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|  | **INSURANCE BILL**  **COMMENTS MATRIX**  **NATIONAL TREASURY’S RESPONSES TO COMMENTS ON SCHEDULES 1 AND 3 OF THE INSURANCE BILL,**  November 2017 |  |
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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. | Alexander Forbes Group Services | Fiona Rollason |
| 3. | Banking Association South Africa (BASA) | Adri Grobler |
| 4. | South African Insurance Association (SAIA) | Easvarie Naidoo |
| 5. | Financial Intermediaries Association of Southern Africa (FIA) | Peter Atkinson |
| 6. | The Unlimited | Joanna Bromley-Gans |
| 7. | Free Market Foundation | Gail Day |
| 8. | Black Insurance Owners Association | Zwilenkosi Mdletshe |
| 9. | Industrial Development Corporation (IDC) | Pumeza Radana |
| 10. | Black Business Council | Tembakazi Mnyaka |

| RESPONSES TO COMMENTS ON SCHEDULES 1 AND 3 OF THE INSURANCE BILL | | | | | |
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| **#** | **Commentator** | **Schedule** | **Clause** | **Comment** | **Response** |
| **SCHEDULE 1** | | | | | |
| 1 | Free Market Foundation | Schedule 1 | Financial Sector Regulation  Act | [a] The Financial Sector Regulation Act, 2017 states that the Prudential Authority may issue, to[[1]](#footnote-1) a financial institution that provides a financial product, a written directive requiring it to take action specified in the directive if the institution is conducting its business in an “improper”[[2]](#footnote-2) way and, as a result, there is a “risk” that the institution “may not be able” to comply with its obligations; or if the institution has contravened or is “likely to” contravene a financial sector law for which the Prudential Authority is the responsible authority.[[3]](#footnote-3)  The directive must be “aimed at” achieving the Prudential Authority’s objective (to[[4]](#footnote-4) “promote”[[5]](#footnote-5) the[[6]](#footnote-6) soundness of financial institutions that provide financial products, and protect customers against the risk that those institutions may fail to meet their obligations[[7]](#footnote-7)), and[[8]](#footnote-8) at reducing the risk (that the institution may not be able to comply with its obligations), or at stopping the institution from contravening applicable financial sector laws or reducing the risk of such contraventions.[[9]](#footnote-9) Action that may be specified in a directive includes the financial institution’s ceasing to provide a specific financial product.[[10]](#footnote-10)  It is unclear what constitutes conducting business in an “improper” way, or what degree of “risk” that the financial institution “may not” be able to comply with its obligations would justify the Authority’s acting; or how “likely” to contravene a law the institution would need to be to justify the Authority’s acting.  The applicable criteria, that the directive must be aimed at achieving the Prudential Authority’s objective of promoting the soundness of institutions, and at reducing the risk that the institution may not be able to comply with its obligations,[[11]](#footnote-11) are insufficient to save the provision from being vague and discretionary.  This power of the Prudential Authority[[12]](#footnote-12) violates the principles of the Rule of Law that laws should be[[13]](#footnote-13) intelligible, clear and predictable,[[14]](#footnote-14) and that questions of legal liability should[[15]](#footnote-15) be resolved by application of law not the exercise of discretion.[[16]](#footnote-16)  [b] Similarly, the Financial Sector Conduct Authority may issue a directive to a financial institution to take specified action if the institution has contravened or is “likely” to contravene a financial sector law for which the Financial Sector Conduct Authority is the responsible authority.[[17]](#footnote-17) The directive must be aimed at achieving the Financial Sector Conduct Authority’s objective (to[[18]](#footnote-18) “protect financial customers by promoting fair treatment” of financial customers by financial institutions[[19]](#footnote-19)), and stopping the institution from contravening applicable financial sector laws or “reducing” the risk of contraventions.[[20]](#footnote-20) The specified action may include ceasing to provide a specific financial product.[[21]](#footnote-21)  This similar power of the Financial Sector Conduct Authority, and for the same reasons, also violates the Rule of Law principles that laws should be predictable, and that liability should not be determined by discretion.  [c] The Financial Sector Regulation Act will amend both Insurance Acts[[22]](#footnote-22) to provide that the Authority[[23]](#footnote-23) by notice to an insurer may amend,[[24]](#footnote-24) replace or impose additional conditions of registration subject to which the insurer is registered, “when in the public interest or the interests of the policyholders or potential policyholders” of the insurer.[[25]](#footnote-25)  It is unclear what constitutes “the public interest or the interests of the policyholders or potential policyholders.”  The amendments are vague and discretionary interferences with vested rights. The amendments violate the Rule of Law principles that laws should be intelligible, clear and predictable, and that questions of legal liability should be resolved by application of law not the exercise of discretion.  [d] The Financial Sector Regulation Act’s transitional provisions also include a provision that the “Prudential Authority” must be substituted as a party in any pending proceedings[[26]](#footnote-26) that have been commenced but not finally determined immediately before the date on which the provision comes into effect, for the Reserve Bank or “a Registrar in terms of” a banking Act,[[27]](#footnote-27) “the Short-term Insurance Act or the Long-term Insurance Act.”[[28]](#footnote-28)  However, the “Financial Sector Conduct Authority” must be substituted as a party in pending proceedings[[29]](#footnote-29) for the Financial Services Board, Directorate of Market Abuse where applicable, or “a Registrar in terms of a financial sector law other than the Banks Act.”[[30]](#footnote-30)  This is contradictory: The one provision[[31]](#footnote-31) states that the “Prudential” Authority must be substituted as a party in pending proceedings for “a Registrar in terms of…the Short-term Insurance Act or the Long-term Insurance Act.” But the other provision 66 states that the Financial Sector “Conduct” Authority must be substituted as a party in pending proceedings for “a Registrar in terms of a financial sector law other than the Banks Act” (implying that the Financial Sector Conduct Authority must be substituted as a party in pending proceedings for a Registrar in terms of “the Short-term Insurance Act or the Long-term Insurance Act”). | Your comment is noted. However, your comment seems to focus on the existing requirements contained in the Financial Sector Regulation Act, 2017 (“FSRA”) (which has been promulgated) and not on the proposed amendment of the FSRA as set out in Schedule 1 to the Insurance Bill. In addition, please note that the extent to which Schedule 1 to the Insurance Bill will be amending the FSRA is limited to ensuring alignment between the FSRA and the Insurance Bill/Act. Schedule 1 to the Insurance Bill does not propose any substance changes to the FSRA. |
| 2 | FIA | Schedule 1 | Schedule 1 Long-Term and Short-Term Insurance | It is not clear whether and or how what is included in Schedule 1 is meant to exist after the Insurance Act and CoFI Acts replace the existing Insurance Acts. It seems as if there is content that is not replaced, e.g. sec 8(2) of the Short Term Act? | Schedule 1 to the Insurance Bill will repeal substantial parts of the Long-term Insurance Act (“LTIA”) and the Short-term Insurance Act (“STIA”) relating to the prudential supervision. The Insurance Bill itself will provide for the prudential supervision of insurers. The remaining parts of the LTIA and STIA (i.e. the parts of these Acts that are not repealed) will serve as an interim conduct of business framework for insurers up until such time as the COFI Bill becomes law and repeals the remaining parts of the LTIA and STIA. |
| 3 | The Unlimited | Schedule 1 | Definitions in Long-Term Insurance Act  Death Event includes the event of the life of a person or unborn having ended.  Life Insurance Policy Definition includes death event.  Non-life insurance policy excludes a death event NOT arising from an accident. | Does not include a definition for death event but includes life having ended under the definition of a life event.  If death event is under life insurance in the Bill it should be included under amendment to the long-term act and accurately defined in the short-term act as being limited to death arising from an accident, in the schedule | Please note that in interpreting the LTIA and STIA subsequent to these Acts being amended by Schedule 1 of the insurance Bill, one should differentiate between a registered and a licensed insurer. Certain terminology (i.e. existing LTIA and STIA terminology) will apply to registered insurers until the registrations of these insurers have been converted to licences under the Insurance Bill. Other terminology (i.e. Insurance Bill terminology) will apply to insurers licensed under the Insurance Bill and insurers once their registrations have been converted to licences under the Insurance Bill.  I.e. “register insurer” = insurer registered under the LTIA or ST  i.e. “licenced insurer” = insurer licensed or converted to being licensed under the Insurance Bill  “Life event” as defined in the LTIA and “death event” as defined in the STIA (as amended through Schedule 1) is only used in the context of a registered insurer.  The LTIA currently defines a “life event” as including the life of a person having ended. Therefore, the definition of “life event” in the LTIA already provides for a death event. In the Insurance Bill “death event” has been defined separately from a “life event” because of the “Risk” class of insurance business only applying to death events (not all other life events). Currently the LTIA in the definition of “life policy” does not distinguish between risk life policies and investment life policies. It is therefore appropriate that the current terminology in the LTIA (i.e. definition of “life event” which includes a death event) continue to apply to registered insurers until conversion, and that the new Insurance Bill terminology (i.e. which refers to death event and life event separately) apply to licensed insurers and insurers whose registrations have been converted to licences under the Insurance Bill.  The STIA currently defines a “death event”, and such definition is not limited to events occurring only as a result of an accident. The Insurance Bill, however, will define a “death event” as only occurring as a result of an accident. Therefore, in future “death events” will be limited to accidents only for purposes of non-life insurance. It is appropriate that the current terminology in the STIA (i.e. definition of “death event” which is not limited) continue to apply to registered insurers, and that the new Insurance Bill terminology (i.e. death event limited to accidents only) apply to licensed insurers (i.e. insurers who are now subject to the Insurance Bill). |
| 4 | The Unlimited | Schedule 1 | Definitions in Long-Term Insurance Act  **“disability event”** means the event of the functional ability of the mind or body of a person or an unborn becoming impaired; | Disability Event is defined as the functional ability of the mind or body of a person or unborn becoming impaired. It is important to note that the definition for Health Event and Health Policy do not exclude disability events. | Please see our response above in as far as it relates to differentiating between registered- and licensed insurers. “Disability event” as defined in the LTIA/STIA through Schedule 1 will only apply to registered insurers. “Disability event” as defined in the Insurance Bill will apply to licensed insurers. |
| 5 | BASA | Schedule 1 | Definition in the Financial Sector Regulations Act  **‘‘Tribunal’’** means the Financial has the meaning as defined in the Financial Sector Regulation Act; | Drafting error. Delete the words highlighted in yellow. | “Tribunal” is defined in Schedule 1 as meaning “the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act”. The definition contained in the draft Schedule is therefore appropriate. |
| 6 | Alexander Forbes Group Services | Schedule 1 | Definition in the Long- Term Insurance Act  **“assistance policy”** means a life policy in respect of which the aggregate of -  (a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and  (b) the amount of the premium in return for which an annuity is to be provided, does not exceed R30 000; and includes a reinsurance policy in respect of such a policy; | The reference in the definition of "assistance policy to "does not exceed R30 000" to be taken out and refer to a limit as prescribed by the Authority from time to time. | The R30,000 limit is the current prescribed limit. The definition of “assistance policy” only applies in the context of registered insurers. We do not foresee a change in this limit occurring within the 2 year conversion period for registered insurers to licensed insurers, hence the reason why the authority to prescribe the limit was not provided for.  🖉 Despite the above, to address unforeseen circumstances the ability to prescribe a different amount will be reinserted. The definition will therefore be amended as follows:  ““assistance policy” means a life policy in respect of which the aggregate of -  (a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and  (b) the amount of the premium in return for which an annuity is to be provided,  does not exceed R30 000, or another amount prescribed by the Minister; and includes a reinsurance policy in respect of such a policy;”. |
| 7 | ASISA | Schedule 1 | Definition in the Long- Term Insurance Act  **“disability event”** means the event of the functional ability of the mind or body of a person or an unborn becoming impaired; | |  | | --- | | ASISA members request that this is aligned to the definition in the Bill, which is set out below. It is also requested that “or” as shown is inserted to make it clear that a disability event can be either (a) or (b).  ‘‘disability event’’ means any event resulting in -  (a) the loss of a limb or sense organ, or the use thereof by a person; or  (b) a person becoming so physically or mentally impaired, whether totally or partially, or temporarily or permanently, that the person is unable to— | | Please see our response to comment 3 above in as far as it relates to differentiating between registered- and licensed insurers. “Disability event” as defined in the LTIA/STIA through Schedule 1 will only apply to registered insurers. “Disability event” as defined in the Insurance Bill will apply to licensed insurers. The existing requirements in the LTIA have to be perpetuated for existing insurers up until such time as they are converted to licensed insurers. In other words, Schedule 1 has been drafted in such a way that the existing terminology in the LTIA will apply to registered insurers up until such time as they are converted to licensed insurers, after which the Insurance Bill terminology will apply. The current definition can therefore not be aligned to the Insurance Bill definition. |
| 8 | Alexander Forbes Group Services | Schedule 1 | Definition in the Long- Term Insurance Act  **“disability event”** | Disability is more often than not, not an "event" (singular or once off), but a series of factors- policy wording ordinarily refer to a " date of disability" | Please see response to comment 7 above. |
| 9 | BASA | Schedule 1 | Definition in the Long- Term Insurance Act    **“life event”** means the event of the life of a  person or an unborn -  (a) having begun;  (b) continuing;  (c) having continued for a period; or  (d) having ended; | Are these definitions consistent with terminology and case law in the medical field? | Please see response to comment 7 above. |
| 10 | The Unlimited | Schedule 1 | Definition in the Long- Term Insurance Act  **“life event”** | The definition of life event is the event of a person *or unborn*, having begun, continuing or having continued for a period; or having ended. A life event falls under a life policy.  The definition of a long-term policy includes a life policy.  It is not clear why there is no death event included under the amendments to the long-term act in the schedule. This would be preferred given the definition in the Bill and the fact that death event is part of the amendments to the Short-term Act.  It is also not clear why under the Bill there is no reference to “unborn”.  It is submitted that for purposes of certainty the discrepancies are clarified. | A death event is inherent in the definition of “life event” (i.e. the life of a person ending). Please also see the responses to comments 3 and 7 above. |
| 11 | The Unlimited | Schedule 1 | Definition in the Long- Term Insurance Act  **“health event”** means an event relating to the health of the mind or body of a person or an unborn; | Definition Health Event is an event relating to the health of the mind or body of unborn and person.  It is important to note that this definition does not exclude a disability event (*see above comment*)  A Health Policy excludes benefits which:  are not paid in money; or  are to pay medical expenses;  or that pay providers directly.  It is important to note the above limitations are not in the insurance Bill itself but are included in Table 1, Risk.  The amendments to the schedules and the to the Bill itself are likely to create uncertainty when writing business under transitional arrangements and to create difficulties when ultimately aligning existing business to the Bill (Insurance Act). | Please see response to comment 7 above. |
| 12 | ASISA | Schedule 1 | Definition in the Long- Term Insurance Act  **“health policy”** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, but excluding any contract -  (a) of which the contemplated policy benefits -  (i) are something other than a stated sum of money;  (ii) are to be provided upon a person having incurred, and to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and  (iii) are to be provided to any provider of a health service in return for the provision of such service; or  (b) (i) of which the policyholder is a medical scheme registered under the Medical Schemes Act, ~~1967~~ (Act No. 72 of 1967); | |  |  | | --- | --- | | The reference to 1967 in (b) (i) can be deleted as shown but it is submitted that the entire definition should be changed to the updated version (effective from 1 April 2017) which makes specific reference to section 72. This is set out below:  “health policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, and includes a reinsurance policy in respect of such a contract-   1. excluding any contract- 2. that provides for the conducting of the business of a medical scheme referred to in section 1(1) of the Medical Schemes Act; or  |  | | --- | | of which the policyholder is a medical scheme Schemes Act, and which contract-  (aa) relates to a particular member of the scheme or to the beneficiaries of that member; and  (bb) is entered into by the medical scheme to fund in whole or in part its liability to the member or the beneficiaries of the member referred to in subparagraph (aa) in terms of its rules; but  specifically including, notwithstanding paragraph (a)(i), any contracts identified by the Minister by regulation under section 72(2A) as a health policy; | | | 🖉 Agreed. The current definition of “health policy” will be inserted into Schedule 1. |
| 13 | BASA | Schedule 1 | Definition in the Long- Term Insurance Act  **“official web site”** means a web site of the Authority; | We suggest that this website must be widely publicised by the Authority as being its official website. | Please note that the website will be in the public domain. |
| 14 | ASISA | Schedule 1 | Definition in the Long- Term Insurance Act  **“policy benefits”** means –  (a) in respect of a registered insurer, one or more sums of money, services or other benefits, including an annuity;  (b) in respect of a licensed insurer, benefits to which a policyholder is contractually entitled under a life insurance policy arising from an insurer’s insurance obligations; | Clarity is requested on the reason for the difference in definition between policy benefits provided by a registered insurer and the policy benefits provided by a licensed insurer. | Please see our response to comment 3 above in as far as it relates to differentiating between registered- and licensed insurers. Existing LTIA terminology must apply to registered insurers and Insurance Bill terminology must apply to licensed insurers. Paragraph (a) of the definition of policy benefits is the current definition used in the LTIA. The Insurance Bill does not have a similar definition and rather defines “insurance obligations”. Paragraph (b) of the definition of “policy benefits” is therefore necessary to ensure alignment with Insurance Bill terminology. |
| 15 | ASISA | Schedule 1 | Definition in the Long- Term Insurance Act  “**independent intermediary”, “representative” and “services as intermediary”** | These definitions all refer to the meaning as prescribed in the Regulations and it is suggested that the definitions should rather be reflected in the Act itself. | These are the existing definitions in the LTIA and these definitions are currently defined in the Regulations under the LTIA. The existing position will therefore be perpetuated. |
| 16 | Alexander Forbes Group Services | Schedule 1 | Definition in the Long- Term Insurance Act  **“licensed insurer”** means -  (a) a previously registered insurer as defined in Item 1 of Schedule 3 to the Insurance Act who has been granted a licence under section 23 of the Insurance Act within the period referred to in item 6.2(2) of Schedule 3 to the Insurance Act; or  (b) a person who has been licensed under section 23 of the Insurance Act after the date on which that Act commenced; | Only covers persons or entities actually licenced or registered as long term insurers. It excludes persons undertaking insurance business but not licenced or registered and thus excluding any affected consumers dealing with persons undertaking insurance business but not registered or licenced - Old LTIA definition covered persons carrying on insurance but not registered or licenced as deemed to be carrying on insurance business. Although non- compliance with the Chapter 4 licencing provisions is an offence, its not clear where consumers who have dealt with an unlicenced or unregistered insurer are afforded protection | Please note that section 7 of the LTIA dealing with unregistered insurance business will be repealed by Schedule 1. Licensing of insurers will be dealt with under the Insurance Bill and therefore unregistered insurance business is addressed in the Insurance Bill. See sections 5, 67 and 69 of the Insurance Bill. |
| 17 | Alexander Forbes Group Services | Schedule 1 | Definition in the Long- Term Insurance Act  **“policy benefits”** means –  (a) in respect of a registered insurer, one or more sums of money, services or other benefits, including an annuity;  (b) in respect of a licensed insurer, benefits to which a policyholder is contractually entitled under a life insurance policy arising from an insurer’s insurance obligations; | Can definition be widened to include contracts of insurance for the benefit of a 3rd party- e.g. where a fund will pay a member in terms of its rules or an employer will pay an employee ito a contract of employment as in certain circumstances, although the contract is between insurer and policyholder there may be a right by the beneficiary (Life assured) or even beneficiaries of a Life assured to be paid a policy benefit. | 🖉 Agree. Your concern, however, only arises in respect of paragraph (b) of the definition. Paragraph (b) will therefore be amended as follows:  (b) in respect of a licensed insurer, benefits to which a ~~policyholder~~person is contractually entitled under a life insurance policy arising from an insurer’s insurance obligations; |
| 18 | Alexander Forbes Group Services | Schedule 1 | Definition in the Long- Term Insurance Act  **“representative”** has the meaning as prescribed in the regulations; | Suggestion to align with RDR categorisations | Please note that the RDR adviser categorisation is still under consideration and therefore alignment therewith is not possible. Alignment with RDR adviser categorization will occur in Phase 3 of RDR as indicated in the Retail Distribution Review, 2014 published by the FSB.  Also please see response to comment 7 above. |
| 19 | BASA | Schedule 1 | Definition in the Long- Term Insurance Act  **“unborn”** means a human foetus conceived but not born | There may be unintended consequences if “frozen embryos” that are cryogenically stored are considered to be “unborn” elsewhere. | This is an existing definition.  Please see response to comment 7 above. |
| 20 | ASISA | Schedule 1  Item 3 | The amendment of section 1A by –  (a) the deletion of subsection (1);  (b) the substitution for subsection (4) of the following subsection – | ASISA members do not think that the reference to section 1A is correct as this section can’t be found. | The reference is correct. Please note that section 1A was inserted into the LTIA through Schedule 4 (item 2 of the LTIA amendments) of the FSRA. |
| 21 | ASISA | Schedule 1  Item 4 | The repeal of section 59 (Misrepresentation and failure to disclose material information) | Although there is a provision in the draft replacement of the Policyholder Protection Rules which deals with the obligation to disclose material facts, it is submitted that this does not go far enough to incorporate the ambit of section 59 and that this could lead to ambiguity and not be to the benefit of policyholders . Therefore section 59 should not be repealed. | Please note that the draft replacement of the Policyholder Protection Rules does not intend to substitute or deal with the current section 59 of the LTIA. Section 59 will be repealed by Schedule 1 of the Insurance Bill. A similar requirement will be inserted in the PPRs as part of Tranche 2 amendments (for details of the process relating to Tranches 1 and 2 amendments please refer to Annexure C published together with the proposed draft replacement PPRs in December 2016). In addition, please note that Schedule 1 also amends section 62 by providing that Rules can be made in respect of “principles and requirements relating to misrepresentation in relation to a long-term policy”. |
| 22 | Alexander Forbes Group Services | Schedule 1  9 | The substitution for section 45 of the following  section –  “45. Prohibition on inducements  (1) Unless done in accordance with the rules prescribed under section 62, no person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a long-term policy.  (2) Subsection (1) shall not apply in the case of a long-term reinsurance policy unless and to the extent that the Authority so determines by notice in the Gazette.” | 1. Tie in with and incoporate provisions of the new PPR allowing limited loyalty rewards; 2 Clarify whether rebates on insurance premiums are or constitute " prohibited inducements" and further whether reinsurance contracts would be excluded from a rebate prohibition as well should rebates fall under prohibited "inducements". | Please note that the only change to the existing section 45 is to provide the Authority with the discretion to determine that the section may be made applicable to reinsurance policies. No other changes were proposed. Your comment does not relate to Schedule 1. |
| 23 | Alexander Forbes Group Services | Schedule 1  10 | The insertion after section 47 of the following  section –  “47A. Collection of premiums by intermediaries  (1) No independent intermediary shall receive, hold or in any other manner deal with premiums payable under a long-term policy entered into or to be entered into with a long-term insurer and no such long-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums -  (a) unless authorised to do so by the longterm insurer concerned as prescribed by regulation; and  (b) otherwise than in accordance with the regulations.  (2) Subsection (1) shall not apply in the case of a long-term reinsurance policy unless and to the extent that the Authority so determines by notice in the Gazette.”. | What is the authorisation envisaged, is this an outsource agreement- if yes - does it require a separate outsource agreement and in addition to an intermediary mandate between the Insurer and the independent intermediary, Suggestion to include in one contract as collection premium is an intermediary service. | This section replicates section 45 of the STIA and intends to align premium collection requirements across the STIA and LTIA. The status/classification of premium collection is not formulated in this section, the section merely provides that premium collection may only be done by an intermediary if the intermediary is authorised to collect premiums by the relevant insurer and if it is done in accordance with the Regulations. Premium collection is currently classified as “services as intermediary” as defined in the Regulations. Consideration will still be given to whether or not premium collection should be reclassified as outsourcing in the Tranche 2 amendments as envisaged in terms of RDR. |
| 24 | ASISA | Schedule 1  Item 14(1) | The amendment of section 55 by the substitution for subsection (1) of the following subsection:  “(1) A long-term insurer shall not undertake to provide, or provide, policy benefits in terms of a long-term policy in the event of the death of an unborn, or of a minor before that minor attains the age of 14 years, the value of which, on its own or when added to the value of policy benefits or similar benefits which to its knowledge are to be provided in that event by a long-term insurer or a short-term insurer or any other person in terms of any policy or similar contract, exceeds, in the event of the death - | It is not clear why it is necessary to refer to “similar benefits” or “similar contracts” and what these would be. Please can this be clarified. | 🖉 The current wording in the LTIA refers to friendly societies. The Friendly Society Act was to be repealed and therefore the reference to friendly societies was removed and expanded to refer similar benefits. In other words, the proposed wording was added to cater for friendly societies/co-operatives. However, because it is not clear if the Friendly Societies Act will be repealed, the current wording will be reinserted and reference to “similar benefits” and “similar contracts” will therefore be removed. |
| 25 | ASIA | Schedule 1  Item 15 (d) | (f) for principles and requirements relating to any advertisement, ~~brochure or similar communication~~ which relates to the business of a long-term insurer, or to a long-term policy; | It is suggested that the wording should be amended as shown, in line with the terminology used in the revised PPR’s where the definition has been shortened to “advertisement”. | Disagree. The enabling provisions should remain wide. The proposed definition of “advertisement” in the PPRs includes brochures and similar communication and was included as a drafting tool. |
| 26 | ASISA | Schedule 1  item 16 (1)(a) and (b) | The substitution for subsection (1) of section 63 of the following subsection:  “(1) Subject to subsections (2), (3) and (4), the policy benefits provided or to be provided to a person under one or more –  (a) in respect of a registered insurer, assistance, life, disability or health policies; or  (b) in the case of a licensed insurer, policies written under the risk, fund risk, credit life or funeral class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act,  in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy-  in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy-  (c) during his or her lifetime, not be liable to be attached or subjected to execution under a judgment of a court or form part of his or her insolvent estate; or  (d) upon his or her death, if he or she is survived by a spouse, child, stepchild or parent, not be available for the purpose of the payment of his or her debts.” | There is a difference in the protection offered to policyholders in Section 63 by a registered insurer under the Long-term Insurance Act and a licenced insurer under the Insurance Bill. This is because under the “old” definition of life policy a number of classes of business were included that are now excluded in respect of a licensed insurer under part (b). In order to ensure that policyholders are not prejudiced, the definition in part (b) should also include the following classes of business - income draw down, life annuity and individual investment classes. | 🖉 Agree that the protection afforded should be extended. Paragraph (b) will be amended as follows:  “(b) in the case of a licensed insurer, policies written under the risk, fund risk, credit life,  ~~or~~ funeral, life annuities, individual investment or income drawdown class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act,”. |
| 27 | ASISA | Schedule 1 item 16 |  | The references to par (c) and (d) appear to be wrong. Shouldn’t they rather be a subsection of paragraphs (a) & (b)? | 🖉 Agreed. References to (c) and (d) will be changed to (i) and (ii). |
| 28 | ASISA | Schedule 1 item 20 (b) | The amendment of the Arrangement of Sections by –  (a) the deletion of all references to sections that are repealed by this Act;  (b) the substitution of section 8 with the following:  “8. Prohibition on performance of certain acts, by certain persons”; and | 20 (b) is duplication-already dealt with in item 6(a). | Disagree.  Item 6(a) substitutes the heading in the body of the Act. Item 20(b) changes the headings in the Arrangement of Sections of the Act. |
| 29 | ASISA | Schedule 1 Item 20(c) | (c) the substitution of Part IV with the following:  “PART IV  RETURNS TO AUTHORITY”; | This is duplication as it is already dealt with in item 7. | Disagree.  Item 7 substitutes the heading in the body of the Act. Item 20(c) changes the headings in the Arrangement of Sections of the Act. |
| 30 | ASISA | Schedule 1  Item 20 (d) | (d) inserting after “47. Receipt for premium paid in cash, and validity of policy” of the following:  “47A. Collection of premiums by intermediaries”. | This is duplication as it is already dealt with by item 10. | Disagree.  Item 10 substitutes the heading in the body of the Act. Item 20(d) changes the headings in the Arrangement of Sections of the Act. |
| 31 | The Unlimited | Schedule 1 | Definition in the Short-Term Insurance Act  “disability event” means the event of the functional ability of the mind or body of a person or an unborn becoming impaired; | Disability Event is defined as the functional ability of the mind or body of a person or unborn becoming impaired.  Important to note that a disability event is included under accident and health policy but there is no reference the event being limited to accident only.  (the limit is referenced in table 2)  The discrepancies between the Bill and the amendments to the long and short-term acts in the Schedule could lead to a confused outcome in the final transition to the Insurance Bill /Act especially where existing policies must align with the definitions in the Bill.  It is also not clear why disability event which falls under an Accident and Health Policy in the short-term act amendment should be subject to limitations in terms of how the benefits are paid and to whom (*as examples benefits not for medical expenses and not to be paid to service providers*) but the same is not true of the amendment to the long-term insurance act. | Please see our response to comment 3 above. |
| 32 | The Unlimited | Schedule 1 | Definition in the Short-Term Insurance Act  “health event” means an event relating to the health of the mind or body of a person or an unborn; | Definition Health Event is an event relating to the health of the mind or body of unborn and person. A health event falls under the definition of Health and Accident Policy. Health and Accident Policy excludes benefits which:  are not paid in money  pay medical expenses  pay providers directly.  Death and disability are also included under Health and Accident policies and subject in theory to the same limitations in terms of how and to whom benefits can be paid.  Includes death event under Definition of Health and Accident Policy.  Defines Death Event as the life of a person or unborn having ended. It is not limited to a death event arising from an accident.  The definitions in the amendments to the schedules and the to the Bill itself are likely to create uncertainty when writing business under transitional arrangements and to create difficulties when ultimately aligning existing business to the Bill (Insurance Act) | Please see our response to comment 3 above. |
| 33 | SAIA | Schedule 1 | Definition in the Short-Term Insurance Act  “personal lines business” | * The SAIA submits that instances exist where private property is registered under a trust and not a natural person for personal lines insurance. We therefore request that provision is made for this in the definition of “personal lines business”. * In addition, small business owners often conduct their business operations from private residences and these small businesses are registered as sole proprietors (i.e. registered as a natural person). We therefore submit that the definition should take this into account given that property will be insured under personal lines insurance. * Policies may also relate to deceased estates hence "Estate Late" may not fall within the scope of the definition of “personal lines business.” | We are not comfortable making changes to the existing definition without undertaking further research and subjecting the definition to a proper consultation process. No concerns have been raised with the definition previously. For this reason the existing definition (which has been repeated in Schedule 1) is retained. |
| 34 | FIA | Schedule 1 | Definition in the Short-Term Insurance Act  “personal lines business” | The definition of “personal lines business” needs to be adapted to take into account business with sole proprietorship e.g. commercial farmers where the complexity of insurance needs and level of business knowledge is high and align to comments made in the PPR.  No definition of commercial lines business is given (although commercial is referred to in several cases in schedule 2). | Please see our response to comment 34 above. |
| 35 | FIA | Schedule 1 | Definition in the Short-Term Insurance Act  “independent intermediary” has the meaning as prescribed in the regulations; | The definitions for “independent intermediary, representative and services as intermediary has the meaning prescribed in the regulations”. We submit that these need proper definition and alignment to FAIS. | These definitions will be defined in the Regulations similar to how they are currently defined in the STIA. Please note that any amendments to these definitions once they are inserted into the Regulations will be subject to consultation. |
| 36 | The Unlimited | Schedule 1 | Definition in the Short-Term Insurance Act  “short-term reinsurance policy” means – (a) in respect of a registered insurer, a reinsurance policy in respect of a short-term policy; (b) in respect of a licensed insurer, a nonlife insurance policy written under the reinsurance class of non-life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act; | Death and disability events are covered under accident and health policies.  It is important to note that the definitions provided for death and disability events include unborn and are not limit to these events being caused by accident.  (it is noted the limitation does appear in Table 2) | Please see our response to comment 3 above. |
| 37 | FIA | Schedule 1  7 | 7. The amendment of section 8 by –  (a) the substitution of the heading of the section for the following heading:  “Prohibition on performance of certain acts, by certain persons”;  (b) the substitution in subsection (2) for paragraph (a) of the following paragraph:  “(a) short-term insurers, excluding Lloyd’s and Lloyd’s underwriters, are the only underwriters in terms of the short-term policy concerned;”;  (c) the substitution in subsection (2) for paragraph (b) of the following paragraph:  “(b) such person or another person has entered into a written agreement as referred to in section 48A(1) with Lloyd’s underwriters for the performance of the function referred to in section 48A(1)(a) in relation to the short-term policy concerned, and Lloyd’s underwriters are the only underwriters in terms of the short-term policy concerned; or ”;  (d) the deletion in subsection (2) of paragraph (c); and  (e) the substitution for subsection (4) of the following subsection:  “(4) Subsections (2) and (3) shall not apply in the case of a short-term reinsurance policy unless and to the extent that the Authority so fdetermines by notice in the Gazette.”. | 8(2)(a) now deletes Lloyd’s and Lloyd’s underwriters.  8(2)(b) permits business to be transacted through Lloyd’s in terms of sec 48A(1) (Binder Authority):  “for the performance of the function referred to in section 48A(1)(a)” (being “enter into vary or renew a short-term policy, other than a short-term reinsurance policy ”).  It does not allow for the other determining functions of “determining the wording (48A(1)(b), determining the premium (48A(1)(c), determining the value of policy benefits (48A(1)(d) or settling claims (48A(1)(e)”.  We query the reasons for the omission of functions (b) to (e) of section 48A(1).  The amendments to sec 8(2)(a) and (b) effectively disqualify intermediaries from rendering services as intermediary by way of the placement of any business at Lloyds, apart from through section 48A(1)(a) (binding authorities), other than by way of the approval of the Regulator under 8(2)(c) (formerly 8(2)d).  In addition, Section 8(2)(b) effectively takes away the opportunity for Lloyds and or local insurers to participate in co-insurance arrangements without referral, these arrangements being key to providing capacity for large and or specialist type risks.  This is a significant change that has been inserted in this version without consultation with the FIA or any of our members. Whilst the change does not preclude use of Lloyd’s (outside the restricted use for binders) the approval process referred to under 8.2(c) is onerous and time consuming, even for the relatively small volume of foreign non-Lloyds business current processed. If this process is to include all the open market business hitherto placed under the authority of 8(2)b, it will present a massive bottleneck and introduce additional costs, delays and possible avoidance of the Lloyd’s market that would be to the distinct disadvantage of policyholders, in particular those requiring specialised covers where Lloyds wordings, benefits and rates may be better than those afforded by the local market and/or capacity that is beyond the level available in the SA market. In view of this we question the need to revoke an authority that has been in place and worked well for decades – this seems to fly in the face of the principle of proportionality even if required at all.  We have heard that the reason may be because SA intermediaries can obtain commissions in excess of the regulated maximum levels for open market business placed at Lloyd’s. We would question this as any business placed into Lloyds on an open market basis needs to follow the following process envisaged by the current regulations that effectively restricts commissions on such placed to the SA regulated maxim:  1. The SA intermediary must be a Lloyds correspondent or must place the business through a Lloyd’s correspondent in SA (this ensures adherence to SA regulations and in particular FAIS).  2. The Lloyd’s correspondent approaches its’ sponsoring Lloyds broker to place the business into Lloyd’s.  3. The Lloyd’s broker approaches one or more Lloyd’s underwriters for quotes.  4. The policy is transacted through this chain.  5. The Lloyd’s broker receives commission from the Lloyd’s underwriter.  6. The Lloyd’s broker pays the Lloyd’s correspondent commission at an agreed rate up to the SA regulatory maximum.  The current process enables placings mainly of a specialised or capacity nature into Lloyd’s on an uncomplicated basis to the benefit of policyholders that is at the same time convenient and fair to local insurers. The process is not unique to SA and is operated by Lloyd’s throughout the world.  Regarding the “approval” process, we assume that this will be in terms of the current sec 8(2)(d) and via the OSIP system. If this is the case, then a specific requirement of this process (Directive 149.A.v (ST & LT) 3.1.3) is that confirmation is required from the South African potential policyholder that the policyholder is aware that the policyholder is not afforded any protection under the Act in respect of such insurance (other than in respect of a short-term policy underwritten by a Lloyd’s underwriter) and that the foreign insurer does not have assets available in South Africa to cover its’ liabilities.  This would seem to be contraindicative for Lloyds who, under the new Bill, will still be capable of being licensed to carry on insurance business in SA provided Lloyd’s establishes a representative office in the Republic and meets the other governance requirements in accordance with Chapter 5 and Lloyd’s establishes a trust in the Republic and meets other financial soundness criteria in accordance with Chapter 6. We believe this is not dissimilar to current requirements and that Lloyd’s have undertaken to meet these requirements of the new Bill. If this is done we question the need to disallow the existing open market placement procedure?  Section 24 (1)(a) of the Draft Bill states that Lloyd’s are licenced to conduct all forms of commercial business and Section 24 (1)(b) of the Draft Bill states that Lloyd’s are licenced to conduct “non-life business in sub-class 17 set out in Table 2 of Schedule 2 in respect of personal lines” business, which means that they are only allowed to conduct “Proportional and Non-proportional Reinsurance” for personal lines business. Clarity is required in that Section 48A(1)(a) excludes reinsurance policies which effectively disqualifies all personal lines business other than by way of the approval process being conducted in the market. In addition under Section 24(1)(c) Lloyd’s may on application and approval from the regulator transact other forms of personal business. The question is that, having enabled Lloyds to conduct business in South Africa, why is there a need to carve out a major component of such trading by withdrawing general approval to open market placings?  The Lloyd’s market is an internationally acclaimed market for sound and secure capacity, in particular for “specialist and unusual” type coverage which is not always available on Binder (sec48A) facilities and where the expertise to underwrite resides with the Lloyd’s underwriter.  This business is not always the large risks but also includes and not limited to, for example high valued/vintage motor vehicles, privately owned aircraft, marine craft, bloodstock, art collections et al. To deprive the South African policyholders of convenient and risk free access to this market must be against the principles of TCF and the FAIS Act in relation to sound advice and fulfilment of the intermediary mandate.  To have to obtain the approval of the Registrar for the variety of types of risks underwritten at Lloyds is time consuming and inefficient taking into consideration their “locally registered” status. In any event, if this is aimed at curtailing suspected commission “abuse” it is submitted that the current remuneration limitations already serve to do this and the proposed approval process will not address this in any way. | Disagree. Section 8(2)(d) relates to the rendering of intermediary services in respect of direct business placed offshore. Where business is placed with Lloyd’s through local cover holders the PA’s permission is not required, but where it is placed directly at Lloyd’s the PA’s permission is required to ensure that appropriate arrangements are in place to ensure policyholder protection.  We are not convinced that the approval requirements will impede business. The FSCA will work with Lloyd’s to ensure an effective and efficient process.  The requirement does not impact co-insurance arrangements as separate policies are issued by each insurer participating in the co-insurance arrangements. |
| 38 | FIA | Schedule 1  11 | 11. The substitution for section 45 of the following  section –  “45. Collection of premiums by  intermediaries  (1) No independent intermediary shall receive, hold or in any other manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums -  (a) unless authorised to do so by the short-term insurer concerned as prescribed by regulation; and  (b) otherwise than in accordance with  the regulations.  (2) Subsection (1) shall not apply in the case of a short-term reinsurance policy unless and to the extent that the Authority so determines by notice in the Gazette.” | This now excludes reinsurance premiums. We question this as the intermediary can from time to time be required to collect facultative reinsurance premiums (not proportional or non- proportional reinsurance treaty premiums). How does this affect the independent intermediary who acts as a “reinsurance” broker? | Please note that the current section 45. The only change proposed is affording the Authority the discretion to determine that the section applies to reinsurance policies (to the extent set out in the determination). To the extent that the section does not apply to reinsurance it means that the requirements of the section do not apply. Intermediaries may therefore collect reinsurance premiums. |
| 39 | FIA | Schedule 1  18 | 18. The amendment of section 70 by:  (a) The insertion of the subsection number “(1)” before the words “The Minister may make regulations not inconsistent with this Act –”;  (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:  “(b) prescribing services performed by an independent intermediary or any other person on behalf of an insurer that are subject to the regulations, and setting out requirements that apply to such services;”;  (c) the insertion in subsection (1) after paragraph (b) of the following paragraphs: “(bA) prohibiting or limiting classes of persons from performing any service prescribed in accordance with paragraph (b); (bB) prescribing governance, risk management, internal controls, oversight and operational ability requirements in relation to a service prescribed in accordance with paragraph (b); (bC) prescribing requirements relating to notification to or approval by the Authority before entering into or terminating an arrangement in respect of any service prescribed in accordance with paragraph (b); (bD) prescribing requirements, limitations or prohibitions in respect of any agreement relating to any service prescribed in accordance with paragraph (b);”;  (d) the substitution in subsection (1) for paragraph (c) of the following paragraph:  (c) prescribing periods within which policies and amended policies are to be issued;”;  (e) the substitution in subsection (1) for paragraph (e) of the following paragraph: “(e)(i) prohibiting or limiting the consideration which may be offered or provided; and (ii) prescribing the timing, manner and conditions under which consideration may be offered or provided, by or on behalf of a short-term insurer to an independent intermediary or any other person, for rendering services prescribed in accordance with paragraph (b), or to any other person associated in business with or related within the second degree of consanguinity or affinity to the independent intermediary or other person who has rendered or is to render such services;”;  (f) the substitution in subsection (1) for paragraph (f) of the following paragraph: “(f)(i) prohibiting consideration that may be accepted; and (ii) prescribing the timing, manner and conditions under which consideration may be accepted, by an independent intermediary or other person for rendering services prescribed in accordance with paragraph (b), or by any other person associated in business with or related within the second degree of consanguinity or affinity to the independent intermediary or other person who has rendered or is to render such services;”;  (g) the insertion in subsection (1) after paragraph (f) of the following paragraphs: “(fA) prescribing different classes of persons to whom consideration contemplated in paragraphs (e) and (f) may be offered or provided, for such services rendered or to be rendered;”;  (h) the substitution in subsection (1)(gA) for subparagraph (iii) of the following subparagraph: “(iii) any consideration that may be offered or provided from, by or on behalf of a short-term insurer to a person that enters into an agreement contemplated in section 48A(1) with a short-term insurer;”;  (i) the substitution in subsection (1)(gA) for subparagraph (v) of the following subparagraph: “(v) the circumstances under which a person who has entered into an agreement contemplated in section 48A(1) may render services in respect of a policy not referred to that person by the relevant insurer or an independent intermediary; and”;  (j) the insertion in subsection (1)(gA) after subparagraph (v) of the following subparagraph: “(vi) governance, risk management, internal controls, oversight and operational ability;”and  (k) the insertion in subsection (2) after paragraph (b) of the following paragraph: “(bA) empower the Authority to prescribe certain matters as specified in the Regulations; and”. | (a) The amendment of section 70 gives the Minister absolute carte blanche to prohibit, limit and or restrict all dealings within the framework of the Short-term Insurance business and the Act through regulation. We do not find this to be acceptable without the disciplines of proper and fair consultation based on the sound and informed evidence and impact studies.  (b) Point 18 (c)(bA) - Mention is made of “classes of persons”. However, no definition of these “classes” appears to have been given.  (c) Clarity is requested with regard to the intention of the amendment in Point 18 (i). | (a) Please note that section 70 only enables the Minister to make such Regulations. The making of the Regulations is still subject to a proper and fair consultation process. See the consultation requirements under the FSRA that also applies to subordinate legislation made under the LTIA, STIA and the Insurance Bill.  (b) In our opinion the grammatical meaning of the word “classes” suffices.  (c) Please note that the only amendment to section 70(1)(gA)(v) as set out in item 18(i) was removing the reference to “Lloyd’s underwriter”, the rest of the section remains exactly the same as the current provision. The reference to “Lloyd’s underwriter” is no longer required as Lloyd’s underwriters are now included in the definition of “registered insurer”. |
| 40 | ASISA | Schedule 3 | Clause 2 (1)  Any matter prescribed by the Minister under a section of a previous Act in respect of the prudential supervision of insurers before the section was amended or repealed is hereby repealed, including Part 2 of the Regulations under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and Parts 2 and 3 of the Regulations under the Short-term Insurance Act, 1998 (Act No. 53 of 1998). | This only repeals Long-term Regulation Part 2 while a previous version also repealed Part 4. Is the reason why Part 4 was removed here because it is being deleted through the current amendments to the Long Term Insurance Act Regulations? | We proposed in the 10 May 2017 version of the Insurance Bill tabled in the SCOF that the proposed deletion of Part 4 should not go ahead as the need to clearly delineate between banking and insurance business should be perpetuated for the foreseeable future. |
| 41 | Alexander Forbes Group Services | Schedule 3 | 5 Continued investigation and enforcement of previous Act  5. (1) Despite the partial repeal of the previous Act—  (a) any investigation or inspection under the previous Act by the Registrar in respect of compliance with the previous Act and pending immediately before the effective date, may be continued by the Prudential Authority, and the Prudential Authority may take any regulatory action under those Acts that the Prudential Authority deems appropriate in respect of any non-compliance; and  (b) for a period of three years after the effective date, the Prudential Authority may initiate an investigation or inspection under the Financial Sector Regulation Act in respect of any suspected non-compliance with the previous Act that occurred during the period of three years immediately before the effective date, and may take any regulatory action under those Acts that the Prudential Authority deems appropriate in respect of that non-compliance. | Can the enforcement of the previous Act be extended to investigation and determination of complaints | Yes, item 5 allows for the continued investigation or inspection under the previous Act by the Prudential Authority in respect of any non-compliance, and to initiate an investigation or inspection under the Financial Sector Regulation Act within three years after the effective date in respect of any suspected non-compliances with the previous Acts that occurred during the period 3 years before the effective date. This can include investigation and determination of complaints relating to compliance with the previous Act. |
| 42 | Free Market Foundation | Schedule 3 | Clause 6 (4)(a) | Schedule 3 contains no criteria for determining if a registered insurer was “actively” or “prudently” conducting insurance business similar to such a class or sub-class of business, and thus gives the Authority a degree of discretion those questions.  This violates the principles of the Rule of Law that laws should be (So far as possible) intelligible, clear and predictable; (Lord Bingham (then Senior Law Lord), “The Rule of Law” (Sixth Sir David Williams Lecture 2006, Centre for Public Law, Univ. of Cambridge), first sub-rule.) and that questions of legal right and liability should be resolved by application of law, not the exercise of discretion. (Bingham, “The Rule of Law” (supra), second sub-rule.) | We submit that item 6(4) is not contrary to the Rule of Law, as the requirements are clear and predictable. The prudent conducting of insurance business refers to the business having been conducted in a prudent manner and specifically aligned to governance and financial soundness requirements on the basis provided for in the existing Insurance Acts.  Insurance business is defined in the Insurance Bill. If an existing license is inactive or no insurance business is being conducted therein, the Prudential Authority should consider whether the license should in fact be converted. The powers afforded to the Prudential Authority are very specific in this regard. This is a practical and sensible approach to the conversion process which we submit makes it transparent and clear.  The aim of the conversion process is to ensure that current insurance licenses will be converted to accurately reflect the type of insurance activity being conducted under current licenses. This will align existing licenses to the broader insurance prudential regulatory reforms. |
| 43 | SAIA | Schedule 3 | Clause 6 (4)(b)(ii):  ii) non-life insurance business must only be licensed to conduct a class or sub-class of life insurance business referred to in Table 2 of Schedule 2. | Drafting error: We submit that the word “non” should be included in Section 6(4)(b)(ii) of Schedule 3 to read as follows:   * *“non-life insurance business must only be licensed to conduct a class or sub-class of non-life insurance business referred to in Table 2 of Schedule 2”.* | 🖉 Agreed. Amendment made. |
| 44 | ASISA | Schedule 3 | Clause 6 (4)(b)(ii) | The reference to life insurance business appears to be an error- it should be non-life insurance business. | 🖉 Agreed. Amendment made. |
| 45 | Free Market Foundation | Schedule 3 | Clause 6 (4)(b) | Schedule 3 also states (Insurance Bill, Sched 3 (Transitional arrangements) item 6(4)(b)(i) and (ii)) that a previously-registered insurer who “applies” for the conversion of its registration to a licence to conduct life-insurance business, must only be licensed to conduct a class or sub-class of life-insurance business referred to in Schedule 2’s Table 1. (Insurance Bill, Schedule 2, Table 1 (Classes and sub-classes of insurance business: Life insurance).) And a previously-registered insurer who applies for conversion of its registration to a licence to conduct non-life insurance business, must only be licensed to conduct a class or sub-class of non-life (Schedule 3 in error refers to “life”) insurance business referred to in Table 2 of that Schedule. (Insurance Bill, Sched 2, Table 2 (Classes and sub-classes of insurance business: Non-life insurance).)  This will mean that registered insurers who prior to the effective date had been lawfully conducting business in categories other than those mentioned in Schedule 2 will be prevented from continuing to do so.  This could well violate the Rule of Law principle that laws of the land should apply equally, except insofar as objective differences justify differentiation.( Bingham, “The Rule of Law” (supra), third sub-rule.) No objective differences justifying this differentiation are identified in either Schedule 3, or the Bill, or its explanatory memorandum.( Insurance Bill, Memorandum on the objects of the Insurance Bill.)  It is a principle of the Rule of Law that Parliament should not act arbitrarily. A statutory measure should have a rational relationship to the achievement of a legitimate government purpose, or the measure is unconstitutional. (Joubert et al, Law of South Africa vol 5(3) 2 ed repl, “Constitutional Law: Structures of Government” D W Freedman par 20; New National Party v Government of the Republic and others 1999 (5) BCLR 489 (CC) pars [19], [24].) | 🖉 Typo in 6(4)(b)(ii): Agreed. Amendment made.  With regard to the classes of business set out in Schedule 2, in as far as it relates to non-life insurance in Table 2, there is a sub-class for “miscellaneous” which will cover damage to or loss resulting from a risk not addressed under any other class or sub-class referred to in the Table, which risk will have to be approved by the Prudential Authority.  In as far as the comment relates to Table 1 of Schedule 2 which relates to Life Insurance, we submit that there will not be any other categories of life insurance business which will not fall into these classes. The classes and sub-classes of insurance business were extensively consulted on with the industry and no concerns were raise of any categories falling outside of Schedule.  The comment that this violates the rule of law is not agreed with. |
| 46 | Free Market Foundation | Schedule 3 | Item 6(5) | The consequences of a registration not being converted to a licence are harsh: Schedule 3 states that, if the Prudential Authority does not convert the registration of a previously-registered insurer to a licence to conduct insurance business,[[32]](#footnote-32) the Prudential Authority may[[33]](#footnote-33) direct the insurer to make arrangements to the satisfaction of the Prudential Authority to ensure the orderly resolution of that insurance business of the insurer.[[34]](#footnote-34)  This violates the Rule of Law principle that laws must afford adequate protection of fundamental rights.[[35]](#footnote-35) Everyone has the fundamental right to equal protection and benefit of the law.[[36]](#footnote-36) No law may permit arbitrary deprivation of property.[[37]](#footnote-37) A business licence that has been revoked may be treated as property, for the purposes of a fundamental right to property.[[38]](#footnote-38) A juristic person is entitled to the rights.[[39]](#footnote-39)  (If there has to be a limit on the conducting of unclassified insurance business, a preferable solution would be to grandfather previously-registered insurers who[[40]](#footnote-40) were not conducting business similar to a business class or sub-class referred to in Schedule 2, for[[41]](#footnote-41) a period of ten years or any remaining period of registration.[[42]](#footnote-42)) | Disagree. Item 6(5) details the circumstances under which a registration or a part thereof may not be converted and sets out the process to address any consequences thereof. These provisions do not infringe on any fundamental rights or arbitrarily deprive any person of property. The consequences of a registration not being converted to a licence will only apply if the insurer was not conducting insurance business immediately prior to the effective date or in terms of an application under sub item 6(4)(b). A registration not being converted to a licence will not automatically amount to arbitrarily deprivation of property as it is appropriately qualified in line with the requirements in the Insurance Bill.  This right already exists under the LTIA and STIA. The latter Acts empower the regulator to remove a class of policies that an insurer may underwrite if not actively pursued therefore amending licensing conditions. |
| 47 | Black Business Council | General comments on Relicensing |  | The BBC is vehemently opposed to relicensing as this is tantamount to expropriation of current licenses which is unconstitutional. The unfairness is especially directed at small and medium companies which are mostly blacks as if for example Old Mutual is targeted there would be no capacity to | Schedule 3 was amended to provide certainty around licensing arrangements and transition.  The effective date, every previously registered insurer that was, registered as a long-term insurer or a short-term insurer under the previous Act continues to exist as an insurer, as if it had been licensed under this Bill, and may continue to conduct the insurance business for which it was so registered until the PA has converted its registration to a licence.  Schedule 3 was amended to reflect the actual process envisaged, which is to convert current insurance registrations to licences which more accurately reflect the type of insurance activity the insurer conducts. The conversion process is not meant to take away any license. Schedule 3 details the circumstances under which a registration or a part thereof may not be converted and sets out the process to address any consequences thereof. These provisions do not infringe on any fundamental rights or arbitrarily deprive any person of property. The consequences of a registration not being converted to a licence will only apply if the insurer was not conducting insurance business prudently immediately prior to the effective date or in terms of an application under subitem 6(4)(b). A registration not being converted to a licence will not automatically amount to arbitrarily deprivation of property as it is appropriately qualified in line with the requirements in the Insurance Bill. |
| 48 | The Black Insurance Owners Association (BIOA) | General comments on Relicensing |  | The Bill must entrench the licenses of the existing black insurance companies and directly exempt them from relicensing. The licencing conditions if changed may only be to enable the black insurance companies to have more competitive advantage than a less.  The Regulator should not have the power to vary the shareholding in existing insurance companies, this is well covered by the Companies Act. | Please see response to comment 10 above.  Shareholders, through the exercise of voting rights or representation on the board, are in a position to influence decisions by which the business and affairs of an insurer are carried out. It is therefore important that the shareholders of an insurer are persons of integrity and good reputation, and who maintain a sound financial position in order to minimise risks that could threaten the safety and soundness of an insurer.  The Insurance Bill and FSRA prescribes the criteria that must be applied by the PA when assessing the suitability of significant owners. |
| 49 | ASISA | Schedule 3 | Clause 8: Reporting  An insurer whose 2017 financial year end falls before the effective date, must, despite the effective date, comply with the reporting obligations imposed under this Act in respect of that financial year. | As the effective date is not certain it is proposed that the year 2017 is not drafted into the Act, but that the wording is amended to say:  “Once the effective date is published in the government gazette, an insurer whose financial year end falls before the effective date, must, despite the effective date, comply with the reporting obligations imposed under this Act in respect of that financial year”. | 🖉 Agree. The item will be amended as proposed. |
| 50 | FIA | Schedule 3 | General | Clarity is needed regarding the status of the current legislation going forward. While the indications are that this will replace the current Short Term and Long Term Insurance Acts, Schedule 1 doesn’t talk about replacement but amendment, while section 5 of schedule 3 talks about the “partial repeal”, so it seems that some sections will still stand? | The Insurance Bill will not replace the LTIA or STIA in totality, but will repeal the prudential sections of these Acts. Schedule 1 amends the LTIA and STIA to ensure that the conduct related provisions that remain in these acts are appropriate to support the conduct mandate of the Financial Sector Conduct Authority. The partial repeal referred in Schedule 3 relates to prudential sections of the LTIA And STI, that have been repealed by Schedule 1 and are provided for in the Insurance Bill. |
| 51 | FIA | Schedule 3 | 8. A previously registered insurer whose 2017 financial year end falls before the effective date, must, despite the effective date, comply with the reporting obligations imposed under this Act in respect of that financial year. | Clarity is requested as to whether the proposed amendments in terms of Schedule 1 will become effective on the “Effective Date” or 18 months from the “Effective Date”?  Draft Bill as related to Point 7 – Lloyd’s:  Section 8(1) will be repealed and Section 8(2) does not appear in the draft Bill. Clarification on this is requested.  Also, will the requirements introduced by the proposed changes to 8(2) live on after the current Act is replaced completely by a combination of the Insurance Act and the Conduct of Financial Institutions Act and, if so, where are these provisions in the draft Insurance Bill? | It is only Part 8 of the current STIA that relates to Lloyds that will continue to apply to Lloyd’s and Lloyd’s underwriters for a period of 18 months after the effective date, and not the entire Schedule 1.  Section 8(1) will be repealed as it will be provided for in the Insurance Bill. See Clause 5(9) of the insurance Bill.  Section 8(2) will not be repealed, and the prohibition will remain subject to the amendments proposed in Schedule 1. See item 7 of Schedule 1. |

1. Inter alia. [↑](#footnote-ref-1)
2. Or financially unsound. [↑](#footnote-ref-2)
3. Financial Sector Regulation Act s 143(1)(a)(i) and (ii)(aa). [↑](#footnote-ref-3)
4. Inter alia. [↑](#footnote-ref-4)
5. And “enhance.” [↑](#footnote-ref-5)
6. Safety and. [↑](#footnote-ref-6)
7. Financial Sector Regulation Act s 33(a) and (c). [↑](#footnote-ref-7)
8. Inter alia. [↑](#footnote-ref-8)
9. As the case may be. Financial Sector Regulation Act s 143(3)(a) and (c). [↑](#footnote-ref-9)
10. Financial Sector Regulation Act s 143(5)(a). [↑](#footnote-ref-10)
11. Or at stopping the institution from contravening applicable laws. [↑](#footnote-ref-11)
12. To direct an institution to take specified action if it is conducting its business in an improper way with a risk it may not be able to comply with its obligations, or if it has contravened or is likely to contravene a law. [↑](#footnote-ref-12)
13. So far as possible. [↑](#footnote-ref-13)
14. Lord Bingham (then Senior Law Lord), “The Rule of Law” (Sixth Sir David Williams Lecture 2006, Centre for Public Law, Univ. of Cambridge), first sub-rule. [↑](#footnote-ref-14)
15. Ordinarily. [↑](#footnote-ref-15)
16. The broader and more loosely textured a discretion conferred on an official is, the greater the scope for subjectivity and hence for arbitrariness, which is the antithesis of the rule of law. Lord Bingham, “The Rule of Law” (supra), second sub-rule. [↑](#footnote-ref-16)
17. Financial Sector Regulation Act s 144(1)(d)(i). [↑](#footnote-ref-17)
18. Inter alia. [↑](#footnote-ref-18)
19. Financial Sector Regulation Act s 57(b)(i). [↑](#footnote-ref-19)
20. Financial Sector Regulation Act s 144(3)(a). [↑](#footnote-ref-20)
21. Financial Sector Regulation Act s 144(5)(a). [↑](#footnote-ref-21)
22. Long-term Insurance Act 52 of 1998; Short-term Insurance Act 53 of 1998. [↑](#footnote-ref-22)
23. i.e., the Authority responsible for registration of insurers, viz. the Prudential Authority. [↑](#footnote-ref-23)
24. Or delete. [↑](#footnote-ref-24)
25. Sched 4, Long-term Insurance Act item 8 cl 11(1)(aA), Short-term Insurance Act item 8 cl 11(1)(aA). [↑](#footnote-ref-25)
26. Whether in a court, tribunal or before an arbitrator or any other person or body [↑](#footnote-ref-26)
27. Banks Act, Mutual Banks Act, or Co-operative Banks Act. [↑](#footnote-ref-27)
28. Financial Sector Regulation Act s 300 (“Pending proceedings”) ss (1). [↑](#footnote-ref-28)
29. That have been commenced but not finally determined immediately before the date on which the provision comes into effect. [↑](#footnote-ref-29)
30. Financial Sector Regulation Act s 300(2). [↑](#footnote-ref-30)
31. Financial Sector Regulation Act s 300(1). [↑](#footnote-ref-31)
32. The precise scope and applicability of the text in the latest version of Schedule 3 is unclear. [↑](#footnote-ref-32)
33. Inter alia. [↑](#footnote-ref-33)
34. Insurance Bill, Sched 3 (Transitional arrangements) item 6(5)(b)(ii). [↑](#footnote-ref-34)
35. Bingham, “The Rule of Law” (supra), fourth sub-rule. [↑](#footnote-ref-35)
36. Constitution s 9 (“Equality”) subsec (1). [↑](#footnote-ref-36)
37. Constitution s 25 (“Property”) subsec (1). [↑](#footnote-ref-37)
38. Courts tend to afford greater protection to government-granted licences and to characterise them as property, when the licence in issue has been revoked. *Shoprite Checkers (Pty) Ltd v Member of Executive Council for Economic Development, Environmental Affairs and Tourism: Eastern Cape and others* 2015 (9) BCLR 1052 (CC) par [116]. [↑](#footnote-ref-38)
39. To the extent required by the nature of the rights and the nature of that juristic person. Constitution s 8(4). [↑](#footnote-ref-39)
40. Prior to the effective date. [↑](#footnote-ref-40)
41. For example. [↑](#footnote-ref-41)
42. Whichever is the longer period. [↑](#footnote-ref-42)