 10:</td>
<td></td>
</tr>
<tr>
<td><strong>08.01</strong></td>
<td>In the aggregate</td>
<td>20</td>
</tr>
<tr>
<td><strong>09.</strong></td>
<td>Item 11:</td>
<td></td>
</tr>
<tr>
<td><strong>09.01</strong></td>
<td>In the aggregate</td>
<td>20</td>
</tr>
<tr>
<td><strong>10.</strong></td>
<td>Ex item 12:</td>
<td></td>
</tr>
<tr>
<td><strong>10.01</strong></td>
<td>In the aggregate in respect of any one body corporate</td>
<td>20</td>
</tr>
<tr>
<td><strong>11.</strong></td>
<td>Item 13:</td>
<td></td>
</tr>
<tr>
<td><strong>11.01</strong></td>
<td>In the aggregate</td>
<td>20</td>
</tr>
<tr>
<td><strong>12.</strong></td>
<td>Ex items 14, 16(1), (2), (3) and (4), 17, 19 and 20:</td>
<td></td>
</tr>
<tr>
<td><strong>12.01</strong></td>
<td>Immovable property, units in a unit trust scheme in property shares, loans or mortgage bonds to or shares or debentures or depository receipts or linked units or loan stock issued by a property company; and linked policies linked thereto—</td>
<td></td>
</tr>
<tr>
<td><strong>12.01.01</strong></td>
<td>In the aggregate</td>
<td>10</td>
</tr>
<tr>
<td><strong>12.01.02</strong></td>
<td>In the aggregate in respect of any one property, or property development project or property company</td>
<td>5</td>
</tr>
<tr>
<td><strong>13.</strong></td>
<td>Ex item 15:</td>
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<tr>
<td><strong>13.01</strong></td>
<td>Computer equipment — in the aggregate</td>
<td>5</td>
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<tr>
<td><strong>13.02</strong></td>
<td>Other assets — in the aggregate</td>
<td>2,5</td>
</tr>
<tr>
<td><strong>14.</strong></td>
<td>Ex items 16(1), (2) (3) and (4), 17 and 20(a):</td>
<td></td>
</tr>
<tr>
<td><strong>14.01</strong></td>
<td>Shares, convertible debentures or depository receipts or linked units or loan stock, issued by a body corporate, other than an asset-holding intermediary, n.e.s.,</td>
<td></td>
</tr>
</tbody>
</table>
and units in a unit trust scheme in securities other than property shares; and linked policies linked thereto—

| 14.01.01 | In the aggregate | 65 |
| 14.01.02 | In the aggregate in respect of ordinary shares, convertible debentures and depository receipts or linked units, issued by a body corporate, other than an asset-holding intermediary, n.e.s., and units in a unit trust scheme in securities other than property shares; and linked policies linked thereto— | 50 |
| 14.01.02.01 | In the aggregate of those which are not listed on a licensed stock exchange or financial market in the Republic or are listed in the Development and Venture Capital Sectors of such an exchange or market | 2,5 |
| 14.01.02.02 | In the aggregate of those which are listed on a licensed stock exchange or financial market in the Republic, otherwise than in the Development and Venture Capital Sectors thereof, and which are issued by any one body corporate which has a market capitalisation— |  |
| 14.01.02.02.01 | not exceeding R2 000 million | 5 |
| 14.01.02.02.02 | exceeding R2 000 million | 10 |
| 14.01.03 | In the aggregate in respect of preference shares, other than property shares, and linked policies thereto— | 40 |
| 14.01.03.01 | In the aggregate in respect of any one body corporate | 2,5 |

15. Ex items 16(1) and (2), 19 and 20(b) and (c):

15.01 Loans to, and claims against, or debentures, other than convertible debentures, issued by, associated companies — in the aggregate | 5 |

16. Ex item 20(a):

16.01 Claims under long-term policies other than linked policies—
<p>| | | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>16.01.01</td>
<td>In the aggregate in respect of any one long-term insurer</td>
<td>20</td>
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<td>17.</td>
<td>Ex items 16(1) and (2), 19 and 20(b) and (c):</td>
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<tr>
<td>17.01</td>
<td>Claims against individuals, and claims against, loans to or debentures, other than convertible debentures, issued by, bodies corporate, n.e.s.—</td>
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<tr>
<td>17.01.01</td>
<td>In the aggregate</td>
<td>25</td>
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<tr>
<td>17.01.02</td>
<td>In the aggregate in respect of any one individual</td>
<td>0.25</td>
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<tr>
<td>17.01.03</td>
<td>In the aggregate in respect of any one body corporate</td>
<td>5</td>
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<tr>
<td>18.</td>
<td>Ex item 16(5):</td>
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<td>18.01</td>
<td>Securities, shares, credit balances, deposits, units, margin deposits—</td>
<td></td>
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<td>18.01.01</td>
<td>In the aggregate</td>
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<td>18.01.02</td>
<td>Ex item 16(5)(b):</td>
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<td>18.01.02.01</td>
<td>In the aggregate</td>
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<tr>
<td>18.01.03</td>
<td>Ex item 16(5)(d):</td>
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<td>18.01.03.01</td>
<td>In the aggregate in respect of margin deposits</td>
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<td>18.01.04</td>
<td>Ex item 16(5)(a)(i):</td>
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<td>18.01.04.01</td>
<td>In the aggregate</td>
<td>15</td>
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<tr>
<td>18.01.05</td>
<td>Ex item 16(5)(a)(ii) and (c):</td>
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<tr>
<td>18.01.05.01</td>
<td>In the aggregate</td>
<td>15</td>
</tr>
<tr>
<td>18.01.05.02</td>
<td>In the aggregate of shares, convertible debentures or depository receipts or linked units or loan stock which are listed in a regulated market in a country other than the Republic which the Registrar has approved or are listed in the Development or Venture Capital Sectors of a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic; and linked policies linked thereto - in the aggregate</td>
<td>2.5</td>
</tr>
<tr>
<td>18.01.05.03</td>
<td>In the aggregate of ordinary shares, convertible debentures or depository</td>
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<tr>
<td>Regulation</td>
<td>Description</td>
<td>Limitation</td>
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<tr>
<td>18.01.05.03.01</td>
<td>Receipts or linked units or loan stock which are listed on a stock exchange outside the Republic, and which are approved by the Registrar and issued by any body corporate incorporated outside the Republic which has a market capitalisation, and linked policies linked thereto—</td>
<td>not exceeding R2 000 million</td>
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<tr>
<td>18.01.05.03.02</td>
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<td>exceeding R2 000 million</td>
</tr>
<tr>
<td>18.01.05.04</td>
<td>In the aggregate of preference shares which are listed on a stock exchange outside the Republic, and which are approved by the Registrar and issued by any body corporate incorporated outside the Republic which has a market capitalisation—</td>
<td>not exceeding R2 000 million</td>
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<tr>
<td>18.01.05.04.02</td>
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<td>exceeding R2 000 million</td>
</tr>
<tr>
<td>18.01.05.04.05</td>
<td>In the aggregate of securities, other than convertible debentures or depository receipts or linked units or loan stock, which are listed on a stock exchange outside the Republic, and which are approved by the Registrar and issued by any body corporate incorporated outside the Republic; and linked policies linked thereto - in the aggregate in respect of any one body corporate</td>
<td></td>
</tr>
</tbody>
</table>

19. Ex items 16(5)(d) and 18:

19.01 In the aggregate in respect of margin deposits 2,5

20. Ex items 14, 15, 16(1), (2), (3), (4) and (5) (a)(ii) and (c), 17, 19, 20 and 21:

20.01 In the aggregate 70

21. In respect of any one asset not subjected elsewhere in this Table to a specific | 2,5 |
Part 4. Authorisation of and Requirements for Collection of Premiums by Intermediaries

1. Authorisation

1) A short-term insurer may, subject to subregulation (2), in writing authorise an independent intermediary to receive, hold or in any other manner deal with premiums payable to it under short-term policies.

2) A person shall not be authorised, as contemplated in subregulation (1), unless that person has provided security, to the extent and in accordance with the requirements of this Part, in respect of his or her obligations in terms of regulation 4.3 by means of—
   a) a guarantee policy issued by a short-term insurer registered to do so in accordance with a guarantee facility created by short-term insurers generally for the purposes of providing such security; or
   b) a contract which, but for the fact that the undertaking concerned is given by a bank, would be a guarantee policy,
and under which policy benefits are to be provided in the event of the failure of that person to meet those obligations.

2. Requirements in respect of security

The security referred to in regulation 4.1(2) shall—
   a) be in such form as prescribed by the Registrar;
   b) be in favour of the South African Insurance Association (Association Incorporated under Section 21) or, if the Registrar so determines, in favour of the Registrar, for the benefit of all of the short-term insurers with whose authority the premiums are received, held or in any other manner dealt under by the person concerned;
   c) be provided, before any premium is received, held or in any other manner dealt with by the person concerned;
   d) be provided, and renewed annually, in respect of each financial year of the person concerned;
   e) subject to subparagraph (f), be for an amount, being not less than R100 000 and not exceeding R50 000 000, equal to—
      i) in the financial year in which the person concerned is first authorised to receive, hold or in any other manner deal with premiums and in the immediately following financial year, 30 per cent of a reasonable estimate of the total premiums which that person expects to receive in a full financial year; and
      ii) in every subsequent financial year of the person concerned, 30 per cent of the total premiums actually received, held or in any other manner dealt with by that person in the previous financial year; and
   f) if the businesses of two or more independent intermediaries are amalgamated, be
for an amount determined by reference to the total premiums received, held or in any other manner dealt with in the financial year concerned by the businesses so amalgamated,
and, for the purposes of this regulation, if the person concerned does not have a particular period of 12 months which constitutes his or her financial year, the reference to a financial year shall be construed as a reference to a period of 12 months.

3. Requirements in respect of payment to short-term insurers

1) A person authorised, as contemplated in regulation 4.1, shall, within a period of 15 days after the end of every month in which premiums are received, pay to the short-term insurer concerned the total amount of those premiums received during that month reduced by the amount of—
   a) any refund premiums then due and payable by such short-term insurer to any policyholder or prospective policyholder represented by such person; and
   b) any consideration payable to that person by the short-term insurer for services as intermediary rendered in respect of the short-term policies concerned.

2) If more than one person was so authorised by the short-term insurer to receive premiums in relation to the same short-term policy, the period between the receipt thereof from the insured or any person on his or her behalf and payment to the short-term insurer shall not exceed the period contemplated in subregulation (1).

3) A short-term insurer shall not authorise more than one person as contemplated in subregulation (2) to receive a premium in relation to the same policy if it is a policy forming part of personal lines business.

4. Returns by authorised persons

Every person authorised as contemplated in regulation 4.1 shall—
   a) in respect of each period of 12 months referred to in regulation 4.2(e)(ii), furnish the person in whose favour the security is provided, with returns—
      i) in the medium and form prescribed by the Registrar;
      ii) containing information relating to each short-term insurer concerned, of the premiums received after setting off any commission payable to that person for services as intermediary rendered during that period of 12 months;
      iii) within a period of three months after the end of each such period of 12 months; and
   b) in respect of every month in respect of which the authority is in force, furnish the short-term insurer concerned with returns—
      i) in the form required by that short-term insurer;
      ii) containing the information relating to the premiums received, the commission payable to that person and the amounts paid to the short-term insurer; and
      iii) within a period of 15 days after the end of the month concerned.
Part 5. Limitation on Remuneration to Intermediaries

1. General limitations

(Section 48)

1) No consideration shall, in respect of short-term insurance business carried on in the Republic, directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of commission in monetary form.

2) No commission shall be paid or accepted otherwise than subject to this Part.

3) Irrespective of how many persons render services as intermediary in relation to a policy, the total commission payable in respect of that policy shall not exceed the maximum amount payable in terms of regulation 5.3.

2. Time and payment of commission

Commission shall not be paid or accepted before the date on which the premium in respect of which it is payable has been paid to the short-term insurer or Lloyd's broker.

3. Maximum commission payable

No commission shall exceed, in respect of—

a) a motor policy, 12,5 per cent of the premium payable under the policy;

b) any other short-term policy, 20 per cent of the premium payable under the policy.

4. Reversal of commission

If a premium or any part thereof is for any reason refunded by a short-term insurer or Lloyd's broker, the commission payable in terms of this Part in respect of that premium, or the part of that premium, which is so refunded, shall be refunded, to the short-term insurer by the person to whom it was paid.

5. Commission when short-term policy comprises combination of policies

If a short-term policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1, the maximum commission payable shall be determined by
aggregating the maximum payable in terms of this Part in respect of each of the separate kinds of policies comprising the combination by reference to the premium payable for each such policy, and if the premium attributable to each component is not specified in or ascertainable from the policy, the maximum shall not exceed that which would have been payable had the policy been the kind of policy to which the lowest maximum rate of commission applies.

Part 6. Title and Commencement

Title and Commencement

1) These regulations shall be known as the Regulations under the Short-term Insurance Act, 1998.

2) These regulations shall come into operation on commencement of the Act.
Prescribed Fees

www.acts.co.za
Prescribed Fees

Notice of Prescribed Fees, 2003

Notice No. 52
27 June 2003

Financial Services Board

I, Jeffrey van Rooyen, Registrar of Short-term Insurance, hereby under sections 3(2)(b)(i) and 3(4) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), prescribe the fees set out in the Schedule.

In this Notice -

Definitions

"Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

"section" means a section of the Act;

and any word or expression to which a meaning has been assigned in the Act has, unless the context otherwise indicates, the meaning so assigned to it.

Board Notice 16 of 2003, published in the Gazette on 28 February 2003, is hereby withdrawn.

This Notice comes into operation on 1 August 2003.

J van Rooyen
Registrar of Short-term Insurance

1) The fees in the Table apply in respect of each item indicated opposite thereto.

Table

<table>
<thead>
<tr>
<th>ITEM</th>
<th>FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Document searching by the Registrar for purposes of inspection thereof, or furnishing of copies or for the search, per insurer, for documents in respect of a particular financial year, relating to the last ten preceding financial years, for the purposes of inspection thereof or furnishing of copies, in terms of section 3(4)</td>
<td>40</td>
</tr>
<tr>
<td>b Furnishing of a photostatic copy of a return contemplated in section 35, excluding those returns to be submitted in terms of the Companies Act, 1973, in terms of section 3(4)</td>
<td>210</td>
</tr>
<tr>
<td>Prescribed Fees</td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td></td>
</tr>
<tr>
<td>c Furnishing of a return contemplated in section 35, in an electronic format, of a particular financial year, excluding those returns to be submitted in terms of the Companies Act, 1973, in terms of section 3(4) of terms 3(4)</td>
<td>160</td>
</tr>
<tr>
<td>d Furnishing of a copy of, or extract from, any document per sheet thereof in terms of section 3(4)</td>
<td>3</td>
</tr>
<tr>
<td>e Certification of a document in terms of section 3(5)</td>
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</tr>
<tr>
<td>f Application for extension of time in terms of section 4(1)</td>
<td>710</td>
</tr>
<tr>
<td>g Application for the determination that a policy shall form part of a different class of policies in terms of section 4(7)(b)</td>
<td>5 080</td>
</tr>
<tr>
<td>h A copy of the Annual Report of the Registrar of Short-term Insurance, in printed and electronic format, prepared in terms of section 5</td>
<td>90</td>
</tr>
<tr>
<td>i Application for approval of the use of the words &quot;insure&quot;, &quot;assure&quot;, &quot;underwrite&quot; or any derivative thereof in the name or description of a business or an undertaking in terms of section 8(1)(a)</td>
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</tr>
<tr>
<td>j Application for approval to place insurance with underwriters other than South African short-term insurers and/or Lloyd's underwriters in terms of section 8(2)(d)</td>
<td>570</td>
</tr>
<tr>
<td>k Application for registration as a short-term insurer, excluding an application which is referred to in section 67(2), in terms of section 9(1)</td>
<td>17 280</td>
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<tr>
<td>l Registration as a short-term insurer, excluding the registration of an existing insurer referred to in section 67(3), in terms of section 9(2)(b)</td>
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<tr>
<td>m Application for variation of conditions of registration, excluding those variations referred to in sections 12 and 13, in terms of section 11(1)(a)</td>
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<tr>
<td>n Application for approval of a change in the financial year in terms of section 17(a)</td>
<td>830</td>
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<tr>
<td>o Application for approval of a change of name, or a translation, shortened form or derivative thereof, of a short-term insurance in terms of section 17(b)</td>
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</tr>
<tr>
<td>p Application for any one approval; of an auditor in terms of any one of sections 19 and 57(5)</td>
<td>1 690</td>
</tr>
<tr>
<td>q Application for exemption from appointing an audit committee in terms of section 22(4)</td>
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</tr>
<tr>
<td>r Application for any one approval in terms of section 23(a)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii)</td>
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<tr>
<td>s Application for approval to allow a subsidiary to acquire directly or indirectly shares in a short-term insurer in terms of section 23(a)(ix)</td>
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<tr>
<td>t Application for approval of registration of shares in the name of a person in terms of section 24(1)</td>
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<td>u Application for approval to acquire or hold shares or any other interest in a short-term insurer in terms of section 25</td>
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<td>v Application for approval of an increase of a percentage specified by regulation in terms of any one of section 30(2) and paragraph 6(3) of</td>
<td>1 850</td>
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<td>Schedule 3</td>
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<td>w Application to hold documentary evidence of title to an asset outside the Republic in terms of section 31(b)</td>
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<td>x Application for any one approval in terms of section 33(1)(a), (c), (d) and (e)</td>
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<td>y Application for approval of a person to hold assets on behalf of a short-term insurer in terms of section 33(1)(b)</td>
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<td>z Application for approval of an arrangement for the transfer of short-term insurance business in terms of section 36(2)</td>
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<tr>
<td>aa Application for approval of compromise, arrangement, amalgamation or transfer of business in terms of section 37</td>
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<tr>
<td>ab Application for a declaration in connection with voluntary winding-up of a short-term insurer in terms of section 42</td>
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<td>ac Application for approval of any one of the Lloyd’s representative and the deputy representative in terms of section 57(2) and (3)</td>
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<tr>
<td>ad Application for approval of the relevant criteria for a counterparty to a over-the-counter instrument in terms of paragraph 2(b)(i) of Schedule 1</td>
<td>2 610</td>
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<tr>
<td>ae Application for approval of any other financial market in the Republic on which any other derivative instrument is traded in terms of paragraph 2(b)(iii) of Schedule 1</td>
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<tr>
<td>af Application for approval of a body corporate which is not incorporated and registered in the Republic in terms of item 20(c) of the Table to Schedule 1</td>
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</tr>
<tr>
<td>ag Application for directive to use a percentage which is different to the prescribed percentage in calculating the amount of the provision for claims incurred but not yet reported in terms of paragraph 4 of Schedule 2</td>
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</tr>
<tr>
<td>ah Application for approval of a calculation, which is different to the prescribed calculation, in determining the amount of the unearned premium provision in terms of paragraph 5(3) of Schedule 2</td>
<td>3 280</td>
</tr>
<tr>
<td>ai Application for approval to use 811 amount, which is lesser than the minimum amount, for a period not exceeding three years in calculating the amount of the contingency reserve in terms of paragraph 6(b) of Schedule 2</td>
<td>3 280</td>
</tr>
<tr>
<td>aj Application for approval for the valuation of any liability i.r.o. a creditor who has waived any right to have the obligation discharged until all obligations to other creditors have been discharged in full in terms of paragraph 7(2) of Schedule 2</td>
<td>2 610</td>
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<tr>
<td>ak Application for approval of a smaller additional amount in terms of any one of Regulations 2.1 (a) and 2.21a)</td>
<td>2 390</td>
</tr>
<tr>
<td>al Application for the special performance by the Registrar of any other act, authorised by the Act, than an act contemplated in any other subparagraph above</td>
<td>A fee determined by the Registrar in</td>
</tr>
</tbody>
</table>
Prescribed Fees

Payment of fees

2) The payment of a fee referred to 1 in this Schedule by a person to the Financial Services Board may be in cash or by means of a cheque or a money transfer (in which case proof of the transfer must be provided).

3) The fees referred to in this Schedule are inclusive of Value-Added Tax.

Short title

4) This Notice is called the Notice on Prescribed Short-term Insurance Fees, 2003.

Notice of Prescribed Fees, 2004

Notice No. 91
27 August 2004

Financial Services Board


Notice 52 of 2003, published in the Gazette on 27 June 2003, is hereby withdrawn.

This Notice comes into operation on 1 September 2004.

Registrar of Short-Term Insurance

Definitions

1) In this Schedule, unless the context otherwise indicates,: "Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), "regulations" means the Regulations made under the Act,
"schedule" means a Schedule of the Act, "section" means a section of the Act, and any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it.

2) The fees in the Table apply in respect of each section or schedule in, or regulation under, the Act and item indicated opposite thereto.

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<thead>
<tr>
<th>SECTION OR SCHEDULE IN, OR REGULATION UNDER, THE ACT</th>
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<tr>
<td>a Section 3(4) Document search by the Registrar for purposes of inspection thereof, or furnishing of copies or for the search, per insurer, for documents in respect of a particular financial year, relating to the last ten preceding financial years, for the purposes of inspection thereof or furnishing of copies</td>
<td></td>
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</tr>
<tr>
<td>b Section 3(4) Furnishing of a photostatic copy of a return contemplated in section 35, excluding those returns to be submitted in terms of the Companies Act, 1973</td>
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<td>c Section 3(4) Furnishing of a return contemplated in section 35, in electronic format, for a particular financial year, excluding those returns to be submitted in terms of the Companies Act, 1973</td>
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<td>f Section 4(1) Application for extension of time</td>
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<td>g Section 4(7)(b) Application for the determination that a policy or policies shall form part of a different class of policies</td>
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<td>h Section 5 A copy of the Annual Report of the Registrar of Short-term Insurance. in Printed or electronic format</td>
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<td></td>
<td>201-00</td>
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<tr>
<td>j Section 8(2)(d) Application for approval to render services in relation to a short-term policy</td>
<td></td>
<td>604-00</td>
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<tr>
<td>k Section 9(1) excluding an application which is referred to in</td>
<td></td>
<td>18 317-00</td>
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<tr>
<td>l</td>
<td>Section 9(2)(b)</td>
<td>Registration as a short-term insurer, excluding the registration of an existing insurer referred to in section 67(3)</td>
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<td>m</td>
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<td>Application for variation of conditions of registration, excluding those variations referred to in sections 12 and 13</td>
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<td>q</td>
<td>Section 22(4))</td>
<td>Application for exemption from appointing an audit committee</td>
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<td>r</td>
<td>Any one of section 23(a)(i), (ii), (iii), (iv), (VI, (vi), (vii) and (viii)</td>
<td>Application for approval</td>
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<td>s</td>
<td>Section 23(a)(ix)</td>
<td>Application for approval to allow a subsidiary of a short-term insurer to acquire directly or indirectly shares in that short-term insurer</td>
</tr>
<tr>
<td>t</td>
<td>Section 24( 1 )</td>
<td>Application for approval to allot or issue any of the shares of a short-term insurer to, or register any of the shares of a short-term insurer in the name of, a person other than the intended beneficial shareholder, or to register transfer of any of the shares of a short-term insurer to a person other than the intended beneficial shareholder</td>
</tr>
<tr>
<td>u</td>
<td>Section 25</td>
<td>Application for approval to acquire or hold shares or any other interest in a short-term insurer</td>
</tr>
<tr>
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</table>
Prescribed Fees

1) The fees in the Table apply in respect of each section or schedule in, or regulation under,

Schedule

1) In this Schedule, unless the context otherwise indicates,:  
"Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998),  
"regulations" means the Regulations made under the Act,  
"schedule" means a Schedule of the Act,  
"section" means a section of the Act,  
and any word or expression to which a meaning has been assigned in the Act has the  
meaning so assigned to it.

2) The fees in the Table apply in respect of each section or schedule in, or regulation under,

Payment of fees

3) The payment of a fee referred to in this Schedule by a person to the Financial Services Board may be in cash or by means of a cheque or money transfer (in which case proof of the transfer must be provided).

4) The fees referred to in this Schedule are inclusive of Value-Added Tax.

Short title

5) This Notice is called the Notice on Prescribed Short-term Insurance Fees, 2004.

Notice of Prescribed Fees, 2005

Board Notice 104 of 2005

Financial Services Board

I, Robert James Gourlay Barrow, Registrar of Short-term Insurance, hereby under sections 3(2)(b)(i) and 3(4) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), prescribe the fees set out in the Schedule.


RJG Barrow  
Registrar of Short-term Insurance

Definitions

1) In this Schedule, unless the context otherwise indicates,:  
"Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998),  
"regulations" means the Regulations made under the Act,  
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meaning so assigned to it.

2) The fees in the Table apply in respect of each section or schedule in, or regulation under,
the Act and item indicated opposite thereto.

<table>
<thead>
<tr>
<th>SECTION OR SCHEDULE IN, OR REGULATION UNDER, THE ACT</th>
<th>ITEM</th>
<th>RAND</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Section 3(4)</td>
<td>Document search by the Registrar for purposes of inspection thereof, or furnishing of copies or for the search, per insurer, for documents in respect of a particular financial year, relating to the last ten preceding financial years, for the purposes of inspection thereof or furnishing of copies</td>
<td>37.00</td>
</tr>
<tr>
<td>b Section 3(4)</td>
<td>Furnishing of a photostatic copy of a return contemplated in section 35, excluding those returns to be submitted in terms of the Companies Act, 1973</td>
<td>196.00</td>
</tr>
<tr>
<td>c Section 3(4)</td>
<td>Furnishing of a return contemplated in section 35, in electronic format, for a particular financial year, excluding those returns to be submitted in terms of the Companies Act, 1973</td>
<td>149.00</td>
</tr>
<tr>
<td>d Section 3(4)</td>
<td>Furnishing of a copy of, or extract from, any document per sheet thereof</td>
<td>3.00</td>
</tr>
<tr>
<td>e Section 3(5)</td>
<td>Certification of a document</td>
<td>176.00</td>
</tr>
<tr>
<td>f Section 4(1)</td>
<td>Application for extension of time</td>
<td>661.00</td>
</tr>
<tr>
<td>g Section 4(7)(b)</td>
<td>Application for the determination that a policy or policies shall form part of a different class of policies</td>
<td>4,724.00</td>
</tr>
<tr>
<td>h Section 5</td>
<td>A copy of the Annual Report of the Registrar of Short-term Insurance. in Printed or electronic format</td>
<td>83.00</td>
</tr>
<tr>
<td>i Section 8(1)(a)</td>
<td>Application for approval of the use of the words &quot;insure&quot;, &quot;assure&quot;, &quot;underwrite&quot; or any derivative thereof in the name or description of a business or an undertaking</td>
<td>176.00</td>
</tr>
<tr>
<td>j Section 8(2)(d)</td>
<td>Application for approval to render services in relation to a short-term policy</td>
<td>530.00</td>
</tr>
<tr>
<td>k Section 9(1)</td>
<td>excluding an application which is referred to in section 67(2)</td>
<td>16,068.00</td>
</tr>
<tr>
<td>l Section 9(2)(b)</td>
<td>Registration as a short-term insurer, excluding the registration of an existing</td>
<td>11,455.00</td>
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<td><strong>m</strong></td>
<td>Section 11(l)(a)</td>
<td>Application for variation of conditions of registration, excluding those variations referred to in sections 12 and 13</td>
</tr>
<tr>
<td><strong>n</strong></td>
<td>Section 17(a)</td>
<td>Application for approval of a change in the financial year of a short-term insurer</td>
</tr>
<tr>
<td><strong>o</strong></td>
<td>Section 17(b)</td>
<td>Application for approval of a change of name, or a translation, shortened form or derivative thereof, of a short-term insurer</td>
</tr>
<tr>
<td><strong>p</strong></td>
<td>Any one of sections 19 and 57(5)</td>
<td>Application for any one approval of an auditor</td>
</tr>
<tr>
<td><strong>q</strong></td>
<td>Section 22(4)</td>
<td>Application for exemption from appointing an audit committee</td>
</tr>
<tr>
<td><strong>r</strong></td>
<td>Any one of section 23(a)(i), (ii), (iii), (iv), (vi), (vi), (vii) and (viii)</td>
<td>Application for approval</td>
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<td><strong>s</strong></td>
<td>Section 23(a)(ix)</td>
<td>Application for approval to allow a subsidiary of a short-term insurer to acquire directly or indirectly shares in that short-term insurer</td>
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<td><strong>t</strong></td>
<td>Section 24(1)</td>
<td>Application for approval to allot or issue any of the shares of a short-term insurer to, or register any of the shares of a short-term insurer in the name of, a person other than the intended beneficial shareholder, or to register transfer of any of the shares of a short-term insurer to a person other than the intended beneficial shareholder</td>
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<tr>
<td>Code</td>
<td>Section/Paragraph</td>
<td>Description</td>
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Prescribed Fees

| contemplated in any other subparagraph above | consultation with the applicant, being a minimum of 500.00 and a maximum of 25,000.00 |

Payment of fees

3) The payment of a fee referred to in this Schedule by a person to the Financial Services Board may be in cash or by means of a cheque or a money transfer (in which case proof of the transfer must be provided).

4) Fees imposed in the past on financial institutions by the Financial Services Board were all inclusive of Value-added Tax (VAT). By virtue of certain national legislative changes the Financial Services Board became no longer liable to register for VAT, reaching thereby the same legal status as other public authorities such as State Departments. As a result fees payable to the Financial Services Board need no longer include any VAT amount.

Short title

5) This Notice is called the Notice on Prescribed Short-term Insurance Fees, 2005.

Notice of Prescribed Fees, 27 of 2010
Prescribed requirements for calculation of value of assets,

I, Dube Phineas Tshidi, Registrar of Short-term Insurance, hereby prescribe, under paragraph 2 of Part I of Schedule 2 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), the requirements for the calculation of the value of the assets, liabilities and capital adequacy requirement of short-term insurers, as set out in the Schedule hereto.

This Board Notice will come into effect on 28 February 2010.

DP TSHIDI,
Registrar of Short-term Insurance
1. Definitions

(Paragraph 2 of Schedule 2 of the Short-term Insurance Act, 1998)

In these Requirements, unless the context indicates otherwise:

"Act"
means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and a word or expression to which a meaning has been given in the Act, has that meaning;

"admissible assets"
means the kinds of assets specified in section 29 of the Act;

"cash-back bonus"
means a benefit specified in the policy document, where the policyholder receives a pre-determined benefit, in relation to the gross premiums received by the insurer, after a specified period of time under specified conditions as specified in the policy document;

"capital requirement"
in relation to a regulated financial institution, means the capital or solvency margin, and will include any additional asset requirements, as the case may be, required for that institution by the regulatory authority concerned;

"cell"
represents an equity participation as shareholder in a different class of shares that is restricted to the results of the insurance business which the shareholder places in an insurer; the results of such business are determined in accordance with an agreement with the participating shareholder; the different class of shares has specified dividend rights-and/or capital risk financing;

"group undertaking"
means a juristic person in which the insurer alone, or with its subsidiaries or holding company, directly holds 20% or more of the shares, if the juristic person is a company, or 20% or more of any other ownership interest, if the juristic person is not a company;

"listed"
means listed on a stock exchange or similar trading facility, which is recognised generally by the international community of institutional investors;

"net asset value"
in relation to a group undertaking, means its net asset value calculated in accordance with paragraph 3.1.10;

"regulated financial institution"
means:

   a) a financial institution as defined in paragraph (a) of the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
b) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

c) an entity that carries on business similar to the business of an entity referred to in paragraphs (a) or (b), which is not regulated by a law that regulates an entity referred to in paragraph (a) or (b), but which is subject to substantially similar regulation outside South Africa;

"return" means the returns prescribed by the Registrar in terms of section 35 of the Act;

"Schedule 2" means Schedule 2 of the Act

2. General requirements

2.1 Except if these Requirements or the Act specifically directs otherwise:
   a) assets must be valued in accordance with financial reporting standards; and
   b) the liabilities of an insurer must be determined in accordance with financial reporting standards.

2.2 Where the insurer applies materiality guidelines in the valuation of its assets or liabilities, they may not be less conservative than the materiality guidelines applied by its external auditors.

3. Valuation of assets

3.1 Value of a group undertaking

3.1.1 The value of a group undertaking must be limited to the percentage of the shareholding or other ownership interest of the insurer in the group undertaking, multiplied by the net asset value of the group undertaking.

3.1.2 If the group undertaking is listed the value in paragraph 3.1.1 may be increased by -
   A multiplied by B
   Where-
   A - equals the difference between the fair value and the net asset value of the group undertaking, provided that A must be taken as nil if the net asset value is larger than the fair value;
   B - equals the lower of 20% or the percentage of the holding by the insurer in the group undertaking.

3.1.3 If a group undertaking is not a regulated financial institution, and its fair value is less than 0,25% of the value of the liabilities of the insurer, it maybe valued at fair
value, notwithstanding paragraph 3.1.1.

3.1.4 If there is more than one group undertaking as contemplated in paragraph 3.1.3, each may be valued at fair value, provided that their combined fair value is not more than 2.5% of the value of the liabilities of the insurer. If their combined fair value is more than 2.5% of the value of the liabilities of the insurer, only so many of them, selected by the insurer, as will have a combined fair value of not more than 2.5% of the value of the liabilities of the insurer, may be valued at fair value. The others must then be valued as required by paragraph 3.1.1.

3.1.5 If an insurer holds shares in its holding company, the value of those shares must for purposes of valuation be limited to the following:
   a) If the holding company is listed - 5% of the value of the liabilities of the insurer.
   b) If the holding company is not listed - nil.

3.1.6 Paragraph 3.1.5 applies also where the insurer, directly, or indirectly through a subsidiary or trust, holds shares in its holding company under a share incentive scheme linked to shares in its holding company.

3.1.7 Paragraph 3.1.5 does not apply where the insurer holds shares in its holding company under a collective investment scheme, an index-based investment scheme or any similar investment scheme that is recognised generally by the international community of institutional investors.

3.1.8 If an insurer has a cell in another licensed insurer, the value of those shares must for the purposes of valuation be limited to the fair value of the admissible assets held in the cell less the sum of the value of its liabilities and its capital requirement as reported by the insurer (that issued the cell) in respect of that cell.

3.1.9 If a negative asset value is reported in paragraph 3.1.8 and the shareholders' agreement stated that the insurer that owns the cell is accountable for losses and/or solvency, a liability must be raised for the fun negative net asset value.

3.1.10 Net asset value of a group undertaking
   3.1.10.1 If the group undertaking is a regulated financial institution
      a) The net asset value of the group undertaking is the value of its assets, less the sum of the value of its liabilities and its capital requirement
      b) These values must be calculated as required by the regulatory authority concerned.
      c) If the group undertaking is a company, and its main business is insurance business, the insurer must, in calculating these values, exclude so much of its capital and reserves as shareholders, other than the insurer, may withdraw in cash when they cease to be shareholders, in terms of the articles of association of, or a contract with, the group undertaking.
   3.1.10.2 In other cases
      a) The net asset value of the group undertaking is the value of its assets, less the value of its liabilities.
      b) If the group undertaking carries on most of its business in South
Africa, these values must be calculated in accordance with financial reporting standards.

c) If the group undertaking carries on most of its business in another country, these values must be calculated in accordance with accounting standards generally accepted in that country.

d) In calculating these values, the following items must be excluded, to the extent that, according to the insurer, they can be ascertained with reasonable effort and are material:

i) an amount that remains unpaid after the expiry of a period of 12 months from the date on which they became due and payable;

ii) an amount representing administrative, organisation or business extension expenses incurred directly or indirectly;

iii) an amount representing goodwill or an item of a similar nature;

iv) an amount representing a prepaid expense or a deferred expense; and

v) an amount representing a holding in a subsidiary of the group undertaking in excess of the net asset value, calculated on the same basis as contemplated in this paragraph 3, of the subsidiary.

4. Valuation of liabilities

4.1 Method of calculating the unearned premium provision (UPP)

4.1.1 In respect of policies, other than reinsurance policies, the minimum amount of the unearned premium provision referred to in section 32(1)(b) of the Act shall, subject to paragraph 3 of Schedule 2, be the amount calculated by means of the formula-

\[(A - B) \times (1 - C/D) + E\]

in which formula-

A - represents the gross premium (excluding VAT) as stipulated in the policy document for the full term of the policy, irrespective of the frequency of the premium payment, under all of the policies concerned for the whole of the period for which each of those policies is operative.

B - represents the sum of the following under all of the policies concerned for the whole of the period for which each of those policies is operative.

a) the total amount of so much of those premiums as has been refunded as a result of the cancellation or variation of the policy; and

b) the total amount payable by the insurer as premiums under approved reinsurance policies in respect of the policies concerned; and

c) the amount of the consideration, payable by the insurer in terms of section 48(1) of the Act to independent intermediaries in respect of the policies concerned, reduced by the total amount of any consideration payable to the
insurer in respect of approved reinsurance policies under which its liabilities in respect of the policies concerned are reinsured: Provided that such reduction shall not exceed an amount equal to the maximum consideration which would have been payable to an independent intermediary in terms of section 48 of the Act had those contracts been policies other than reinsurance policies.

C - represents the number of days in the period from the date of the commencement of the incidence of risk under the policy until the day on which the calculation is made in accordance with this paragraph.

D - represents the total number of days during the whole period for which the risk is covered under the policy.

E - represents the total reserve for any type of cash-back bonus where this reserve is calculated as follows:

a) the percentage cash-back bonus stipulated in the policy document must be reserved for in full in respect of each premium received in respect of which a cash-back bonus will become payable in accordance with the policy document;

b) the reserve can only be released either when:
   i) the liability ceases to exist; or
   ii) the benefit is paid out to the policyholder.

4.1.2 In respect of reinsurance policies, the minimum amount of the unearned premium provision referred to in section 32(1)(b) of the Act shall, subject to paragraph 3 of Schedule 2, be the amount calculated by means of the formula-

\[(A - B) / 2\]

in which formula –

A - represents the gross premium for the full term of the policy, irrespective of the frequency of the premium payment, under all of the policies concerned for the whole of the period for which each of those policies is operative

B - represents the sum of the following under all of the policies concerned for the whole of the period for which each of those policies is operative:

a) the total amount of so much of those premiums as has been refunded as a result of a cancellation or variation of the policy;

b) the total amount payable by the insurer as premiums under approved reinsurance policies in respect of the policies concerned;

c) represents the total amount of consideration payable at the start of the policy by the insurer in respect of those reinsurance policies, subject to a maximum of 30 per cent of the said premiums, reduced by the total amount of any consideration payable to the insurer in respect of approved reinsurance policies under which its liabilities in respect of the policies concerned are reinsured: Provided that such reduction shall not exceed the total amount of consideration paid by the insurer in respect of those policies.

4.1.3 An insurer shall apply to the Registrar to approve any other method than set out in paragraph 4.1.1 or 4.1.2 above and which the Registrar is satisfied places a more
appropriate value on the liabilities concerned, based on the incidence of the risk covered under the policy.

4.1.4 The Registrar may by notice, in a particular case, or in general require an insurer to arrive at another minimum amount of its unearned premium provision by means of a calculation which is different from that set out in paragraph 4.1.1 or 4.1.2 above.

4.2 Method of calculating the outstanding claims reserve (OCR)

4.2.1 The outstanding claims reserve (OCR) is the amount which the insurer estimates will become payable in respect of claims incurred under policies which are reported but not yet fully paid, reduced by the amount which it estimates will be paid in respect of those claims under approved reinsurance policies.

4.3 Method of calculating the incurred but not reported reserve (IBNR)

4.3.1 The minimum amount referred to in section 32(1)(a)(ii) of the Act, shall be an amount equal to 7 per cent or such other percentage or method as the Registrar may approve, or by notice require, in a particular case, or in general, of the total amount of all of the premiums payable to the insurer under policies entered into by it in the period of 12 months preceding the date on which the amount is calculated, reduced by the total amount payable by the insurer as premiums under approved reinsurance policies in respect of the policies concerned.

4.4 Method of calculating the contingency reserve –

4.4.1 An amount equal to 10 per cent of the total amount of all of the premiums payable to the insurer under policies entered into by it in the period of 12 months preceding the date on which the amount is calculated, reduced by the total amount payable by the insurer as premiums under any approved reinsurance policies in respect of the policies concerned; or

4.4.2 At any time during a period, not exceeding three years, as the Registrar may approve, such lesser amount as the Registrar may approve, subject to the conditions the Registrar determines, if the Registrar is satisfied that the insurer concerned -
   a) has incurred claims under policies of such extent and as a result of such extraordinary events that it is reasonable to meet all, or such part as the Registrar may approve, thereof from the contingency reserve; and
   b) will be able to restore the reserve to the amount required in terms of subparagraph 4.4.1 within that approved period.

4.5 Method of calculating the unexpired risk provision

4.5.1 An unexpired risk provision if the insurer incurs an underwriting loss in the conduct of its short-term insurance business as reflected in any prescribed return in terms of this Act, and the insurer, in consultation with its auditor, considers it necessary to defray the possible cost of claims together with the costs to carry on the said business.
5. Calculation of the capital adequacy requirement

5.1 The capital adequacy requirement referred to in section 29 of the Act shall be determined as described in paragraph 5.2 below.

5.2 Calculation of the capital adequacy requirement –

5.2.1 The capital adequacy requirement referred to in section 29(1) shall be an amount equal to the greater of the following amounts:
   A - R5 000 000 or such smaller amount as the Registrar may, in a particular case and for a determined period, approve; or
   B - 15 per cent of the greater of the amount of the premium Income of the insurer after deduction of all premiums payable by it in terms of any reinsurance policies entered into by it in respect of any policies -
      i) during the period of 12 months immediately preceding the day on which the previous financial year ended; or
      ii) during the period of 12 months immediately preceding the day on which the calculation is made;

5.2.2 The capital adequacy requirement referred to in section 29(2) shall be an amount equal to the greater of the following amounts:
   A - R5 000 000 or such smaller amount as the Registrar may, in a particular case and for a determined period, approve; or
   B - 15 percent of the greater of the amount of the premium income of the insurer in respect of the insurance business carried on by it in the Republic after deduction of all premiums payable by it in terms of any reinsurance policies entered into by it in respect of any policies -
      i) during the period of 12 months immediately preceding the day on which the previous financial year ended; or
      ii) during the period of 12 months immediately preceding the day on which the calculation is made.

6. Process for the relaxation of a provision

6.1 The Registrar may relax a provision in these Requirements, for such duration and on such conditions as the Registrar may determine.

6.2 An insurer must apply for such relaxation in writing, in the form and with the supporting information, documents and explanation the Registrar may require.

7. Short title

7.1 This Notice is called the Notice on the Prescribed Requirements for the Calculation of the Value of Assets, Liabilities and Capital Adequacy Requirement of Short-term Insurers,
Notice of Prescribed Fees, 28 of 2010

Prescribed requirements for the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter, as set out in the Schedule hereto.

1) I, Dube Phineas Tshidi, Registrar of Short-term Insurance, hereby prescribe, under paragraph 4 of Schedule 3 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), the requirements for the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter, as set out in the Schedule hereto.

2) This Board Notice will come into effect on 28 February 2010.

D P Tshidi,
Registrar of Short-term Insurance

Prescribed requirements for the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter

(Paragraph 4 of Schedule 3 of the Short term Insurance Act, 1998)

1) The value of the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter is an amount equivalent to -

a) the estimated amount payable by the underwriter in respect of claims which have been incurred under South African short-term insurance policies and reported but not yet paid; less

b) an allowance in respect of reinsurance cover held, which allowance shall be a percentage of the amount contemplated in item (a), calculated by the formula-

\[
A \times \frac{B - A}{100}
\]

in which formula-

A - represents the premium income received by all Lloyd's underwriters under all short-term insurance policies underwritten by them less brokerage and commission; and

B - represents the amount of A less all premiums paid for reinsurance cover held by those underwriters, during, in the case of both A and B, the latest calendar year prior to the calculation as reported in the most recent published Global Results of
Lloyd's available at the time and approved by the Registrar; plus

c) a provision for claims incurred but not yet reported equal to 7% of the total net amount of the premiums under South African short-term insurance policies received by or on behalf of the underwriter at Lloyd's Policy Signing Office during the year ended on the last day of the quarter concerned.

2) For the purpose of item (c) of paragraph (1) "net amount" means the net amount after deduction of the aggregate of-
   a) the same percentage of such total premiums as the percentage contemplated in item (b) of paragraph (1), in respect of reinsurance cover held;
   b) the aggregate of the refunds made by or on behalf of the underwriter during the year in respect of premiums under South African short-term insurance policies;
   c) brokerage and commissions in respect of the premiums concerned; and
   d) any tax payable on the premiums concerned, other than taxes payable on net income.
   Provided that only premiums received and refunds made on or after the date of commencement of section 60 of the Short-term Insurance Act shall be taken into account for that purpose.

3) Short title - this Notice is called the Notice on the Prescribed Requirements for the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter, 2010.

Notice of Prescribed fees, BN 54 OF 2010
Prescribed short-term insurance fees

Board Notice 54 of 2010

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Short-term Insurance, hereby under sections 3(2)(b)(i) and 3(4) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), prescribe the fees set out in the Schedule. Notice 104 of 2005, published in the Gazette on 21 October 2005 will be repealed with effect from 1 May 2010. This Notice will come into operation on 1 May 2010.

DP TSHIDI,
Registrar of Short-term Insurance

Prescribed Short-term Insurance Fees
(Sections 3(2)(b)(i) and 3(4) of the Short-term Insurance Act, 1998)

Definitions

1) In this Schedule, unless the context otherwise indicates:

"Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998),
"regulations" means the Regulations made under the Act,
"schedule" means a Schedule of the Act,
"section" means a section of the Act,
and any word or expression to which a meaning has been assigned in the Act has the
meaning so assigned to it.

2) The fees in the Table apply in respect of each section or schedule in, or regulation under,
the Act and item indicated opposite thereto.

<table>
<thead>
<tr>
<th>SECTION OR SCHEDULE IN, OR REGULATION UNDER, THE ACT</th>
<th>ITEM</th>
<th>FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Section 3(4)</td>
<td>Document search by the Registrar for purposes of inspection thereof, or furnishing of copies or for the search, per insurer, for documents in respect of a particular financial year, relating to the last ten preceding financial years, for the purposes of inspection thereof or furnishing of copies</td>
<td>48.00</td>
</tr>
<tr>
<td>b Section 3(4)</td>
<td>Furnishing of a photostatic copy of a return contemplated in section 35, excluding those returns to be submitted in terms of the Companies Act, 1973</td>
<td>225.00</td>
</tr>
<tr>
<td>c Section 3(4)</td>
<td>Furnishing of a return contemplated in section 35, in electronic format, for a particular financial year, excluding those returns to be submitted in terms of the Companies Act, 1973</td>
<td>194.00</td>
</tr>
<tr>
<td>d Section 3(4)</td>
<td>Furnishing of a copy of, or extract from, any document per sheet thereof</td>
<td>4.00</td>
</tr>
<tr>
<td>e Section 3(5)</td>
<td>Certification of a document</td>
<td>229.00</td>
</tr>
<tr>
<td>f Section 4(1)</td>
<td>Application for extension of time</td>
<td>859.00</td>
</tr>
<tr>
<td>g Section 4(7)(b)</td>
<td>Application for the determination that a policy or policies shall form part of a different class of policies</td>
<td>6,141.00</td>
</tr>
<tr>
<td>h Section 5</td>
<td>A copy of the Annual Report of the Registrar of Short-term Insurance. in Printed or electronic format</td>
<td>108.00</td>
</tr>
<tr>
<td>i Section 8(1)(a)</td>
<td>Application for approval of the use of the words &quot;insure&quot;, &quot;assure&quot;, &quot;underwrite&quot; or any derivative thereof in the name or description of a business or an undertaking</td>
<td>229.00</td>
</tr>
<tr>
<td>Prescribed Fees</td>
<td></td>
<td></td>
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<td>----------------</td>
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</tr>
<tr>
<td><strong>Prescribed Fees</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Section 8(2)(d)</strong></td>
<td>Application for approval to render services in relation to a short-term policy</td>
<td>689.00</td>
</tr>
<tr>
<td><strong>Section 9(1)</strong></td>
<td>excluding an application which is referred to in section 67(2)</td>
<td>20,888.00</td>
</tr>
<tr>
<td><strong>Section 9(2)(b)</strong></td>
<td>Registration as a short-term insurer, excluding the registration of an existing insurer referred to in section 67(3)</td>
<td>14,892.00</td>
</tr>
<tr>
<td><strong>Section 11(1)(a)</strong></td>
<td>Application for variation of conditions of registration, excluding those variations referred to in sections 12 and 13</td>
<td>9,416.00</td>
</tr>
<tr>
<td><strong>Section 17(a)</strong></td>
<td>Application for approval of a change in the financial year of a short-term insurer</td>
<td>1,004.00</td>
</tr>
<tr>
<td><strong>Section 17(b)</strong></td>
<td>Application for approval of a change of name, or a translation, shortened form or derivative thereof, of a short-term insurer</td>
<td>1,075.00</td>
</tr>
<tr>
<td><strong>Any one of sections 19 and 57(5)(a)</strong></td>
<td>Application for any one approval of an auditor</td>
<td>2,042.00</td>
</tr>
<tr>
<td><strong>Any one of sections 19A(4) and 57(5)(b)</strong></td>
<td>Application for approval of any one of the statutory actuary and alternate statutory actuary</td>
<td>2,441.00</td>
</tr>
<tr>
<td><strong>Section 22(4))</strong></td>
<td>Application for approval concerning the appointment or composition of an audit committee</td>
<td>1,583.00</td>
</tr>
<tr>
<td><strong>Any one of section 23(a)(i), (ii), (iii), (iv), (v), (vi), (vii) and (viii)</strong></td>
<td>Application for approval</td>
<td>3,602.00</td>
</tr>
<tr>
<td><strong>Section 23(a)(ix)</strong></td>
<td>Application for approval to allow a subsidiary of a short-term insurer to acquire directly or indirectly shares in that short-term insurer</td>
<td>3,892.00</td>
</tr>
<tr>
<td><strong>Section 24(1)</strong></td>
<td>Application for approval to allot or issue any of the shares of a short-term insurer to, or register any of the shares of a short-term insurer in the name of, a person other than the intended beneficial shareholder, or to register transfer of any of the shares of a short-term insurer to a person other than the intended beneficial shareholder</td>
<td>1,583.00</td>
</tr>
<tr>
<td><strong>Section 25</strong></td>
<td>Application for approval to acquire or hold shares or any other interest in a short-term insurer</td>
<td>3,613.00</td>
</tr>
<tr>
<td><strong>Any one of section 30(2) and paragraph 6(3) of schedule 3</strong></td>
<td>Application for approval of an increase of a percentage specified by regulation</td>
<td>2,236.00</td>
</tr>
<tr>
<td><strong>Section 31(b)</strong></td>
<td>Application to hold documentary evidence</td>
<td>1,148.00</td>
</tr>
<tr>
<td>Prescribed Fees</td>
<td>of title to art asset outside the Republic</td>
<td>Application for approval</td>
</tr>
<tr>
<td>----------------</td>
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</tr>
<tr>
<td>y</td>
<td>Any one of section 33(1)(a),(c),(d) and (e)</td>
<td>Application for approval of a person to hold assets on behalf of a short-term insurer</td>
</tr>
<tr>
<td>z</td>
<td>Section 33(1)(b)</td>
<td>Application for approval of an arrangement for the transfer of short-term insurance business</td>
</tr>
<tr>
<td>aa</td>
<td>Section 36(2)</td>
<td>Application for approval of compromise, arrangement, amalgamation or transfer of business</td>
</tr>
<tr>
<td>ab</td>
<td>Section 37</td>
<td>Application for approval with the voluntary winding-up of a short-term insurer</td>
</tr>
<tr>
<td>ac</td>
<td>Section 42(a)</td>
<td>Application for approval of any one of the Lloyd's representative and the deputy representative</td>
</tr>
<tr>
<td>ad</td>
<td>Section 57(2) and (3)</td>
<td>Application for approval of any other financial market in the Republic on which any other derivative instrument is traded</td>
</tr>
<tr>
<td>ae</td>
<td>Paragraph 2(b)(i) of schedule 1</td>
<td>Application for approval of the relevant criteria for a counterparty to an over-the-counter instrument</td>
</tr>
<tr>
<td>af</td>
<td>Paragraph 2(b)(iii) of schedule 1</td>
<td>Application for approval of a body corporate which is not incorporated and registered in the Republic</td>
</tr>
<tr>
<td>ag</td>
<td>Item 20(c) of the Table to schedule 1</td>
<td>Application for approval of a method which is different to the prescribed method in determining the amount of the unearned premium provision</td>
</tr>
<tr>
<td>ah</td>
<td>Paragraph 4.1.3 of the Notice on the Prescribed requirements for the calculation of the value of the assets, liabilities and capital adequacy requirement of short term insurers, 2010, which Notice has been prescribed in terms of paragraph 2 of schedule 2</td>
<td>Application for approval to use a percentage or method which is different to the prescribed percentage or method in calculating the amount of the claims incurred but not reported reserve</td>
</tr>
<tr>
<td>Prescribed Fees</td>
<td>Requirement Description</td>
<td>Application Description</td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>aj</td>
<td>Paragraph 4.4.2 of the Notice on the Prescribed requirements for the calculation of the value of the assets, liabilities and capital adequacy requirement of short term insurers, 2010, which Notice has been prescribed in terms of paragraph 2 of schedule 2</td>
<td>Application for approval to use an amount, which is lesser than the minimum amount, for a period not exceeding three years in calculating the amount of the contingency reserve</td>
</tr>
<tr>
<td>ak</td>
<td>Any one of paragraphs 5.2.1 or 5.2.2 of the Notice on the Prescribed requirements for the calculation of the value of the assets, liabilities and capital adequacy requirement of short term insurers, 2010, which Notice has been prescribed in terms of paragraph 2 of schedule 2</td>
<td>Application for approval of a smaller amount</td>
</tr>
<tr>
<td>al</td>
<td>Paragraph 6 of the Notice on the Prescribed requirements for the calculation of the value of the assets, liabilities and capital adequacy requirement of short term insurers, 2010, which Notice has been prescribed in terms of paragraph 2 of schedule 2</td>
<td>Application for relaxation of a provision other than an application for approval contemplated in subparagraphs (ah) to (ak) above</td>
</tr>
<tr>
<td>am</td>
<td>Paragraph 7(2) of schedule 2</td>
<td>Application for approval for the valuation of any liability i.r.o. a creditor who has waived any right to have the obligation</td>
</tr>
</tbody>
</table>
Prescribed Fees

| an | Application for the special performance by the Registrar of any other act, authorised by the Act, than an act contemplated in any other subparagraph above | A fee determined by the Registrar in every individual case after consultation with the applicant, being a minimum of 500.00 and a maximum of 25,000.00 |

3) The payment of a fee referred to in this Schedule by a person to the Financial Services Board may be in cash or by means of a cheque or a money transfer (in which case proof of the transfer must be provided).

4) The Financial Services Board is listed in Part A - National Public Entities - of Schedule 3 – Other Public Entities - in the Public Finance Management Act, 1999. Public entities generally are not liable to register for value added tax (VAT). The Financial Services Board is not registered as a VAT vendor under the Value-Added Tax Act, 1991. The amounts in this schedule therefore do not include VAT.
Notices
Board Notice 76 of 2006 : Appointment of Members of the Short-Term Insurance Advisory Commi

Board Notice 76 of 2006

Financial Services Board

The Minister of Finance has, in terms of Section 6 of the Insurance Act 1998, appointed the following persons to be members of the Advisory Committee on the Short-term Insurance from 01 August 2005 until 31 July 2008. This excludes the Chairperson whose term of appointment is 01 August 2005 until 30 June 2007.

Mr Robert Barrow (Chairperson)
Mr Mashudu Munyai
Mr Mohamed Akoob
Mr Adam Samie
Ms Isabel Jones
Ms Venete Klein
Ms Tantaswa Kentane
Ms Mamadiga Molala
Mr Jackson Raseroka
Mr Clifford Brooke
Mr Barry Scott
Mr Sipho Sono
Prof Robert Vivian

Ms Hermina Monama of the Financial Services Board will act as a Secretary to the Committee.

Board Notice 80 of 2008 : Returns by Short-term Insurers to Registrar

Board Notice 80 of 2008

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Short-term Insurance, hereby notify, in terms of section 35 of the Short-term Insurance Act, 1998, that every short-term insurer shall furnish the Registrar, -

a) within a period of four months after the expiration of each financial year with an audited return relating to its business;

b) within a period of one month after the expiration of each quarter of its financial year with a return relating to its business; and

c) within a period of six months of the expiration of each financial year, with a copy of its financial statements as defined in section 1(1) of the Companies Act, 1973 (Act no. 61 of 1973).
This Board Notice is applicable to all registered short-term insurers with financial years ending on or after 1 January 2008 and relates to the financial year under review in its entirety.

The returns must be submitted on A4 paper and also electronically.

The returns referred to in paragraphs (a) and (b) above must contain the following information and be submitted in the following form:
1) Annual Statutory Return (Refer Annexure A)
2) Quarterly Return (Refer Annexure B)

Board Notice 60 of 25 May 2007, published in the Government Gazette No. 29894 is hereby repealed.

**DP TSHIDI**
**REGISTRAR OF SHORT-TERM INSURANCE**

* Annexure A and B of this document can be found in Government Gazette No. 31282 dated 5 September 2008.

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**Board Notice 94 of 2007 : Documents which a person may inspect**

Board Notice 94 of 2007

**Financial Services Board**

I, Robert James Gourlay Barrow, Registrar of Short-term Insurance, after consulting with the Advisory Committee on Short-term Insurance, hereby notify that a person may inspect the following documents held by the Registrar of Short-term Insurance under the Act in relation to a short-term insurer or obtain a copy of or extract from any such document:

1) A certificate of registration issued to a short-term insurer in terms of section 9(2)(b) or 11 (2) of the Act;
2) Any approval granted in terms of section 25(1) and 25(2) of the Act for the holding of shares in a short-term insurer;
3) The names of short-term insurers registered in terms of section 9(2) of the Act and any changes to those names, or translations, shortened forms or derivatives thereof approved in terms of section 17(b) of the Act;
4) The addresses of the head offices of short-term insurers and the names of their public officers as contemplated in section 16(1) of the Act;
5) The name of the auditor appointed by a short-term insurer as contemplated in section 19 of the Act;
6) The names of the Lloyd's representative and deputy representative as contemplated in section 57(7) of the Act;
7) The names and addresses of Lloyd's correspondents submitted to the Registrar by the Lloyd's representative in terms of section 58(2) of the Act;
8) Each completed statement identified as being available to the public in the annual returns submitted by short-term insurers in terms of section 35 of the Act, including any duly audited account or balance sheet or any other statement or report relating to the finances of short-term insurers which they are in terms of the Companies Act, 1973 (Act No. 61 of 1973) or any other law under which they are incorporated, required to submit to an annual general meeting of shareholders or policyholders, whether or not these insurers have complied with the requirements of the said Act or such other law;

9) Each completed statement identified as a public statement in the annual return submitted by Lloyd's or the Lloyd's representative in terms of section 58(1) of the Act read with paragraph 7 of Schedule 3 to the Act in respect of the short-term insurance business carried on by Lloyd's in the Republic and in respect of the Lloyd's South African Trust and the Lloyd's South African Transitional Trust.

The above-mentioned documents will only be made available upon payment of the fees prescribed in terms of section 3(2)(b)(i) of the Act.


Notice 386 - Amendment of Board Notice

Notice No. 386
7 April 2009

Financial Services Board


a) substituting Statement B1, Statements E1 and E5 and Statements G4.1, G4.2, G4.3, and G4.4 of the Annual Statutory Return for the Statements set out in the Schedule; and

b) repealing Statements G4.5 and G4.6 of the Annual Statutory Return.

This Notice takes effect on the date of publication thereof and applies to every registered short-term insurer whose financial year ends on or after 1 January 2009, and applies in respect of the full financial year preceding the end of the financial year referred to above.

DP TSHIDI
Registrar of Short-Term Insurance

*The Schedule containing the Forms can be found in Government Gazette No. 32078 dated 7 April 2009.
Notice 295-Amendment of Notices

Notice No. 295
16 April 2010

Financial Services Board


a) substituting Statement A1, Statement A2, Statement B1, Statement B5, Statement D3, Statement F1 and Statement G3 of the Annual Statutory Return for the Statements set out in Annexure A of the Schedule hereto; and

b) substituting the Quarterly Return for the Quarterly Return set out in Annexure B of the Schedule hereto.

This Notice takes effect on the date of publication thereof and applies to every registered short-term insurer whose financial year ends on or after 1 January 2010, and applies in respect of the full financial year preceding the end of the financial year referred to above.

DP TSHIDI
Registrar of Short-term Insurance

*The Schedule containing the Forms can be found in Government Gazette No. 33113 dated 16 April 2009.

Board Notice 188 of 2011 : Pre-application assessment fees
Internal Model Application Process : Pre-Application Assessment Fees

Board Notice 188 of 2011

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Long-term Insurance and Short-term Insurance, hereby prescribe the fees for the pre-application assessment of internal models as set out in the Schedule.

This Notice comes into operation on 25 November 2011.

DP TSHIDI,
Registrar of Long-term Insurance and Short-term Insurance
1. Definitions

In this Schedule any word or expression to which a meaning has been assigned in the Long-term Insurance Act, 1998 or the Short-term Insurance Act, 1998, respectively, has the meaning so assigned to it, unless the context otherwise indicates, and -

"extended review" means a more detailed review of an element of the full or partial internal model of an insurer subsequent to a standard review, if the Registrar determines that such a review is necessary taking into account amongst others, the materiality or complexity of a risk or risks, or the potential risk from the use of an inappropriate internal model;

"intensive review" means an in depth and comprehensive review of an element of the full or partial internal model of an insurer subsequent to a standard review, if the Registrar determines that such a review is necessary taking into account amongst others, the materiality or complexity of a risk or risks, or the potential risk from the use of an inappropriate internal model;

"pre-application assessment" means the standard, and where required, the extended or intensive review of the full or partial internal model of an insurer to determine if that insurer qualifies for submitting an application for the use of a full or partial internal model for the calculation of the solvency capital requirement; and

"standard review" means a review of all the elements of the full or partial internal model of an insurer, which review constitutes a basic, typical or complex review as determined by the Registrar taking into account, amongst others, the size of the insurer, the risks and legal entities addressed by the internal model, the classes of insurance business conducted by the insurer and the type of internal model.

2. Fees

2.1) The following fees are payable in respect of a pre-application assessment:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>FEE (RAND)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STANDARD REVIEW</strong></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>800,000</td>
</tr>
<tr>
<td>Typical</td>
<td>1,400,000</td>
</tr>
<tr>
<td>Complex</td>
<td>2,600,000</td>
</tr>
<tr>
<td><strong>EXTENDED REVIEW</strong></td>
<td>Between R400 000 and R1 400 000</td>
</tr>
<tr>
<td><strong>INTENSIVE REVIEW</strong></td>
<td>Between R700 000 and</td>
</tr>
</tbody>
</table>
2.2) The standard review fee is payable by an insurer that participates in the pre-application assessment.

2.3) The extended review or intensive review fee is payable by an insurer in addition to the standard review fee and in respect of each element of the full or partial model of the insurer that is subjected to an extended review or intensive review.

2.4) The exact fee payable in respect of an extended review or intensive review will be determined by the Registrar taking into account the complexity of the element to be reviewed.

3. Payment of fees

3.1) The standard review fee is payable in two equal instalments. The first instalment is due on 10 June or 28 October, whichever date is the first date following the date on which the Registrar notified the insurer that the undertaking qualifies to take part in the pre-application assessment. The second installment is due six months later.

3.2) The extended review fee or intensive review fee is payable within 60 days of the date on which the Registrar notified the insurer that such a review is necessary.

3.3) The fees are payable to the Financial Services Board and payment may be by means of a cheque or a money transfer (in which case proof of the transfer must be provided).

3.4) The Financial Services Board, a public entity listed in Schedule 3A of the Public Finance Management Act No.1 of 1999, is not liable for value added tax and is not registered as a VAT vendor under the Value-Added Tax Act No. 89 of 1991. The amounts in this schedule therefore do not include VAT.
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