1. **Definitions**

**“transformation of the insurance sector”** means transformation as envisaged by the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

## 3. Objective of Act

The objective of this Act is to, in a manner consistent with the Constitution of the Republic of South Africa, 1996, promote the maintenance of a fair, safe and stable insurance market for the benefit and protection of policyholders, by establishing a legal framework for the prudential regulation and supervision of insurers and insurance groups that—

* 1. facilitates the monitoring and the preservation of the safety and soundness of insurers;
  2. enhances the protection of policyholders and potential policyholders;
  3. increases access to insurance for all South Africans; and
  4. promotes transformation of the insurance sector;

## 22. Requirements for licence

(1) In order to qualify for licensing as an insurer—

* 1. a person—
     1. that intends to conduct microinsurance business only, must be a profit company or a non-profit company registered under the Companies Act, or a co-operative registered under the Co-operatives Act;
     2. that intends to conduct reinsurance business only, must be a public company or state-owned company registered under the Companies Act, a co-operative registered under the Co-operatives Act or a branch of a foreign reinsurer; and
     3. in any other case, subject to section 70, must be a public company or state-owned company registered under the Companies Act, or a co-operative registered under the Co-operatives Act;
  2. a person’s primary business activity must be the conducting of insurance business and operations arising directly therefrom;
  3. a person must demonstrate that—
     1. its key persons and significant owners meet the prescribed fit and proper requirements;
     2. it has a sound business plan;
     3. it has a plan to meet its stated commitments in terms of transformation of the insurance sector;
     4. it has adequate operational management capabilities to conduct the classes and sub-classes of insurance business set out in Schedule 2 that it wishes to conduct;
     5. if it is a branch of a foreign reinsurer and the requirements imposed by the foreign jurisdiction in which the institution is authorised and supervised have not been determined as equivalent to this Act under section 65, the laws of the country under which the institution is authorised and supervised establish a regulatory framework equivalent to that established by this Act;
     6. if it is part of an insurance group, that its controlling company will be able to meet the requirements for insurance groups as set out in this Act; and
     7. it will be able to comply with the governance framework requirements, financial soundness requirements and reporting and public disclosure requirements of this Act;
  4. that person’s licensing must not be contrary to the interests of prospective policyholders or the public interest, including transformation of the insurance sector; and
  5. in the case of a state-owned company, an Act of Parliament authorises that company to conduct insurance business and the Minister has approved that the company may apply for a license under this Act.

## 26. Variation of licence conditions

(1) The Prudential Authority may amend, delete, replace or vary any licensing conditions or impose other or additional licensing conditions—

* 1. on application by an insurer or controlling company;
  2. when it is in the public interest, including transformation of the insurance sector;
  3. when, in the case of an insurer, it is in the interests of the policyholders or potential policyholders of the insurer, or
  4. when, in the case of a controlling company, it is in the interests of maintaining the financial soundness of any insurer that is part of the insurance group;
  5. when revoking a suspension of a licence;
  6. in the circumstances referred to in section 48; or
  7. in the case of an insurer, if an insurer has ceased to enter into insurance policies relating to a class or sub-class of insurance business, to the extent that its licence for that class or sub-class of insurance business is no longer justified.

## 66. Exemptions

(1) The Prudential Authority 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 Prudential Authority—

*(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, financial inclusion and transformation 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) Any 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) Any exemption may be granted subject to any conditions specified by the Prudential Authority.

(4) Any 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.

(6) The Prudential Authority—

*(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 Prudential Authority determines sufficient.

* The above is the approach mooted in the Bill presented to the committee on 10 May 2017.
* This construct does not purport to hard-code transformation targets in the Insurance Bill itself, but rather the construct recognises the overarching and central role the Broad-Based Black Economic Empowerment Act (BBBEE Act) plays in facilitating transformation and aims to support this role.
* The proposal moots the inclusion of a clear reference to transformation targets entrenched (and to be evolved over time) in the Financial Sector Code for BBBEE in the Insurance Bill.
* An applicant, on application to be licensed as an insurer, will be required to demonstrate that it has a plan to meet its stated commitments in terms of transformation of the insurance sector. The Prudential Authority will also be empowered to consider transformation in the licencing process (this echoes the obligation placed on organs of state in the BBBEE Act).
* The aforementioned will in turn enable the Prudential Authority to monitor implementation of the plan and to engage with the insurer if it fails to implement the plan (and take regulatory action where necessary).
* The following definition of “transformation of the insurance sector” was also proposed to the Committee and supports the proposal: “means transformation as envisaged by the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)”.
* The benefits of this option are that it builds on and supports the transformation / empowerment architecture enacted by Parliament and allows additional monitoring of implementation, and where necessary, supervisory intervention.