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| <p><b>GENERAL COMMENTS</b></p>              | <p>ASISA thanks the Standing Committee on Finance for the opportunity to submit and present our comments on the Insurance Bill. The entire consultation process in developing the new solvency regime, known as SAM, and the legislation has been excellent and ASISA members commend National Treasury (NT) and the Financial Services Board (FSB) for all their work on this and the collaborative approach followed. As a result of this consultation the comments from ASISA on the Bill are limited.</p> <p>ASISA members are supportive of the Bill and hope that it can be finalised and approved as quickly as possible. The SAM implementation date has already been postponed twice. As a result, the industry has been in a state of flux for a prolonged period of time, which resulted in uncertainty, direct cost duplication and significant opportunity cost. In their planning insurers have now assumed that SAM will definitely be implemented in 2017. Any further delay will not only cause further cost duplication, but will hamper the ability of insurers to deal with further regulatory and other changes that need to receive priority attention. As an example, preparation for the implementation of updates to financial reporting in IFRS17 will need to receive high priority as soon as the final draft is released, which is expected in the next couple of months. This preparation will be significantly more difficult if participants in the industry do not operate from stable and certain balance sheets.</p> <p>One of the comments to highlight is that the changes made to the exemption provision in the final version of the Financial Sector Regulation Bill (FSR) Bill, means that it isn't applicable to the Insurance Bill as the Insurance Bill already has an exemption provision although this is limited to temporary exemptions. Therefore the exemption in section 72 of the Bill needs to be extended.</p> <p>The specific comments on the Bill are set out below.</p> |   |
| <p><b>Definition "disability event"</b></p> | <p><b>"disability event"</b> means the event of a person becoming so physically or mentally impaired, whether totally or partially, or temporarily or permanently, that the person is unable to—</p> <p>(a) continue his or her employment or own occupation, profession or trade;</p> <p>(b) participate in any employment, occupation, profession or trade that is reasonably suitable for that person given, amongst other matters, his or her education, skills, experience or age; or</p> <p>(c) fully carry on the functions required for normal activities of life, including as a result of losing a limb or sense organ, or the use thereof;</p> <p><b>Alternative wording proposed:</b><br/> <b>"disability event"</b> means any event:</p> <p>a) resulting in the loss of a limb or sense organ of the insured, or the use thereof ;or</p> <p>b) resulting in physical or mental impairment which renders the insured totally or partially disabled, whether permanently or temporarily, to either—</p> <p>(i) continue his or her current employment or own occupation, profession or trade; or</p>  | <p>ASISA has previously commented on this definition and appreciate the fact that our comments have been taken into account to some extent but believe the definition still needs to provide for the following:</p> <ul style="list-style-type: none"> <li>• The loss of sight in one eye or loss of a limb may not necessarily render a person unable to fully carry on the functions required for normal activities of life. For example the person may still be able to drive a car. The way the definition is currently worded will mean that the loss of sight in one eye or loss of a limb will not necessarily qualify as a disability event, whilst it should. Please see amended part (a) in the alternative wording proposed.</li> <li>• The inclusion of the word "fully" in paragraph (c) is a new addition from previous versions of the Bill and seems to imply that a person must be 100% unable to carry on the functions required for normal activities of life" before it can be viewed as a disability event. If a person can partially carry on with the functions required for normal activities of life, does that mean they will not qualify for disability cover? It is submitted that this word be deleted.</li> </ul> |



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|  | <p>(ii) participate in any occupation or employment that is reasonably suitable for the insured given, amongst other relevant factors, his or her education, skills, experience and age; or<br/>(iii) carry on the functions required for the normal activities of life;”</p>  |   |
| <p><b>Insurance business and limitations on other business</b><br/><b>Section 5(4)</b></p> | <p>4) An insurer may not, without the approval of the Prudential Authority, conduct any business other than insurance business in the Republic, including any insurance business performed on behalf of another person.</p>  | <p>Given that there are already vested rights and obligations in respect of business such as portfolio management or the administration of retirement annuity and other retirement funds, we submit that the approval of the PA, contemplated in sub-section 5(4) only apply to any new business, which an insurer proposes to embark upon. It is also requested that subordinate legislation be enacted setting out the criteria for approval to be obtained from the PA.</p> <p>A related question is whether if the Financial Sector Conduct Authority (FSCA) approves and grants an insurer's license (and any other business e.g. portfolio management etc), is it then also necessary to obtain a license/approval from the PA? In this regard please see Schedule 2 of the FSR Bill. Both the PA and the FSCA are the responsible authorities.</p> |
| <p><b>Designation of Insurance Groups</b><br/><b>10(1)(a)</b></p>                          | <p>(1)(a)The Prudential Authority may for the purpose of facilitating the prudential supervision of insurers designate as an insurance group –<br/>(i) an insurer;<br/>(ii) any company that is part of the group of companies of which the insurer is a part of; and<br/>(iii) any associate, or related or inter-related person of any company that is part of the group of companies referred to in paragraph (ii).</p>   | <p>ASISA members maintain that there must be appropriate consultation with an insurer or controlling company prior to the PA designating an insurance group. The draft Bill provided for notification to the insurer (section 9(2) (a)) and for an insurer to apply for a part of the group to be exempted (section 9(4)).</p> <p>The FSR Bill provides for this type of consultation for designation of financial conglomerates in section 160 and it is submitted that section 10 of the Bill should be aligned appropriately with that section.</p>  |
| <p><b>Transparent insurance group structure</b><br/><b>12(1)</b></p>                       | <p>The Prudential Authority may for <u>the purpose of facilitating the prudential supervision of insurers</u>, direct a controlling company to amend the structure of the insurance group, in accordance with a plan submitted to, and approved by, within a period agreed by the Prudential Authority.</p> <p><b>Proposed amendment</b><br/>The Prudential Authority may only direct a controlling company to amend the structure of the insurance group in terms of section 12(1) where it is of the opinion that the structure of an insurance group impedes the:<br/>(a) financial soundness of any insurer that formed part of the group; or<br/>(b) the ability of the regulator to determine:</p> | <p>The draft Bill provided that the regulator had to be of the opinion that the structure of the insurance group impeded the:</p> <ul style="list-style-type: none"> <li>• Financial soundness of any insurer that formed part of the group; or</li> <li>• The ability of the regulator to determine: <ul style="list-style-type: none"> <li>○ How the different types of business of the insurance group was conducted;</li> <li>○ The risks of the insurance group and each person that forms part of the group; or</li> <li>○ The manner in which the governance framework is organized and conducted for the group and each person that is part of the group.</li> </ul> </li> </ul> <p>These factors have been removed in the Bill and replaced with the underlined wording which</p>  |



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|  | <p>(i) how the different types of business of the insurance group was conducted;</p> <p>(ii) the risks of the insurance group and each person that forms part of the group; or</p> <p>(ii) the manner in which the governance framework is organized and conducted for the group and each person that is part of the group.</p>  | <p>widens the scope of the PA's powers in respect of the structure of an insurance group. It is submitted that section 12(1) should oblige the PA to take the above factors into consideration in making a decision to issue a directive in terms of this section.</p> <p>As such, it is submitted that section 12(1) be amended as proposed to expressly mention these factors.</p>  |
| <p><b>Approval of appointment of certain key persons - Section 14 (2(b))</b></p> | <p>(b) Where the appointed auditor is a firm defined under the Auditing Profession Act, <del>both the firm and the partner that takes responsibility for compliance with section 32</del> must be approved by the Prudential Authority.</p>  | <p>The view of ASISA members is that a change of auditing firm by the insurer should require the approval of the PA, but not necessarily a change in the audit partner as this can add unnecessary delays and costs. It is submitted that auditing firms already have a professional accountability and responsibility to see that the partner appointed to an insurer has the necessary experience and expertise and it is also in the interests of the insurers to check that this is the case.</p> <p>Our suggestion is that a proportionate approach would be to provide that the PA should be notified of a change in audit partner and is able to request further details, and direct that a change be made if they consider it reasonably necessary.</p> |
| <p><b>Termination of appointment of key persons- Section 16(4)(a)</b></p>        | <p>(a) Any key person, other than an auditor, of an insurer or a controlling company who resigns or whose appointment has been terminated, must at the request of the Prudential Authority, notify the Prudential Authority in writing of any matter relating to the affairs of that insurer or controlling company of which the key person became aware in the performance of that key person's role, responsibilities, duties or functions, and which may <u>materially</u> prejudice the ability of the insurer or controlling company to comply with this Act.</p> | <p>Whilst ASISA members understand that the PA may require information from a key person whose appointment has been terminated, it is submitted that this should only extend to matters which may "materially" impact the ability of the insurer or controlling company to comply with the Act. As currently worded this provision could have the unintended consequence of unreasonable and unduly burdensome obligations being placed on an insurer to respond to any matter which the former employee has reported on even if it is not material.</p>  |
| <p><b>Changes in control of insurer or controlling company- Section 17</b></p>   | <p>Significant owners</p>  | <p>This part will need to be aligned to the changes made to the FSR Bill regarding significant owners.</p>  |
| <p><b>Section 17(4)</b></p>  | <p>(4) If the Prudential Authority is reasonably satisfied that the retention of a particular interest by a particular significant owner will be prejudicial to the insurer or controlling company, or to the policyholders of the insurer, the</p>  | <p>As with other section of the Bill where the PA's authority is subject to the requirement of reasonability, it is submitted that the exercise of the PA's power in this context also be made subject to the requirements of reasonability.</p>  |



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|  | Prudential Authority may, in addition to any other action that the Prudential Authority may take in terms of this Act, after consultation with the insurer or controlling company—  |   |
| <b>Audit Committee-<br/>Section 33(1)<br/>&amp; (2)</b>                | <b>33.</b> (1) Section 94 of the Companies Act, except section 94(2), applies to an insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) and a controlling company.<br>(2) An insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) and a controlling company must appoint an audit committee.   | <p>Section 33(1) and (2) has the effect that an insurer as well as a controlling company must each have an audit committee and cannot rely on Section 94(2) of the Companies Act. {Section 94(2) provides that a public company [such as an insurer] is not required to have an audit committee where it is a subsidiary of another company which has an audit committee that will perform the necessary functions on its behalf}.</p> <p>It is submitted that a separate audit committee for an insurer or controlling company may not always be needed, as is recognized in the Companies Act. ASISA members would like the Bill to allow for an exemption from this requirement in appropriate circumstances. The changes requested to section 72 would allow for this.</p>  |
| <b>Information for<br/>supervisory<br/>purposes-<br/>Section 44(1)</b> | 44. (1) In addition to any specific or general requirement provided for elsewhere in this Act, an insurer and a controlling company must provide the Prudential Authority with <u>any</u> information the Prudential Authority may <u>reasonably</u> require in the form, manner and at the intervals determined by the Prudential Authority for the supervision and enforcement of this Act (including the resolution of an insurer or a controlling company).   | <p>The wording of this section should include a reasonability test as has been included in other sections of the Bill which provide the PA with such a wide authority.</p>  |
| <b>Annual financial<br/>statements-<br/>Section 47(2)</b>              | <p><del>(2) The audited annual financial statements of the insurer or a controlling company must be submitted to the Prudential Authority and made available to the public within the prescribed period after its financial year-end.</del></p> <p><u>Proposed wording</u><br/> <u>(2) The audited annual financial statements of:</u><br/> <u>(a) the insurer must be submitted to the Prudential Authority and made available to the public within the prescribed period after its financial year-end; and</u><br/> <u>(b) the controlling company must be submitted to the Prudential Authority within the prescribed period after its financial year-end.</u></p> | <p>There is an inadvertent error in the wording of this provision, especially to the extent that the use of the word “or” could result in uncertainty as to whether there is an obligation on both the insurer and the controlling company to make their audited financial statements publicly available.</p> <p>During the consultation period on the draft Bill, NT expressly indicated in their public response to stakeholder comments that the obligation is on the insurer and controlling company to submit financial statements to the PA but only the insurers must be publicly disclosed. Although section 47(2) has been subsequently amended, it contains an ambiguity which could result in the PA compelling both sets of financial statements to be made publicly available.</p> <p>Please see proposed wording to clarify this.</p> |



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| <p><b>Delays and exemptions- Section 72(b)</b></p> | <p><b>72.</b> The Prudential Authority, to facilitate the implementation of this Act, may, by notice in the <i>Gazette</i>—</p> <p>(a) delay the implementation of a provision of this Act for a transitional period not exceeding two years from the date when that section takes effect; or</p> <p>(b) where practicalities require the progressive or incremental application of a specific provision of this Act, exempt any insurer, controlling company, key person or significant owner from that provision for a period and on conditions determined in the notice.</p> <p><b>For ease of reference, section 64 in the draft Bill read as follows:</b><br/>Exemptions</p> <p>64. (1) <i>The Registrar may exempt any insurer or a controlling company from, or in respect of, a provision of this Act for a period and on conditions determined by the Registrar—</i></p> <p>(a) <i>if practicalities impede the strict application of a specific provision of this Act;</i></p> <p>(b) <i>if a strict application of a specific provision of this Act is not proportional to the nature, scale and complexity of the business of an insurer or an insurance group;</i></p> <p>(c) <i>for developmental and financial inclusion objectives necessary to facilitate the progressive or incremental compliance of this Act by a specific insurer; and</i></p> <p>(d) <i>if the granting of the exemption will not—</i></p> <p>(i) <i>conflict with the public interest; or</i></p> <p>(ii) <i>frustrate the achievement of the objective of this Act.</i></p> <p>(2) <i>An exemption may apply to insurers or controlling companies generally or be limited in its application to particular kinds or types of insurers or controlling companies, which may be defined either in relation to a category, kind, size or in any other manner.</i></p> <p>(3) <i>An exemption may be granted subject to any conditions specified by the Registrar.</i></p> <p>(4) <i>An exemption in respect of which an insurer or controlling company has to comply with conditions, lapses whenever the insurer or controlling company contravenes or fails to comply with any such conditions.</i></p> | <p>Section 72(b) only allows for a temporary exemption from a part of the Bill in order to allow for time for implementation thereof by an insurer etc. The draft Bill provided for a well-crafted general exemption section (see section 64 in the adjacent column) but this has been removed, presumably because it was envisaged that the exemption provisions in the FSR Bill could be used.</p> <p>However, the amendments to the exemption provision in the final FSR Bill means that it won't apply to the Insurance Bill as the new subsection (2) of section 281 in the FSR Bill says that: (2) <i>Subsection (1) applies to the granting of exemptions if a financial sector law does not provide a power to grant exemptions.</i></p> <p>The Insurance Bill does provide a power to grant exemptions, albeit only temporary exemptions. It is therefore necessary to amend section 72 of the Bill to broaden the exemption provision to allow for a permanent exemption and it is requested that the wording from section 64 of the draft Bill is used.</p> |



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|   | <p>(5) <i>The Registrar—</i><br/>                     (a) <i>must publish an exemption on the official web site;</i><br/>                     (b) <i>may, at any time, by notice to the insurer or controlling company and on the official web site withdraw any exemption, wholly or in part and on any ground which the Registrar determines sufficient.</i></p>   |  |
| <b>DRAFTING COMMENTS</b>                            |  |  |
| <p><b>Definition of “life insurance policy”</b></p> | <p><b>“life insurance policy”</b> means any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations—<br/>                     (a) on the happening of a life event, health event, disability event or death event;<br/>                     (b) on or from a fixed determinable date or at the request of the policyholder, but excludes –<br/>                     (i) a deposit with an institution authorized under the Banks Act, 1990 (Act No. 94 of 1990), the Mutual Banks Act, 1993 (Act No. 124 of 1993) or the Co-operative Banks Act, 2007 (Act No. 40 of 2007); and<br/>                     (ii) participatory interests in a collective investment scheme registered in terms of the Collective Schemes Control Act, 2002 (Act No. 45 of 2002), <del>and includes a renewal or variation of that arrangement;</del><br/>                     and includes a renewal or variation of that arrangement;</p> | <p>In order to avoid interpretational issues the wording “<i>and includes a renewal or variation of that arrangement</i>”; should be moved so it is not part of (b)(ii) as it relates to the whole definition.</p>               |
| <p><b>Definition of “outsourcing”</b></p>           | <p><b>“outsourcing”</b> means an arrangement of any form between an insurer or a controlling company and another person, whether that person is supervised under any law or not, and includes an arrangement where the other person is —<br/>                     (a) a related or inter-related person of the insurer or controlling company, irrespective of that other person being located outside of the Republic;<br/>                     or<br/>                     (b) an insurer and the function or activity (such as pricing and actuarial services) it performs for the insurer or controlling company, whether under an insurance policy or not, is not part of the insurance provided to that insurer;<br/>                     (c) <u>performing binder functions referred to in section 49A(1) of the Long-term Insurance Act, 1998 or section 48A(1) of the Short-term</u></p>  | <p>It is suggested that the wording of the definition should be amended as proposed to avoid confusion and to make it absolutely clear that the definition excludes the rendering of a financial service as defined in FAIS.</p> |



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|  | <p><u>Insurance Act, 1998.</u><br/>but excludes the rendering of a financial service as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), <del>other than binder functions referred to in section 49A(1) of the Long term Insurance Act, 1998 (Act No. 52 of 1998), or section 48A(1) of the Short term Insurance Act, 1998 (Act No. 53 of 1998);</del></p> |   |
| <p><b>General interpretation of Act- Section 2(4)(a)</b></p> | <p>(4)<del>(a)</del>Despite any other law, <del>but subject to paragraph (b),</del>...</p>  | <p>There is no paragraph (b) so this part should be amended as shown.</p> |