**Comments on the Insurance Bill**

**by Assupol Life Ltd**

We appreciate the opportunity to comment on the Bill. We have provided comments on a previous draft, and provide only a few further comments.

We support the objectives of the Bill, particularly its endeavour to enhance the protection of policyholders, and to increase access to insurance.

We commend National Treasury and the FSB for the huge work they have done on the Bill, and wish the Standing Committee on Finance well with its very important task of considering and approving the Bill.

The Bill, together with the Financial Sector Regulation Bill (*FSR Bill*), is the most significant development in our country’s history of insurance. The Bill comes 126 years after the first insurance legislation was passed in South Africa in 1891.

**Definition of** “**this Act**”

It includes a prudential standard made under the Act. This, we respectfully submit, is problematic from a legal perspective, as it elevates prudential standards, which are subordinate legislation, to the legal status of primary legislation.

It is not necessary, we submit, for the purposes and application of the Act, to so incorporate prudential standards into the Act. In any event, joint standards, which could also apply in respect of the Act, are not likewise incorporated into the Act.

**Definition of** “**encumber**”

It is defined as:

*any pledge, restriction or limitation (including any contractual obligation that must be fulﬁlled before a contractual right may be exercised) that limits access to, or the use or disposal of, an asset.*

We are concerned that that the part underlined above could give rise to interpretation and application difficulty.

For example, would a property of an insurer that is leased, by virtue of the underlined part be “encumbered”? This could have an effect on the insurer`s solvency calculations.

**Definition of** “**state-owned insurer**”

State-owned company, unless the context indicates otherwise, has the meaning given to it in the Companies Act – see clause 2(5) of the Bill. The Companies Act defines a state-owned company as an enterprise registered in terms of the Companies Act.

For the purposes of the Bill, and its objectives, this definition of state-owned insurer is too narrow. State-owned entities established by or under another Act of Parliament, which provides insurance benefits to insurance consumers, should likewise fall within the definition of state-owned insurer – for such entities to be subject to particularly the policyholder-protection measures of the Bill.

The holistic intention of the Bill clearly is that it in principle applies to all persons that provide insurance benefits – except persons specifically exempted. The FSR Bill defines “person” widely as *any natural or juristic person, including an organ of state.* This wide definition applies also in the Bill. The Minister may, under clause 5(7)(b), exempt a state-owned insurer from provisions of the Bill.

Therefore, we respectfully propose that the definition of state-owned insurer be amplified to read:

“means a state-owned company or other state-owned person that conducts insurance business …”.

To this end, it is necessary to amplify also clause 22(1)(a)(iii) to read:

(iii) in any other case, subject to section 70, must be a public company or state-owned company registered under the Companies Act or a state-owned person established by or under any other Act of Parliament.

**Duplicate repeal of a provision of the Long-term Insurance Act (*LTIA*)**

The Bill, in Schedule 1, repeals section 5 of the LTIA. It should not do so, because section 5 is already repealed by the FSR Bill, which in time sequence will commence before the Insurance Bill.

**Definition of** “**group**” **in Schedule 2 of the Bill**

“Group”, for the purpose of classes of group life-insurance business, is defined as:

*an autonomous association of persons united voluntarily to meet their common or shared economic and social needs and aspirations (other than obtaining insurance), which association is democratically-controlled.*

It is not clear why group insurance, in terms of this definition, may be provided to persons who associate to share economic and social needs, but not to persons who associate to share insurance needs. Insurance is a primary and vital economic need – and, in our respectful view, should not be excluded for this purpose.

Transformation of the financial sector, and financial inclusion, are major objectives of the FSR Bill, which the Insurance Bill must support. Group insurance fulfils a paramount role in achieving these objectives. Its main virtue and worth is that it can be provided at a lower cost than individual insurance, which is to the real advantage of especially previously disadvantaged persons.

In the history of insurance persons commonly associated to share their insurance needs on a group basis.

We respectfully submit that the exclusion of an association of persons who unite for the purpose solely of obtaining group insurance, which can be provided to them more cost-effectively than individual insurance, should be deleted from the definition of “group”. Therefore, the bit underlined in the definition of “group’’ quoted above, we submit, should be deleted.

**Description of funeral insurance in Table 1 of Schedule 2 of the Bill**

This description, for both individual and group insurance, is not entirely clear, and raises possible questions.

It reads, in the case of individual insurance:

*Lump sum or, speciﬁed or determinable equal or unequal sums of money payable at speciﬁed intervals not exceeding an amount prescribed by the Prudential Authority to cover cost associated with a funeral or the rendering of a service on the happening of a death event.*

***Possible uncertainties***

* The grammatical function of the comma in the first line, particularly its position after “or”, is not clear.
* Does the part “not exceeding an amount prescribed by the Prudential Authority”apply to both the lump sum and the money payable at intervals?
* Must the total of the sums payable at intervals not exceed the prescribed amount? Or must each interval sum not exceed the prescribed amount?
* Must “the rendering of a service” also be in connection with the funeral, this being funeral insurance? Or can, under such a funeral policy, a service be rendered that is not in connection with the funeral itself?

Would this description not perhaps be clearer if it were rewritten in three sentences, along the following lines?

 *Lump sum, or speciﬁed or determinable equal or unequal sums of money payable at speciﬁed intervals (interval sums), paid on the happening of a death event. The lump sum, or total interval sums/each interval sum (?), may not exceed an amount prescribed by the Prudential Authority. The lump sum, or interval sums, must cover cost associated with a funeral or the rendering of a service.*

**Micro-insurance**

The Bill introduces a regulatory framework for micro-insurance. We support this, as micro-insurance certainly can further the major objectives of access to insurance, financial inclusion, and transformation of the financial sector.

Our understanding of the Bill:

1. Persons licenced to do *life insurance business*, will be able to do, as micro-insurance business, the classes of life insurance business set out in paragraph (a)(i) of the definition of micro-insurance business.

It follows that they will be able to do this micro-insurance, together with their other life insurance business, under their life insurance licence.

1. Persons licenced to do *non-life insurance business*, will be able to do, as micro-insurance business, the classes of non-life insurance business set out in paragraph (a)(ii) of the definition of micro-insurance business.

It follows that they will be able to do this micro-insurance, together with their other non-life insurance business, under their non-life insurance licence.

1. Persons licenced to do only *micro-insurance business*, will be able to both:
* the classes of life insurance business set out in paragraph (a)(i) of the definition of micro-insurance business; and
* the classes of non-life insurance business set out in paragraph (a)(ii) of the definition of micro-insurance business.

They will be “micro-insurers” as defined in clause 1 of the Bill, doing their micro-insurance business under their dedicated micro-insurance licence. In terms of clause 22(1)(a)(i) they must be, among others, profit or non-profit companies registered under the Companies Act.

It is difficult to comment on micro-insurance business, as the regulations and standards under the Bill, which will deal with micro-insurance business, and which will contain essential detail, have not been published yet. What is known at this point, is that softer regulatory requirements will apply to micro-insurance business.

It follows that, to give full effect to the objectives of micro-insurance, the softer regulatory requirements must apply to all micro-insurance business, namely micro-insurance done by:

1. life insurers under their life-insurance licence – only the classes of life insurance business set out in paragraph (a)(i) of the definition of micro-insurance business;
2. non-life insurers under their non-life insurance licence – only the classes of non-life insurance business set out in paragraph (a)(ii) of the definition of micro-insurance business; and
3. micro-insurers under their micro-insurance licence – both the classes of life insurance business set out in paragraph (a)(i) of the definition of micro-insurance business, and the classes of non-life insurance business set out in paragraph (a)(ii) of the definition of micro-insurance business.

This, we respectfully submit, is a correct reading and application of the Bill – which we trust the Standing Committee on Finance will confirm. If the Committee so deem, the Bill could be made even clearer regarding this.

An aside: It would perhaps be more reader-friendly to spell micro-insurance with a hyphen.

**Reinsurance**

Long-term insurers presently may provide both direct insurance and reinsurance, except if their licence does not permit it.

Our understanding is that this position will continue for life insurers under the Bill, and that clause 22(1)(a)(ii) applies only where a life insurer intends to provide only reinsurance, and not also direct insurance.

This, we respectfully submit, is a correct reading and application of the Bill – which we trust the Standing Committee on Finance will confirm. If the Committee so deem, the Bill could be made even clearer regarding this.

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