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|  | **INSURANCE BILL, 2016**  **COMMENTS MATRIX**  **NATIONAL TREASURY’S RESPONSES TO COMMENTS ON THE INSURANCE BILL PUBLISHED BY PARLIAMENT ON 15 DECEMBER 2016**  **DRAFT FOR DISCUSSION PURPOSES ONLY**  This document sets out the National Treasury’s formal response in respect of comments submitted by stakeholders on the version of the Insurance Bill that was published by Parliament on 15 December 2016. |  |
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# LIST OF COMMENTATORS

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| --- | --- | --- |
|  | **Agency/ Organisation** | **Contact Person** |
| 1. | Association for Savings and Investment South Africa (ASISA) | Anna Rosenberg |
| 2. | Assupol Life Limited | Gillie Gehle |
| 3. | Black Business Council (BBC) | George Sebulela |
| 4. | Centre for Applied Legal Studies (CALS) | Nomonde Nyembe or Vuyolethu Mntonintshi |
| 5. | Cilliers, G | Gerhardus Cilliers |
| 6. | Emeritus Reinsurance Company SA Limited\* | Calven Mutyavaviri |
| 7. | Eskom Holdings SOC Limited | Suzanne Daniels |
| 8. | Ernst and Young Incorporated | Michael Bourne |
| 9. | Hollard Life Assurance Company Limited and Hollard Insurance Company Limited | Nyeleti Shirilele |
| 10. | Home Loan Guarantee Company\* |  |
| 11. | KGA Life Limited | Lize Kotze |
| 12. | Monarch Insurance Company Limited | Leslie Davies |
| 13. | Munich Reinsurance Company Limited | Adv. Alan Lambert |
| 14. | Norton Rose Fulbright | Patrick Bracher |
| 15. | Professional Provident Society Insurance Company Limited (PPS) |  |
| 16. | PGC Group of Companies (Workerslife, Union Life, Nestlife and Bophelo Life) | Zwilenkosi Mdletshe |
| 17. | South African Insurance Association (SAIA) | Easvarie Naidoo |
| 18. | The Unlimited Group (Pty) Limited | Wayne Mann |
| 19. | Webber Wentzel | Johan Henning |

\* These organisations submitted that they have no comments on the Bill.

| RESPONSES TO COMMENTS ON THE INSURANCE BILL, 2016 | | | |
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| **Reviewer** | **Section** | **Issue** | **Response** |
| **CHAPTER 1: INTERPRETATION AND OBJECTIVE OF ACT** | | | |
| Norton Rose Fulbright | **“associate”** | The Bill defines “associate” as having the “meaning set out in the International Financial Reporting Standards issued by the International Accounting Standards Board or successor body”. This is neither constitutional nor legal for Parliament to delegate its lawmaking powers to another body least of all a body in another country or an unknown successor to that body. If the Act is to adopt the IFRS meaning it should put the current meaning in the Act for consideration by the public. | 🗶 Disagree. It is acceptable drafting practice to incorporate terms and the like by reference. Further, it is important to ensure that the meaning of the term in the Insurance Bill (“the Bill”) is and remains aligned to the accounting standards applicable to public companies to ensure consistency and comparability. See section 29(5) of the Companies Act that requires the financial reporting standards for public companies to be in accordance with the International Financial Reporting Standards of the International Accounting Standards Board or its successor body. |
| Ernst and Young | **“control function”** | In light of the reporting duty imposed on the appointed auditor of the insurer or controlling company in section 32(4)(a), we consider it important that the terms “internal controls” and “control function” be clearly defined.  The definition of “control function” is incomplete if reference to the systems of internal controls established by management is omitted. We recommend that the definition be amended as follows:  ‘‘control function’’ means each of the following:  (a) [Insert] **the insurer or controlling company’s system of internal controls**  (b) the risk management function;  (c) the compliance function;  (d) the internal audit function;  (e) the actuarial function  Definition of “internal controls” - We note that there is no definition of this phrase in the Bill. Without this definition, the scope and extent of the auditor’s reporting obligations in section 32 in relation to the insurer and controlling company’s governance framework is unclear and would therefore be subject to individual interpretation by the auditor and/or by the insurer and controlling company.  As the meaning of this phrase may be interpreted differently in different settings, we recommend that the Bill include a definition of internal controls to clarify its intended meaning in context of the prudential regulation of an insurer or a controlling company. For example, the commonly referenced COSO definition of control encompasses controls designed to provide reasonable assurance regarding the achievement of control objectives relating to operations, reporting and compliance. | 🗶 Disagree that the definition of “control function” should include the system of internal controls. Control functions are independent risk governance functions. They provide independent oversight of an insurer’s risk management system and system of internal controls.  🗶 Disagree that the term “internal controls” needs to be defined in the Bill. Section 30(2) requires that the governance framework of an insurer and controlling company must, amongst others, include effective systems of corporate governance, risk management and internal controls. Section 30(4) authorises the Prudential Authority (“PA”) to prescribe governance principles and requirements relating to, amongst others, internal control, including in respect of an internal control system. The obligations of an auditor in section 32(4)(a) relates to the governance framework requirements of this Act and the maintenance of internal controls. On reading the above sections together it is clear that what constitutes internal controls and consequently what the auditor must check for will be set out in the Prudential Standards. Informal consultation on the Prudential Standards has already commenced. The Prudential Standards in respect of internal controls are quite similar to what is already provided for in the Board Notice on the Governance and Risk Management Framework prescribed in 2014.  Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the Financial Sector Regulation Bill (FSRB) on the enactment of the Bill. |
| ASISA | **“disability event”** | 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:   * 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. * 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.   **Alternative wording proposed:**  **"disability event"** means any event:  a) resulting in the loss of a limb or sense organ of the insured, or the use thereof ;or  b) resulting in physical or mental impairment which renders the insured totally or partially disabled, whether permanently or temporarily, to either–  (i) continue his or her current employment or own occupation,  profession or trade; or  (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  (iii) carry on the functions required for the normal activities of life;” | 🖉 Agree to amend definition as proposed. |
| SAIA | **“encumber”** | Clarity is sought in respect of whether this definition in its current form extends to simple lease agreements as we are of the view that this is not the intention. | The definition as proposed in the Bill is wide and includes operational leases. However, the definition must be read in the context of the Bill as a whole. The definition is relevant to two sections only.  Section 29(4) provides that prior to the withdrawal of a licence of an insurer the PA must direct the insurer, amongst others, not to dispose of or encumber any assets or liabilities, or incur any additional liability, without the approval of the PA. In these circumstances it is prudent for the PA to approve even simple lease agreements.  Section 36 authorises the PA to prescribe in Prudential Standards requirements in respect of, amongst others, transactions that may increase, encumber or reduce assets or liabilities. Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB on the enactment of the Bill. |
| KGA Life Limited | **“insurance obligation”** | The definition of “**insurance obligation**” includes all obligations whether it is an obligation to pay benefits or to render services under or arising from insurance policies.  It is unclear if upon a proper interpretation of this definition it includes other third parties obligations such as the provision of burial services for example. It is also unclear if the furnishing of advice and rendering of intermediary services “arises from” the insurance policy.  In other words, will the insurer even be responsible as an insurance obligation for the advice given by another FSP who sells its product? | The definition must be read in the context of the Bill as a whole. The definition therefore relates to the obligations of the insurer in terms of an insurance policy. Where a policy provides for the rendering of a service, the service constitutes an insurance obligation. |
| ASISA | **“life insurance policy”** | In order to avoid interpretational issues the wording “and includes a renewal or variation of that arrangement”; should be moved so it is not part of (b)(ii) as it relates to the whole definition.  **Proposed amendments:**  **“life insurance policy”** 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–  (a) on the happening of a life event, health event, disability event or death event;  (b) on or from a fixed determinable date or at the request of the policyholder, but excludes –  (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  (ii) participatory interests in a collective investment scheme registered in terms of the Collective Schemes Control  Act, 2002 (Act No. 45 of 2002)~~,~~**~~and includes a renewal or variation of that arrangement;~~**  and includes a renewal or variation of that arrangement; | 🖉 Agree to amend the section as proposed.  🖉 A similar amendment will be made to the definition of “non-life insurance policy”. |
| Hollard | **‘‘microinsurance business’’** | Under part (d) of the definition, aggregation by life insured is more important than aggregation by policyholder, by using policyholder for aggregation a life insured can be significantly over-insured by splitting policies between multiple policyholders | While the comment is valid, the purpose of the provision is to limit the size of the risk exposure per policy for prudential reasons.  The comment relates to a market conduct concern regarding the risk of individuals being over-insured. This is being dealt with through the PPRs and related conduct reforms.. |
| PGC Group of Companies | **‘‘microinsurance business’’** | The Insurance Bill seeks to distinguish between micro-insurance and macro-insurance business.  We believe this will exacerbate the lack of transformation in the industry by opening up only one aspect of the insurance industry and not all.  We submit that Parliament should consider the implication of the introduction of micro-insurance against the backdrop of what we submit is an untransformed insurance industry.  More specifically should be the consideration whether the introduction of micro-insurance will not serve to further balkanise the insurance industry and create permanent walls between those who are relatively rich and have a bigger share in the insurance industry and those who are relatively poor and having a smaller share in the insurance industry.  We submit that the micro insurance provision should be scrapped from the Insurance Bill because it promotes the balkanization of the insurance industry and is likely to perpetuate past imbalances.  The Insurance Bill should rather proactively promote the opening up of the entire insurance industry as part of the scheme to radically transform the industry, including the removal of any other unreasonable barriers to transformation.  Our submission is that, it would have helped if we could get a combined hybrid of the micro- insurance and the macro-insurance frameworks rather than creating balkanised zones in insurance. | It is not the intention of the Bill to force all black-owned insurers to only conduct microinsurance business.  Rather, the possibility of a microinsurance licence is being opened-up for other types of non-traditional industry participants – such as financial services cooperatives or funeral parlours – to also be able to conduct insurance business.  Commercial insurers may also conduct microinsurance business, but this will be optional.  A microinsurance licence facilitates financial inclusion through having lower and more proportionate regulations (including capital requirements) based on the low risk of microinsurance products from a prudential perspective.  The Bill gives effect to the National Treasury’s Microinsurance Policy Document released in July 2011. It balances lowering regulatory barriers to entry, so as to facilitate access and support affordability, while at the same time ensuring that there is appropriate and sufficient consumer protection in place.  The Bill achieves the above by—   * Facilitating formalisation by currently informal providers, and in the process promoting the formation of regulated and well capitalised insurers and small business development; * Lowering barriers to entry, which should encourage broader participation in the market and promote competition among insurers, further supporting poverty alleviation through economic growth and job creation; * Enhancing consumer protection within this market segment through appropriate conduct of business regulation, which will be facilitated through dedicated PPRs / Regulations following the enactment of the Insurance Bill. The legislation will provide for specific requirements relating to advice and intermediation, and product standards; and * Facilitating effective supervision and enforcement and supporting the integrity of the insurance market as a whole.   The Bill allows for a lower minimum regulatory capital requirement for microinsurers as well as a simpler dedicated prudential regulatory model (to be prescribed) suited to the risk profile of microinsurers. The risk profile of microinsurers are different from that of insurers because of the limited classes of business that microinsurers may underwrite and the product standards that will be imposed in respect of these policies, which standards aim to ensure that the policies do not provide for complex designs that increase risks to the insurer or policyholders.  🖉 A number of other provisions in the Bill promote the opening-up and transformation of the industry, including the proportionate application of Prudential Standards. See revised clauses proposed in respect of –   * the definition of “transformation of the insurance sector”; * inclusion of “transformation of the insurance sector” in the Objective for the Bill; * criteria to be considered in the granting or variation of a licence; * the progressive achievement of licensing requirements; and * exemption from certain requirements for a specific period. |
| The Unlimited Group (Pty) Limited | **“non-life insurance policy”** | **“non-life insurance policy”** means any arrangement under which a person… other than –  (a) a life; or  (b) a death event or disability event not resulting from an accident,…  What is the rationale for restricting death cover (other than accidental death) to long-term insurers only? We refer in this regard to our previous submission to Treasury in May 2015. What is proposed should happen to the hundreds of thousands (if not millions) of lives currently covered by short-term insurers under death policies? The implications for migrating all of these policies across to life insurers are not, in our respectful submission, in the interest of policyholders. The costs alone would be exorbitant in affecting a transfer. Furthermore, the fees earned by brokers will be adversely impacted. We accordingly propose that:   * Short-term insurers be allowed to continue offering death policies to the public; alternatively * That existing death policies at the of commencement of the Act:   + be allowed to remain under a short-term license, including for purposes of renewal (many of them are month-to-month), and that such policies be allowed to run off over time; and   + that fees payable to brokers writing such (new) business to a life license should be commensurate with the fees they could earn under a short-term license. In this regard the premiums payable in respect of such products are often relatively small. | Internationally, life business is not underwritten by non-life insurers. Longevity and mortality risks are not appropriately underwritten by non-life insurers. The skill set required in respect of underwriting life insurance differ significantly from the skill set required to underwrite non-life business. The risk factors and underwriting assumptions differ significantly for life and non-life insurance.  In recognition of the fact that accident insurance has some of the characteristics of both life insurance and non-life insurance, both life insurers and non-life insurers are allowed to underwrite this class of business. Further the skills and expertise required to underwrite non-patrimonial loss differs significantly from that required to underwrite patrimonial loss.  Transitional provisions are provided for in Schedule 3 to the Bill. Item 6 provides for a two year transitional period and provides for the PA and insurer to discuss how best to address business an insurer may no longer underwrite. This may include options such as transferring the business to another insurer or allowing the business to runoff (i.e. not renewing policies relating to this business).  Commissions issues are being comprehensively reviewed as part of the FSB’s Retail Distribution Review (RDR). |
| KGA Life Limited | **“life insurance business”** | The definition of “**life insurance business**” is problematic. If read with the definition of “insurance obligation” it seems that life insurance business will overlap with intermediary functions.  It is also not clear if a function is not performed for the state purpose if it will then fall within the definition of life insurance business. | 🗶 Disagree. The definitions must be read in the context of the Bill as a whole. The definitions therefore relate to the obligations of the insurer in terms of an insurance policy. |
| SAIA | **“policyholder”** | We are of the view that the inclusion of *“successors in title”* herein is still open to misinterpretation as a person who is entitled to benefit in terms of a short-term insurance contract is referred to as the “policyholder” in accordance with the Short-term Insurance Act | 🗶 Disagree. The definition of “policyholder” in the Short-term Insurance Act is ambiguous and includes persons entitled to benefits that are not the person with whom the insurer entered into the policy. Schedule 2 provides for a definition of beneficiary. The Bill therefore draws a clear distinction between the policyholder and a person other than the person with whom the insurer entered into a policy that may receive benefits under a policy.  It Is important to add the phrase “successor in title” in the definition to recognise that, for example, executors of estates or cessionaries have the rights of the person with whom the insurer entered into the policy, where necessary. |
| KGA Life Limited | **“policyholder”** | The current definition of “policyholder” is inconsistent in the amended PPR / Regulation and the Insurance Bill. Clarification is needed. | 🗶 Disagree. The proposed definition in the draft Policyholder Protection Rules (PPRs) published in December 2016 adds persons that for the purposes of the PPRs are to be regarded as policyholders. The proposed definition in the PPRs therefore builds on the definition in the Bill. |
| ASISA | **“outsourcing”** | It is suggested that the wording of the definition should be amended as proposed below to avoid confusion and to make it absolutely clear that the definition excludes the rendering of a financial service as defined in FAIS.  **Proposed amendments:**  **“outsourcing"** 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 —  (a) a related or inter-related person of the insurer or controlling company, irrespective of that other person being located outside of the Republic; or  (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;  (c) performing binder functions referred to in section 49A(1) of the Long- term Insurance Act, 1998 or section 48A(1) of the Short-term Insurance Act, 1998;  but excludes the rendering of a financial service as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), **~~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);~~** | 🖉 Agree to align the definition to the FSRB. |
| KGA Life Limited | **“outsourcing”** | The definition of “outsourcing” in the Act is too broad and needs to be limited. The current definition refers to “any arrangement” and not just controls management and material functions. Extended scope may lead to obscurities if not revised. | 🖉 Agree to align the definition to the FSRB. |
| PPS | **“outsourcing”** | In our view the definition of “outsourcing” should be aligned with the definition of Directive 159 to include control function, management function and material function. | 🖉 Agree to align the definition to the FSRB. |
| SAIA | **“outsourcing”** | We acknowledge that the response document to comments on the previous version of the Bill states that, *“the application of the definition will be limited in the Standards.”* We have not had sight of the relevant Standards yet hence our concern for the consequences for non-insurance related service providers. | 🖉 Agree to align the definition to the FSRB. |
| KGA Life Limited | “**rider benefits**” | The definition of “**rider benefits**” if read together with section 5 of the Insurance Bill leads one to believe that rider benefits are benefits subject to Section 54 of the LTIA and that such benefits can only be provided once every 5 years.  In terms of the demarcation regulations emergency evacuation for example is seen as a rider benefit – so can this service only be provided to a policyholder / beneficiary once every 5 years? And must a separate premium now be paid for these benefits in terms of the definition of insurance obligation because they are seen to be ancillary? | 🗶 Comment not understood.  Section 54 enables limitations on certain policies. Part 4 of the Regulations made under the Long-term Insurance Act impose limitations on access to the investment values of policies during the first five years. Part 4 was informed by the need to distinguish between insurance investment business and deposit-taking banking business.  The Bill provides that an insurer that is licensed to conduct a specific class or sub-class of insurance business may provide the rider benefits as may be prescribed in respect of that class or sub-class of insurance business.  Where a policy combines different classes of business the requirements relating to the class will apply unless in Prudential Standards specific additional requirements are imposed in respect of a specific rider benefit. The rider benefits that will be allowed are value-add benefits.  Consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB. |
| PGC Group of Companies | 2(2) | Time and again, the Constitutional Court has cautioned against importing foreign legal principles that ignore the political, social and economic history of South Africa.  While recognizing the necessity to implement international standards and best practices, the focus of any regulatory reforms in a developing country like South Africa must ensure that those reforms are practically applicable and relevant to the domestic conditions and realities. We submit that the Insurance Bill has not done this, this is more so of the SAM regime.  We recommend that section 2(2) of Insurance Bill be amended by the inclusion at the end of the sentence the following words:  **‘with due consideration of the South African context’;** | 🖉 Agree to amend the section by the addition of the phrase “to the extent practicable and with due consideration to the South African context”.  [See also corresponding change to clause 63(2)] |
| ASISA | 2(4)(a) | There is no paragraph (b) so this part should be amended as follows:  (4)**~~(a)~~**Despite any other law**~~, but subject to paragraph (b)~~**,… | 🖉 Agree to amend the section as proposed. |
| The Centre for Applied Legal Studies | 3 | The Insurance Bill as it currently reads falls short of advancing and protecting human rights. CALS submits that it should be amended to include:   * Principles of business and human; and * Environmental, social and good governance considerations.   The objective of this Act is to promote the **adherence to human rights and the Constitution of the Republic of South Africa and to promote** the maintenance of a fair, safe and stable insurance market for the benefit and protection of policyholders, by establishing a legal framework for insurers and insurance groups that—  (a) facilitates the monitoring and the preservation of the safety and soundness of insurers;  (b) enhances the protection of policyholders and potential policyholders;  (c) increases access to insurance for all South Africans;  (d) **promote compliance with the Bill of Rights as provided for in the Constitution, in the application of insurance law;** and  (d) contributes to the stability of the financial system in general.” | 🖉 All legislation must adhere to the Constitution. However, agree to amend the Long Title and clause 3 to explicitly provide that the legislative framework must be consistent also with the Constitution. |
| PGC Group of Companies | 3 | The Insurance Bill does not make an express commitment to transform the insurance industry and the inclusion of previously disadvantaged persons in the industry.  We recommend that section 3 of the Insurance Bill be amended by the incorporation of a subsection (e) which should read as follows:  **“ transform the insurance industry to address historical imbalances and achieve equity within the insurance industry”** | 🖉 Agree to amend the section to explicitly include “transformation of the insurance sector”. Also see proposed definition of “transformation of the insurance sector”. |
| **CHAPTER 2: CONDUCTING INSURANCE BUSINESS AND INSURANCE GROUP BUSINESS** | | | |
| ASISA | 5(4) | 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.  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. | 🗶 Disagree that approval should be limited to new business. It is important, on relicensing, that existing business other than insurance business and business conducted outside of South Africa be reassessed to determine the possible risks associated therewith for the insurance business that the insurer will be allowed to conduct. In addition, in respect of insurance business conducted outside of South Africa, specifically in respect of insurance business for which that insurer is not licensed in South Africa, it is important to assess if the insurer has the necessary expertise and experience to conduct that class of insurance business.  🖉 Agree to provide for criteria that will inform the consideration of an application under this subsection. See revised clause proposed.  All approvals under the Insurance Bill will be considered by the PA and, where relevant, in consultation with the FSCA. Separate approvals from the FSCA to conduct insurance business will not be required under the LTIA or the STIA pending the enactment of the proposed Conduct of Financial Institutions Bill. During the consultations on the latter Bill the interplay between approvals by the PA and the FSCA will be discussed. |
| Hollard | 5(4) | An insurer may not conduct any business other than insurance business without approval. Is the administration of insurance policies (with no assumption of risk) on behalf of another insurer considered to be “business other than insurance business”? | Yes, because the insurer, in performing the administration, is not acting as an insurer put as a person performing an outsourced activity on behalf of another insurer. |
| PPS | 5(4) | Please clarify to say if rendering of financial services is included or excluded from “insurance business”. | Comment not understood. It is assumed that the request for clarification relates to the rendering of advice and intermediary services. Advice and intermediary services are and will continue to be regulated under the Financial Advisory and Intermediary Services Act, and to the extent necessary, under those parts of the Long-term Insurance Act and Short-term Insurance Act that will, post the enactment of the Bill, represent the conduct of business framework relating to insurance business, until such time that the CoFI Bill is enacted. |
| Munich Reinsurance Company | 5(5) | Section 5(5) of the Bill states “An insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) may not, without the approval of the Prudential Authority, conduct any business, including business similar to insurance business, outside the Republic.”  MRoA’s concern is that locally domiciled insurers (i.e. subsidiaries, and other locally registered entities) were not included in the exemption. The reason is most probably an oversight when drafting the comments, but such oversight will have a large impact on locally domiciled reinsurers.  It is MRoA’s view that locally registered reinsurers should not require regulatory approval to conduct reinsurance business outside the Republic. The reasons for this view are:  It is currently not a requirement in South Africa. South African domiciled reinsurers currently conduct reinsurance business outside the Republic without having had to receive regulatory approval;   1. Reinsurance is a global business in which reinsurers operate in various countries to reduce concentration risk and to achieve an adequate spread of business. I have spoken to my colleagues in the Munich Re Group in Australia and the United Kingdom who confirm that there are no statutory requirements requiring them to seek regulatory approval for writing reinsurance abroad. I am also not aware of any other jurisdictions that do require such approval. The Reinsurance Regulatory Review Discussion Paper, at page 3, states that the local reinsurance industry can act as a hub for reinsurance business into Africa. It goes on to state that this principle is consistent with broader government policies and objectives. Requiring approval of the regulator to implement such policies and objectives seems counter intuitive. 2. It is intended that the new Insurance Act will apply to branches of foreign reinsurers, Lloyd’s Underwriters and Lloyd’s unless specifically excluded (section 6(3)). On what basis would a locally domiciled reinsurer not be granted approval? Local reinsurers have to comply with the SAM requirements, whether their reinsurance business is written inside or outside the Republic, and therefore discriminating against locally domiciled reinsurers in terms of requiring regulatory approval seems onerous and was probably never the intention. 3. Currently there are no legislated restrictions stopping insurers placing their reinsurance offshore. The Financial Services Board’s Directive 55.A.i dictates different requirements for the placement of primary insurance outside the Republic, and the placement of reinsurance outside the Republic. This clearly demonstrates that the two are very different in nature and supports point 2 above where it is stated that reinsurance is a global business. Apart from exchange control regulations there are no statutory restrictions on placing reinsurance offshore. We are firmly of the view that it should not be a requirement for locally domiciled reinsurers. 4. The Bill allows branches of foreign reinsurers to conduct reinsurance business in the Republic. The Bill also allows such branches to conduct business outside the Republic without obtaining regulatory approval. This can be seen as putting locally domiciled reinsurers at a disadvantage in doing reinsurance business in Africa and once again seems counter intuitive to the broader government policies and objectives mentioned in point 2 above.   It is suggested that section 5(4) be amended to read: “An insurer (other than a **reinsurer,** Lloyd’s underwriter or Lloyd’s) may not, without the approval of the Prudential Authority, conduct any business, including business similar to insurance business, outside the Republic.” The definition of reinsurer in the draft Bill includes a branch of a foreign reinsurer. | 🖉 Agree to also exclude reinsurers from the application of clause 5(5). The same risks associated with insurers conducting business outside of South Africa do not arise in respect of reinsurers. See revised clause proposed. |
| SAIA | 5(5) | Locally domiciled reinsurers (i.e. subsidiaries, and other locally registered entities) were not included in the exemption in Section 5(5) of the Insurance Bill. Whilst this may be an oversight, such oversight will have a large impact on locally domiciled reinsurers. We are of the view that locally registered reinsurers should not require regulatory approval to conduct reinsurance business outside the Republic of South Africa for the following reasons:   * It is currently not a requirement in South Africa. South African domiciled reinsurers currently conduct reinsurance business outside the Republic without having to receive regulatory approval; * Reinsurance is a global business in which reinsurers operate in various countries to reduce concentration risk and to achieve an adequate spread of business. The Reinsurance Regulatory Review Discussion Paper, at page 3, states that the local reinsurance industry can act as a hub for reinsurance business into Africa. It goes on to state that this principle is consistent with broader government policies and objectives. Requiring approval of the Prudential Authority to implement such policies and objectives seems counter intuitive; * It is intended that the new Insurance Act will apply to branches of foreign reinsurers, Lloyd’s Underwriters and Lloyd’s unless specifically excluded (section 6(3)). Please clarify on what basis a locally domiciled reinsurer would not be granted approval. Local reinsurers have to comply with the Solvency Assessment and Management (SAM) requirements, whether its reinsurance business is written inside or outside the Republic. We are therefore of the view that discriminating against locally domiciled reinsurers in terms of requiring regulatory approval seems onerous and was probably never the intention; * Currently there are no legislated restrictions stopping insurers placing their reinsurance offshore. The Financial Services Board’s Directive 55.A.i dictates different requirements for the placement of primary insurance outside the Republic, and the placement of reinsurance outside the Republic. This clearly demonstrates that the two are very different in nature and supports the point above where it is stated that reinsurance is a global business. Apart from exchange control regulations there are no statutory restrictions on placing reinsurance offshore. We are firmly of the view that it should not be a requirement for locally domiciled reinsurers; * The Bill allows branches of foreign reinsurers to conduct reinsurance business in the Republic. The Bill also allows such branches to conduct business outside the Republic without obtaining regulatory approval. This can be seen as putting locally domiciled reinsurers at a disadvantage in doing reinsurance business in Africa and once again seems counter intuitive to the broader government policies and objectives outlined above.   We therefore propose that section 5(5) be amended to read: “An insurer (other than **a reinsurer**, Lloyd’s underwriter or Lloyd’s) may not, without the approval of the Prudential Authority, conduct any business, including business similar to insurance business, outside the Republic.” The definition of reinsurer in the Bill includes a branch of a foreign reinsurer. | 🖉 Agree to also exclude reinsurers from the application of clause 5(5). The same risks associated with insurers conducting business outside of South Africa do not arise in respect of reinsurers. See revised clause proposed. |
| Eskom Holdings SOC Limited | 5(7)(a) | The Bill provides that a state–owned insurer may not conduct insurance business that is not explicitly authorised under the Act of Parliament that established it or which authorised its establishment.  The state-owned insurer is defined as:  “a state-owned company that conducts insurance business and is –  (a) established under or whose establishment is authorised under the Act of Parliament, and  (b) a public entity subject to the Public Finance Management Act, 1999 (Act No.1 of 1999) (PFMA).  Eskom Holding SOC Limited has a wholly-owned subsidiary, a captive insurance company, Escap SOC Limited that was incorporated in terms of the Companies Act and registered to carry on a short term Insurance business in terms of the Short-Term Insurance Act, 1998. The nature of insurance business that Escap is authorised to carry on is explicitly stated in its certificate of registration and not in an Act of parliament authorising its establishment.  It is not clear whether this section is intended to apply only to insurance companies that are established in terms of an Act of Parliament that is specific to the insurance company in question, such as the SASRIA Act or all insurance companies that are considered public entities in terms of the PFMA. As a captive insurer it only insures the operational risks of its group of companies and not the public.  If the intention is that this section should apply only to all insurance companies that are considered public entities in terms of the PFMA, then the wording should be widened to allow state-owned insurance businesses that are explicitly authorised in the certificate of registration issued in terms of the Short-Term insurance Act or its replacement.  If the intention is that this section should only apply to state-owned insurance companies established in terms of an Act of Parliament, specifically enacted for its establishment to conduct insurance business, then the section should state that it does not apply to an insurance companies that is not established in terms of an Act of Parliament that has been enacted specifically for its establishment.  Eskom recommends that as Escap is a state –owned captive insurer which does not serve the public but serve the interest of and insures the operational risks of the Eskom group of companies, the Bill should not apply to it and all other state-owned public entities that conduct insurance business to cover only their own business risk which are not established under an Act of Parliament.  The Purpose of the Bill is to protect policyholders. Members of the public cannot buy policies from Escap and have no exposure. As such, the fact that Escap is not established by an Act of Parliament poses no risk to the public.  Eskom further recommends that the wording should be revised to state clearly that the Bill does not apply to state-owned captive insurers who are subject to the PFMA and that are not established in terms of an Act of parliament authorising their establishment. | ESCAP is a state-owned insurer. This is so because ESCAP meets the definition of “state-owned company” in the Companies Act - *an enterprise that is registered in terms of the Companies Act as a company, and either is listed as a public entity in the Public Finance Management Act or is owned by a municipality*, and is listed in Schedule 2 to the Public Finance Management Act. Schedule 2 includes “Any subsidiary or entity under the ownership control of the above public entities”.  🖉 Agree to amend the definition of “state-owned insurer” to remove criteria relating to legislation as not all state-owned insurers are established under or authorised to be established under an Act of Parliament. As a result of this amendment section 5(6)(a) has also been deleted.  🗶 Disagree that the Bill should be revised to provide that the Bill does not apply to state-owned captive insurers who are subject to the PFMA. The requirements relating to state-owned insurers have been clarified under section 22. Also see amendment to section 71.  The Bill provides for the regulation of all insurers irrespective of the fact that it is a state-owned company or not. |
| PGC Group of Companies | 10 | Due to past unfair discrimination, most businesses owned and controlled by persons from designated groups have distinct business practices of raising capital by diversifying their investment portfolios to include in their stable different types of businesses.  Their business portfolios may include insurance business and other lines of businesses, which all feed into their overall business group. Despite this, the Insurance Bill seeks to regulate these businesses as a single business group without regard to the fact that some activities in the group might be non-insurance related.  The problem is that once a designation as an insurance group is made under the Insurance Bill, the Prudential Authority would enjoy broad authority, particularly in the context of the power to review a designation under section 10(3), to supervise the insurance group including the non-insurance related activities of the group.  We recommend that section 10 be removed from the Insurance Bill or alternatively be amended to ensure that the Prudential Authority, when designating an insurer as an insurance group, takes into account insurance related activities of the insurance group only and prevent the implicit conferment of power to regulate other industries other than insurance to the Prudential Authority.  We further recommend that section 10(4) of the Insurance Bill be amended to provide parameters for the exercise of the power within that provision. Parliament should provide that the power to revoke or amend a designation as an insurance group should be exercised with due regard to the transformation objectives of the Insurance Bill.  We submit that section 10(4) is overbroad because it confers unfettered power to the Prudential Authority to revoke or amend a designation of an insurance group. We submit that this power must be constrained by providing guidelines on how it should be exercised. | The provision is clear that the designation of an insurance group is solely for the purposes of facilitating the prudential supervision of insurers.  This is important as a significant number of South African licensed insurers operate within a group structure. Insurance groups benefit from the pooling and diversification of risk, intra-group financing, and integrated governance structures. However, being part of a group also presents a range of risks to an insurer. These may include, for example, direct or indirect risk exposures to other group entities, conflicts of interest, and inadequate risk assessment. The recent global financial crisis has demonstrated that the failure of one entity within an insurance group may damage, or even cause the failure of, insurers within the group.  The Bill introduces a new group-wide supervision regime for insurers, in line with international standards. This allows the regulator to regulate and place requirements on the controlling company, in order to protect policyholders and beneficiaries from risks emanating from the insurance group.  🖉 Agree to elaborate on the criteria that must inform the decisions of the PA. See revised subclause 62(4). |
| ASISA | 10(1)(a) | 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)).  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. | 🖉 Agree to insert a general provision in respect of all administrative actions referencing the FSRB provision relating to the application of PAJA to administrative actions. See proposed subclause 62(4). |
| PGC Group of Companies | 10(1)(a) | A major part of the proposed prudential supervisory framework is contained in section 10 of the Insurance Bill. This section reads: Designation of insurance group and licensing of controlling company,  Section 10 (1) (a) “The Prudential Authority may, for the purpose of facilitating the prudential supervision of insurers, designate as an insurance group”.  We recommend that section 10 be removed from the Insurance Bill or alternatively be amended and enjoin the Prudential Authority to exercise its power by taking into account transformation of the insurance industry, particularly the impact of its decisions on people who were previously disadvantaged by unfair discrimination.  We remind Parliament that this recommendation is predicated upon a principle that has been affirmed by the judiciary time and again that “the Constitution makes an exception because it recognizes that substantive equality can be achieved only by providing advantages to groups of people upon whom apartheid imposed heavy disadvantages. | The purpose of designation of an insurance group is to facilitate the prudential supervision of insurers, in particular to protect policyholders.  It is not clear what the implied negative impact would be on black-owned insurers.  As outlined in the response to the broader comment on section 10, insurance group supervision is important in order to protect policyholders and beneficiaries from risks emanating from within the broader insurance group. |
| SAIA | 10(1)(a) | On point (ii) it is not clear that “any company” excludes the immediate holding company. If “any company” includes the ultimate holding company (e.g. of a financial conglomerate), the Bill will need to define when groups are considered a banking group or an insurance group. In the absence of same, there may be duplication of consolidated supervision. Previous SAM definitions specifically excluded ultimate holding companies which were bank holding companies from the insurance group classification. We submit further that the implications and duties imposed on holding companies and insurance groups would similarly be imposed on the ultimate holding company. | The PA will be responsible for both the supervision of banks and insurers. This will assist in avoiding overlaps between banking groups and insurance groups on designation of the groups.  🖉 Agree to provide that the PA must, as part of designating an insurance group, also designate the holding company or juristic person that must apply for a licence as a controlling company of that insurance group. This will create certainty as to the holding company that will be responsible for meeting the requirements of the Bill. |
| Webber Wentzel | 10(2) | We have been requested by a client to comment on section 10(2) of the Insurance Bill, which, in its current form, may have unintended consequences:   * Section 10(2) of the Insurance Bill currently provides "The holding company of, or another juristic person that controls, an insurance group designated under sub-section (1) and which is located in the Republic must, within 30 days of the designation, apply to be licensed as a controlling company of that insurance group under Chapter 4". * A holding company is defined in the Insurance Bill with reference to the Companies Act, 71 of 2008 ("Companies Act"), and the word "control" in respect of specifically section 10 has the meaning as defined in section 2 of the Companies Act. * A holding company in the Companies Act is defined in relation to a subsidiary meaning a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a) of the Companies Act. * In terms of sections 2 and 3 of the Companies Act, a company ("A") is a subsidiary of its holding company ("B") if B (alone or together with related or inter-related person) controls A, meaning that B (alone or together with related or inter-related persons) may exercise a majority of the general voting rights associated with the issued securities or control the appointment or election of the directors of A who control a majority of the votes at a meeting of the board of A. * Therefore, the moment that a company for example acquires 50.1% of the shares in an insurance company, whether directly or through shares in intermediate holding companies, it becomes a holding company of that insurer and the other intermediate holding companies in terms of the Companies Act, exercising control as defined in the Companies Act over those companies. * To the extent that insurer alone or together with other intermediate holding companies have been designated an insurance group in terms of section 10(1) of the Insurance Bill then the holding company of that insurer and the intermediate holding companies becomes obligated to apply to be licensed as a controlling company in terms of section 10(2). * That holding company will not have a choice in the matter but must apply to be licensed as the controlling company. * This, in our view, cannot be the intention of the legislator. * The impact is that any holding company higher up in the chain will be obligated to apply for a license as a controlling company of the insurance group. * It will have the implication, for instance, that the ultimate controlling company of a conglomerate, exercising control in respect of an insurance group and a bank group, will in respect of the insurance group have to apply for a license to be the insurance controlling company. * This defeat the entire purpose of group supervision in respect of conglomerates as provided for in the FSR Bill. * Section 10.1 must, in our view, be amended to empower the Prudential Authority to not only designate the insurance group, but also to designate the controlling company of the insurance group on the same basis and subject to the same limitations applying to its power in designating the insurance group. * Once the controlling company is so designated, that controlling company must then, in terms of clause 10(2), within 30 days of the designation apply to be licensed as a controlling company of the insurance group. | 🖉 Agree to provide that the PA must, as part of designating an insurance group, also designate the holding company or juristic person that must apply for a licence as a controlling company of that insurance group. This will create certainty as to the holding company that will be responsible for meeting the requirements of the Bill. |
| ASISA | 12(1) | The draft Bill provided that the regulator had to be of the opinion that the structure of the insurance group impeded the:   * Financial soundness of any insurer that formed part of the group; or * The ability of the regulator to determine: * How the different types of business of the insurance group was conducted; * The risks of the insurance group and each person that forms part of the group; or * The manner in which the governance framework is organized and conducted for the group and each person that is part of the group.   These factors have been removed in the Bill and replaced with the underlined wording which 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.  As such, it is submitted that section 12(1) be amended as proposed to expressly mention these factors.  **Proposed amendment**  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:  (a) financial soundness of any insurer that formed part of the group; or  (b) the ability of the regulator to determine:  (i) how the different types of business of the insurance  group was conducted;  (ii) the risks of the insurance group and each person that forms part of the group; or  (ii) the manner in which the governance framework is organized and conducted for the group and each person that is part of the group. | 🖉 Agree to provide for criteria that must inform the decision to issue a directive under this section. See proposed subclause 62(4). |
| SAIA | 12(1) | We propose that the consultation requirements set out in Clause 146(1) of the Financial Sector Regulation Bill be aligned to the Insurance Bill in respect of this clause. | 🖉 Agree to insert a general provision in respect of all administrative actions referencing the FSRB provision relating to the application of PAJA to administrative actions. See proposed subclause 62(4). |
| **CHAPTER 3: KEY PERSONS AND SIGNIFICANT OWNERS** | | | |
| ASISA | 14(2)(b) | 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.  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.  **Proposed amendments:**  14(2)(b) Where the appointed auditor is a firm defined under the Auditing Profession Act, ~~both~~ **the firm** ~~and the partner that takes responsibility for compliance with section 32~~ must be approved by the Prudential Authority. | 🗶 Disagree. It is important to also approve the audit partner to ensure that the audit partner has the necessary expertise and experience and to facilitate accountability of the audit partner. This approach will also allow for the PA to require the removal of the audit partner as opposed to the audit firm, which in turn may mitigate reputational risk to the firm. |
| ASISA | 16(4)(a) | 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.  **Proposed amendments:**  16(4)(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 **materially** prejudice the ability of the insurer or controlling company to comply with this Act. | 🗶 Disagree. The clause only applies where the PA has requested the person to notify the PA of any potential non-compliance issue. It should not be for the person to decide on what is material and not material. The insurer will not have to respond to non-material matters; the PA will on notification apply its mind as to which matters, if any, to address with the insurer. |
| ASISA | 17 | This part will need to be aligned to the changes made to the FSR Bill regarding significant owners. | 🖉 Agree to amend the clause as proposed. |
| ASISA | 17(4) | 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. | 🖉 Agree to amend the clause as proposed. |
| **CHAPTER 4: LICENSING, SUSPENSION AND WITHDRAWAL OF LICENCE** | | | |
| Monarch Insurance Company Limited | 22(1)(a)(i) | Despite the Bill being in almost-final form, it is still wholly unclear as to what the requirements, thresholds, limits and conditions applicable to microinsurers will be. This makes it impossible for stakeholders to properly assess their position and rights under the Bill.  We therefore propose that the draft prudential standards for microinsurance be published for public comment as matter of urgency and in any event before the coming into force of the Bill, so that stakeholders can assess their position and rights under the Bill, and begin preparing their corporate structure and business offerings to comply with either the microinsurance regime or the life/non-life insurance option. | Informal consultation on the Prudential Standards has already commenced.  The first draft of the Financial Soundness Standards for Microinsurers (“FSM”) was distributed to the SAM structures for comment in July 2016. The second draft of the Financial Soundness Standards for Microinsurers was released for informal public comment in November 2016.  The first draft of the Governance and Operational Requirement for Microinsurers will be released soon for informal public consultation.  Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB on the enactment of the Bill. |
| SAIA | 25(6)(b)(ii) | This clause appears to be in conflict with the Reinsurance Regulatory Review Position Paper which states that*, “Cell captive insurers will only be prohibited from insuring the risks associated with the insurance obligations of another insurer licensed in South Africa, i.e. they may reinsure risks from insurers in other countries.”*  We propose that the wording of Clause 25(6)(b)(ii) be amended to include the term “local” before *“licensed insurer”* to align with the Reinsurance Regulatory Review Position Paper. | 🖉 Partially agreed. The clause has been amended to clarify that risks of other insurers (local and foreign) may only be insured with the approval of the PA. |
| **CHAPTER 5: GOVERNANCE** | | | |
| Ernst and Young | 30(2)(b) | The provisions in section 30(2) of the Bill are incomplete. The section omits to require the insurer or controlling company to maintain an effective ethics management system and an effective compliance management system. These two elements are not encompassed by the phrase “risk management and controls” and are necessary elements of the governance framework including when applied on a proportional basis. Experiences of compliance failures and governance failures that have occurred in various other countries have revealed lack of ethical awareness/ethics training as part of an ethics management system has been shown to be a root cause of a variety of significant compliance failures. Likewise, compliance management systems are a recognised element of the “3 lines of defense” model underpinning to the company’s combined assurance model applied in the context of maintaining effective governance oversight of the business.  We strongly recommend, therefore, that these omissions be addressed through incorporation the following amendment:  (2) The governance framework must –  *(b)* include effective systems of corporate governance, **for oversight of the adequacy and effectiveness of the ethics management,** risk management, **compliance** and internal controls of the insurer and a controlling company; and  *(c)* address, and provide for, the matters prescribed **in this Act, or in associated regulations or regulatory notices issued by the Prudential Authority from time to time.** | 🗶 Disagree with the first amendment proposed. Ethics and compliance is inherent in the requirement to adopt, implement and document an effective governance framework. Ethics management is key to sound corporate, and compliance management is an integral part of a system of internal controls. Additional matters may be prescribed in Prudential Standards. Informal consultation on the Prudential Standards has already commenced. The Prudential Standards in respect of internal control is quite similar to what is already provided for in the Board Notice on the Governance and Risk Management Framework prescribed in 2014.  🗶Disagree with the second amendment proposed. See the definition of “this Act” read with the definition of “prescribed”. |
| Ernst and Young | 30(4) | Section 30(4) is similarly incomplete. The Prudential Authority (PA)’s right to prescribe governance principles and requirements ought to include reference to principles and requirements for ethical management systems and compliance management systems.  The section omits to require the insurer or controlling company, as part of its governance framework, to have a written policy designed to ensure the appropriateness of the information required to be submitted to the PA under section 44 and the annual disclosures required under section 45. This policy should include measures to ensure the information required under section 44(1) complies with the requirements set out in section 44(2). This is an important provision to ensure that the required information is properly prepared, in all material respects, in the manner prescribed by the Act (as finally promulgated). The following amendment is recommended:  30(4) The Prudential Authority may prescribe governance principles and requirements  relating to—  (a) in the case of an insurer (other than a branch of a foreign reinsurer or Lloyd’s)—  (i) the composition and governance of the board of directors, including requirements relating **to the requisite skills and experience of board members,** and independence;….  *d)* control functions, including in respect of—  (i) the required control functions;  (ii) the requirements for control functions; and  (iii) the roles, responsibilities and functions of control functions and heads of control functions; and … | 🗶 Disagree with the amendment proposed. There is no need for the additional wording. The composition of the board of directors and their duties relating to setting and implementing governance arrangements to ensure reliable and transparent financial reporting for public and supervisory purposes will be prescribed in Prudential Standards. Informal consultation on the Prudential Standards has already commenced. The Prudential Standards in respect of internal control is quite similar to what is already provided for in the Board Notice on the Governance and Risk Management Framework prescribed in 2014. |
| Ernst and Young | 32(4) and (5) | The regulatory reporting duty for the auditor set out in sections 32(4) and (5) are not practicable as currently worded, and are in our view scoped too widely. Unless amended, this section as currently drafted will impose an unduly burdensome additional reporting duty on the auditor, with the likely prospect of there being significant attendant audit-related fees for the insurer/controlling company.  We recommend that this section be amended to reflect the scope of the auditor’s duty to report to the PA in line with the way the imposition of this reporting duty is approached in other jurisdictions as part of formulating their statutory prudential supervision arrangements. The key amendment needed is to state that the reporting duty applies in circumstances where the auditor becomes aware of matters that cause the auditor to believe that the matter is, or is likely to be, significant or material as relates to the areas addressed in section 32(4) and (5). The following amendment is recommended:  The auditor must, in addition to the requirements of the Financial Sector Regulation Act, without delay, submit a detailed written report to the Prudential Authority, and also to the board of directors in the case of an insurer referred to in subsection (1) and a controlling company, on any matter of which the auditor becomes aware in the **ordinary** performance of the auditor’s functions and duties referred to in subsection (6), and which, in the opinion of the auditor—  *(a)* in respect of the business of the insurer or insurance group, **the auditor has cause to believe** ~~may be~~ **is** contrary **in material respects** to the governance framework requirements of this Act, or amounts to **significant** inadequate maintenance of internal controls\*  *(b)* in respect of a significant owner of the insurer or controlling company, ***the auditor has cause to believe*** constitutes a **significant** contravention of any section of this Act. | 🗶 Disagree that the addition of the word “ordinary” will assist in clarifying the clause.  🗶 Disagree with the proposed amendment to paragraph (a). The phrase “in the opinion of the auditor” in the preamble to paragraph (a) and the word “may” in paragraph (a) is sufficient.  🗶 Disagree that the reporting obligation should be limited to “material” and “significant” aspects as these terms calls for the auditor to exercise discretion, which is not appropriate in the context of the clause as all non-compliances should be brought to the attention of the PA. The non-compliance may be an indicator of larger concerns or challenges relating to the business of the insurer or insurance group.  This is consistent with the provision in the FSRB. |
| Ernst and Young | 32(6) | The specification of the auditor’s functions in section 32(6)(a) and (b) of the Bill is not workable as currently drafted. These requirements conflict with the requirements of International Engagement Standards (including the International Auditing Standards and International Assurance Engagement Standards) issued by the International Auditing and Assurance Standards. Those Standards are adopted as auditing pronouncements issued by the Independent Regulatory Board for Auditors (IRBA), as defined in the Auditing Professions Act, 2005 (APA) with which all licensed auditors must comply.  Our main concern is that this section will create a conflict of laws for licensed auditors in South Africa, and we therefore urge the Committee to amend the wording of this section to prevent that occurring.  Section 32(6)(c) will impose a requirement on the auditor to “perform any other duties or functions prescribed”. In our view it is reasonable to expect that the specification of this requirement be made much clearer by adding wording to clarify how such other duties or functions will be prescribed. Specifically, those other duties and functions would be those communicated by the PA from time to time in communications with auditors in the form of regulations or regulatory notices issued by the PA, including in consultation with IRBA and the South African Institute of Chartered Accountants, as needed, as to the nature and scope of such other duties or functions and with reference to existing professional and ethical standards as are applicable to licensed auditors.  The following is our recommendations for amendment to the wording of this section:  The auditor of an insurer or a controlling company must—  *(a)* ~~audit~~ periodically **examine** the financial soundness of an insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) or controlling company, **within the meaning of the requirements for maintaining a financial sound condition established in section 36, in the manner prescribed by the Prudential Authority in communications of the Prudential Authority with appointed auditors in associated regulations or regulatory notices issued by the Prudential Authority from time to time, pursuant to engaging in consultation with the IRBA and the South African Institute of Chartered Accountants, as appropriate, on the question of how such examination is to be performed with reference to professional and ethical standards applicable to the auditors;**  *(b)* ~~audit~~ **periodically provide an assurance report in relation to** the security held in a trust referred to in section 41 **on such matters in relation to the security as are prescribed by the Prudential Authority in communications of the Prudential Authority with appointed auditors in associated regulations or regulatory notices issued by the Prudential Authority from time to time, pursuant to engaging in consultation with the IRBA and the South African Institute of Chartered Accountants , as appropriate, on the question of how such examination is to be performed with reference to the professional and ethical standards applicable to the auditor;**  *(b)* perform the duties and functions ~~assigned to~~ **of** the auditor of an insurer or a controlling company **established in** ~~under~~ this Act, the Companies Act and the Auditing Profession Act; and  *(c)* perform any other duties or functions **prescribed by the Prudential Authority in communications of the Prudential Authority with appointed auditors in associated regulations or regulatory notices issued by the Prudential Authority from time to time, pursuant to engaging in consultation with the IRBA and the South African Institute of Chartered Accountants, as appropriate, about how such examination is to be performed with reference to professional and ethical standards applicable to the auditors.** | 🗶 Disagree with the proposed amendments. The term “audit” is appropriate and consistent with the Auditing Professions Act. The requirements relating to financial soundness and security will be set out in Prudential Standards. Informal consultation on the Prudential Standards has already commenced. The Prudential Standards will also set out what needs to be audited and what form the audit should take. These Standards are being prepared in consultation with IRBA.  Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB on the enactment of the Bill. |
| ASISA | 33(1)&(2) | 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}*.  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. | 🗶 Disagree. Both the insurer and controlling company should have an audit committee.  🖉 However, a general exemption provision will be provided for that builds on the exemption provisions provided for in the FSRB – this will facilitate the granting of an exemption from this provision where appropriate. See proposed new clause 66. |
| Ernst and Young | 33(3) | Section 33 also omits mention of key attributes of the audit committee of an insurer or a controlled company that are necessary for effectiveness of the governance framework and governance oversight of the insurer/controlled company’s implementation of the governance framework and compliance with the requirements pertaining to financial soundness in Chapter 6 of the legislation. This is a critical omission.  In consideration of the significance of the latter requirements for effectiveness of the prudential system, it would seem to be an omission not to specify a financial expertise requirement for each member of the audit committee, or financial literacy as a minimum. In our view, the governance framework and financial soundness requirements contained in the Bill may be poorly applied by some insurers/controlled companies unless this issue is addressed explicitly in the requirements of section 33, in turn increasing the likelihood of auditors having to report under section 32(4). The “first line of defense” approach is needed in this situation, i.e. all audit committee members should be required to have recent and relevant financial expertise in the insurance sector.  In addition, Section 33 is unclear in a number or areas. In our view the drafting of this section can be further tightened up in the interests of achieving better clarity. We offer our suggested amendments for consideration in the attached Schedule. The following amendment are recommended:  3) The audit committee must—  *(a)* **be established with an appropriate** structured **structure and composition** to ensure that it has the necessary authority, independence, resources and expertise, **including recent and relevant financial expertise relating to the insurance industry**, and **with** access to all relevant employees and information **of the insurer** to perform its functions **under this Act and under the Companies Act;** and  *(b)* in addition to the functions referred to in section 94(7) of the Companies Act, perform the functions of the audit committee of an insurer or a controlling company of an insurer as may be **are prescribed by the Prudential Authority in communications of the Prudential Authority with audit committees of insurers and of controlling companies in associated regulations or regulatory notices issued by the Prudential Authority from time to time**. | 🗶 Disagree. Clause 33(1) makes it clear that the Companies Act, except section 94(2) applies to an insurer and a controlling company. No additional requirements other than those specified in clause 33(3)(a) and the Companies Act relating to the structure of the audit committee is necessary.  The functions of the audit committee of an insurer or a controlling company of an insurer will be prescribed in Prudential Standards. Informal consultation on the Prudential Standards has already commenced. Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB on the enactment of the Bill. |
| **CHAPTER 6: FINANCIAL SOUNDNESS** | | | |
| PPS | 36(2) | In our view section 36(2) must be clearly worded in such a way that it excludes business operating on a mutual model with members as the beneficial owners through a trust. This will mean that the trust itself is excluded from the requirements to hold capital as group eligible own funds to meet any prescribed group solvency capital requirement. | The comment has not been motivated so it is difficult to respond.  🗶Disagree. Where trust controls more than one business the trust must meet the financial soundness requirement. The rationale for group supervision equally applies to mutual structures holding more than one business. Insurance groups benefit from the pooling and diversification of risk, intra group financing, and integrated governance structures. However, being part of a group also presents a range of risks to an insurer. These may include, for example, direct or indirect risk exposures to other group entities, conflicts of interest, and inadequate risk assessment. The Bill introduces a new group-wide supervision regime for insurers, including where a mutual entity controls the insurance group. This allows the regulator to regulate and place requirements on the controlling company, in order to protect policyholders and beneficiaries from risks emanating from the insurance group.  Also, the capital does not have to be held at the controlling company level – it can be held at the level of the subsidiaries. |
| Black Business Council | 37(1) | Section 37 (1) (a) & (b) states that Prudential Authority may direct a capital add-on if the risk profile of insurer or governance framework deviates from underlying Solvency Capital Requirement calculation. This may results in small black businesses with high costs and low profit margins due to increased costs taken over by big role players which will negatively affect transformation agenda | The circumstances under which a capital add-ons may be imposed is limited in the Bill to where the PA reasonably believes that—   * the risk profile of the insurer or the insurance group deviates significantly from the assumptions underlying the solvency capital requirement calculation or the group solvency capital requirement calculation; * the governance framework of an insurer or a controlling company deviates significantly from the requirements of this Act.   The Bill also requires the PA to review any capital add-on imposed at least once a year and remove the capital add-on when the PA is satisfied that an insurer or controlling company has remedied the deficiencies that led to its imposition.  This is necessary to ensure the financial soundness of the insurer and controlling company so that promises to and claims of policyholders can be met. |
| SAIA | 39(3) | We propose that this clause be amended to include the word “material” or “reasonable” before *“any*  *risk …”* | 🗶 Disagree that the reporting obligation should be limited to “material” or “reasonable”. This is not appropriate in the context of the clause as all non-compliances must be brought to the attention of the PA and corrected in accordance with the process set out in the clause. It should not be for the insurer to decide what is material or not. |
| SAIA | 39(4) | We propose that this clause be amended to include the word “material” or “reasonable” before “any risk …” | 🗶 Disagree that the reporting obligation should be limited to “material” or “reasonable”. This is not appropriate in the context of the clause as all non-compliances must be brought to the attention of the PA and corrected in accordance with the process set out in the clause. It should not be for the controlling company to decide what is material or not. |
| **CHAPTER 7: REPORTING AND PUBLIC DISCLOSURES** | | | |
| ASISA | 44(1) | 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.  **Proposed amendments:**  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 any information the Prudential Authority may **reasonably** 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). | 🖉 Agree to amend the clause as proposed. |
| Ernst and Young | 44(2) | Section 44(2) sets out requirements for the insurer to comply with as to the quality of “any information” the Prudential Authority (PA) may require for the supervision and enforcement of the Act – as provided for in section 44(1).  The section 44(2) requirements would be more helpful if the stated qualities of completeness, relevance, reliability and comprehensibility were given some context. We recommend that that context ought to be “in consideration of the purpose and intended users of the information”.  Furthermore, with reference to section 44(2)(a) it is not uncommon in reporting situations for information to be incomplete, not comparable or not consistent from one reporting period for valid reasons. Accordingly we believe the section should recognize that possibility by adding wording that requires explanatory reasons to cater for circumstances where the stated qualities for the information are not practically achievable.  Our recommended amendments are as follows:  S44 (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 any information the Prudential Authority may 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).  (2) An insurer and a controlling company must, when providing **the** information referred to in subsection (1), ensure that the information—  *(a)* is complete in all material respects, comparable and consistent from one reporting period to another**, or provide explanatory reasons where it is not**; and  *(b)* is relevant, reliable and comprehensible **in consideration of the purpose and users of the information**. | 🗶 Disagree with the proposed amendments. Clause 44(2) is a general obligation that should not be qualified. Further, the clause relates to information requested by the PA so the purpose and user of the information is clear. |
| Ernst and Young | 46(1) | Section 46(1) requires the insurer or controlling company’s annual financial statements to be prepared in accordance with IFRS, but omits to make reference to the requirements for preparation of company financial statements set out in the Companies Act. As the definitions of annual financial statements contained in the Companies Act are not aligned to the definition contained in IFRS, unless reference is made to both IFRS and the Companies Act for preparation of financial statements there is potential for a conflict of laws. We believe that prospect should be carefully avoided by the drafters of the Insurance Bill.  Our recommended amendments in this regard are as follows:  S46 (1) An insurer (other than a foreign branch of an insurer, Lloyd’s underwriter or Lloyd’s) and a controlling company must annually prepare, in respect of the relevant financial year of the insurer or controlling company, annual financial statements **in** **accordance with the Companies Act**, **and** in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body. | 🖉 Agree to amend the clause as to read “in accordance with the Companies Act andInternational Financial Reporting Standards issued by the International Accounting Standards Board or a successor body”. |
| Ernst and Young | 47(1)-(3) | Section 47(1)-(3) establishes an “audit” requirement for the “any information” requirements contained to in section 44(1). Under the established standards contained in the auditing pronouncements issued by IRBA, which as a matter of public policy are aligned to internationally accepted auditing and assurance standards, it is not possible to audit undefined information – indeed the auditor is prohibited from accepting an engagement to perform an audit when the subject information is not able to be properly audited under criteria established or a generally accepted framework defined in those standards. Accordingly there are 2 options: (1) either define or describe the information in section 44 that needs to be audited under section 47 – ensuring that the information is auditable information or (2) change the wording in section 47 to wording that is accommodating of the fact that the information in section 44(1) is unidentified/undefined and while it may (at such time when it is identified or defined) not be auditable may be able to be subject to another form of examination by the auditor – also applying any relevant pronouncements of IRBA, as applicable in the circumstances.  Assuming that only option (2) above is feasible, we strongly recommend that the drafters of the Bill adopt the suggested wording we provide for section 44(1)-(3) in the attached schedule, to ensure this section is workable in practice for insurers/controlling companies and their auditors.  Section 47(5) reserves the PA’s right to also prescribe auditing standards or requirements in respect of the application of sections 41, 44 and 45. It is appropriate in that case that the PA be required to consult with IRBA and the South African Institute of Chartered Accountants in the course of doing so. This is an important procedural requirement to avoid any potential conflicts between the auditing pronouncements of IRBA and the professional and ethical standards that apply to professional auditors who are licensed by IRBA.  Further, in relation to the auditing requirements contained in section 47, it is critically important to enhance the effective performance of these requirements by licensed auditors, we recommend inclusion, in common with prudential regulation standards applied in other countries[[1]](#footnote-1), of a corresponding requirement for the insurer or controlling company to make arrangements to ensure the appointed auditor is able to perform the required functions in section 47, including ensuring that:   * the insurer and controlling company provides the appointed auditor with any information that has been requested by the auditor, or that the PA has provided to the insurer or controlling company, that may assist the auditor in performing the auditor’s functions and duties under sections 32 and 47; and * the auditor has access to all relevant data, information, reports and personnel of the insurer and the controlling company (and must take all reasonable steps to ensure access to contractors of the insurer or controlling company) that the auditor reasonable believes are necessary to perform the auditors functions and duties under the Act.   Our recommended amendments in this regard are as follows:  S44(1) An insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) and a controlling company must annually cause the following information and statements to be **examined or** audited, **as applicable,** and reported on by its **appointed** auditor in accordance with auditing pronouncements as defined in section 1 of the Auditing Profession Act—  *(a)* such of the information referred to in sections 44 and 45 as prescribed [insert …]; and  *(b)* the annual financial statements referred to in section 46. | 🗶 Disagree that any amendments to clause 47 are required. The clause makes it clear that only information as prescribed needs to be audited. This will be prescribed in Prudential Standards. Further, the Prudential Standards will, to the extent that it is not provided for in the Companies Act prescribe the requirements relating to the insurers engagement with the auditor. Informal consultation on the Prudential Standards has already commenced, including with IRBA.  Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB on the enactment of the Bill. |
| ASISA | 47(2) | 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.  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.  **Proposed amendments:**  (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.~~  **(2) The audited annual financial statements of:**  **(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**  **(b) the controlling company must be submitted to the Prudential Authority within the prescribed period after its financial year-end.** | 🖉 Agree to amend the clause to provide for the audited annual financial statements of the insurer and controlling company to be submitted to the Prudential Authority and to provide for only the audited annual financial statements of the insurer to be made available to the public within the prescribed period after its financial year-end. See revised clause proposed.  (b) The audited annual financial statements of the controlling company must be submitted to the Prudential Authority within the prescribed period after its financial year-end. |
| SAIA | 49(2) | We propose that the words “to provide the further information or” be inserted as follows:  “If the Prudential Authority reasonably believes that information or a part thereof requires further investigation, the Prudential Authority may direct the insurer or controlling company **to provide the further information** or to secure a report from a person to be approved by the Prudential Authority, at the cost of the insurer or controlling company, by a specified date or within a specific period, and in the form, manner and containing the information as required by the Prudential Authority.” | 🖉 Agree to include the ability for the PA to require additional information. See revised clauses proposed. |
| **CHAPTER 10: ADMINISTRATION OF ACT** | | | |
| PGC Group of Companies | 62 | The Insurance Bill does not make reference to transformation in relations to the powers and functions of the Prudential Authority, which is entrusted with the authority to supervise the insurance industry.  The Prudential Authority is not legislatively required to take into account the need to transform the insurance industry in the performance of its functions. This is deeply problematic given the social, political and economic history of South Africa, and the constitutional values and commitments contained in the Constitution. Therefore, we urge Parliament to reconsider this aspect of the Insurance Bill. | 🖉 A number of amendments are proposed to facilitate the achievement of government’s broader transformation objectives. See revised clauses proposed in respect of –   * the definition of “transformation of the financial sector”; * inclusion of “transformation of the insurance sector” in the Objective for the Bill; * criteria to be considered in the granting or variation of a licence; * the progressive achievement of licensing requirements; * exemption from certain requirements for a specific period. |
| PGC Group of Companies | 65 | Section 65 of the Insurance Bill is problematic to the extent that it fails to acknowledge the need to build and grow the local insurance industry by promoting companies owned and controlled by members from previously disadvantaged groups so as to achieve substantive equality.  Section 65 does not acknowledge that South Africa has a unique political, social and economic history, particularly the constitutional commitment that seek to respond to that history by imposing certain obligations to those entrusted with the implementation of the legislation passed by Parliament  The South African’s legislative system is informed by the constitution, which includes a positive obligation to transformation. Under such a system, one can never find congruence between legislative objectives passed in South Africa and those passed in a foreign country, as section 65 imply, because the constitutional basis will be distinct. No country in the world has a supreme Constitution that enjoins its Parliament to pass laws that have the objective to transform society by addressing the imbalances brought about by colonialism and apartheid, with a particular focus on designated groups. To this extent, we submit that section 65 would be constitutionally invalid if passed in its current form because it is impossible to implement without compromising the Constitution and its goals of achieving substantive equality. Further, the impugned provision is in conflict with the Constitution to the extent that it purports to permits the Prudential Authority to supersede the imperatives in the Constitution in favour of laws objectives passed by foreign country. | The purpose of clause 65 is to determine that the requirements imposed by a foreign jurisdiction are equivalent to this Act if the PA is satisfied that the laws, and supervisory and information sharing frameworks, established in that foreign jurisdiction meet the objects of this Act. The clause is specific to –   * the licensing of foreign branches of reinsurers – only branches of reinsurers located in foreign jurisdictions whose laws, and supervisory and information sharing frameworks that are regarded as equivalent to ours may be licensed; and * the extent to which licensed insurers may take into account reinsurance into foreign jurisdictions in calculating their financial soundness (the latter will be addressed in Prudential Standards). Only reinsurance into foreign jurisdiction whose laws, and supervisory and information sharing frameworks that are regarded as equivalent to ours may be taken into account without providing security.   The clause does not impact on or impede transformation. Insurers are already permitted to reinsurer on a cross-border basis.  More background on this clause is provided in the Reinsurance Regulatory Review Position Paper issued by the FSB on 9 September 2016. |
| Ernst and Young | 68(4) | Section 68(4) sets out an offence and related penalty for auditors of insurers/controlling companies that are convicted of a breach of any provisions of sections 32(4)-(6).  We have however pointed out in this submission a number of flaws, technical and drafting deficiencies in each of those sections that need to be addressed to ensure the provisions in the legislation are both fair, practicable and in compliance with the rules governing auditors, and also clear and understandable for insurers, controlling companies and their auditors.  It is submitted that it is not reasonable to expect auditors to comply with the currently drafted provisions or provisions with which the auditor may not be able to comply without breaching the auditing standards while also imposing a significant penalty provision for any instances of non-compliance or breach of those provisions – which we consider will be punitive. In many cases, as we have pointed out in this submission, the auditor will not reasonably be able to comply with certain of those provisions, or will of necessity be obliged to adopt an interpretation of certain provisions that potentially may not accord with the PA’s interpretation, which could trigger technical non-compliance with the legislation or non-compliance with the auditors own professional standards.  In light of the many places where the Bill lacks clarity in relation to specifying the auditor’s duties and functions, a reasonable defence provision is needed for the auditor in relation to section 32(6).  As a minimum, there needs to be further provisions to ensure that the insurer and a controlling company have the legal obligation to provide all information to the auditor needed for the auditor to perform the auditor’s functions and duties as prescribed in the Act, and in associated regulations and regulatory notices as may be published by the Prudential Authority from time to time. | 🗶 Disagree. The offences are limited to clauses 16(5) and 32(4), (5) and (6).  Clause 16(5) requires any auditor of an insurer or a controlling company who resigns or whose appointment is terminated to submit to the PA -   * a written statement on the reasons for the resignation or the reasons that the auditor believes are the reasons for the termination; and * any report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act that the auditor would, but for the termination, have had reason to submit.   See response to EY’s comment on clause 32 and other responses to comments from EY relating to clarity on the role and, functions and duties of auditors.  This provision has been through several rounds of consultation with IRBA and SAICA, and is consistent with provisions in the FSRB. |
| **CHAPTER 11: GENERAL PROVISIONS** | | | |
| Hollard | 69(1) | Given the demarcation regulations that have been introduced, does this mean that Dread Disease / Critical Illness benefits do not fall into the definition of “business of a medical scheme”? If not does this mean existing dread disease and critical illness products would not be permitted? | Dread disease / critical illness policies which offer a lump sum benefit or annuity income when diagnosed with illness, disability or when a death event occurs, are unaffected by the demarcation regulations and the amended definition of business of a medical scheme. |
| ASISA | 72(b) | Section 72(b) only allows for a temporary exemption from a part of the Bill in order to allow time for implementation thereof by an insurer etc. The first draft Bill published on 15 April 2015 provided for a well-crafted general exemption section - see section 64 below:  *64(1) 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—*  *(a) if practicalities impede the strict application of a specific provision of this Act;*  *(b) 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;*  *(c) for developmental and financial inclusion objectives necessary to facilitate the progressive or incremental compliance of this Act by a specific insurer; and*  *(d) if the granting of the exemption will not—*  *(i) conflict with the public interest; or*  *(ii) frustrate the achievement of the objective of this Act.*  *(2) 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.*  *(3) An exemption may be granted subject to any conditions specified by the Registrar.*  *(4) 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.*  *(5) The Registrar—*  *(a) must publish an exemption on the official web site;*  *(b) 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.*  This section has been removed, presumably because it was envisaged that the exemption provisions in the FSR Bill could be used.  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) Subsection (1) applies to the granting of exemptions if a financial sector law does not provide a power to grant exemptions.*  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. | 🖉 Agree to reinsert the provision. See proposed new clause 66. |
| **SCHEDULE 2: CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS NON-LIFE INSURANCE** | | | |
| Hollard | **‘‘beneficiary’’** | For an individual policy it is much broader than is applied in current practice and may lead consumers to misunderstand the rights of a beneficiary. A beneficiary only acquires any rights to receive insurance policy proceeds in the instance that the policyholder is deceased at the time of the insurance event. An individual version of the beneficiary definition is not used anywhere in the Schedule. | 🗶 Disagree.  The definition of “beneficiary” cannot be construed as to giving rise to any misunderstanding on the rights of a beneficiary. The definition clearly states who a beneficiary is.  Also, the term “beneficiary” is used in the definition of “group” and in the Table 1 and 2 in respect of the following classes and sub-classes of insurance business: Group Death, Group Health, Group Disability – lump sum, Group Disability – recurring payment, Funeral and Accident and health |
| Hollard | **‘‘individual’’** | The meaning that it includes insurance policy issued to an employer but excludes a group policy where the policyholder is the employer, seems circular. Clarity is required. | 🗶 Disagree. The definition of ‘‘individual’’ clearly states what is regarded as an individual policy.  The definition specifically excludes group policies. A policy where an employer is the policyholder and the person in respect of whom the insurer should meet the insurance obligations is an individual policy.  A policy where an employer is the policyholder but the employer holds the insurance policy exclusively for the benefit of a beneficiary is a group policy. |
| PPS | Table 1 | Schedule 2 does not have products with Discretionary Participation features as risk products only investment or retirement products.  In our view “Discretionary Participation features” should be included under Schedule 2 – Table 1 for insurers operating on a mutual model. | Where “with discretionary participation features” is identified as a sub-class it means that an insurer that wishes to provide for this in the insurance policies that it intends to underwrite must be specifically licensed for that sub-class. It was not regarded as necessary for such a sub-class to be specified under the life risk classes. This means that an insurer may provide for this in the policies it intends to underwrite without having to be specifically authorized to do so. |
| Hollard | Table 1, Class 1 – Risk, a. Individual Death | Single sub-class for lump sum and income benefits but disability classes has separate sub-classes for lump sum and income, seems unnecessary to separate sub-classes based on frequency of claim payment. Similar for others e.g. Group disability lump sum and group disability recurring payment etc. | A separate sub-class for “Disability – recurring payments” was provided for as the skills and expertise to underwrite same differs from that required for the other sub-classes referred to in the comment. The PA therefore wants to ensure that insurers that intend to underwrite this sub-class are specifically licensed to do so and have the necessary skills and expertise to do so. |
| Hollard | Table 1, Class 1 – Risk, b. Individual Health | “which sum is not linked to the costs or services regulated under the Medical Schemes Act”. Tiered or severity based Critical Illness / Dread Disease policies vary the sum payable based on the severity of the diagnosed condition. Diagnosis is a service regulated under the Medical schemes act, therefore would this definition not prohibit severity based Critical Illness / Dread Disease products as Critical Illness / Dread Disease not included in the allowed products in the current demarcation regulations. | Dread disease / critical illness policies which offer a lump sum benefit or annuity income when diagnosed with illness, disability or when a death event occurs, are unaffected by the demarcation regulations and the amended definition of business of a medical scheme as these policies do not defray medical expenses. |
| The Unlimited Group (Pty) Limited | Table 1, Class 1 – Risk, b. Individual Health | The description of individual health (life business) and individual –Personal lines (non-life insurance business) differ in the following respects (our emphasis added):   * individual health: “… *which sum is not linked to the costs or services regulated under the medical schemes Act…****but includes*** *any kind, type or category of contract identifies by the Minister…”,* * Individual *–* Personal Lines: “*Covers costs or loss of income resulting from - \*a health event, other than costs or services regulated under the Medical Schemes Act…****including*** *any kind, type or category of contract identified by the Minister…”.*   We interpret the word “including” in the description of individual –Personal Lines’ to mean that:   * Any kind, type or category of contract identified by the Minister in regulations as an insurance policy is NOT exhaustive; and accordingly * That other types of policies which provides benefits on the happening of health event, but which:   + Do not amount to costs or services regulated under the Medical Schemes Act; and have not been identifies by the Minister in regulations (the so-called demarcation Regulations),   still constitute insurance policies and accordingly fall to be regulated under the Bill. In this regard we strongly propose that the wording in the description of “Individual Health” be changed to “including (instead of ***“but includes”)*** *-* which is a lot more certain. | 🖉 Agree to align the descriptions. Only products identified by the Minister in Regulations are insurance products. |
| Hollard | Table 1, Class 3 – Credit Life | Should exclude an individual policy that has been ceded on a collateral basis to the credit provider. Or is it expected that a policy will move classes in the event of a cession to a credit provider? Retrenchment (unemployment) cover is only permissible under the Credit Life class – is this intentional? | 🗶 Disagree. A policy ceded to a credit provider remains a life risk policy.  Yes. Retrenchment is only permissible under this class to allow for alignment with the National Credit Act definition of "credit life insurance". However, it may be allowed in the Prudential Standards to be provided as a rider benefit in respect of other classes. |
| SAIA | Table 1, Class 3 – Credit Life | In light of the SAIA’s current engagement with the National Treasury, in respect of a Public Private Partnership on Agricultural Insurance, we propose that Agriculture be included as a class of business under microinsurance.  We further propose that provision be made for index based insurance products under the agriculture class of business. We will therefore continue our engagement with the National Treasury and Financial Services Board in respect of both points above. | ✓ Agree. This will facilitate access to insurance. Prudential risks will be managed through licensing conditions. |
| Hollard | Table 1, Class 9 – Reinsurance | Is each class to which reinsurance licensing required applied for? Or is the approval for reinsurance mean approval for reinsurance on each class for which the insurer is licensed? | An insurer that intends to conduct reinsurance in respect of a specific class or sub-class must be specifically licensed to conduct reinsurance in that class. See separate class for reinsurance in the Tables in Schedule 2. |
| Monarch Insurance Company Ltd | Table 2 | In terms of the Bill, short-term insurance will be referred to as “non-life insurance “and long-term insurance will be referred to as “life insurance”. Separate licence will be required in order to offer non-life insurance and life insurance. A single entity will not be permitted to hold both a non-life insurance licence and life insurance licence.  As an existing short-term insurer offering credit life insurance, we would thus have expected, on the enactment of the Bill, to have been required to apply for a non-life insurance licence to replace our existing short-term insurance licence. However, it appears from Schedule 2 to the Bill (which sets out classes of insurance that may be licensed under a life and non-life insurance), that this will not be possible. Instead, it appears that the Bill will require us to apply for a non-life insurance licence for our short-term insurance product (property insurance), and to establish a new, separate entity that have to apply for a life-insurance licence in order to offer the short-term credit life insurance products that we have, up until now, been permitted to sell under our short-term insurance licence.  We respectfully submit it is not in line with the international practice, unfair, unconstitutional and uncompetitive to force insurers who currently sell short-term credit life insurance under short-term insurance licence, to apply for life licence in order to continue offering credit life insurance products, and to have to compete in the life insurance market with long-established major life insurance players.  Furthermore in our respectful view Credit life insurance relates to the contractual risk event of failing to pay a liability or discharge an obligation weighing more what caused or brought about the contractual risk event (e.g. death, disability, and loss of employment or other).  To address these concerns, we propose that credit life insurance to be included in Table 2 as a class of non-life insurance that may be offered under a non-life licence as follows:  **Credit life insurance - Lump sum payable to satisfy all or part of a financial liability to a credit provider upon the happening of a specified risk event, including in the event of a consumer’s death event, health or disability event, unemployment, or other insurable risk that is likely to impair the consumer’s ability to earn an income or meet the obligation under a credit agreement.**  Alternatively consider including credit life as a component of the Consumer Credit” class in Table 2. | Internationally, life business is not underwritten by non-life insurers. Longevity and mortality risks are not appropriately underwritten by non-life insurers. The skill set required in respect of underwriting life insurance differ significantly from the skill set required to underwrite non-life business. The risk factors and underwriting assumptions differ significantly for life and non-life insurance.  An exception to this is a microinsurance licence, which allows for a composite life and non-life licence on the basis that microinsurance product standards help ensure that there is limited prudential risk. Credit life can be written under a microinsurance licence.  Transitional provisions are provided for in Schedule 3 to the Bill. Item 6 provides for a two year transitional period and provides for the PA an insurer to discuss how best to address business an insurer may no longer underwrite. This may include options such as transferring of the business to another insurer, allowing the business to runoff (i.e. not renewing policies relating to this business). |
| **SCHEDULE 3: TRANSITIONAL ARRANGEMENTS** | | | |
| Black Business Council | 7 | Section 7 of Schedule 3 states that “an insurer that immediately after the effective date fails to comply with the financial soundness requirements must submit a scheme or strategy referred to in section 39 of this Act to the Prudential Authority in accordance with that section, subject to that insurer holding capital of at least R10 million” – this may put a lot of small players out of business | **🗶** Disagree.Under the Long-term and Short-term Insurance Acts the current minimum capital requirement is R 10 million or higher. Existing insurers should therefore already meet this capital requirement.  In addition see above for the amendments proposed to facilitate the achievement of government’s broader transformation objectives, including the progressive achievement of licensing requirements. |
| **GENERAL COMMENTS** | | | |
| Black Business Council | Section 18 (financial implication) of the memorandum on the objects of the insurance bill | Section 18.5 (financial implication) of the memorandum on the objects of the insurance bill states that “the implementation of SAM will result in additional costs to the insurance industry. These costs will be offset by the benefits described above, although they are more difficult to measure. Even if these costs are passed on to consumers in the medium term, they are likely to be small, and may even be negligible given the difficulty in quantifying counterbalancing benefits and the fact that pricing may be influenced by many other factors”. | Noted. The main conclusion from the SAM Economic Impact Assessment is that the costs that may be passed on to consumers are likely to be negligible, but that this is outweighed by the significant benefits of contributing to stronger policyholder protection and financial stability. |
| Black Business Council | Appointment of Auditors and actuaries | The criteria for accrediting audit firms should be less stringent and allow them to outsource skills like actuarial that they don’t have in-house. This will benefit small firms as well who charges less rates compared to the big audit firms. | The FSB is mindful of these costs and is considering an approach to address the costs for small insurers – particularly black-owned insurers - as part of an overall financial sector transformation strategy. |
| Gerhardus Cilliers | General | I would like to petition Parliament of South African to amend legislation relating to own occupational disability benefit to include whole life option for current and new policies and for this amendment to be made retrospective. | The petition does not relate to matters that can be addressed in the Bill. |
| PGC Group of Companies | Appointment of Auditors and actuaries | Our submission is that, Parliament has an opportunity to break down this interwoven, carefully crafted and well executed exclusion strategy of black people in the financial services sector by taking bold decisions.  We submit that, the current practice that insurance companies in South Africa are compelled to use Banks, Auditing Firms and Actuarial firms that have been ring-fenced is not assisting the transformation agenda.  The secrecy around which service providers are to be used and what criteria has informed their preference is an affront to this parliament because, this is not legislated, but it is standard practice .  With the banking and the auditing sectors being controlled by a few white people, this practice further haemorrhages any attempt to transform the financial services.  Instead, the Bill should in an unambiguous and crystal clear language champion the use by Insurance companies of emerging Actuarial firms, Auditing Firms and other banks. | The Bill and practice to date is that the insurer informs the PA / FSB of the auditor that it wants to appoint. The PA/ FSB then considers the proposed auditor to be appointed. The PA / FSB does not propose whom the auditor should be.  The FSB is mindful of the costs of audit firms and actuaries, and the need to contribute to the transformation of these industries, and is considering an approach to address this as part of an overall financial sector transformation strategy. |
| PGC Group of Companies | Constitutionality of the Bill | We submit that the Insurance Bill is unconstitutional to the extent that it fails to incorporate express transformation objectives. Without such incorporation, the Insurance Bill will not pass constitutional muster if challenge do unconstitutional grounds at a later stage.  Without such incorporation Parliament will fail in its constitutional obligation to respect, protect, promote and fulfil the rights in the Bill of Rights. Further, any steps taken by Parliament to pass this Insurance Bill in its current form will be in effective and unreasonable and render the Insurance Bill unconstitutional obligations. | 🗶 Disagree that the Bill as tabled is unconstitutional.  Agree that the Insurance Bill explicitly address transformation of the insurance sector. Amendments proposed to facilitate the achievement of government’s broader transformation objectives include:   * the definition of “transformation of the financial sector”; * inclusion of “transformation of the insurance sector” in the Objective for the Bill; * criteria to be considered in the granting or variation of a licence; * the progressive achievement of licensing requirements; * exemption from certain requirements for a specific period. |
| The Unlimited Group (Pty) Limited | Microinsurance | How does National Treasury envisage Micro-insurers will be regulated? There does not appear to be any further clarity on this important initiative. | Informal consultation on the relevant Prudential Standards has already commenced.  The first draft of the Financial Soundness Standards for Microinsurers (“FSM”) was distributed to the SAM structures for comment in July 2016. The second draft of the Financial Soundness Standards for Microinsurers was released for informal public comment in November 2016.  The first draft of the Governance and Operational Requirement for Microinsurers will be released soon for informal public comment.  Formal consultation on these Prudential Standards will take place in accordance with the requirements for regulatory instruments provided for in the FSRB on the enactment of the Bill.  Enhanced conduct of business regulation will be facilitated through dedicated PPRs / Regulations. The legislation will provide for specific requirements relating to advice and intermediation, and product standards. |
| PGC Group of Companies | Amendment of the Preamble | Whilst black people are major consumers of financial services due to their numerical superiority, black control of financial services is less than 1%.  The current preamble or the long title of the Insurance Bill is silent pertaining to transformation in the insurance industry.  We recommend that the preamble or the long title of the Insurance Bill must give due regard to transformation. In other words, it must expressly state that it will give due regard to transformation | 🗶 Disagree that transformation must be provided for in the Long Title. This has been provided for in the Objective of the Bill. See above for this and other amendments proposed to facilitate the achievement of government’s broader transformation objectives. |

1. For example, see the Australian Prudential Regulator’s Prudential Standard GPS 310 (paragraph 9), available at http://www.apra.gov.au/CrossIndustry/Consultations/Documents/GPS-310-Audit-and-Related-Matters-January-2013.pdf [↑](#footnote-ref-1)