

REPUBLIC OF SOUTH AFRICA

**STANDING COMMITTEE AMENDMENTS
TO
INSURANCE BILL**

[B 1—2016]

(As agreed to by the Standing Committee on Finance (National Assembly))

[B 1A—2016]

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AMENDMENTS AGREED TO

INSURANCE BILL

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CLAUSE 1

1. On page 7, in line 5, in the definition of “accident”, to omit “accidental” and to substitute “unexpected”.
2. On page 7, from line 46, to omit the definition of “control function” and to substitute:

“control function” has the meaning defined in the Financial Sector Regulation Act;
3. On page 7, from line 51, to omit the definition of “controlling company” and to substitute:

“controlling company” means a holding company of, or another juristic person that controls, an insurance group, which is located in the Republic, designated under Part 4 of Chapter 2 and licensed under Chapter 4;
4. On page 7, from line 58, to omit the definition of “disability event” and to substitute:

“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—
 - (i) continue his or her employment or own occupation, profession or trade;
 - (ii) participate in any employment, occupation, profession or trade that is reasonably suitable for that person given, amongst other matters, his or her education, skills, experience or age; or
 - (iii) carry on the functions required for normal activities of life;
5. On page 8, after line 24, after the definition of “encumber”, to insert:

“financial inclusion” has the meaning defined in the Financial Sector Regulation Act;
6. On page 8, after line 26, after the definition of “Financial Institution (Protection of Funds) Act” to insert:

“Financial Sector Code” means 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);
7. On page 8, in line 30, to omit “2016” and to substitute “2017”.

8. On page 8, from line 45, to omit the definition of “fit and proper requirements” and to substitute:

“**fit and proper requirements**” means—

- (a) in relation to a key person, personal character qualities of honesty, integrity, and competence, including experience, qualifications and knowledge as may be prescribed; and
- (b) in relation to a significant owner, qualities of honesty and integrity and financial standing as may be prescribed;

9. On page 8, from line 56, to omit the definitions of “governing body”, “group of companies” and “head of a control function” and to substitute:

“**governing body**” means a person or a body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of the insurer or controlling company, directs its affairs or has the authority to exercise the powers and perform the functions of the insurer or controlling company;

“**group of companies**” means any group of related or inter-related juristic persons, including a group of companies as defined in section 1 of the Companies Act;

“**head of a control function**” has the meaning defined in the Financial Sector Regulation Act and includes for purposes of this Act a person so appointed by a controlling company;

10. On page 9, after line 27, after the definition of “joint arrangement”, to insert:

“**juristic person**” has the meaning defined in the Financial Sector Regulation Act;

11. On page 9, from line 42, to omit the definition of “life insurance policy”, and to substitute:

“**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; or
- (b) on or from a fixed determinable date or at the request of the policyholder, but excludes—
 - (i) a deposit with an institution authorised 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 Investment Schemes Control Act, 2002 (Act No. 45 of 2002),
 and includes a renewal or variation of that arrangement;

12. On page 10, in line 6, to omit item (aa) in paragraph (a) of the definition of “microinsurance”, and to substitute:

(aa) classes 1, 2, 3, 9, 11, 14 or 17; and

13. On page 10, from line 32, to omit the definition of “official website” and to substitute:

“**official web site**” means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) of the Prudential Authority;

14. On page 10, from line 38, to omit the definition of “outsourcing” and to substitute:
- “outsourcing”** means an outsourcing arrangement as defined in section 1 of the Financial Sector Regulation Act;
15. On page 11, from line 1, to omit the definitions of “Prudential Authority” and “Prudential Standard” and to substitute:
- “Prudential Authority”** has the meaning defined in the Financial Sector Regulation Act;
“Prudential Standard” means a standard prescribed by the Prudential Authority under section 63;
16. On page 11, after line 5, after the definition of “public company” to insert:
- “Regulation”** has the meaning defined in section 1 of the Financial Sector Regulation Act;
17. On page 11, from line 22, to omit the definition of “reinsurer” and to substitute:
- “reinsurer”** means a person licensed to conduct—
- (a) only reinsurance business; or
- (b) only reinsurance business and the business referred to in section 25(7)(b), in the reinsurance class and sub-classes set out in Schedule 2, and, unless specifically provided for otherwise in this Act, includes a branch of a foreign reinsurer so licensed;
18. On page 11 in line 27, to omit the definition of “related person”.
19. On page 11, after line 30, after the definition of “rider benefit” to insert:
- “scheme”** for the purposes of sections 29 and 52 means a compliance scheme referred to in section 31, a recapitalisation scheme referred to in section 39 or a recovery scheme referred to in section 42;
20. On page 11, from line 42, to omit sub-paragraph (ii) of paragraph (b) of the definition of “senior manager” and to substitute:
- (ii) who oversees the enforcement of policies and the implementation of strategies approved, or adopted, by the board of directors,
21. On page 11, from line 47, to omit the definition of “state-owned insurer” and to substitute:
- “state-owned insurer”** means a state-owned company that conducts insurance business and is a public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
22. On page 11, after line 52, after the definition of “state-owned insurer” to insert:
- “strategy”** for the purposes of sections 29 and 52 means a recapitalisation strategy referred to in section 39;
23. On page 11, in line 55—
- (a) to omit the definition of “this Act” and to substitute:
“this Act” includes any Prudential Standard or Regulation prescribed or made in terms of this Act;

(b) to omit “and” after the definition of “this Act”.

24. On page 11, after line 55, after the definition of “this Act”, to insert:

“**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);

“**Tribunal**” has the meaning as defined in the Financial Sector Regulation Act; and

25. On page 11, from line 56, to omit the definition of “winding up” and to substitute:

“**winding-up**” has the meaning as defined in the Financial Sector Regulation Act.

26. On page 11, after line 58, to insert the following subsection, the existing provisions becoming subsection (1):

(2) In this Act, unless the context indicates otherwise, a word or expression derived from, or that is another grammatical form of, a word or expression defined in this Act has a corresponding meaning.

CLAUSE 2

1. On page 12, from line 2, to omit subclause (2) and to substitute:

(2) When interpreting, applying or complying with this Act, a court, the Prudential Authority or any other person may, to the extent practicable and with due consideration to the South African context, consider relevant international standards relating to insurance regulation and supervision.

2. On page 12, from line 5, to omit paragraph (a) of subclause (3) and to substitute:

(3) (a) If there is an inconsistency between any provision of this Act, other than a Prudential Standard or Regulation made this Act, and a provision of any other legislation that—

- (i) provides for the under regulation of insurance business; or
- (ii) affects or impedes the appropriate operation or implementation of a provision of this Act,

the provision of this Act prevails, unless that other legislation by explicit reference, and not merely by reference to other legislation in general, provides that the other legislation applies in the event of a conflict.

3. On page 12, from line 19, to omit subclause (4), and to substitute:

(4) Despite any other law, if other legislation confers a power on or imposes a duty upon another organ of state—

- (a) in respect of a matter regulated under this Act or the regulation of insurance business; or
- (b) that affects or impacts on the appropriate exercise of powers and the performance of duties under this Act by the Prudential Authority,

that power or duty must be exercised or performed in consultation with the Prudential Authority, and any decision taken in accordance with that power or duty must be taken with the concurrence of the Prudential Authority, irrespective of when that other legislation was

enacted, unless that other legislation by explicit reference, and not merely by reference to other legislation in general, provides that such concurrence is not required.

CLAUSE 3

1. On page 12, from line 55, to omit the clause and to substitute:

Objective of Act

3. 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—

- (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) promotes broad-based transformation of the insurance sector; and
- (e) contributes to the stability of the financial system in general.

CLAUSE 5

1. On page 13, from line 17, to omit the clause and to substitute:

Insurance business and limitations on other business

5. (1) No person may conduct insurance business in the Republic unless that person is licensed under this Act.

(2) A person is regarded as conducting insurance business in the Republic if—

- (a) the person conducts business similar to insurance business outside the Republic; and
- (b) that person or another person, in relation to the business referred to under paragraph (a), directly or indirectly acts in the Republic on behalf of the first-mentioned person, including, but not limited to, by rendering a financial service within the meaning of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), in respect of that business.

(3) A person to whom an insurer has outsourced a function or activity is not regarded as conducting insurance business.

(4) An insurer may not, without the approval of the Prudential Authority, conduct any business other than insurance business in the Republic, including any insurance business performed on behalf of another person.

(5) An insurer (other than a reinsurer, 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.

(6) The Prudential Authority must only grant an approval referred to under subsections (4) or (5) if the Prudential Authority is satisfied that such business will not—

- (a) impede or be likely to impede the financial soundness of the insurer;
- (b) negatively impact on the interests of policyholders; or

(c) introduce risks that cannot, to the satisfaction of the Prudential Authority, be appropriately mitigated.

(7) (a) Despite any approval under subsection (4) or (5), the Prudential Authority may direct an insurer to cease conducting business referred to in subsection (4) or (5), if the Prudential Authority reasonably believes that the business may—

- (i) impede or is likely to impede the financial soundness of the insurer; or
- (ii) introduce a risk or risks that cannot be appropriately mitigated.

(b) An insurer who is directed under paragraph (a) must, within the period agreed with the Prudential Authority, which period must not exceed three months after a directive referred to in paragraph (a) is issued, submit to the Prudential Authority for approval a plan to reorganise its business.

(c) An insurer whose plan was approved under paragraph (b) must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the plan.

(d) The Prudential Authority may restrict or prohibit certain activities or transactions of the insurer until the plan is implemented.

(8) (a) The Prudential Authority may prescribe that, for the purposes of this Act—

- (i) certain types, kinds or categories of insurance business are, subject to any requirements prescribed, excluded from the application of this Act; or
- (ii) certain types, kinds or categories of business constitute insurance business to which this Act applies.

(b) The Prudential Authority, when making a Prudential Standard under paragraph (a), must have regard to—

- (i) any existing Act of Parliament that regulates that business;
- (ii) the nature, size, complexity or type of that business;
- (iii) the persons that conduct that business;
- (iv) the nature or type of any insurance obligations;
- (v) the threshold below which it is not possible for a person to effectively retain and manage insurance risk.

(9) No person may, without the approval of the Prudential Authority, apply to that person's business or undertaking a name or description which includes the word "assure", "insure" or "underwrite", or any derivative thereof, unless that person is licensed as an insurer under this Act.

CLAUSE 7

1. On page 14, from line 52, to omit subclause (2) and to substitute:

(2) The trust referred to in section 41 must—

- (a) meet the insurance obligations under an insurance policy referred to in subsection (1), if a branch of a foreign reinsurer or a Lloyd's underwriter fails to meet any insurance obligations under that insurance policy after—
 - (i) a court has given a final judgment in respect of a claim; or
 - (ii) the Prudential Authority has directed the payment of that claim, and any reconsideration or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor; or
- (b) pay a penalty imposed under this Act or under the Financial Sector Regulation Act, if a branch of a foreign reinsurer, Lloyd's or a Lloyd's underwriter fails to pay that penalty within the time allowed for payment, and any reconsideration or review proceedings in relation thereto have not been completed or have not been instituted within the period allowed therefor.

CLAUSE 10

1. On page 15, from line 16, to omit the clause and to substitute:

Designation of insurance group and licensing of controlling company

10. (1) (a) The Prudential Authority may, for the purpose of facilitating the prudential supervision of insurers, designate as an insurance group—

- (i) an insurer;
- (ii) any juristic person that is part of the group of companies of which the insurer is a part; and
- (iii) any associate, or related or inter-related person of any juristic person that is part of the group of companies referred to in subparagraph (ii).

(b) An insurance group designated in terms of paragraph (a) need not include all the juristic persons, associates, or related and inter-related persons referred to in paragraph (a).

(2) The Prudential Authority 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 under Chapter 4.

(3) The holding company of, or another juristic person that controls, an insurance group designated under subsection (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.

(4) The Prudential Authority must keep designations in terms of subsection (1) under review, including if the Prudential Authority becomes aware of a change in the risk profile of the designated insurance group.

(5) The Prudential Authority may amend or revoke a designation in terms of subsection (1) if the Prudential Authority becomes aware of a change in the risk profile of any juristic person that is part of the designated insurance group.

(6) The Prudential Authority must publish a notice on the official web site of each designation and each amendment and revocation of a designation under subsection (1), (2) or (5).

CLAUSE 12

1. On page 15, from line 44, to omit the clause and to substitute:

Transparent insurance group structure

12. (1) The Prudential Authority may, for the purpose of facilitating the prudential supervision of the insurance group or any insurer that is part of the insurance group, direct a controlling company to amend the structure of the insurance group, in accordance with a plan submitted to, and approved by the Prudential Authority, within a period agreed by the Prudential Authority.

(2) (a) The controlling company whose restructuring plan was approved as contemplated in subsection (1) must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the restructuring plan.

(b) The Prudential Authority may restrict or prohibit certain activities or transactions of the insurance group until the restructuring plan is implemented.

(3) The Prudential Authority may take such regulatory action that the Prudential Authority determines is necessary and appropriate if—

- (a) the Prudential Authority does not approve the restructuring plan; or
- (b) the controlling company—
 - (i) fails to submit a restructuring plan;
 - (ii) fails to report as provided for under subsection (2)(a); or
 - (iii) fails to implement an approved restructuring plan.

(4) (a) Any juristic person that is part of an insurance group, including any insurer, must, on demand by the controlling company, provide any information to the controlling company that is needed to enable the controlling company to comply with its obligations in terms of this Act.

(b) To give effect to paragraph (a), a controlling company must impose binding corporate rules on, or enter into a binding agreement with, every juristic person that is part of the insurance group, that includes terms regarding the processing of information, including personal information, within the insurance group.

CLAUSE 16

1. On page 17, from line 29, to omit subclause (5).

CLAUSE 17

1. On page 17, from line 48, to omit subclauses (3) and (4) and to substitute:

(3) The Prudential Authority may only approve an arrangement referred to in the provisions of the Financial Sector Regulation Act relating to significant owners if the Prudential Authority is satisfied, in addition to the matters specified in the Financial Sector Regulation Act, that the likely influence of the proposed significant owner, will be reasonably likely to result in, or will continue to result in—

- (a) key persons of the insurer or controlling company meeting the fit and proper requirements prescribed under this Act; and
- (b) any other licensing requirements and licensing conditions being met.

(4) If the Prudential Authority is reasonably satisfied that the retention of a particular interest by a particular significant owner will be prejudicial to the insurer or controlling company, or to the policyholders of the insurer, the Prudential Authority may, in addition to any other action that the Prudential Authority may take in terms of this Act, after consultation with the insurer or controlling company and the particular significant owner direct that insurer, controlling company or significant owner to—

- (a) prepare and submit to the Prudential Authority a plan that is satisfactory to the Prudential Authority, under which the significant owner will, within a period that is acceptable to the Prudential Authority—
 - (i) limit, with immediate effect, the voting rights that may be exercised by that owner by virtue of the proportion of the voting rights or the interest held;
 - (ii) reduce the proportion of the voting rights or the interest held by that owner in the insurer or controlling company to a percentage specified; or
 - (iii) cease to be a significant owner of the insurer or controlling company; and
- (b) on the Prudential Authority's approval of the plan, to implement the plan.

CLAUSE 19

1. On page 19, from line 14, to omit subclause (2) and to substitute:

- (2) If an insurer fails to make arrangements contemplated in subsection (1) to address the non-compliance of a key person with the fit and proper requirements prescribed, the Prudential Authority, in addition to any other action that the Prudential Authority may take under this Act, may—
- (a) impose additional reporting requirements on the insurer or controlling company; or
 - (b) vary the licensing conditions of the insurer or controlling company; or
 - (c) suspend or withdraw the licence of the insurer or controlling company.

CLAUSE 22

1. On page 19, from line 38, to omit subclause (1) and to substitute:

- 22.** (1) In order to qualify for licensing as an insurer—
- (a) a person—
 - (i) in the case of a person that intends to conduct micro-insurance 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;
 - (ii) in the case of a person 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
 - (iii) in any other case, subject to section 70, must be a public company or state-owned company registered under the Companies Act, or a co-operative registered under the Co-operatives Act;
 - (b) a person's primary business activity must be the conducting of insurance business and operations arising directly therefrom;
 - (c) a person must demonstrate that-
 - (i) its key persons and significant owners meet the prescribed fit and proper requirements;
 - (ii) it has a sound business plan;
 - (iii) it has a plan to meet its stated commitments in terms of transformation of the insurance sector, including meeting the targets envisaged by the Financial Sector Code;
 - (iv) 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;
 - (v) 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;
 - (vi) 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
 - (vii) it will be able to comply with the governance framework requirements, financial soundness requirements and reporting and public disclosure requirements of this Act;
 - (d) that person's licensing must not be contrary to the interests of prospective policyholders or the public interest; and

- (e) 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 licence under this Act.

CLAUSE 23

1. On page 20, from line 38, to omit subclause (2) and to substitute:
 - (2) The Prudential Authority must, in the case of a branch of a foreign reinsurer or a subsidiary of a foreign insurer, only grant or refuse an application after consultation with the regulatory authority that regulates the foreign reinsurer.
2. On page 21, from line 7, to omit subclause (5) and to substitute:
 - (5) An insurer and controlling company must ensure that a reference to the fact that such a licence is held is contained in all business documentation and advertisements and other marketing material.

CLAUSE 25

1. On page 21, from line 47, to omit subclauses (6) to (10) and to substitute:
 - (6) (a) Only a cell captive insurer may conduct insurance business through cell structures.
 - (b) A cell captive insurer may not insure—
 - (i) first party risks and third party risks in the same cell structure; or
 - (ii) the risks associated with the insurance obligations of another insurer without the approval the Prudential Authority.
 - (7) (a) A reinsurer that is licensed to conduct both life and non-life insurance business may not be licensed to conduct reinsurance business in respect of classes 6 to 8 set out in Table 1 of Schedule 2.
 - (b) A reinsurer licensed to conduct life or non-life insurance business or both may be licensed to conduct insurance business in respect of class 10 set out in Table 2 of Schedule 2 directly with a medical scheme registered under the Medical Schemes Act, 1998 (Act No. 131 of 1998).
 - (8) The Prudential Authority may, in the case of an insurer, impose licensing conditions in addition to subsections (1) to (7) necessary to achieve the objective of this Act, which may include conditions—
 - (a) relating to the insurance business arrangements, including, but not limited to, the outsourcing arrangements or cell structures that the insurer may enter into;
 - (b) relating to the persons with whom the insurer may conduct insurance business;
 - (c) relating to reinsurance arrangements;
 - (d) limiting the scope and size of the insurance business that may be conducted to that set out in the application for a licence referred to in section 23;
 - (e) prohibiting particular terms or conditions from being included in insurance policies entered into under a specific class or sub-class of business;
 - (f) limiting the amount or value of the benefits that may be provided under insurance policies entered into under a specific class or sub-class of business;
 - (g) limiting the amount of the premiums that the insurer may contract to receive, during a specific period, in respect of all or specific insurance policies entered into by the insurer during that period;

- (h) requiring that the provisions of the Memorandum of Incorporation of an insurer that is a company or the equivalent constitution, deed or founding instrument of an insurer that is not a company-
 - (i) must be suitable to enable it to carry on insurance business; and
 - (ii) may not be amended without the approval of the Prudential Authority; or
- (i) that are reasonably necessary to ensure that the insurance business is conducted in a financially sound manner or in accordance with this Act.
 - (9) The Prudential Authority may, in the case of a controlling company, impose licensing conditions necessary to achieve the objective of this Act, which may include conditions—
 - (a) requiring the controlling company of the insurance group to limit its business to the acquiring, holding and managing of another company or companies;
 - (b) requiring that the provisions of the Memorandum of Incorporation of a controlling company that is a company or the equivalent constitution, deed or founding instrument of a controlling company that is not a company-
 - (i) must be suitable to enable it to be the controlling company of an insurance group; and
 - (ii) may not be amended without the approval of the Prudential Authority; or
 - (c) that are reasonably necessary to ensure that the insurance business is conducted in a financially sound manner or in accordance with this Act.
 - (10) The Prudential Authority may—
 - (a) impose different conditions in respect of different types or kinds of insurers or controlling companies, and different classes and sub-classes of insurance business; and
 - (b) impose conditions in a manner that seeks to facilitate the progressive or incremental compliance with this Act by a specific insurer to promote developmental, financial inclusion and transformation objectives.

CLAUSE 26

1. On page 22, from line 39, to omit paragraph (b) in subclause (1) and to substitute:
 - (b) when it is in the public interest, including transformation of the insurance sector;

CLAUSE 27

1. On page 23, from line 29, to omit paragraph (a) in subclause (3) and to substitute:
 - (3) (a) The Prudential Authority may suspend a licence of an insurer or controlling company under subsection (1) or (2), subject to any condition necessary to achieve the objective of this Act that the Prudential Authority may determine.

CLAUSE 30

1. On page 25, from line 35, to omit subclause (4) and to substitute:
 - (4) The Prudential Authority may prescribe governance principles

and requirements relating to—

- (a) in the case of an insurer, the achievement and maintenance of the stated commitments in the plan referred to in section 22(1)(c)(iii) and Item 6 of Schedule 3;
- (b) in the case of an insurer (other than a branch of a foreign reinsurer or Lloyd's) and a controlling company—
 - (i) the composition and governance of the board of directors, including requirements relating to independence;
 - (ii) the roles and responsibilities of the board of directors (in addition to those provided for in the Companies Act);
 - (iii) the duties of directors; and
 - (iv) the structure of the board of directors, including the committees that must be established;
- (c) risk management, including in respect of—
 - (i) a risk management system;
 - (ii) a risk management strategy;
 - (iii) a risk management policy; and
 - (iv) own risk and solvency assessments;
- (d) internal control, including in respect of an internal control system;
- (e) control functions, including in respect of—
 - (i) required control functions;
 - (ii) requirements for control functions; and
 - (iii) roles, responsibilities and functions of control functions and heads of control functions; and
- (f) outsourcing by an insurer or a controlling company, including in respect of—
 - (i) an outsourcing policy, and the matters that must be included and addressed in that policy;
 - (ii) the principles and requirements with which any outsourcing, and remuneration paid in respect of outsourcing, must comply;
 - (iii) the requirements with which an insurer or a controlling company, and any person that will perform an outsourced function or activity, must comply;
 - (iv) the matters that must be included or addressed, or may not be included in an outsourcing contract;
 - (v) the functions or activities that may not be outsourced, or may only be outsourced after the Prudential Authority has been notified of the proposed outsourcing, and the information that must accompany that notification;
 - (vi) matters relating to any outsourcing of which the Prudential Authority must be informed; and
 - (viii) limitations on or requirements for sub-outsourcing.

CLAUSE 32

1. On page 27, from line 50, to omit subclause (6) and to substitute:

- (6) The auditor of an insurer or a controlling company must—
 - (a) audit the financial soundness of an insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) or controlling company in the manner prescribed;
 - (b) audit the security held in a trust referred to in section 41 in the manner prescribed;
 - (c) perform the duties and functions assigned to the auditor of an insurer or a controlling company under this Act, the Companies Act and the Auditing Profession Act; and
 - (d) perform any other duties or functions prescribed.

CLAUSE 37

1. On page 30, from line 52, to omit paragraph (a) of subclause (1) and to substitute:
 - (a) 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; or

CLAUSE 40

1. On page 32, from line 52, to omit the clause and to substitute:

Security to be held in trust

40. (1) A branch of a foreign reinsurer must provide and maintain security in respect of its insurance business conducted in the Republic in the form of assets valued in accordance with prescribed requirements that are at least equal to the technical provisions for the insurance business calculated in accordance with this Act.

(2) Lloyd's underwriters must provide and maintain security in respect of the insurance business conducted in the Republic in the form of assets valued in accordance with prescribed requirements that are at least equal to the aggregate of the technical provisions for the insurance business of each Lloyd's underwriter in the Republic calculated in accordance with this Act.

(3) The security referred to in subsections (1) and (2) must—

- (a) comply with any matters prescribed;
- (b) be held in trust and be provided to the trustees of the trust referred to in section 41; and
- (c) be reported on by the representative of the branch of a foreign insurer or Lloyd's in accordance with Chapter 7.

(4) The Prudential Authority may prescribe matters referred to in section 36(6) in respect of a branch of a foreign reinsurer, Lloyd's underwriters, Lloyd's or the security referred to in subsection (1) or (2).

(5) Section 36(3), (4) and (5) apply with the necessary changes to a branch of a foreign insurer, Lloyd's underwriter, Lloyd's and any security referred to in subsection (1) or (2).

(6) For the purposes of this section "insurance business conducted in the Republic" means insurance business relating to any—

- (a) risk of a policyholder residing or located in the Republic irrespective of where the risk is located and includes any placement of insurance business through a person that provides 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 on behalf of Lloyd's or a Lloyd's underwriter; and
- (b) risk emanating in the Republic irrespective of where the policyholder resides or is located.

CLAUSE 41

1. On page 33, from line 17, to omit the clause and to substitute:

Trust and trustees

41. (1) A branch of a foreign reinsurer and Lloyd's must establish a trust in the Republic in accordance with the Trust Property Control Act, 1988 (Act No. 57 of 1988).

(2) The trust and the trust deed must comply with any prescribed requirements and be approved by the Prudential Authority.

(3) (a) The Prudential Authority may, at any time, direct that the trust deed be varied or substituted, or that an additional trustee must be appointed, if the Prudential Authority reasonably believes that it is in the public interest, the interests of policyholders or potential policyholders of the insurer, or in the interest of maintaining the security referred to in section 40.

(b) The trust deed may not be amended or terminated by any person without the prior approval of the Prudential Authority.

(4) The Prudential Authority may prescribe requirements relating to the—

(a) roles, responsibilities and functions of trustees; and

(b) roles, responsibilities and functions of the representative of a branch of a foreign reinsurer or Lloyd's in respect of the trust.

(5) Despite the Trust Property Control Act, 1988 (Act No. 57 of 1988), if any trustee of a trust fails to comply with any requirements of this Act or any provision of the trust deed, the Prudential Authority, on notice to the branch of a foreign reinsurer or Lloyd's and the trustee, may exercise the powers of that trustee under the trust deed.

(6) The funds held in the trust may not, without the approval of the Prudential Authority, be withdrawn or accessed by a foreign reinsurer, a Lloyd's underwriter or Lloyd's in circumstances other than those referred to in section 7(2)(a).

CLAUSE 42

1. On page 33, from line 40, to omit subclause (2) and to substitute:

(2) The Prudential Authority may, in the circumstances referred to in subsection (1), or if the Prudential Authority reasonably believes that a branch of a foreign reinsurer or a Lloyd's underwriter is failing to provide or maintain the security referred to in section 40—

(a) direct a branch of a foreign reinsurer or Lloyd's to submit a recovery scheme to the Prudential Authority for approval that sets out the measures that the branch of a foreign reinsurer or Lloyd's will implement to restore the security; or

(b) suspend or withdraw the licence of the branch of a foreign reinsurer or Lloyd's underwriters and Lloyd's.

CLAUSE 44

1. On page 34, from line 23, to omit subclause (1) and to substitute:

44. (1) In addition to any specific or general requirement provided for elsewhere in this Act or the Financial Sector Regulation 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).

CLAUSE 46

1. On page 35, from line 10, to omit subclause (1) and to substitute:

46. (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 International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body.

CLAUSE 47

1. On page 35, from line 25, to omit subclause (2) and to substitute:
 - (2) (a) The audited annual financial statements of the insurer must be submitted to the Prudential Authority and made available to the public within the prescribed period after its financial year-end.
 - (b) The audited annual financial statements of a controlling company must be submitted to the Prudential Authority within the prescribed period after its financial year-end.

CLAUSE 48

1. On page 35, in line 55, to omit “(inclusive)”.

CLAUSE 49

1. On page 36, from line 11, to omit subclause (2) and to substitute:
 - (2) 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 additional 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.

CLAUSE 50

1. On page 36, from line 46, to omit paragraph (a) in subclause (5) and to substitute:
 - (a) prescribe the requirements that an insurer and controlling company must comply with in respect of transfers, transactions or changes, which may include requirements for informing and consulting policyholders through appropriate media; and

CLAUSE 56

1. On page 40, from line 56, to omit paragraph (b) in subclause (2) and to substitute:
 - (b) The court may only grant an order relating to the business rescue of an insurer or a controlling company if the Prudential Authority has been notified of the application as required in paragraph (a)(i).
2. On page 41, from line 1, to omit subclause (3) and to substitute:
 - (3) (a) Any resolution of an insurer or a controlling company to begin business rescue proceedings is subject to the approval of the Prudential Authority.

(b) An insurer or a controlling company may file a resolution under section 129 of the Companies Act only after the Prudential Authority has approved the resolution.

(c) The Prudential Authority must grant or refuse an application for approval of a resolution within 14 days of the date on which the application was submitted to the Prudential Authority, or such longer period agreed between the Prudential Authority and the applicant.

(d) If the Prudential Authority requested additional information in terms of section 60(4)(a)(i), then the period between the date on which the additional information was requested and when the information was provided to the Prudential Authority is not considered when determining the 14 days referred to in paragraph (c).

(e) Any resolution of an insurer or a controlling company that is not approved by the Prudential Authority under paragraphs (a) or (b), is void.

3. On page 41, from line 17, to omit subclause (6) and to substitute:

(6) As from the date on which a business rescue practitioner is appointed, the business rescue practitioner of an insurer may not enter into any new insurance policies with policyholders, or insurance policies with new policyholders, unless the practitioner has been granted prior approval to do so by the Prudential Authority.

CLAUSE 58

1. On page 42, from line 13, to omit paragraph (b) in subclause (2) and to substitute:

(b) The court may only grant an order relating to the winding-up of an insurer or a controlling company if the Prudential Authority has been notified of the application as required in paragraph (a)(i).

2. On page 42, from line 15, to omit subclause (3) and to substitute:

(3) (a) Any resolution of an insurer or a controlling company to begin winding-up proceedings is subject to the approval of the Prudential Authority.

(b) An insurer or a controlling company may file a resolution under section 80 of the Companies Act only after the Prudential Authority has approved the resolution.

(c) The Prudential Authority must grant or refuse an application for approval of a resolution within 14 days of the date on which the application was submitted to the Prudential Authority, or such longer period agreed between the Prudential Authority and the applicant.

(d) If the Prudential Authority requested additional information in terms of section 60(4)(a) (i), then the period between the date on which the additional information was requested and when the information was provided to the Prudential Authority is not considered when determining the 14 days referred to in paragraph (c).

(e) Any resolution of an insurer or a controlling company that is not approved by the Prudential Authority under paragraph (a) or (b) is void.

CLAUSE 59

1. On page 42, from line 49, to omit paragraph (d) in subclause (1) and to substitute:

(d) The court may only grant an order relating to the business rescue of an insurer or a controlling company if the Prudential Authority has been notified of the application as required in paragraph (c)(i).

CLAUSE 60

1. On page 43, from line 33, to omit subclause (5) and to substitute:

(5) The Prudential Authority may grant any application subject to any conditions necessary to achieve the objective of this Act.

2. On page 43, from line 34, to omit subclause (6).

CLAUSE 62

1. On page 43, from line 47, to omit the clause and to substitute:

General powers, functions and duties of Prudential Authority

62. (1) The Prudential Authority, in addition to other powers or functions conferred on the Prudential Authority by or in terms of any other provision of this Act or any other Act of Parliament—

- (a) must take steps the Prudential Authority considers necessary to implement a regulatory framework that supports the objectives of the Act, including supervising and enforcing compliance with this Act;
- (b) must take steps the Prudential Authority considers necessary to protect policyholders in their dealings with insurers;
- (c) must determine the form, manner and period (if a period is not specified in this Act) in which any documentation, information or report must be published, disclosed, provided or submitted, that an insurer or a controlling company is required to publish, disclose, provide or submit under this Act; and
- (d) may, at regular intervals, determine or amend any rate, parameter or percentage referred to or specified in this Act or a Prudential Standard relating to financial soundness by publishing a notice on the official web site.

(2) Any approval, determination, designation, decision or exemption by the Prudential Authority is valid only if it is in writing.

(3) (a) The Promotion of Administrative Justice Act applies to any approval, determination, designation, decision, exemption or other administrative action taken by the Prudential Authority in terms of this Act.

(b) Without detracting from section 3(3) and (4) of the Promotion of Administrative Justice Act, and despite section 3(5) of that Act, the Prudential Authority must before acting under section 12, also give the juristic persons that are part of that insurance group that are affected notice of the proposed designation and a statement of the purpose of and the reasons for the proposed action.

(4) The Prudential Authority when taking administrative actions, must, in addition to specific matters for consideration specified elsewhere in this Act, have regard to—

- (a) the objective of this Act;
- (b) the nature, scale and complexity of the business of an insurer or an insurance group;
- (c) developmental, financial inclusion, and transformation objectives;
- (d) any submissions made; and

- (e) in the case of an insurance group also—
 - (i) the financial soundness of an insurer that is part of the insurance group;
 - (ii) how the different types of business of the insurance group are conducted;
 - (iii) the risks of the insurance group and each juristic person that is part of that insurance group; and
 - (iv) the manner in which the governance framework is organised and conducted for the insurance group and each juristic person that is part of that insurance group.

CLAUSE 63

1. On page 44, from line 21, to omit subclause (1) and to substitute:

63. (1) (a) The Prudential Authority may prescribe Prudential Standards on any matter that is required or permitted to be prescribed in terms of this Act.

(b) An insurer must comply with prudential standards that apply to that insurer.

2. On page 44, after line 22, after subclause (1) to insert the following subclause, with the existing subsequent subclauses being renumbered consecutively:

(2) The Prudential Authority when making of Prudential Standards, must have regard to—

 - (a) the objective of this Act;
 - (b) the interests of policyholders;
 - (c) international regulatory and supervisory standards, to the extent practicable and with due consideration to the South African context;
 - (d) developmental, financial inclusion, and transformation objectives; and
 - (e) the nature, scale and complexity of different kinds or types of insurers and controlling companies.

NEW CLAUSE

1. That the following be a new clause:

Exemptions

- 66.** (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, including meeting the targets envisaged by the Financial Sector Code; and
 - (d) if the granting of the exemption will not—
 - (i) conflict with the public interest or prejudice policyholders;
 - or
 - (ii) undermine 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.

(5) 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.

CLAUSE 68

1. On page 45, from line 41, to omit the clause, and to substitute:

Offences

69. (1) Any person commits an offence and is on conviction liable to a fine not exceeding R10 million if that person—

(a) contravenes or fails to comply with a provision of section 5(1), 10 or 29(2) or (3); or

(b) fails to comply with a request under section 43(2).

(2) A holding company of or another juristic person designated under subsection 10(1) commits an offence and is on conviction liable to a fine not exceeding R50 million if that holding company of or another juristic person contravenes or fails to comply with a provision of section 10(2).

(3) A key person commits an offence and is on conviction liable to a fine not exceeding R10 million if that person contravenes or fails to comply with a provision of section 16(4).

(4) An auditor commits an offence and is on conviction liable to a fine not exceeding R10 million if that auditor contravenes or fails to comply with a provision of sections 16(5), 32(4), 32(5) or 32(6).

(5) A significant owner commits an offence and is on conviction liable to a fine not exceeding R50 million if that owner fails to comply with a directive issued under section 17(4).

(6) An insurer commits an offence and is on conviction liable to a fine not exceeding R50 million if that insurer fails to comply with a directive issued under section 29(4).

CLAUSE 69

1. On page 46, in line 13, omit “9(1)” and to substitute “1(1)”.

CLAUSE 70

1. On page 46, from line 46, to omit the clause, and to substitute:

Special exemption of certain insurers

70. (1) The following persons are exempt from section 22(1)(a)(iii) of this Act—

- (a) a mutual association licensed under section 30(1) of the Compensation for Occupational Injuries and Diseases, 1998 (Act No. 130 of 1998), at the date on which this Act comes into operation for as long as it remains so licensed;
 - (b) the AVBOB Mutual Assurance Society established in terms of the AVBOB Mutual Assurance Society Incorporation (Private) Act, 1951 (Act No. 7 of 1951);
 - (c) the Attorney Insurance Fidelity Fund NPC (registration number 1993/03588/08) for as long as it remains registered as a non-profit company under the Companies Act; and
 - (d) the Home Loan Guarantee Company NPC (registration number 1990/001845/08) for as long as it remains registered as a non-profit company under the Companies Act.
- (2) Any state-owned company licensed to conduct insurance business under the Long-term Insurance Act, 1998 or the Short-term Insurance Act, 1998 at the commencement date of this Act is exempt from section 22(1)(e).

CLAUSE 72

1. Clause rejected.

LONG TITLE

1. On page 2, to omit the long title of the Bill and to substitute:

To provide for a legal framework for the prudential regulation and supervision of insurance business in the Republic that is consistent with the Constitution of the Republic of South Africa, 1996 and promotes the maintenance of a fair, safe and stable insurance market; to introduce a legal framework for microinsurance to promote financial inclusion; to replace certain parts of the Long-term Insurance Act, 1998, and the Short-term Insurance Act, 1998; and to provide for matters connected therewith.

SCHEDULES

1. From page 48, to omit the Schedules to the Bill, and to substitute:

SCHEDULE 1

LAWS AMENDED

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
|----------------------------|---------------------------------|--|
| 9 of 2017 | Financial Sector Regulation Act | <p>1. The amendment of section 1—</p> <p>(a) by the substitution for paragraph (b) of the definition of “eligible financial institution” of the following paragraph:</p> <p>“(b) a financial institution registered as a long-term insurer in terms of the Long-term Insurance Act or a short-term insurer in terms of the Short-term Insurance Act or licensed or required to be licensed in terms of the Insurance Act;”; and</p> <p>(b) by the insertion after the definition of “industry ombud scheme” of the following definition:</p> <p>““Insurance Act” means the Insurance Act, 2017;”.</p> <p>2. The amendment of section 2—</p> <p>(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:</p> <p>“(b) a long-term policy as defined in section 1(1) of the Long-term Insurance Act or a life insurance policy as defined in section 1 of the Insurance Act;”; and</p> <p>(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) a short-term policy as defined in section 1(1) of the Short-term Insurance Act or a non-life insurance policy as defined in section 1 of the Insurance Act;”.</p> <p>3. The amendment of Schedule 1 by the insertion in the next row after “Credit Rating Services Act, 2012 (Act No. 24 of 2012)” of the following:</p> <p>“Insurance Act, 2017”.</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
|----------------------------|-------------------------|---|
| | | <p>4. The amendment of Schedule 2—</p> <p>(a) by the insertion after the “Credit Rating Services Act, 2012 (Act No. 24 of 2012)” row of the following row: Insurance Act, 2017 Prudential (Act No. [-] of 2017) Authority</p> <p>(b) by the amendment of the row following the “Insurance Act (Act No. [-] of 2017)” row as follows:</p> <p>[the] Long-term Insurance Act (Act No. 52 of 1998) and the Short-term Insurance Act (Act No. 53 of 1998) [, so far as they relate to matters within the objectives of—</p> <p>(a) the Prudential Authority [Prudential Authority</p> <p>(b) the Financial Sector Conduct Authority] Financial Sector Authority]</p> |
| 52 of 1998 | Long-term Insurance Act | <p>1. The substitution of all references in this Act to “Registrar” with “Authority”.</p> <p>2. The substitution for section 1 of the following section:</p> <p>“1. Definitions</p> <p>(1) In this Act, unless the context otherwise indicates—</p> <p>“assistance policy” means a life policy in respect of which the aggregate of—</p> <p>(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</p> <p>(b) the amount of the premium in return for which an annuity is to be provided,</p> <p>does not exceed R30 000, or another amount prescribed by the Minister; and includes a reinsurance policy in respect of such a policy;</p> <p>“Authority” means the Financial Sector Conduct Authority established by the Financial Sector Regulation Act;</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>“conduct standard” has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;</p> <p>“disability event” means the event of the functional ability of the mind or body of a person or an unborn becoming impaired;</p> <p>“disability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event; and includes a reinsurance policy in respect of such a contract;</p> <p>“Financial Sector Regulation Act” means the Financial Sector Regulation Act, 2017;</p> <p>“fund” means—</p> <ul style="list-style-type: none"> (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956); (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956); (c) a medical scheme as defined in section 1 of the Medical Schemes Act; and (d) any other person, arrangement or business prescribed by the Authority; <p>“fund policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract;</p> <p>“health event” means an event relating to the health of the mind or body of a person or an unborn;</p> <p>“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—</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(a) excluding any contract—</p> <p>(i) that provides for the conducting of the business of a medical scheme referred to in section 1 (1) of the Medical Schemes Act; or</p> <p>(ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act, and which contract—</p> <p>(aa) relates to a particular member of the scheme or to the beneficiaries of that member; and</p> <p>(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</p> <p>(b) specifically including, notwithstanding paragraph (a) (i), any contracts identified by the Minister by regulation under section 72 (2A) as a health policy;</p> <p>“independent intermediary” has the meaning as prescribed in the regulations;</p> <p>“Insurance Act” means the Insurance Act, 2017;</p> <p>“joint standard” has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;</p> <p>“licensed insurer” means—</p> <p>(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) of Schedule 3 to the Insurance Act; or</p> <p>(b) a person who has been licensed under section 23 of the Insurance Act after the date on which that Act commenced;</p> <p>“life event” means the event of the life of a person or an unborn—</p> <p>(a) having begun;</p> <p>(b) continuing;</p> <p>(c) having continued for a period;</p> <p>or</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(d) having ended;</p> <p>“life insured” means the person or unborn to whose life, or to the functional ability or health of whose mind or body, a long-term policy relates;</p> <p>“life policy” means a contract in terms of which a person, in return for a premium, undertakes to—</p> <p>(a) provide policy benefits upon, and exclusively as a result of, a life event; or</p> <p>(b) pay an annuity for a period;</p> <p>and includes a reinsurance policy in respect of such a contract;</p> <p>“long-term insurance business” means —</p> <p>(a) in respect of a registered insurer, the business of providing or undertaking to provide policy benefits under long-term policies;</p> <p>(b) in respect of a licensed insurer, life insurance business as defined in section 1 of the Insurance Act;</p> <p>“long-term insurer” means a registered insurer or a licensed insurer;</p> <p>“long-term policy” means—</p> <p>(a) in respect of a registered insurer, an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied;</p> <p>(b) in respect of a licensed insurer, a life insurance policy as defined in section 1 of the Insurance Act;</p> <p>“Medical Schemes Act” means the Medical Schemes Act, 1998 (Act No. 131 of 1998);</p> <p>“Minister” means the Cabinet member responsible for finance;</p> <p>“official web site” means a web site of the Authority;</p> <p>“policy benefits” means—</p> <p>(a) in respect of a registered insurer, one or more sums of money, services or other benefits, including an annuity;</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
|----------------------------|--------------------|--|
| | | <p>(b) in respect of a licensed insurer, benefits to which a person is contractually entitled under a life insurance policy arising from an insurer's insurance obligations;</p> <p>"policyholder" in respect of a—</p> <p>(a) registered insurer, means the person entitled to be provided with the policy benefits under a long-term policy;</p> <p>(b) licensed insurer, has the meaning assigned to it in the Insurance Act;</p> <p>"premium" in respect of a—</p> <p>(a) registered insurer, means the consideration given or to be given in return for an undertaking to provide policy benefits;</p> <p>(b) licensed insurer has the meaning assigned to it in the Insurance Act;</p> <p>"Register" means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;</p> <p>"registered insurer" means a previously registered insurer as defined in item 1 of Schedule 3 to the Insurance Act for the period between the date on which the Insurance Act commenced and the previously registered insurer's licence application referred to in item 6(2) of Schedule 3 to the Insurance Act has been granted or not granted;</p> <p>"regulation" means a regulation under section 72;</p> <p>"reinsurance policy" means—</p> <p>(a) in respect of a registered insurer, a reinsurance policy in respect of a long-term policy;</p> <p>(b) in respect of a licensed insurer, a life insurance policy written under the reinsurance class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act;</p> <p>"repealed Act" means the Insurance Act, 1943 (Act No. 27 of 1943);</p> <p>"representative" has the meaning as prescribed in the regulations;</p> <p>"services as intermediary" has the meaning as prescribed in the regulations;</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>“sinking fund policy” means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money, on a fixed or determinable future date, as policy benefits; and includes a reinsurance policy in respect of such a contract;</p> <p>“short-term insurer” has the meaning assigned to it in the Short-term Insurance Act, 1998;</p> <p>“this Act” includes any regulation made, or matter prescribed under this Act;</p> <p>“Tribunal” means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;</p> <p>“unborn” means a human foetus conceived but not born.</p> <p>(2) For the purposes of entering into a long-term policy the life of an unborn shall be deemed to begin at conception.</p> <p>(3) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act or Insurance Act.</p> <p>(4) A reference to statutory actuary in this Act must be construed as a reference to the head of the actuarial control function appointed by a long-term insurer in accordance with the Insurance Act.”.</p> <p>3. The amendment of section 1A by—</p> <p>(a) the deletion of subsection (1);</p> <p>(b) the substitution for subsection (4) of the following subsection—</p> <p>“(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being—</p> <p>(a) prescribed must be read as a reference to the matter being prescribed in a conduct standard or a joint standard; or</p> <p>(b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.”;</p> |

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| | | <p>(c) the substitution for subsection (6) of the following subsection— “(6) The references in section 3(3) to an appeal to the board of appeal established by section 26 of the Financial Services Board Act must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.”.</p> <p>4. The whole of sections 2(2), 2(3), 4(5), 4(7), 7, 8(1), 8(2), 9 – 35, 37 – 43, 48, 52, 53, 56, 59, 60, 67, 69 – 71 and 72(2A), and Schedules 1 and 3 are hereby repealed.</p> <p>5. The amendment of section 3 by—</p> <p>(a) the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph: “(i) the fees determined under the Financial Sector Regulation Act; and”;</p> <p>(b) the substitution for subsection (4) of the following subsection: “(4) A person may, upon payment of any fees determined under the Financial Sector Regulation Act, inspect only those documents determined by the Authority by notice on the official web site, which are held by the Authority under this Act in relation to a long-term insurer or an intermediary, or obtain a copy of or extract from any such document.”.</p> <p>6. The amendment of section 8 by—</p> <p>(a) the substitution of the heading of the section for the following heading: “Prohibition on performance of certain acts, by certain persons”;</p> <p>(b) the substitution for subsection 3 of the following subsection: “(3) Subject to this Act, no person shall render services as intermediary, in relation to a long-term policy, unless—</p> <p>(a) long-term insurers are the only underwriters in terms of the long-term policy concerned; or</p> |

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| | | <p>(b) that person does so with the approval of the Authority.”; and</p> <p>(c) the insertion after subsection (3) of the following subsections:</p> <p>“(4) The Authority may from time to time by notice on the official web site or, in the case of any particular person, by notice to such person, subject to such conditions as the Authority determines—</p> <p>(a) and specifies in the notice, grant to persons generally or to any particular person or category of persons the approval contemplated in subsection (3)(b) to such extent as may be specified by the Authority in the notice; and</p> <p>(b) at any time withdraw or amend any such approval to such extent as may be determined by the Authority.</p> <p>(5) Subsection (3) 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 <i>Gazette</i>.”.</p> <p>7. The substitution of the heading of Part IV for the following: “RETURNS TO AUTHORITY”.</p> <p>8. The amendment of section 36 by—</p> <p>(a) the substitution in subsection (1) for the words following paragraph (c) of the following words: “determined by the Authority by notice on the official web site, either generally or in relation to a particular insurer.”; and</p> <p>(b) the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “If the Authority is satisfied that a return furnished to it in terms of subsection (1) is incomplete or incorrect, it may, by notice—”.</p> |

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| | | <p>9. The substitution for section 45 of the following section—</p> <p>“45. Prohibition on inducements</p> <p>(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.</p> <p>(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 <i>Gazette</i>.”.</p> <p>10. The insertion after section 47 of the following section—</p> <p>“47A. Collection of premiums by intermediaries</p> <p>(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—</p> <p>(a) unless authorised to do so by the long-term insurer concerned as prescribed by regulation; and</p> <p>(b) otherwise than in accordance with the regulations.</p> <p>(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 <i>Gazette</i>.”.</p> <p>11. The substitution for section 49 of the following section—</p> <p>“49. Limitation of remuneration</p> <p>No consideration shall be—</p> <p>(a) offered or provided by a long-term insurer or a person on behalf of a long-term insurer to an independent intermediary or any other person; or</p> <p>(b) accepted by an independent intermediary or other person, for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.”.</p> |

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| | | <p>12. The amendment of section 49A by—</p> <p>(a) the substitution for subsection (1) of the following subsection:</p> <p>“(1) A long-term insurer may in terms of a written agreement only, and in accordance with any requirements, limitations or prohibitions that may be prescribed by regulation, allow another person to do any one or more of the following on behalf of that insurer:</p> <p>(a) Enter into, vary or renew a long-term policy on behalf of that insurer;</p> <p>(b) determine the wording of a long-term policy;</p> <p>(c) determine premiums under a long-term policy;</p> <p>(d) determine the value of policy benefits under a long-term policy;</p> <p>(e) settle claims under a long-term policy.”; and</p> <p>(b) the insertion after subsection (1) of the following subsection:</p> <p>“(1A) 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 <i>Gazette</i>.”.</p> <p>13. The substitution for section 51 of the following section—</p> <p>“51. Policy suspended until payment of first premium</p> <p>(1) The undertaking of a long-term insurer to provide policy benefits under a long-term policy shall be suspended until the long-term insurer has received, if there—</p> <p>(a) is to be one premium, that premium; or</p> <p>(b) are to be two or more premiums, the first of those premiums,</p> <p>or until arrangements to its satisfaction have been made for the provision of the premium by debit order, stop order, credit card or other instrument approved by the Authority generally by notice on the official web site.</p> |

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| | | <p>(2) Subsection (1) shall not apply to—</p> <p>(a) a fund policy in the case of a registered insurer; and</p> <p>(b) a life insurance policy written under the fund risk class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act in the case of a licensed insurer;</p> <p>(3) 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 <i>Gazette</i>.”.</p> <p>14. The amendment of section 55 by the substitution for subsection (1) of the following subsection:</p> <p>“(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 a friendly society in terms of any policy, exceeds, in the event of the death—</p> <p>(a) of that unborn, or of that minor before he or she attains the age of six years, R20 000; or</p> <p>(b) of that minor after he or she attains the age of six years but before he or she attains the age of 14 years, R50 000,</p> <p>or such other amount prescribed by the Minister: Provided that this section shall not apply to or prohibit the allocation of profit in respect of such policies on the lives of minors, which allocation does not exceed the profits allocated to other such policies on the lives of persons who are not minors.”.</p> <p>15. The amendment of section 62 by—</p> <p>(a) the substitution in subsection (1) for paragraph (a) of the following paragraph:</p> |

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| | | <p>“(a) prescribe rules not inconsistent with this Act, aimed at ensuring for the purpose of policyholder protection that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;”;</p> <p>(b) the substitution in subsection (2) for paragraph (b) of the following paragraph: “(b) that the policy and particular information in relation to a policy shall be made known in a particular manner to prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;”;</p> <p>(c) the substitution in subsection (2) for paragraph (e) of the following paragraph: “(e) for standardised wording, definitions or provisions that must be or may not be included in policies;”;</p> <p>(d) the insertion in subsection (2) after paragraph (e) of the following paragraphs: “(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; (g) for principles and requirements relating to claims handling, complaints handling and dispute resolution applicable to long-term insurers; (h) for principles and requirements relating to the manner and form in which policy benefits must be provided; (i) for principles and requirements relating to misrepresentation in relation to a long-term policy; (j) for requirements relating to the validity of a contract under a long-term policy;</p> |

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| | | <p>(k) for principles and requirements relating to non-payment of premiums and grace periods in relation to a long-term policy, and related disclosures to policyholders;</p> <p>(l) for principles and requirements relating to insurance product design and ongoing review of insurance product performance to ensure the fair treatment of policyholders;</p> <p>(m) for principles and requirements relating to a long-term insurer's dealings with intermediaries;</p> <p>(n) for principles and requirements relating to data management in order to appropriately identify, assess, measure and manage the conduct of business risks associated with its insurance business to ensure the fair treatment of policyholders; and</p> <p>(o) for principles and requirements relating to the termination of policies.”;</p> <p>(e) the substitution for subsection (3) of the following subsection: “(3) Rules referred to in subsection (2) may— (a) apply generally; (b) be limited in application to a particular kind or type of policies, long-term insurers or long-term insurance business; or (c) differentiate between different kinds of insurers, policies, contracts, and services.”; and</p> <p>(f) the substitution for subsection (5) of the following subsection: “(5) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2013, must be regarded as having been prescribed under this section, and remains valid and enforceable until repealed or amended by the Authority.”.</p> |

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| | | <p>16. The substitution for subsection (1) of section 63 of the following subsection:</p> <p>“(1) Subject to subsections (2), (3) and (4), the policy benefits provided or to be provided to a person under one or more—</p> <p>(a) in respect of a registered insurer, assistance, life, disability or health policies; or</p> <p>(b) in the case of a licensed insurer, policies written under the risk, fund risk, credit life, 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,</p> <p>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—</p> <p>(i) 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</p> <p>(ii) 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.”.</p> <p>17. The substitution for section 66 of the following section:</p> <p>“66. Offences by persons other than long-term insurers</p> <p>(1) A person, other than a long-term insurer, who—</p> <p>(a) contravenes or fails to comply with a provision of section 44(1), 45, 47 or 49; or</p> <p>(b) furnishes false information in relation to an application for approval under a provision of this Act,</p> <p>shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.</p> |

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| | | <p>(2) A person, other than a long-term insurer, who contravenes or fails to comply with a provision of section 8(3) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”.</p> <p>18. The insertion in section 68 of the following section: “68. Penalty for failure to furnish the Authority with returns etc.</p> <p>(1) (a) A person who fails to furnish the Authority with a return, information or document, as provided by this Act, within the specified period or the period determined by the Authority by notice on the official web site, or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding R5 000 for every day during which the failure continues, unless the Authority, on good cause shown, waives the penalty or any part thereof.</p> <p>(b) The amount referred to in paragraph (a) must be adjusted by the Authority annually in order to reflect the Consumer Price Index, as published by Statistics South Africa.</p> <p>(2) A penalty contemplated in subsection (1) shall be imposed by notice by the Authority on the person concerned, and such imposition shall be preceded by the procedures determined by the Authority by notice on the official web site to afford such person a reasonable opportunity to be heard, and shall take effect on a date specified in such notice of the Authority which may be a date prior to the date of the notice.</p> <p>(3) A penalty so imposed shall constitute a debt due to the Authority and shall be recoverable by action by the Authority in any court having jurisdiction.”.</p> |

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| | | <p>19. The amendment of section 72 by:</p> <p>(a) 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 will be subject to the regulations and setting out requirements that apply to such services;”;</p> <p>(b) 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);”;</p> <p>(c) the substitution in subsection (1) for paragraph (c) of the following paragraph: “(c) prescribing different or additional requirements for the receipt or retention of, or dealing with money in respect of premiums;”;</p> <p>(d) the substitution in subsection (1) for paragraph (d) of the following paragraph:</p> |

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| | | <p>“(d) (i) prohibiting or limiting the consideration which may be offered or provided; and</p> <p>(ii) prescribing the timing, manner and conditions under which consideration may be offered or provided,</p> <p>by or on behalf of a long-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;”;</p> <p>(e) the substitution in subsection (1) for paragraph (e) with the following paragraph:</p> <p>“(e) (i) prohibiting consideration that may be accepted; and</p> <p>(ii) prescribing the timing, manner and conditions under which consideration may be accepted,</p> <p>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;”;</p> <p>(f) the substitution in subsection (1)(gA) in subparagraph (v) of “. . .” with “. . .”; and”;</p> <p>(g) the insertion in subsection (1)(gA) after subparagraph (v) of the following subparagraph:</p> <p>“(vi) governance, risk management, internal controls, oversight and operational ability”; and</p> <p>(h) the insertion in subsection (2) after paragraph (b) of the following paragraph:</p> <p>“(bA) empower the Authority to prescribe matters specified in the Regulations; and”.</p> |

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| | | <p>20. The amendment of the Arrangement of Sections by—</p> <p>(a) the deletion of all references to sections that are repealed by this Act;</p> <p>(b) the substitution of section 8 with the following: “8. Prohibition on performance of certain acts, by certain persons”; and</p> <p>(c) the substitution of Part IV with the following: “PART IV RETURNS TO AUTHORITY”;</p> <p>(d) inserting after “47. Receipt for premium paid in cash, and validity of policy” of the following: “47A. Collection of premiums by intermediaries”.</p> <p>21. The substitution for the long title of the Act of the following: “To provide for a legal framework for the regulation of conduct of business supervision of long-term insurers in the Republic, that is consistent, to the extent practicable, with international standards for insurance regulation and supervision; for the control of certain activities of long-term insurers and intermediaries; and for matters connected therewith.”.</p> |
| 53 of 1998 | Short-term Insurance Act | <p>1. The substitution of all references in this Act to “Registrar” with “Authority”.</p> <p>2. The substitution for section 1 of the following section: “1. Definitions (1) In this Act, unless the context otherwise indicates— “accident and health policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if a disability, health or death event contemplated in the contract as a risk event occurs, and includes a reinsurance policy in respect of such a contract— (a) excluding any contract— (i) that provides for the conduct of the business of a medical scheme referred to in section 1 (1) of the Medical Schemes Act; or</p> |

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| | | <p>(ii) of which the policyholder is a medical scheme registered under the Medical Schemes Act and which contract—</p> <p>(aa) relates to a particular member of the scheme or to the beneficiaries of such member; and</p> <p>(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</p> <p>(b) specifically including, despite paragraph (a) (i), any category of contracts identified by the Minister by regulation under section 70 (2A) as an accident and health policy;</p> <p>“Authority” means the Financial Sector Conduct Authority established by the Financial Sector Regulation Act;</p> <p>“conduct standard” has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;</p> <p>“death event” means the event of the life of a person or an unborn having ended;</p> <p>“disability event” means the event of the functional ability of the mind or body of a person or an unborn becoming impaired;</p> <p>“engineering policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk relating to—</p> <p>(a) the possession, use or ownership of machinery or equipment, other than a motor vehicle, in the carrying on of a business;</p> <p>(b) the erection of buildings or other structures or the undertaking of other works; or</p> <p>(c) the installation of machinery or equipment,</p> |

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| | | <p>occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“Financial Sector Regulation Act” means the Financial Sector Regulation Act, 2017;</p> <p>“guarantee policy” means a contract in terms of which a person, other than a bank, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the policy as a risk relating to the failure of a person to discharge an obligation, occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“health event” means an event relating to the health of the mind or body of a person or an unborn;</p> <p>“independent intermediary” has the meaning as prescribed in the regulations;</p> <p>“Insurance Act” means the Insurance Act, 2017;</p> <p>“joint standard” has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;</p> <p>“liability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the incurring of a liability, otherwise than as part of a policy relating to a risk more specifically contemplated in another definition in this section, occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“licensed insurer” means—</p> <p>(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</p> |

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| | | <p>(b) a person who has been licensed under section 23 or 24 of the Insurance Act on or after the date on which that Act commenced;</p> <p>“long-term insurer” has the meaning assigned to it in the Long-term Insurance Act, 1998;</p> <p>“Medical Schemes Act” means the Medical Schemes Act, 1998 (Act No. 131 of 1998);</p> <p>“Minister” means the Cabinet member responsible for finance;</p> <p>“miscellaneous policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to any matter not otherwise defined in this section, occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“motor policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a motor vehicle, occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“official web site” means a web site of the Authority;</p> <p>“personal lines business” means short-term insurance business in respect of which the policyholder is a natural person;</p> <p>“policy benefits” means—</p> <p>(a) in respect of a registered insurer, one or more sums of money, other than an annuity, or services or other benefits;</p> <p>(b) in respect of a licensed insurer, benefits to which a person is contractually entitled to under a non-life insurance policy arising from an insurer’s insurance obligations;</p> |

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| | | <p>“policyholder” in respect of a—</p> <p>(a) registered insurer, means the person entitled to be provided with the policy benefits under a short-term policy;</p> <p>(b) licensed insurer has the meaning assigned to in the Insurance Act;</p> <p>“premium” in respect of a—</p> <p>(a) registered insurer, means the consideration given or to be given in return for an undertaking to provide policy benefits;</p> <p>(b) licensed insurer has the meaning assigned to in the Insurance Act;</p> <p>“property policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk other than a risk more specifically contemplated in another definition in this section relating to the use, ownership, loss of or damage to movable or immovable property occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“Register” means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;</p> <p>“registered insurer” means</p> <p>(a) a previously registered insurer as defined in item 1 of Schedule 3 to the Insurance Act for the period between the date on which the Insurance Act commenced and the previously registered insurer’s licence application referred to in item 6(2) of Schedule 3 to the Insurance Act has been granted or not granted; or</p> <p>(b) for a period of 18 months after the effective date of the Insurance Act as referred to in item 11 of Schedule 3 of the Insurance Act, Lloyd’s or a Lloyd’s underwriter;</p> |

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| | | <p>“regulation” means a regulation under section 70;</p> <p>“repealed Act” means the Insurance Act, 1943 (Act No. 27 of 1943);</p> <p>“representative” has the meaning as prescribed in the regulations;</p> <p>“risk” means a possibility that a particular event may occur during the period for which a short-term policy is operative;</p> <p>“services as intermediary” has the meaning as prescribed in the regulations;</p> <p>“short-term insurance business” means—</p> <p>(a) in respect of a registered insurer, the business of providing or undertaking to provide policy benefits under short-term policies;</p> <p>(b) in respect of a licensed insurer, non-life insurance business as defined in section 1 of the Insurance Act;</p> <p>“short-term insurer” means a registered insurer or a licensed insurer;</p> <p>“short-term policy” means—</p> <p>(a) in respect of a registered insurer, an engineering policy, guarantee policy, liability policy, miscellaneous policy, motor policy, accident and health policy, property policy or transportation policy or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is renewed or varied;</p> <p>(b) in respect of a licensed insurer, a non-life insurance policy as defined in section 1 of the Insurance Act;</p> <p>“short-term reinsurance policy” means—</p> <p>(a) in respect of a registered insurer, a reinsurance policy in respect of a short-term policy;</p> |

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| | | <p>(b) in respect of a licensed insurer, a non-life 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;</p> <p>“this Act” includes any regulation made, or matter prescribed under this Act;</p> <p>“transportation policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft or for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed, occurs; and includes a reinsurance policy in respect of such a policy;</p> <p>“Tribunal” means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;</p> <p>“unborn” means a human foetus conceived but not born.</p> <p>(2) For the purposes of entering into a short-term policy the life of an unborn shall be deemed to begin at conception.</p> <p>(3) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act or Insurance Act.</p> <p>(4) A reference to statutory actuary in this Act must be construed as a reference to the head of the actuarial control function appointed by a short-term insurer in accordance with the Insurance Act.”.</p> <p>3. The amendment of section 1A by— (a) the deletion of subsection (1);</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(b) the substitution for subsection (4) of the following subsection— “(4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation, a reference in this Act to a matter being— (a) prescribed must be read as a reference to the matter being prescribed in a conduct standard or a joint standard; or (b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.”; and (c) the substitution for subsection (7) of the following subsection— “(7) The reference in section 3(3) to an appeal to the board of appeal established by section 26 of the Financial Services Board Act must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.”.</p> <p>4. The whole of sections 2(2), 2(3), 4(5), 4(7), 7, 8(1), 9 – 34, 36 – 42, 46, 47, 51, 53, 54, 65, 67 – 69, and 70(2A), and Schedules 1 – 3 are hereby repealed.</p> <p>5. The whole of sections 56 to 63 and Schedule 3 are hereby repealed 18 months after the effective date of the Insurance Act.</p> <p>6. The amendment of section 3 by— (a) the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph: “(i) the fees determined under the Financial Sector Regulation Act; and”; and (b) the substitution for subsection (4) of the following subsection: “(4) A person may, upon payment of any fees determined under the Financial Sector Regulation Act, inspect only those documents determined by the Authority by notice on the</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>official web site, which are held by the Authority under this Act in relation to a short-term insurer or an intermediary or, obtain a copy of or extract from any such document.”.</p> <p>7. The amendment of section 8 by—</p> <p>(a) the substitution of the heading of the section for the following heading: “Prohibition on performance of certain acts, by certain persons”;</p> <p>(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;”;</p> <p>(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”;</p> <p>(d) the deletion in subsection (2) of paragraph (c); and</p> <p>(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 determines by notice in the <i>Gazette</i>.”.</p> <p>8. The substitution of the heading of Part IV for the following: “RETURNS TO AUTHORITY”.</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>9. The amendment of section 35 by—</p> <p>(a) the substitution in subsection (1) of the words following paragraph (c) of the following words: “determined by the Authority by notice on the official web site, either generally or in relation to a particular insurer.”; and</p> <p>(b) the substitution in subsection (2) for the words preceding paragraph (a) of the following words: “If the Authority is satisfied that a return furnished to it in terms of subsection (1) is incomplete or incorrect, it may, by notice—”.</p> <p>10. The substitution for section 44 of the following section— “44. Prohibition on inducements (1) Unless done in accordance with the rules prescribed under section 55, 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 short-term policy. (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 <i>Gazette</i>.”.</p> <p>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.</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(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 <i>Gazette</i>.”.</p> <p>12. The substitution for section 48 of the following section: “48. Limitation of remuneration No consideration shall be— (a) offered or provided by a short-term insurer or a person on behalf of a short-term insurer to an independent intermediary or any other person; or (b) accepted by an independent intermediary or other person, for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.”.</p> <p>13. The amendment of section 48A by— (a) The substitution of all references in this section to “short-term insurer or a Lloyd’s underwriter” with “short-term insurer”; (b) the substitution for subsection (1) of the following subsection: “(1) A short-term insurer may, in terms of a written agreement only, and in accordance with any requirements, limitations or prohibitions that may be prescribed by regulation, allow another person to do any one or more of the following on behalf of that insurer: (a) Enter into, vary or renew a short-term policy on behalf of that insurer; (b) determine the wording of a short-term policy; (c) determine premiums under a short-term policy; (d) determine the value of policy benefits under a short-term policy; (e) settle claims under a short-term policy.”; and</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
|----------------------------|--------------------|---|
| | | <p>(c) the insertion after subsection (1) of the following subsection: “(1A) 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 <i>Gazette</i>.”.</p> <p>14. The substitution of section 50 for the following section: “50. Limitation on policy benefits in the event of death of unborn or of certain minors A short-term insurer shall not undertake to provide, or provide, policy benefits, in terms of — (a) in respect of a registered insurer, an accident and health policy; or (b) in respect of a licensed insurer, a non-life policy written under the accident and health class of non-life insurance business as set out in Table 2 of Schedule 2 of the Insurance Act, 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 which to its knowledge are to be provided in that event by a short-term insurer or a long-term insurer or a friendly society in terms of any policy, exceeds, in the event of the death— (c) of that unborn, or of that minor before he or she attains the age of six years, R20 000; or (d) of that minor after he or she attains the age of six years but before he or she attains the age of 14 years, R50 000, or such other amount prescribed by the Minister.”.</p> <p>15. The amendment of section 55 by: (a) the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) prescribe rules not inconsistent with this Act, aimed at ensuring for the purpose of policyholder protection that policies are</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;”;</p> <p>(b) the substitution in subsection (2) for paragraph (b) of the following paragraph: “(b) that the policy and particular information in relation to a policy shall be made known in a particular manner to prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;”;</p> <p>(c) the substitution in subsection (2) for paragraph (e) of the following paragraph: “(e) for standardised wording, definitions or provisions that must be or may not be included in policies;”;</p> <p>(d) the insertion in subsection (2) after paragraph (e) of the following paragraphs: “(f) for principles and requirements relating to any advertisement, brochure or similar communication which relates to the business of a short-term insurer, or to a short-term policy; (g) for principles and requirements relating to claims handling, complaints handling and dispute resolution applicable to short-term insurers; (h) for principles and requirements relating to the manner and form in which policy benefits must be provided; (i) for principles and requirements relating to misrepresentation in relation to a short-term policy; (j) for requirements relating to the validity of a contract under a short-term policy;</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(k) for principles and requirements relating to non-payment of premiums and grace periods in relation to a short-term policy, and related disclosures to policyholders;</p> <p>(l) for principles and requirements relating to insurance product design and ongoing review of insurance product performance to ensure the fair treatment of policyholders;</p> <p>(m) for principles and requirements relating to a short-term insurer's dealings with intermediaries;</p> <p>(n) for principles and requirements relating to data management in order to appropriately identify, assess, measure and manage the conduct of business risks associated with its insurance business to ensure the fair treatment of policyholders; and</p> <p>(o) for principles and requirements relating to the termination of policies.”;</p> <p>(e) the substitution for subsection (3) of the following subsection: “(3) Rules referred to in subsection (2) may— (a) apply generally; (b) be limited in application to a particular kind or type of policies, short-term insurers or short-term insurance business; or (c) differentiate between different kinds of insurers, policies, contracts and services.”; and</p> <p>(f) the substitution for subsection (5) of the following subsection: “(5) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2013, must be regarded as having been prescribed under this section, and remains valid and enforceable until repealed or amended by the Authority.”.</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>16. The substitution for section 64 of the following section:</p> <p>“64. Offences by persons other than short-term insurers</p> <p>(1) A person, other than a short-term insurer, who—</p> <p>(a) contravenes or fails to comply with a provision of section 43(1), 44, 45 or 48;</p> <p>(b) furnishes false information in relation to an application for approval under a provision of this Act,</p> <p>shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.</p> <p>(2) A person, other than a short-term insurer, who contravenes or fails to comply with a provision of section 8(2) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”.</p> <p>17. The insertion of section 66 of the following section:</p> <p>“66. Penalty for failure to furnish the Authority with returns etc.</p> <p>(1)(a) A person who fails to furnish the Authority with a return, information or document, as provided by this Act, within a specified period or the period determined by the Authority by notice on the official web site, or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding R5 000 for every day during which the failure continues, unless the Authority, on good cause shown, waives the penalty or any part thereof.</p> <p>(b) The amount referred to in paragraph (a) must be adjusted by the Authority annually in order to reflect the Consumer Price Index, as published by Statistics South Africa.</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(2) A penalty contemplated in subsection (1) shall be imposed by notice by the Authority on the person concerned, and such imposition shall be preceded by the procedures determined by the Authority by notice on the official web site to afford such person a reasonable opportunity to be heard, and shall take effect on a date specified in such notice of the Authority which may be a date prior to the date of the notice.</p> <p>(3) A penalty so imposed shall constitute a debt due to the Authority and shall be recoverable by action by the Authority in any court having jurisdiction.”.</p> <p>18. The amendment of section 70 by:</p> <p>(a) The insertion of the subsection number “(1)” before the words “The Minister may make regulations not inconsistent with this Act—”;</p> <p>(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;”;</p> <p>(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);</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(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);</p> <p>(bD) prescribing requirements, limitations or prohibitions in respect of any agreement relating to any service prescribed in accordance with paragraph (b);”;</p> <p>(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;”;</p> <p>(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;”;</p> <p>(f) the substitution in subsection (1) for paragraph (f) of the following paragraph: “(f) (i) prohibiting consideration that may be accepted; and</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
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| | | <p>(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;”;</p> <p>(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;”;</p> <p>(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;”;</p> <p>(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”;</p> <p>(j) the insertion in subsection (1)(gA) after subparagraph (v) of the following subparagraph: “(vi) governance, risk management, internal controls, oversight and operational ability;”;</p> |

| <i>No. and year of Act</i> | <i>Short title</i> | <i>Extent of amendment or repeal</i> |
|----------------------------|--------------------|---|
| | | <p>(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”.</p> <p>19. The amendment of the Arrangement of Sections by—</p> <p>(a) the deletion of all references to sections that are repealed by this Act;</p> <p>(b) the substitution of section 8 with the following: “8. Prohibition on performance of certain acts, by certain persons”; and</p> <p>(c) the substitution of Part IV with the following: “PART IV RETURNS TO AUTHORITY”.</p> <p>20. The substitution for the long title of the Act of the following: “To provide for a legal framework for the regulation of conduct of business supervision of short-term insurers in the Republic, that is consistent, to the extent practicable, with international standards for insurance regulation and supervision; for the control of certain activities of short-term insurers and intermediaries; and for matters connected therewith.”.</p> |

SCHEDULE 2

CLASSES AND SUB-CLASSES

In this Schedule—

“beneficiary” means—

- (a) in the case of an insurance policy other than a group insurance policy, the person stated in the insurance policy or a person nominated by the policyholder as the person in respect of whom the insurer should meet the insurance obligations; or
- (b) in the case of a group insurance policy—
 - (i) a member of the association or fund, or an employee; or
 - (ii) a person nominated by the member referred to in subparagraph (i) in respect of whom the insurer should meet the insurance obligations, which person is not the association, fund or employer;

“fully guaranteed” means where the total insurance obligations under an insurance policy payable at the end date of the insurance policy or, in respect of an annuity, at each annuity instalment, are at the start of the policy—

- (a) stated in the insurance policy in Rand terms; or
- (b) stated in or ascertainable from the insurance policy with reference to the growth rate used in calculating the policy’s investment value or, in the case of an annuity, each annuity installment, which growth rate is stated in the insurance policy as a fixed rate of return or stated return linked to inflation over the full term of the insurance policy;

“fund” means—

- (a) in respect of life insurance business—
 - (i) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (ii) a pension fund organisation as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956); and
- (b) in respect of non-life insurance business, a medical scheme as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

“group” in respect of the classes of insurance business, relates to an insurance policy entered into with—

- (a) an autonomous association of persons united voluntarily to meet their common or shared economic and social needs and aspirations (other than obtaining insurance), which association is democratically-controlled;
- (b) an employer; or
- (c) a fund,

where the association, employer or fund holds the insurance policy exclusively for the benefit of a beneficiary;

“individual” in respect of the classes of insurance business, relates to an insurance policy entered into with a person (whether individually risk rated or underwritten on a group basis) and—

- (a) includes—
 - (i) an insurance policy where a credit provider is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are debtors of that credit provider;
 - (ii) an insurance policy where an employer is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are directors or employees of that employer; but
- (b) excludes—
 - (i) a group insurance policy; and
 - (ii) subject to (a)(i) and (ii), an insurance policy where the persons who are the life insureds under the policy are two or more persons without an insurable interest in each other;

“inflation” means any rate of inflation published by Statistics South Africa, or any successor body, from time to time;

“investment value” means the value of an insurance policy calculated as the accumulated basic premium and investment return stated in or ascertainable from the insurance policy, less deductions specifically provided for in the

insurance policy;

“linked” means where the insurance obligations under an insurance policy are—

- (a) not fully guaranteed or partially guaranteed; and
- (b) determined solely by reference to the value of particular assets or categories of assets which are specified in the insurance policy and are actually held by or on behalf of the insurer specifically for the purposes of the insurance policy, less deductions specifically provided for in the insurance policy;

“lump sum” means a single stated sum of money;

“market related” means where the insurance obligations under an insurance policy are not partially guaranteed, fully guaranteed or linked;

“partially guaranteed” means where some, but not all, the insurance obligations under an insurance policy at the end date of the insurance policy or, in respect of an annuity, at each annuity installment, are at the start of the insurance policy—

- (a) stated in the insurance policy to be no less than an amount in Rand terms; or
- (b) stated in or ascertainable from the insurance policy to be no less than an amount calculated with reference to a growth rate used in calculating the policy’s investment value or, in the case of an annuity, each annuity installment, which growth rate is stated in the insurance policy as a fixed rate of return or stated return linked to inflation over the full term of the insurance policy;

“start of the policy” means the date on which an insurance policy is entered into between an insurer and a policyholder;

“underwritten on a group basis” means where the risks covered under an insurance policy are rated based on the characteristics of a group of people together, as opposed to that of the individual or individuals to whom the policy relates.

TABLE 1

CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS

LIFE INSURANCE

| CLASS | | SUB-CLASS | | DESCRIPTION |
|-------|-------------|-----------|-------------------|---|
| 1. | RISK | a. | Individual Death | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a death event |
| | | b. | Individual Health | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a health event, which sum is not linked to the costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class |

| | CLASS | | SUB-CLASS | DESCRIPTION |
|----|------------------|----|---|---|
| | | c. | Individual Disability — lump sum | Lump sum payable on the happening of a disability event |
| | | d. | Individual Disability — recurring payment | Specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a disability event |
| | | e. | Group Death | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a death event |
| | | f. | Group Health | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a health event, which sum is not linked to the costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class |
| | | g. | Group Disability—lump sum | Lump sum payable to a beneficiary on the happening of a disability event |
| | | h. | Group Disability—recurring payment | Specified or determinable equal or unequal sums of money payable at specified intervals to a beneficiary on the happening of a disability event |
| 2. | FUND RISK | a. | Death | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a fund on the happening of a death event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |

| CLASS | | SUB-CLASS | | DESCRIPTION |
|-------|--------------------|-----------|-------------------------------|---|
| | | b . | Disability— lump sum | Lump sum payable to a fund on the happening of a disability event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| | | c. | Disability— recurring payment | Specified or determinable equal or unequal sums of money payable to a fund at specified intervals payable on the happening of a disability event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| 3. | CREDIT LIFE | | | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals to satisfy all or part of a financial liability to a credit provider— * on the happening of a death event, health event or a disability event; * in the event of unemployment, or other insurable risk that is likely to impair a person's ability to earn an income or meet credit obligations |
| 4. | FUNERAL | a. | Individual | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority to cover cost associated with a funeral or the rendering of a service on the happening of a death event |

| | CLASS | | SUB-CLASS | DESCRIPTION |
|----|---|----|---------------------------------|---|
| | | b. | Group | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority payable to a beneficiary to cover costs associated with a funeral or the rendering of a service on the happening of a death event |
| 5. | LIFE ANNUITIES | a. | Guaranteed (fully or partially) | Specified or determinable equal or unequal sums of money payable at specified intervals from the start of the policy, or a fixed or determinable date— * for the remainder of the life of the policyholder; or * to one or more dependants or nominees after the death of the policyholder |
| b. | Market related | | | |
| c. | With Discretionary Participation features | | | |
| 6. | INDIVIDUAL INVESTMENT | a. | Guaranteed (fully or partially) | Lump sum or periodic payments payable— * on or from a fixed or determinable date, whether payable as a result of a life event, disability event or death event of a person or not; or * at the request of the policyholder |
| b. | Market related | | | |
| c. | Linked | | | |
| d. | With Discretionary Participation features | | | |
| 7. | FUND INVESTMENT | a. | Guaranteed (fully or partially) | Benefits provided for the purpose of funding in whole or in part the obligation of a fund to provide investment benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| b. | Market—related | | | |
| c. | Linked | | | |
| d. | With Discretionary Participation features | | | |
| 8. | INCOME DRAWDOWN | a. | Guaranteed (fully or partially) | Specified or determinable equal or unequal sums of money payable at specified intervals from the start of the policy, or a fixed or determinable date linked to a life event until the value of the investment is exhausted; or a lump sum or specified or determinable equal or unequal sums of money payable at specified intervals equal to the remaining value of the investment to the estate, or one or more dependents or nominees after the death of the policyholder |
| b. | Market related | | | |
| c. | Linked | | | |
| d. | With Discretionary Participation features | | | |

| | CLASS | SUB-CLASS | DESCRIPTION |
|----|--------------------|------------------|---|
| 9. | REINSURANCE | a. | Proportional in respect of a class or sub-class referred to above |
| | | b. | Non-proportional in respect of a class or sub-class referred to above |

TABLE 2
CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS
NON-LIFE INSURANCE

| | CLASS | SUB-CLASS | DESCRIPTION | |
|----|--------------------|------------------|--------------------|---|
| 1. | MOTOR | a. | Personal lines | Covers damage or loss resulting from the possession, use or ownership of motor vehicles and other vehicles operating on land, excluding railway rolling stock and warranty business |
| | | b. | Commercial lines | |
| 2. | PROPERTY | a. | Personal lines | Covers damage to or loss resulting from the possession, use or ownership of property (other than classes 1 above and 3 to 8 below) |
| | | b. | Commercial lines | |
| 3. | AGRICULTURE | a. | Personal lines | Covers damage or loss to crop, forestry, agricultural equipment, other agricultural activities and livestock |
| | | b. | Commercial lines | |
| 4. | ENGINEERING | | | Covers damage to or loss resulting from the possession, use or ownership of machinery or equipment; the erection of buildings or other structure; the undertaking of other works; or the installation of machinery or equipment, and includes loss of revenue |
| 5. | MARINE | a. | Personal lines | Covers damage or loss resulting from the possession, use or ownership of vessels used on or in a river, canal, dam, lake or sea |
| | | b. | Commercial lines | |
| 6. | AVIATION | a. | Personal lines | Covers damage or loss resulting from the possession, use or ownership of aircraft or spacecraft |
| | | b. | Commercial lines | |
| 7. | TRANSPORT | a. | Personal lines | Covers damage or loss resulting from the conveyance, storage, treatment and handling of goods in transit, irrespective of the form of transport |
| | | b. | Commercial lines | |

| | CLASS | | SUB-CLASS | DESCRIPTION |
|-----|------------------------|----|--|---|
| 8. | RAIL | | | Covers damage or loss resulting from the possession, use or ownership of railway rolling stock or related infrastructure |
| 9. | LEGAL EXPENSE | a. | Personal lines | Covers any legal expenses and costs of litigation |
| | | b. | Commercial lines | |
| 10. | LIABILITY | a. | Directors and officers | Covers liability to another person including liability provided for under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) |
| | | b. | Employer liability | |
| | | c. | Product liability (including product guarantee and product recall) | |
| | | d. | Professional indemnity | |
| | | e. | Public liability | |
| | | f. | Aviation | |
| | | g. | Engineering (including environmental impairment liability) | |
| | | h. | Marine | |
| | | i. | Motor | |
| | | j. | Rail | |
| | | k. | Transport | |
| | | l. | Personal | |
| | | m. | Other | |
| 11. | CONSUMER CREDIT | a. | Personal lines | Lump sum payable to satisfy all or part of a financial liability to a credit provider in the event of loss resulting from the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement |
| | | b. | Commercial lines | |
| 12. | TRADE CREDIT | | | Covers loss resulting from the provision of export credit or agricultural credit or any other trade credit as a result of insolvency or any other event |
| 13. | GUARANTEE | | | Covers loss resulting from- * insolvency; * the direct and indirect failure of a person to discharge an obligation; * suretyship offered as part of normal business activities, other than a guarantee issued by a Bank registered under the Banks Act, 1990 |

| | CLASS | SUB-CLASS | DESCRIPTION |
|------------------------------------|----------------------------|---|---|
| 14. | ACCIDENT AND HEALTH | a. Individual— Personal lines | Covers costs or loss of income resulting from— * a disability or death event caused by an accident; or * a health event, other than costs or services regulated under the Medical Schemes Act, 1998, but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class |
| b. Individual— Commercial lines | | Covers costs or loss of income resulting from— * a disability or death event caused by an accident; or * a health event, other than costs or services regulated under the Medical Schemes Act, 1998, but includes any— — kind, type or category of contract identified by the Minister in regulations as a policy that may be entered into under this class; — an event covered under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) | |
| c. Group | | Covers costs or loss of income of a beneficiary resulting from— * a disability or death event caused by an accident; or * a health event, other than costs or services regulated under the Medical Schemes Act, 1998, but includes any kind, type or category of contract identified by the Minister in regulations as a policy that may be entered into under this class | |

| | CLASS | | SUB-CLASS | DESCRIPTION |
|-----|----------------------|---|--|---|
| 15. | TRAVEL | a. | Individual— Personal lines | Covers damage or loss resulting from— * cancellation, interruption, loss of property (including baggage), or other unforeseen events before, while and after travelling; * a death, disability or health event while travelling in a country in which the insured person is not ordinarily resident |
| b. | | Individual— Commercial lines | | |
| c. | | Group | | |
| 16. | MISCELLANEOUS | a. | Personal lines | Covers damage to or loss resulting from a risk not addressed under any other class or sub-class referred to in this Table, which risk is approved by the Prudential Authority |
| b. | | Commercial lines | | |
| 17. | REINSURANCE | a. | Proportional in respect of a class or sub-class referred to above. | |
| b. | | Non-proportional in respect of a class or sub-class referred to above | | |

SCHEDULE 3**TRANSITIONAL ARRANGEMENTS****Definitions and interpretation**

1. (1) In this Schedule, unless the context indicates otherwise—
“**effective date**” means the date fixed by the Minister in accordance with section 73(1) as the date that this Act comes into operation;
“**previous Act**” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), or both, as the case may be; and
“**previously registered insurer**” means an insurer registered or deemed to have been registered under the previous Act.

(2) A reference in this Schedule to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

Repeal of matters prescribed under previous Act and savings

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).

(2) Despite sub-item (1), any Regulations made under section 72(2A) of the Long-term Insurance Act, 1998 and section 70(2A) of the Short-term Insurance Act, 1998 prior to the repeal thereof by this Act must be regarded as having been made under section 69(1) of this Act and remains valid and enforceable until repealed or amended by the Minister.

Pending matters

3. Any matter relating to prudential supervision pending before the Registrar under the previous Act immediately before the effective date and not fully addressed at that time, must be concluded by the Prudential Authority in terms of that previous Act, despite its amendment.

Preservation and continuation of court proceedings and orders

4. (1) Any proceedings in any court in terms of the previous Act immediately before the effective date are continued in terms of that Act, as if it had not been amended.

(2) Any order of a court in terms of the previous Act, and in force immediately before the effective date, continues to have the same force and effect as if that Act had not been amended, subject to any further order of the court.

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.

Continuation of previously registered insurers

6. (1) As of the effective date, every previously registered insurer that was, immediately before that date, 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 Act, and may continue to conduct the insurance business for which it was so registered until its registration is converted to a licence under this Act during the period of two years referred to in subitem (2), subject to and in accordance with the governance, financial soundness, security, reporting and public disclosure obligations imposed under this Act.

(2) The Prudential Authority must, subject to subitem (4), within a period of two years after the effective date, convert the registration of all previously registered insurers to a licence in accordance with this Act.

(3) (a) The Prudential Authority must, within two months of the effective date, publish the process the Prudential Authority will implement to give effect to subitem (2).

(b) The process referred to in paragraph (a) must—

- (i) be reasonable and fair;
- (ii) allow for sufficient engagement with a previously registered insurer; and
- (iii) among other matters, require the insurer to demonstrate that it has a plan to meet its stated commitments in terms of transformation of the insurance sector.

(4) (a) The Prudential Authority must convert the registration of a previously registered insurer to a licence to conduct a class and sub-class of life insurance business or non-life insurance business referred to in Schedule 2 to the Act if the previously registered insurer, immediately prior to the effective date, were actively and prudently conducting insurance business similar to that class or sub-class of insurance business.

(b) Despite paragraph (a) and subject to any limitations relating to a type or kind of insurer or insurance business provided for in the Act, a previously registered insurer who applies for the conversion of its registration to a licence to conduct—

- (i) life insurance business must only be licensed to conduct a class or sub-class of life insurance business referred to in Table 1 of Schedule 2; and
- (ii) 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.

(5) If the Prudential Authority does not convert the registration of a previously registered insurer to a licence to conduct insurance business in respect of a specific class or sub-class set out in Schedule 2 that is similar to the business that the previously registered insurer was registered for on the effective date because—

(a) the insurer did not immediately prior to the effective date conduct that insurance business; or

(b) of the application of subitem (4)(b),

the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to—

- (i) discharge its obligations under all insurance policies entered into in respect of that class or sub-class before the conversion of that insurer's registration;
- (ii) ensure the orderly resolution of that insurance business of the insurer; or
- (iii) transfer that insurance business to another insurer under section 50 of this Act by a specified date.

(6) Section 23(5)(a) comes into effect six months after the date on which a previously registered insurer's registration is converted to a licence.

Maintenance of financial soundness

7. (1) A previously registered 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.

(2) Despite subitem (1), any reinsurance arrangement entered into with an insurer or reinsurer located in a foreign jurisdiction may continue until the previously registered insurer's registration under the previous Act is converted to a licence under this Act during the period of two years referred to in item 6(2) despite that foreign jurisdiction not having been determined by the Prudential Authority as equivalent.

Reporting

8. A previously registered 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.

Key persons and significant owners other than representatives, deputy representatives of Lloyd's and trustees of Lloyd's trust

9. (1) Any person appointed as a key person and any significant owner of an insurer immediately before the effective date is deemed to meet the fit and proper requirements of this Act, subject to the requirements of this Act.

(2) Despite sub-item (1), the Prudential Authority may act in accordance with section 19 if the Prudential Authority reasonably believes that a key person or significant owner does not comply or no longer complies with the prescribed fit and proper requirements.

(3) The Prudential Authority must, when considering the conversion of the registration of a previously registered insurer—

- (a) approve the directors and auditor of the insurer; and
- (b) require the previously registered insurer to demonstrate and certify that its key persons (other than directors and auditor) and significant owners meet the prescribed fit and proper requirements.

Conducting of business other than insurance business inside Republic and conducting of any other business outside Republic

10. (1) As of the effective date, subject to subitem (3) below, every previously registered insurer that, immediately before that date, was conducting any business other than insurance business in the Republic or conducting any business, including business similar to insurance business, outside the Republic, may continue to conduct that business until its registration under the previous Act is converted to a licence under this Act.

(2) A previously registered insurer must, as part of the process referred to in item 6(3)(a) apply for approval to conduct-

- (a) any business other than insurance business in the Republic, including any business performed on behalf of another person; or
- (b) any business, including business similar to insurance business, outside the Republic.

(3) If the Prudential Authority does not approve the business referred to in sub-item (2), the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to ensure the orderly resolution or transfer of that business of the insurer.

Lloyd's

11. (1) (a) The requirements of Part 8 of the previous Act continue to apply to Lloyd's and Lloyd's underwriters for a period of 18 months after the effective date.

(b) Any sections of the previous Act that did not apply to Lloyd's and Lloyd's underwriters prior to the amendment of that Act by Schedule 1 to this Act continues not to apply to Lloyd's and Lloyd's underwriters for a period of 18 months only after the effective date.

(2) Lloyd's must, within three months after the effective date, submit a plan to the Prudential Authority demonstrating how compliance with this Act will be achieved within 18 months after the effective date.

Insurance groups

12. A previously registered insurer that is part of a group of companies must, within two months of the effective date, notify the Prudential Authority thereof, and provide the Prudential Authority with detailed information on the structure of the group of companies, its holding company and intra-group transactions.

Delays and exemptions

13. The Prudential Authority, to facilitate the incremental implementation of this Act, may, by notice in the Gazette—

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding two years from the date when that section takes effect; or
- (b) where practicalities require the progressive or incremental application of a specific provision of this Act, exempt any insurer, controlling company, key person or significant owner from that provision for a period and on conditions determined in the notice.

LONG TITLE

1. On page 2, to omit the Long Title of the Bill and to substitute:

To provide for a legal framework for the prudential regulation and supervision of insurance business in the Republic that is consistent with the Constitution of the Republic of South Africa, 1996 and promotes the maintenance of a fair, safe and stable insurance market; to introduce a legal framework for microinsurance to promote financial inclusion; to replace certain parts of the Long-term Insurance Act, 1998, and the Short-term Insurance Act, 1998; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

1. From page 2, to omit the Arrangement of Sections of the Bill and to substitute:

ARRANGEMENT OF SECTIONS

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INTERPRETATION AND OBJECTIVE OF ACT

1. Definitions
2. General interpretation of Act
3. Objective of Act

CHAPTER 2

CONDUCTING INSURANCE BUSINESS AND INSURANCE GROUP BUSINESS

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General principles for conducting insurance business or insurance group business

4. Principles

Part 2

Insurance business and other business of insurers

5. Insurance business and limitations on other business

Part 3***Branches of foreign reinsurers and Lloyd's underwriters***

6. Conducting of insurance business by branches of foreign reinsurers and Lloyd's underwriters
7. Claims against branches of foreign reinsurers or Lloyd's underwriters

Part 4***Insurance groups***

8. Application of Part
9. Notification by insurer on becoming part of group of companies
10. Designation of insurance group and licensing of controlling company
11. Responsibility of board of directors of controlling company
12. Transparent insurance group structure

CHAPTER 3**KEY PERSONS AND SIGNIFICANT OWNERS****Part 1*****Fit and proper requirements***

13. Fit and proper requirements for key persons and significant owners

Part 2***Appointment and termination of key persons***

14. Approval of appointment of certain key persons
15. Notification of appointment and change of circumstances of certain key persons
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Part 3***Changes in control of insurer or controlling company and nominees***

17. Changes in control of insurer or controlling company
18. Registration of shares in name of nominee

Part 4***Key persons or significant owners not fit and proper***

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10. Conducting of business other than insurance business inside Republic and conducting of any other business outside Republic
11. Lloyd's
12. Insurance groups
13. Delays and exemptions

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