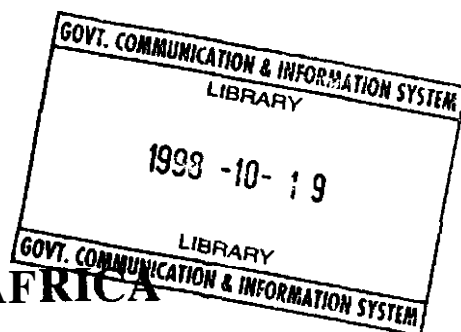




REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1191.

23 September 1998

No. 1191.

23 September 1998

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

Hierby word bekend gemaak dat die Waarnemende President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 53 of 1998: Short-term insurance Act, 1998.

No. 53 van 1998: Korttermynversekeringswet, 1998.

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

ACT

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:—

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1. (I) [In this Act, unless the context otherwise indicates—
 (i) "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— 40
 (a) disability event;

- (b) health event; or
 (c) death event.
 contemplated in the contract as a risk, occurs, but excluding any contract—
 (d) of which the contemplated policy benefits—
- (i) are something other than a stated sum of money; 5
 - (ii) are to be provided upon a person having incurred, and to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and
 - (iii) are to be provided to any provider of a health service in return for the provision of such service; or 0
- (e) (i) of which the policyholder is a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967);
 (ii) which relates to a particular member of the scheme or to the beneficiaries of such member; and
 (iii) which is entered into by the scheme to fund in whole or in part its liability to such member or beneficiaries in terms of its rules; 5
 and includes a reinsurance policy in respect of such a policy; (xxxiv)
- (ii) “Advisory Committee” means the Advisory Committee on Short-term Insurance established by section 6; (ii)
- (iii) “approved reinsurance policy” means any proportional short-term 20 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 25 reinsurance policy are to be provided in the Republic;
 - (b) an insurer by virtue of section 2 of the Export Credit and Foreign Investments Re-insurance Act, 1957 (Act No. 78 of 1957);
 - (c) Lloyd’s underwriters in accordance with Part VIII; or
 - (d) an insurer under a reinsurance policy in terms of which the reinsurer 30 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 35 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; (xii)
- (iv) “auditor” means an auditor registered in terms of the Public Accountants’ and 40 Auditors’ Act, 1991 (Act No. 80 of 1991), and appointed in terms of section 19(1) or 20(1) of this Act; (xxxvi)
- (v) “bank” means a bank registered otherwise than provisionally in terms of the Banks Act, 1990 (Act No. 24 of 1990); (iii)
- (vi) “Board” means the Financial Services Board established by section 2 of the 45 Financial Services Board Act; (xlili)
- (vii) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (xxviii)
- (viii) “company” means a company incorporated in accordance with, and 50 registered under, the Companies Act, or deemed to have been so incorporated and registered; (xxvii)
- (ix) “Court” means the High Court of South Africa; (xiv)
- (x) “death event” means the event of the life of a person or an unborn having 55 ended; (vi)

- (xi) “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; (v)
- (xii) “disability event” means the event of the functional ability of the mind or body of a person or an unborn becoming impaired; (xxxiii) 5
- (xiii) “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; 10
 (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; (xvi)
- (xiv) “Financial Services Board Act” means the Financial Services Board Act, 1990 (Act No. 97 of 1990); (ii) 15
- (xv) “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; (ix) 20
- (xvi) “health event” means an event relating to the health of the mind or body of a person or an unborn; (xi)
- (xvii) “holding company” means a holding company as defined in section 1 of the Companies Act; (xv) 25
- (xviii) “independent intermediary” means a person, other than a representative, who renders services as intermediary and includes a Lloyd’s correspondent; (xxxi)
- (xix) “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 **include**s a **reinsurance** policy in respect of such a policy; (i) 30
- (xx) “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; (xxii) 35
- (xxi) “Lloyd’s broker” means a person permitted by the Lloyd’s Council to perform acts as a broker at Lloyd’s; (xxiv)
- (xxii) “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; (xxiii) 40
- (xxiii) “Lloyd’s representative” means the person referred to in section 57; (xxvi)
- (xxiv) “Lloyd’s underwriter” means an underwriting member of Lloyd’s; (xxv)
- (xxv) “long-term insurer” means a person **registered** or deemed to be registered as a long-term insurer under the Long-term Insurance Act, 1998; (xxi) 45
- (xxvi) “managing executive” means the chief executive officer of a short-term insurer or a manager of that short-term insurer who reports directly to that chief executive officer; (xlvii)
- (xxvii) “Minister” means the Minister of Finance or any other Minister to whom the administration of this Act may be assigned from time to time; (xxix) 50
- (xxviii) “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; (x) 55

- (xxix) “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; (xxx) 5
- (xxx) “personal lines business” means short-term insurance business in respect of which the policyholder is a natural person; (xxxix)
- (xxxix) “policy benefits” means one or more sums of money, other than an annuity, or services or other benefits; (xii)
- (xxxixii) “policyholder” means the person entitled to be provided with the policy benefits under a short-term policy; (xxxviii) 10
- (xxxixiii) “premium” means the consideration given or to be given in return for an undertaking to provide policy benefits; (xl)
- (xxxixiv) “prescribe” means to determine from time to time by notice in the *Gazette*; (l)
- (xxXv) “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; (vii) 15 20
- (xxxixvi) “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; (xii)
- (xxxixvii) “Public Accountants’ and Auditors’ Act” means the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); (li) 25
- (xxXviii) “public company” means a company with a share capital which is a public company under the Companies Act; (xiii)
- (xxxixix) “Registrar” means the Registrar of Short-term Insurance referred to in section 2(l); (xliv)
- (xl) “regulation” means a regulation under section 70; (xIv) 30
- (xli) “repealed Act” means the Insurance Act, 1943 (Act No. 27 of 1943); (xiii)
- (xlii) “representative” means a person employed—
- (a) by or working for a short-term insurer and receiving or entitled to receive remuneration: and
- (b) for the purpose of rendering services as intermediary in relation to short-term policies entered into or to be entered into by the short-term insurer only; (xlviii) 35
- (xliiii) “risk” means a possibility that a particular event may occur during the period for which a short-term policy is operative; (xIvi)
- (xliiv) “services as intermediary” means any act performed by a person— 40
- (a) the result of which is that another person will or does or offers to enter into, vary or renew a short-term policy; or
- (b) with a view to—
- (i) maintaining, servicing or otherwise dealing with;
- (ii) collecting or accounting for premiums payable under; or 45
- (iii) receiving, submitting or processing claims under, a short-term policy; (iv)
- (xIv) “short-term insurance business” means the business of providing or undertaking to provide policy benefits under short-term policies; (xx)
- (xlvI) “short-term insurer” means a person registered or deemed to be registered as a short-term insurer under this Act; (xix) 50
- (xlvii) “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; (xviii) 55
- (xlviii) “short-term reinsurance policy” means a reinsurance policy in respect of a short-term policy; (xvii)
- (xlix) “subsidiary” means a company which, in terms of section I(3) of the Companies Act, is deemed to be a subsidiary company; (viii) 60
- (l) “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; (xxxv)

- (li) “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; (xlix) 5
- (lii) “unborn” means a human foetus conceived but not born. (xxxii)
- (2) For the purposes of entering into a short-term policy the life of an unborn shall be deemed to begin at conception. 10

Part I

Administration of Act

Registrar of Short-term Insurance

2. (1) There shall be a Registrar of Short-term Insurance with the powers and duties conferred on or assigned to the Registrar by or under this Act or any other law. 15
- (2) The executive officer of the Board shall be the Registrar.
- (3) The powers and duties of the Registrar may be exercised and shall be carried out—
- (a) personally by the Registrar;
 - (b) by another member of the executive of the Board authorised thereto by the Registrar or, in the Registrar’s absence for any reason, the Board; or 20
 - (c) by any person who has been appointed by the Board for that purpose and who has been authorised to do so under his or her control by the Registrar, or by the member referred to in paragraph (b), to the extent and subject to the conditions determined, either generally or in any particular case, in that authorisation.
- (4) Any decision or action taken by a person referred to in subsection (3)(b) or (c) in the exercise of any power or carrying out of any duty of the Registrar shall, for the purposes of this Act or any other law, be deemed to have been taken by the Registrar. 25

General provisions concerning Registrar

- 3.(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. 30
- (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 35
 - (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. 40
- (4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, after consultation with the Advisory Committee, which are held by the Registrar under this Act in relation to a short-term insurer, Lloyd’s or an intermediary, or obtain a copy of or extract from any such document. 45
- (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. 50

Special provisions concerning Registrar and his or her powers

4. (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. 5

(3) If any advertisement, brochure or similar document which relates to the business of a short-term insurer, or to a short-term policy, and which is being, or is to be, published by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Registrar may by notice direct that person not to publish it or to cease publishing it or to effect the changes to it which the Registrar deems fit. 10

(4) If the Registrar has reason to believe that a person is contravening or failing to comply with a provision of this Act, the Registrar may by notice direct that person or any other person to—

(a) furnish the Registrar within a specified period with any specified information or documents in the possession or under the control of that person which relate to the matter; 15

(b) appear before the Registrar at a specified time and place in connection with the matter.

(5) (a) If a person contravened or is contravening section 7(1)(a) of this Act, the Registrar may— 20

(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— 25

(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 30

(old) 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 35

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

(6) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions thereof relating to jurisdiction, procedure and evidence in relation to a Court, the Registrar shall have a right of appearance to institute and conduct any proceedings in a Court if it is reasonably necessary— 40

(a) to discharge any duty or responsibility assigned to the Registrar by this Act;

(b) to compel any person to comply with or to cease contravening this Act;

(c) to compel any person to comply with a lawful request, directive or instruction made, issued or given by the Registrar under this Act; 45

(d) to obtain a declaratory order on any point of law relating to this Act or to short-term insurance business generally; or

(e) in connection with any matter relating to short-term insurance business generally where the Registrar considers it to be in the public interest, 50

subject to such additional procedural requirements as the Court may order in each case so as to ensure fair and equitable judicial process.

(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, 1997, 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, 1997, 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.

Annual report

5. (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.

Advisory Committee on Short-term Insurance

6. (1) There shall be an Advisory Committee on Short-term Insurance which may on its own initiative, or shall at the request of the Minister or Registrar, investigate and report or advise concerning any matter relating to short-term insurance.

(2) The Advisory Committee shall consist of a chairperson and other members, appointed by the Minister after consultation with the Board.

(3) A member of the Advisory Committee shall hold office for the period determined by the Minister when the appointment is made.

(4) A member of the Advisory Committee who is not in the full-time employment of the State or the Board shall be paid the remuneration and allowances in respect of any expenses incurred in the performance of the functions of the Advisory Committee, determined by the Board.

(5) The Advisory Committee may meet or otherwise arrange for the performance of its functions, and may regulate its meetings as it thinks fit, after consultation with the Board.

(6) The expenditure connected with the functions of the Advisory Committee shall be paid out of the funds of the Board, whose approval shall be required for all expenditure proposed to be incurred, or actually incurred, by the Advisory Committee.

(7) The Advisory Committee shall have the powers and carry out the duties conferred on or assigned to it by or under this Act.

Part II

Registration of short-term insurers

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

- 7.(1) No person shall carry on any kind of short-term insurance business, unless that person— 5
- (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. 10
- (2) Subsection (1) shall not apply to—
- (a) a pension fund organization 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; 15
 - (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; 20
 - (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, 1967 (Act No. 25 72 of 1967), if and in so far as it acts in accordance with that Act; 25
 - (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 or special farmers' co-operative formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), if and in so far as it provides, under a scheme or arrangement in terms of its statutes, 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; 30
 - (g) the unemployment insurance fund established by the Unemployment Insurance Act, 1966 (Act No. 30 of 1966), if and in so far as it acts in accordance with that Act; or 35
 - (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. 40
- (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 45
 - (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— 50
 - (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. 55

Prohibition on use of certain words, or performance of certain acts, by certain persons

- 8. (1) No person shall—**
- (a) subject to section 8(1)(u) 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 he, she or it is a short-term insurer or a Lloyd’s underwriter; or 5
- (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. 10
- (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; 15
- (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 20
- (d) such person does so with the approval of the Registrar.
- (3) The Registrar may from time to time by notice in the *Gazette* 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 25
- (b) at any time withdraw or amend any such approval to such extent as may be determined by the Registrar.
- (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*. 30
- (5) An independent intermediary shall not charge, in addition to any remuneration contemplated in section 48, any fee which is payable by a policyholder, unless the amount thereof is disclosed expressly and separately to the policyholder by the intermediary. 35
- (6) No short-term insurer shall change its name without the prior approval of the Registrar.

Application for registration

9. (1) A person who wishes to carry on short-term insurance business shall apply to the Registrar for registration as a short-term insurer. 40
- (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, authorizing that person to carry on the short-term insurance business concerned and specifying the conditions contemplated in paragraph (a). 45
- (3) An application referred to in subsection (1) shall not be granted by the Registrar—
- (a) unless the applicant— 50
- (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; 55

- (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.

Conditions of registration

10. The conditions contemplated in section 9(2)(a) may include conditions—
- (a) authorizing the short-term insurer to enter into only certain short-term policies determined by the Registrar;
 - (b) authorizing the short-term insurer to enter into short-term policies other than certain short-term policies determined by the Registrar;
 - (c) authorizing 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 and articles of association, or equivalent constitution, of the short-term insurer must be suitable to enable it to carry on short-term insurance business; or
 - (h) reasonably necessary to ensure that the short-term insurance business concerned is carried on soundly and in a manner whereby the short-term insurer will be in a position to meet its liabilities,
- and different conditions may be determined in respect of different short-term insurers.

Variation of registration conditions

11. (I) 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 2(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.

Registrar may under certain circumstances prohibit short-term insurers from carrying on business**12. (I) 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) (i) has made a material misrepresentation to members of the public in connection with the short-term insurance business carried on by it;
- (ii) has failed to comply with a material condition subject to which it is registered or deemed to be registered as a short-term insurer; or
- (iii) has contravened or failed to comply with a material provision of this Act, and has thereafter, within a period determined by the Registrar, failed to remedy such conduct to the satisfaction of the Registrar; 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 of section 9(3)(b)(i), (iii) or (iv),

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.

(2) When the Registrar has given notice to a short-term insurer in accordance with subsection (I), and has allowed that insurer at least 30 days 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 II; or
- (c) if it is appropriate and if the Minister has authorised the Registrar in writing to do so, 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.

(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.

Termination of registration

13. (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. 5

(2) The Registrar shall— 10

(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; 15

(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)(c), 20

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 in the *Gazette*, cancel its registration. 25

(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 30

(b) wound up as contemplated in Part VI,

the Registrar shall by notice in the *Gazette* cancel its registration.

Deregistration of short-term insurers as companies

14. For the purposes of section 73(5) of the *Companies Act* in relation to a short-term insurer, the reference to the Registrar of Companies in that section shall be construed as a reference to the Registrar of Companies acting in concurrence with the Registrar. 35

Part III

Business and administration of short-term insurers

Limitation on business

15. (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— 40

(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— 45

(a) a particular short-term insurer; or 50

(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 in the *Gazette*—
- (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 5 case of—
 - (i) a particular short-term insurer, to that short-term insurer; or
 - (ii) short-term insurers generally, in the *Gazette*; and
 - (c) after considering any representations received in respect of the matter. 10
- (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.

Head office and public officer

16. (1) A short-term insurer shall—
- (a) have its head office in the Republic; 15
 - (b) appoint a natural person who is permanently resident in the Republic as its public officer;
 - (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 20 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 may be served at the 25 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.

Financial year and name 30

17. A short-term insurer may not change—
- (a) its financial year; or
 - (b) its name,
- without the approval of the Registrar.

Notification of certain appointments and terminations 35

18. 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, within 30 days after such appointment or termination, together with the reasons for any such termination.

Auditor 40

19. (1) A short-term insurer shall from time to time appoint, and at all times have, one or more auditors.
- (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. 45
- (3) A short-term insurer shall not appoint as its auditor—
- (a) one of its directors; or
 - (b) a person who is not engaged in public practice as an auditor.
- (4) If an auditor of a short-term insurer is a firm (as contemplated in the Public

Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), the last approval of the Registrar for the appointment thereof shall not lapse by reason of a change in the membership of the firm if at least half of the members, after the change, were members 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 20(5)(b) of the Public Accountants' and Auditors' Act, 1991, also furnish a copy thereof to the Registrar; and
- (b) if the auditor's appointment is terminated for any reason-
 - (i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and
 - (ii) if the auditor would, but for that termination, have had reason to submit to the short-term insurer a report contemplated in section 20(5)(a) of the Public Accountants' and Auditors' Act, 1991, submit such a report to the Registrar; and
- (c) inform the Registrar in writing of any matter relating to the affairs of the short-term insurer of which the auditor became aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, may prejudice the insurer's ability to comply with section 28(1) of this Act.

(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) In addition to the duties assigned to the auditor of a short-term insurer by the Act under which that insurer is incorporated or by the Public Accountants' and Auditors' Act, 1991, the auditor shall-

- (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, presents fairly the matters dealt with therein as contemplated in section 20 of the Public Accountants' and Auditors' Act, 1991; and
- (b) carry out the other duties provided in this Act or prescribed by the Minister.

Appointment of auditor by Registrar

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

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

Removal of appointees who are not fit and proper

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

(z) 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 judgment of a lower court.

Audit committee

22. (1) The board of directors of a short-term insurer shall appoint an audit committee of at least three members of whom at least two shall be members of that board.

(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 an audit committee shall, *inter alia*, be—

(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.

(4) If the appointment 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).

Preference shares, debentures, share capital and share warrants

23. A short-term insurer shall not—

(a) without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines—

(i) issue any debentures;

(ii) issue preference shares other than preference shares compulsorily convertible to ordinary shares;

(iii) convert any of its shares into preference shares;

(iv) convert any of its preference shares of a particular class into preference shares of another class;

(v) convert any of its shares, including preference shares, into debentures;

(vi) reduce its share capital in terms of sections 83 and 84 of the Companies Act;

(b) notwithstanding section 10 I of the Companies Act, issue share warrants to bearer as contemplated in that section.

Registration of shares in name of nominee

24. (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 (i) 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 of a unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies; 5
 - (b) to or in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances contemplated in section 103(3) of the Companies Act;
 - (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; 10
 - (d) to or in the name of a person acting as a depository institution by virtue of an authorisation under section 2 of the Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992), or of a company contemplated in section 12(1)(s)(i) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985): Provided that the person or member concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held; 15
 - (e) to or in the name of another person prescribed by the Minister. 20

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

25. (1) Subject to this section, no person shall, without the approval of the Registrar, acquire or hold shares or any other interest in a short-term insurer which results in that person, directly or indirectly, alone or with an associate, exercising control over that short-term insurer. 25

(2) No person shall acquire shares in a short-term insurer if 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 his, her or its associates, 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, without first having obtained the approval of the Registrar. 30

(3) The approval referred to in subsection (2)—

- (a) may be given—
 - (i) subject to the aggregate nominal value of the shares owned by the person concerned and his, her or its, associates not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section; 35
 - (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 40
 - (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 associates, has not already owned shares in the short-term insurer—
 - (i) of the aggregate nominal value; and 45
 - (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— 50

- (a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding with a total nominal value not

- exceeding 25 per cent of the total nominal value of all the issued shares of 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 25 per cent of the voting rights attached to all the issued shares of the short-term insurer. 5
- (5) For the purposes of this section "associate", in relation to—
- (a) a natural person, means—
- (i) his or her spouse;
 - (ii) his or her child, parent, stepchild or stepparent and any spouse of any such person; 10
 - (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; 15
 - (v) a trust controlled or administered by him or her;
- (b) a juristic person—
- (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof; 20
 - (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— 25
 - (a) had it been a company; or
 - (b) 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; 30
 - (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.
- (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 associates— 35
- (a) holds shares in the short-term insurer of which the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;
 - (b) holds shares which entitle such person to exercise 25 per cent or more of the voting rights attached to the issued shares of that short-term insurer; or 40
 - (c) has the power to determine the appointment of 25 per cent or more of the directors of that short-term insurer, including the power—
 - (i) to appoint or remove, without the concurrence of another person, 25 per cent or more of the directors; or
 - (ii) to prevent a person from being appointed as a director without another 45 person's consent.

Furnishing of information concerning shareholders

26. (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. 50

(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 55

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).

Effect of registration of shares contrary to Act

27. (1) No person shall— 5
 (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 allotted or issued to such first-mentioned person or registered in such person's name contrary to this Act. 10
 (2) The validity of a resolution passed by a short-term insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1)(a).
 (3) A dividend referred to in subsection (1)(b) shall be void.

Part IV

Financial arrangements 15

Maintenance of financially sound condition

28. (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 20
 (c) generally conducting its business,
 so as to be in a position to meet its liabilities 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; 25
 (b) it does not have in the Republic assets as required by section 30; or
 (c) it has not made provision for the liabilities referred to in section 32 in accordance with the requirements of that section.
 (3) A short-term insurer which fails to comply with subsection (1) shall, within 30 days after becoming aware of it, notify the Registrar of the failure and furnish the 30 reasons therefor.
 (4) A short-term insurer shall not declare or pay a dividend to its shareholders if, and for as long as, it fails to comply with subsection(1), or if the declaration or payment of the dividend would result in it failing to comply with subsection (1).

Assets 35

29. (1) A short-term insurer shall have assets the aggregate value of which, on any day, is not less than the aggregate of—
 (a) the aggregate value on that day of its liabilities; and
 (b) the additional amount calculated as prescribed by regulation.
 when the values of those assets and liabilities are calculated in accordance with 40 Schedule 2.
 (2) A short-term insurer shall, subject to section 31, have assets in the Republic of the kinds specified in Schedule 1. the aggregate value of which on any day is not less than the aggregate of—
 (a) the aggregate value on that day of those of its liabilities which are to be met in 45 the Republic; and
 (b) the additional amount calculated as prescribed by regulation,
 when the values of those assets and liabilities are calculated in accordance with Schedule 2.

Kinds and spread of assets 50

30. (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 in respect of the particular kinds or categories of assets specified by regulation, when expressed as a percentage of the aggregate value of the liabilities and the additional amount referred to in section 29(2), not exceed the percentage specified by regulation in relation to those kinds or categories of assets. 5

(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 10

(c) subject to such conditions as the Registrar may determine.

Deeming provisions concerning assets

31. 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; 15

(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— 20

(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; 25

(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 30

(iii) another insurer and the encumbrance or transfer takes place in terms of a short-term reinsurance policy. 35

Liabilities

32. (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— 40

(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 11 of Schedule 2; 45

(b) an unearned premium provision, being an amount not less than the amount calculated in accordance with Part II of Schedule 2; 50

(c) a contingency reserve, being an amount not less than the amount calculated in accordance with Part II of Schedule 2;

(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 55

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.

(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), (b) and (c), to an amount exceeding the amount of the security referred to in that paragraph. 5

Prohibitions concerning assets and certain liabilities 10

33. (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, 15

without the approval of the Registrar, given generally or in a particular case, and subject to such conditions as the Registrar may determine. 20

(2) A short-term insurer shall not invest in derivatives other than—

- (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 in terms of section 29; 25
- (b) for the purpose of reducing investment risk or for efficient portfolio management; and
- (c) in such a manner that the short-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches its obligations under that instrument and from which it can discharge those obligations. 30

Failure to maintain financially sound condition

34. (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— 35

- (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— 40

- (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 45
- (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). 50

Returns to Registrar

35. (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 5
- (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, 10
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.

Part V 15**Compromise, arrangement, amalgamation and transfer****Approval of Registrar required for compromise, arrangement, amalgamation or transfer**

36. (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 compromise, arrangement or amalgamation contemplated in Chapter XII of the Companies Act is effected, shall have legal force without the approval of the Registrar. 20

(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. 30

Application to Registrar

37. When application is made to the Registrar for the approval of a transaction referred to in section 36— 35

- (a) the parties to the transaction shall jointly—
 - (i) at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction;
 - (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 newspapers as the Registrar may determine; 40
 - (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)(ii), submit to the Registrar such representations concerning the transaction as are relevant to his, her or its interests; 45
- (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: and 50

- (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 he or she may require;
- (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. 5

Conditions of approval

38. Notwithstanding the provisions of the Companies Act, the approval of the Registrar of a transaction referred to in section 36(1) shall not be **granted**— 10
- (a) unless the provisions of this Part have been complied with;
- (b) if the transaction is inconsistent with this Act 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. 15

Approved transaction, and certain exemptions

39. (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. 20
- (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: 25
- (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. 30
- (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— 35
- (i) a transfer of business compelled by law; or
- (ii) the initiative or at the direction of the Registrar under section 34.

Part VI 40

Judicial management and winding-up of short-term insurers

Judicial management

40. (1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, Chapter XV of the Companies Act shall, subject to this section and with the necessary **changes**, apply in relation to the judicial management of a short-term insurer whether or not it is a company, and in such application the Registrar shall be deemed to be a person authorised by section 346 of the Companies Act to make an application to the Court for the winding-up thereof. 45
- (2) The Registrar may make an application under section 427(2) of the Companies Act for a judicial management order in respect of a **short-term** insurer, if he or she is satisfied, whether as contemplated in section 12(3) or 4(2) of this Act otherwise, that it is in the interests of the policyholders of that short-term insurer or Lloyd's underwriters to do so. 50

- (3) In the application of Chapter XV of 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 or to meet its obligations shall be construed as relating also to its inability to comply with the requirements prescribed by section 28(1) of this Act; 5
 - (b) in addition to any question which relates to the nature of a short-term insurer as a successful concern, there shall be considered also the question whether any course of action is in the interest of its policyholders; and
 - (c) in the following sections of the Companies Act, namely—
 - (i) sections 432(2) and 433(b), the reference to the creditors of a company shall be construed as a reference also to the policyholders of a short-term insurer;
 - (ii) sections 432(2)(e) and 433(d), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar;
 - (iii) sections 428(3), 432(4) and 433(j), the reference to the Master shall be construed as a reference also to the Registrar; and 15
 - (iv) section 433(j), the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act.
- (4) If an application to the Court for the judicial management of a short-term insurer is made by a person other than the Registrar— 20
- (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; 25
 - (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.
- (5) As from the date on which a provisional or final judicial management order is granted in respect of a short-term insurer—
- (a) any reference in this Act to a short-term insurer shall, unless clearly inappropriate, be construed as a reference to the provisional or final judicial manager, as the case may be;
 - (b) the provisional or final judicial manager of a short-term insurer shall not enter into any short-term policies unless he or she has been granted permission to do so by the Court in the provisional or final judicial management order or in a variation thereof. 35

Winding-up by Court

41. (1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, Chapter XIV of 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 by section 346 of the Companies Act to make an application to the Court for the winding-up thereof. 45

(2) The Registrar may, with the written approval of the Minister, make an application under section 346 of the Companies Act for the winding-up of a short-term insurer, if he or she 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 policyholder of that short-term insurer to do so. 50

(3) In the application of Chapter XIV of 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; 55
- (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 that Chapter, there shall be considered whether a person is acting in contravention of section 7(1)(a) of this Act;
- (d) in the following sections of the Companies Act, **namely—** 5
- (i) sections 392, 394(5) and 400, the reference to the Master shall be construed as a reference also to the Registrar;
- (ii) sections 375(5)(a) and 419(1), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar; and 10
- (iii) section 400, the reference to a contravention of any provision of that Act shall be construed as a reference **also** to a contravention of any provision of this Act; and
- (e) section 346(3) of the Companies Act shall not apply where the Registrar makes the application to Court.
- (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—** 15
- (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 20
- (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.

Voluntary winding-up

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42. No special resolution relating to the winding-up of a short-term insurer as contemplated in section 349 of the Companies Act shall be registered in terms of section 200 of 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 30
- (b) if the Registrar, by notice to the short-term insurer, declares that the resolution is contrary to this Act. 35

Part VII

Business practice, policies and policyholder protection

Business practice

Free choice in certain circumstances

43. (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— 45
- (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—** 50
- (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
- (c) 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.

Prohibition on inducements

44. 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.

Collection of premiums by intermediaries

45. 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:

-Receipt for premium paid in cash

46. (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.

Copy of policy and inspection of policy records

47. (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, against payment of a fee not exceeding that which may be prescribed by the Registrar, to be provided, upon request, with a copy of the policy, 15

Intermediaries: remuneration and binder agreements

48. (1) No consideration shall be offered or provided by a short-term insurer or a Lloyd's broker or a representative of such insurer or broker or any person on behalf of such insurer or broker or accepted by any independent intermediary, other than someone who has entered into an agreement contemplated in subsection (2), for rendering services as intermediary, and otherwise than in accordance with the regulations. 20

(2) A short-term insurer or a Lloyd's underwriter shall not authorise an independent intermediary to enter into a short-term policy, other than a short-term reinsurance policy, on their behalf, otherwise than in terms of an agreement which has been entered into between that short-term insurer or Lloyd's underwriter and independent intermediary, or renewed, in writing, and which contains, in addition to any other terms and conditions, a term— 25

(a) setting out the kinds of short-term policies which may so be entered into, the premiums or the basis for the calculation of premiums to be charged in terms of those short-term policies, the wording of those policies and the maximum value of the policy benefits which may be undertaken to be provided under each such kind of short-term policy; 30

(b) if such intermediary is empowered to settle or pay claims under any such short-term policies, setting out the scope of the intermediary's powers to do so and the circumstances under which it may be done; 35

(c) if such intermediary is by virtue of such agreement entitled to any remuneration other than by way of commission only, setting out the basis on which the intermediary is remunerated for services rendered in terms of such agreement;

(d) requiring that such intermediary shall, prior to entering into a short-term policy on behalf of the short-term insurer or Lloyd's underwriter concerned, disclose to the prospective policyholder the name of the short-term insurer or Lloyd's underwriter and the fact that the intermediary is acting in terms of the agreement, 40

and a short-term insurer shall not enter into such an agreement by which an independent intermediary is entitled to any remuneration other than by way of commission only in relation to any particular kind of short-term policy, with more than one such independent intermediary. 45

(3) An independent intermediary who is by virtue of an agreement referred to in subsection (2), entitled to any remuneration other than by way of commission only, shall not— 50

(a) enter into any kind of short-term policy other than the kind to which such agreement relates;

(b) enter into any short-term policy in relation to which another independent intermediary— 55

(i) who holds, directly or indirectly, shares or any other interest in the former;

- (ii) in which, or in the business of which, the former holds, directly or indirectly, shares or any other interest;
- (iii) who is the former's debtor or creditor;
- (iv) who is related within the second degree of consanguinity or affinity to the former,

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- render services as intermediary; or
- (c) enter into a short-term policy in respect of which such intermediary received an application from any person other than a short-term insurer or a Lloyd's underwriter or an independent intermediary.

(4) Notwithstanding the failure of an independent intermediary referred to in subsection (2) to act in accordance with the agreement in relation to that kind of short-term policy, the short-term insurer or Lloyd's underwriter concerned shall be liable under a short-term policy entered into or issued or purporting to have been entered into or issued on their behalf by such intermediary.

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Undesirable business practice

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49. (1) Notwithstanding anything to the contrary in any law contained, the Registrar may, after consultation with the Advisory Committee and in concurrence with the Minister, by notice in the *Gazette* declare a particular business practice to be undesirable for—

- (a) all or a particular category of short-term insurers; or
- (b) all or a particular category of persons who render services in respect of short-term policies.

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(2) The Minister shall not concur with a declaration referred to in subsection (1) unless the Registrar has, at least 30 days before that concurrence is requested, by notice in the *Gazette* published his or her intention to make the declaration and invited interested persons thereby to make written representations concerning the intended declaration so as to reach him or her within 21 days after the date of publication of that notice.

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(3) If the Registrar is satisfied that a short-term insurer or a person rendering services in respect of short-term policies is carrying on a business practice which may become the subject of a declaration under this section, he or she may, in concurrence with the Minister, by notice direct that short-term insurer or person to suspend that particular business practice for such period, not exceeding three months, as he or she deems necessary to enable the matter to be dealt with in accordance with subsection (1).

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(4) A short-term insurer or other person shall not, on or after the date of a notice referred to in subsection (1), or of a directive referred to in subsection (3), carry on the business practice concerned.

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(5) The Registrar may, by notice, direct a short-term insurer or other person who, on or after the date of a notice referred to in subsection (1), or a directive referred to in subsection (3), carries on the business practice concerned, to rectify, to the satisfaction of the Registrar, anything which was caused by or arose out of that carrying on of the business practice concerned.

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(6) A short-term insurer or other person who is, under subsection (5), directed to rectify anything, shall do so within 60 days after he, she or it is so directed.

Policies

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

50. 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—

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- (a) of that unborn, or of that minor before he or she attains the age of six years, R 10 000; 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. 5

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

51. 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; 10
- (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 15
- (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, 20
- shall be void.

Short-term policies entered into by certain minors

52. 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. 30

Misrepresentation

53. (1) Notwithstanding anything to the contrary in a short-term policy contained, whether entered into before or after the commencement of this Act, but subject to subsection (2)—
- (a) the policy shall not be invalidated; 35
- (b) the obligation of the short-term insurer thereunder shall not be excluded or limited; and
- (c) the obligations of the policyholder shall not be increased, on account of any representation made to the insurer which is not true, whether or not the representation has been warranted to be true, unless that representation 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. 40
- (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. 50

Validity of contracts

54. (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, 5 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 in the *Gazette*, may cancel the short-term policy, 10 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.

(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 15 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 20 deemed to be payment to the short-term insurer under that short-term policy.

Policyholder protection

Protection of policyholders

55. (1) The Advisory Committee, or the Registrar after consultation with the Advisory Committee, may—

- (a) propose rules aiming to ensure that policies are entered into, executed and 25 enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;
- (b) propose the variation or rescission of any such rule; and
- (c) propose the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette* in terms of subsection 30 (5).

(2) Without derogating from the generality of subsection (1)(a), a rule may provide that—

- (a) provisions with a particular import may not appear in a policy and that they 35 shall be void if they do so appear;
- (b) 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) 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 40 does that;
- (d) different arrangements shall apply in relation to different kinds of short-term policies; and
- (e) 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. 45

(3) The Registrar shall publish in the *Gazette* a rule, variation or rescission proposed in terms of subsection (1), together with—

- (a) a notice of intention to promulgate the rule, variation or rescission; and
- (b) an invitation to all interested persons to make written representations in 50 relation to the matter so as to reach the Registrar within 21 days, or a longer period specified in the notice, after the date of publication of the notice.

(4) The Registrar shall submit to the Minister the proposed rule, variation or rescission and all written representations received accompanied by the Registrar's comments and those of the Advisory Committee thereon and, after consideration

thereof, the Minister may reject, or approve as proposed, or approve in a modified form which the Minister deems fit, the proposed rule, variation or rescission.

(5) If the Minister approves, whether as proposed or in a modified form, a proposed rule, variation or rescission, the Minister shall promulgate it by notice in the *Gazette*, and thereupon it shall be binding on all parties concerned with effect from a date 5 determined by the Minister and specified in the notice.

Part VIII

Provisions relating to Lloyd's

General

56. (1) Subject to this Part, Lloyd's underwriters are authorised to carry on short-term insurance business. 10

(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 15

(b) made any bye-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. 20

(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; 25

"Lloyd's South African Transitional Trust" means the trust by that name contemplated in section 60(2)(u);

"Lloyd's South African Trust" means the trust by that name contemplated in section 60(2)(b); 30

"Lloyd's Trusts" means the Lloyd's South African Transitional Trust and the Lloyd's South African Trust.

Appointment of Lloyd's representative

57. (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. 35

(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. 40

(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. 45

(5) The Lloyd's representative shall comply, with the necessary changes, with section 19(1), (2), (3) and (4) 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— 50

(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.

Returns to Registrar

58. (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.

Claims against Lloyd's underwriters

59. (1) Any claim against any Lloyd's underwriter under a South African short-term insurance policy shall be cognizable 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 judgment, 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.

Security to be furnished by or on behalf of Lloyd's underwriters

60. (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.

Payment of certain claims against Lloyd's underwriters

61. Subject m 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— 5

- (u) the claimant has a final judgment 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 10
- (c) Lloyd's so agrees in the circumstances set out in the trust deed of the Lloyd's Trust concerned.

Imposition of prohibition on activities of Lloyd's underwriters 15

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

(b) 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 20
- (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. 25

(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. 30

(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. 35

(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— 40

(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 45

(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. 50

Application of other provisions of Act to Lloyd's

63. (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. 5

(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. 10

(4) Section 19(5), (6) and (7) shall apply with the necessary changes in relation to the auditor appointed by virtue of section 57(5) 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.

(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. 15

(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; 20

(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.”. 25

(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. 30

(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 35

(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** 40**Offences by persons other than short-term insurers**

64. (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)(u)(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(1) or (3); 45

(c) where a rule contemplated in section 55(2)(e) so provides, contravenes or fails to comply with a provision of any rule under section 55(5), 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, 50

shall be guilty of an offence and liable on conviction to a fine not exceeding R 100000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment. 55

(2) A person, other than a short-term insurer, who contravenes or fails to comply with section 7(1)(a) or (b), 8(2), 25(1) or (2) or 49(4) or (6), shall be guilty of an offence and

liable on conviction to a fine not exceeding R 1000000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Offences by short-term insurers

65. (1) A short-term insurer which—

- (a) contravenes or fails to comply with a provision of a notice, directive or requirement referred to in section, (3) or (4), 21(I) or (2), 26(1), 34(2)(a) or 35(2); 5
- (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(1) or (2) or 50; or
- (c) where a rule contemplated in section 55(2)(e) so provides, contravenes or fails to comply with a provision of any rule promulgated under section 55(5), to the extent so provided, 10

shall be guilty of an offence and liable on conviction to a fine not exceeding R 100000.

(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)(u), 15(1), (2), (4) or (5), 19(1) or (3), 23, 25(1) or (2), 28(I), (3) or (4), 33 or 49(4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R 1 000000. 15

Penalty for failure to furnish Registrar with returns etc

66. (1) 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 R 1000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof. 20 25

(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. 30

(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

Transitional provisions 35

Continued registration of existing insurers

67. (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— 40

- (a) accident and health policies;
- (b) engineering policies;
- (c) guarantee policies; 45
- (d) liability policies;
- (e) miscellaneous policies;
- (f) motor policies;
- (g) property policies; or
- (h) transportation policies, 50

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.

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

68. 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.

General provisions

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

69. (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 36 of the Companies Act with the necessary changes as if it were a public company having a share capital.

(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.

(3) The financial statements of a short-term insurer shall be drawn up and presented in accordance with Generally Accepted Accounting Practice.

Regulations

70. 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) authorizing the Registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (b);
- (d) prescribing the calculation of the additional amounts of assets contemplated in section 29;
- (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;
- (h) 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 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.
- (3) The Minister shall publish any regulations made under this section in the Gazette.

Savings

71. 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.

Interpretation of certain references in existing laws

- 72.** 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.

Short title and commencement

73. 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*.

Schedule 1

(Section 29)

Kinds of assets

Requirement for claim to be asset, and definitions

1. 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 realizable 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; 10

(b) income from such asset; or

(c) an index of such assets or the income therefrom;

“derivatives” means—

(a) an option contract as contemplated in the definition of “securities” in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); 15

(b) a futures contract and an option contract as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989); and

(c) a contract for differences;

“listed”, in relation to an asset referred to in item 16(5) of the Table to this Schedule, means that— 20

(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 referred to in item 16(5)(a)(aa) of the Table to this Schedule, means the margin as defined in regulations issued or approved by the appropriate authority of the state in which the stock exchange is situated or which is required by that stock exchange; 25

“margin deposit” means a margin with SAFEX and a stock exchange referred to in item 10 of the Table to this Schedule; 30

“margin with SAFEX” means the margin as defined in the rules of the South African Futures Exchange referred to in section 17 of the Financial Markets Control Act, 1989;

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

“regulated market” means a market situated outside the Republic which is characterised by— 35

(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; 40

“securities” includes bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments of whatever nature;

“shares” includes share stock. 45

Derivatives

2. 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 50

(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 counterpart 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.

Kinds of assets

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

Item no.	Description of assets	10
1.	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).	15
2.	A credit balance in an account with, or a deposit, including a negotiable deposit and a bill, accepted by, an institution finally registered under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993).	20
3.	Public deposits with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).	
4.	Securities issued by, and loans made to, the Government of the Republic in terms of section 19 of the Exchequer Act, 1975 (Act No. 66 of 1975).	
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 Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984).	30
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).	40
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 <i>Gazette</i> subject to the conditions determined by the Registrar and specified in the notice.	45
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 in the <i>Gazette</i> and subject to the conditions determined by the Registrar and specified in the notice.	50 55

14. Immovable property in the Republic.
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 debentures issued by a company incorporated in the Republic. 5
 (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 10
 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— 15
 (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,
 in respect of which the Registrar has recognised the— 20
 (aa) stock exchange outside the Republic; or
 (bb) country, other than the Republic, in which the regulated market
 concerned is situated,
 subject to the conditions determined by the Registrar.
 (b) A credit balance in an account with, or a deposit, including a negotiable 25
 certificate of deposit, or a bill, accepted by, an institution incorporated
 outside the Republic, in a country approved by the Registrar, 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 30
 in paragraphs (a) and (b).
 (d) Derivatives and margin deposits on the assets referred to in paragraphs
 (a) and (b).
17. Units in a unit trust scheme registered in terms of the Unit Trusts Control Act, 1981 35
 (Act No. 54 of 1981).
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 40
 (c) 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 in the *Gazette* and subject to the conditions determined by
 the Registrar and specified in the notice. 45
21. Premiums due and payable to the short-term insurer in respect of short-term
 insurance business carried on in the Republic.

Schedule 2

(Sections 29,30 and 32)

Method of calculation of value of assets and liabilities

Part I

Valuation of assets

5

Amounts to be disregarded

1. 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 10
reinsurance policy, which is due and payable, including a premium
debited to an intermediary or a deferred installment 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 15
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 20
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 negative liability or a **reinsurance** contract in
terms of which the short-term insurer concerned is the policyholder; and 25
 - (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.

Calculation of values

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2. The value of—

- (a) a Krugerrand coin referred to in item 1, shall be the price which the South
African Reserve Bank is prepared to pay for it on the date as at which its value
is calculated;
- (b) a credit balance, deposit or margin deposit referred to in items 2, 3, 10. 35
16(5)(b) and (d) and 18, shall be the amount **thereof**;
- (c) an asset referred to in item 4, 5,6, 7, 8, 9,10,11,12, 13 or 16(1),(2),(3), (4)
or (5)(a) or (c) which is listed on a stock exchange and for which a closing
price was quoted on that stock exchange on the date as at which the value is
determined, shall be the closing price or the closing price last so quoted; 40
- (d) an asset referred to in items 16(5)(c) and 17, shall be the price at which the unit
would have been repurchased by the unit trust management company on the
date as at which the value is calculated, and in the case of a property unit trust.
the market value, and if it is listed on a stock exchange and for which a closing
price was quoted on that stock exchange on the date as at which the value is 45
determined, the closing price, or the closing price last so quoted;
- (t?) a futures contract referred to in items 16(5)(d) and 18, shall be determined by
the mark-to-market as defined in the rules of the South African Futures
Exchange referred to in section 17 of the Financial Markets Control Act, 1989
(Act No. 55 of 1989); 50

- (f) an option contract referred to in items 16(5)(d) and 18 for which a price was quoted on a stock exchange on the date on which the value is calculated, shall be that quoted price;
- (s) an asset referred to in item 21, shall be the amount of premiums less—
- (i) the amount or estimated amount of any commission which the short-term insurer owes or for which it is likely to become liable in connection with the premiums;
 - (ii) a provision of 7,5 percent of that amount, to cover the risk of loss arising from non-receipt by the insurer of any premiums;
- (h) an asset referred to in item 14, 15, 19 or 20(b) or (c), or an asset not otherwise specified in this paragraph, shall be an amount not exceeding that which could have been obtained on the sale of the asset between a willing seller and a willing buyer, acting at arm's length and in good faith, as estimated by the insurer;
- (i) an asset referred to in item 20(a), shall be the amount which would be payable to the policyholder upon the full surrender of the policy on the day on which the value is calculated;
- (j) a derivative not mentioned in subparagraph (e) or (f) shall be calculated as determined by the Registrar from time to time.

Savings

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3. (1) Notwithstanding paragraphs 1 and 2, if the Registrar is satisfied that the value of an asset, when calculated in accordance with paragraph 2, does not reflect a proper value, the Registrar may direct the insurer to appoint another person, at the cost of the insurer, to place a proper value on that asset or the Registrar may direct the short-term insurer to calculate the value in another manner which the Registrar determines and which will produce a proper value for that asset.

(2) An asset in respect of which no basis of valuation is prescribed in paragraphs 1 and 2 shall be valued in accordance with Generally Accepted Accounting Practice.

Part 11

Valuation of liabilities

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Method of calculating amount referred to in section 32(1)(a)(ii)

4. The minimum amount referred to in section 32(1)(a)(ii), shall be an amount equal to 7 per cent or such other percentage as the Registrar may direct in a particular case, of the total amount of all of the premiums payable to the short-term insurer under short-term 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 short-term insurer as premiums under approved reinsurance policies in respect of the short-term policies concerned.

Method of calculating unearned premium provision

5. (1) In respect of short-term policies, other than short-term reinsurance policies, the minimum amount of the unearned premium provision referred to in section 32(1)(b) shall, subject to subparagraph (3), be the amount calculated by means of the formula—

$$(A - B) \times \left(1 - \frac{C}{D}\right)$$

45

in which formula—

A represents the amount remaining after deducting from the total amount of all of the premiums payable to the short-term insurer under all of the short-term policies concerned for the whole of the period for which each of those short-term policies is operative, of—

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- (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;

- (b) the total amount payable by the short-term insurer as premiums under approved reinsurance policies in respect of the short-term policies concerned;
- B represents the total amount of the consideration, payable by the short-term insurer in terms of section 48 to independent intermediaries in respect of the short-term policies concerned, reduced by the total amount of any consideration payable to the short-term insurer in respect of approved reinsurance policies under which its liabilities in respect of the short-term 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 had those contracts been short-term policies other than short-term reinsurance policies; 5
- C represents the number of days in the period from the date of the commencement of the short-term policy until the day on which the calculation is made in accordance with this paragraph; 10
- D represents the total number of days during the whole period for which the short-term policy is operative. 15
- (2) In respect of short-term reinsurance policies, the minimum amount of the unearned premium provision referred to in section 32(1)(b) shall, subject to subparagraph (3), be the amount calculated by means of the formula— 20

$$\frac{(A - B)}{2}$$

in which formula—

- A represents the amount remaining after deducting from the total amount of all of the premiums payable to the short-term insurer under all of the short-term policies concerned for the whole of the period for which each of those short-term policies is operative, of— 25
- (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 short-term insurer as premiums under approved reinsurance policies in respect of the short-term policies concerned; 30
- B represents the total amount of consideration payable by the short-term 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 short-term insurer in respect of approved reinsurance policies under which its liabilities in respect of the short-term policies concerned are reinsured: Provided that such reduction shall not exceed the total amount of consideration paid by the short-term insurer in respect of those policies. 35
- (3) A short-term insurer shall, if the Registrar so approves or by notice requires, arrive at the minimum amount of its unearned premium provision by means of a calculation which is different from that set out in subparagraph (1) or (2) and which the Registrar is satisfied places a more appropriate value on the liabilities concerned. 40

Method of calculating contingency reserve

6. The minimum amount of the contingency reserve referred to in section 32(1)(c) shall be— 45
- (a) an amount equal to 10 per cent of the total amount of all of the premiums payable to the short-term insurer under short-term 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 short-term insurer as premiums under any approved short-term reinsurance policies in respect of the short-term policies concerned; or

- (b) 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 short-term insurer concerned—
- (i) has incurred claims under short-term 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
 - (ii) will be able to restore the reserve to the amount required in terms of subparagraph (a) within that approved period.

Determination of value of other liabilities 15

7. (1) For the purposes of section 29, the value of the liabilities of a short-term insurer, other than those referred to in paragraphs 5 and 6, shall be determined in accordance with Generally Accepted Accounting Practice.

(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 20 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.

Schedule 3

(Section 60)

Lloyd's security 25

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

Definition of "South African short-term insurance policy"

1. (1) In this Schedule "South African short-term insurance policy" means, subject to subparagraphs (2) and (3)— 30

(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 35

(bb) in any other case, the insured has its registered office or principal 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. 40

(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— 45

(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 50

- (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. 5

(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; 10
 (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.

Security to be provided to Lloyd's South African Trust

2. 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. 15

By whom and manner in which security to be provided

3. 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. 20

Amount of security

4.(1) 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 25
 (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— 30

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

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 35

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 40

- (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. 45

(2) For the purpose of item (c) of subparagraph (1) "net amount" means the net amount after deduction of the aggregate of—

- (a) the same percentage of such total premiums as the percentage contemplated in item (b) of subparagraph (1), in respect of **reinsurance** cover held; 50
 (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: 55

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

Contributions and withdrawal of surplus

5. 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.

Investment of trust funds

6. (1) The funds in the Lloyd's South African Trust shall be invested in assets of the kinds set out in Schedule 1. 10

(2) **Subject to** section 63(4), 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 Schedule 3, not exceed the percentage specified by regulation in relation to that kind or category of asset. 15

(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. 20

(4) For the purposes of paragraph 5 and subparagraphs (1) and (2) assets shall be valued in accordance with Schedule 3.

(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.

Returns in respect of Lloyd's South African Trust

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7. 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, 30

as prescribed by the Registrar.

Transitional provisions

8. (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"; 35
- (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; 40
- (c) in calculating the amount of the security, paragraph 4(c) shall be disregarded; and 45
- (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— 50

- (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; and

(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 (t), 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 5 Schedule.