Administration
PO Box 4464
Cape Town, 8000, RSA
Tel. + 27 21 509 5242
Fax. + 27 21 509 0160

President
Garth Griffin
Tel. + 27 21 794 8078
Fax. + 27 21 509 0160
Email. ggriffin@iafrica.com

www.actuarialsociety.org.za
www.actuarialsociety.co.za

ACTUARIAL SOCIETY OF SOUTH AFRICA

23 May 2008

Mr B Viljoen
Houses of Parliament
P O Box 15
CAPE TOWN
8000

Dear Mr Viljoen

INSURANCE LAWS AMENDMENT BILL, 2008

The Actuarial Society welcomes the opportunity to comment on the proposed changes. Our comments are limited to the proposed amendments to the Long Term Insurance Act. While we do not deem it necessary to take up more time of the Committee by giving oral evidence, we shall gladly provide any further information, if required.

Clause 1: Amendment to section 1 (as amended in 2003) referring to the deletion of the definition of market-related policy.

We believe that a definition is still necessary. Board Notice 61 (dealing with the LT2000 returns) uses the term extensively and refers to the definition in the Act. A definition is either required in the Act or in Board Notice 61.

Clause 7: Amendment to section 20 to require the statutory actuary to report without delay and in writing to the board of directors and the Registrar on any matter which may prejudice the insurer's ability to comply with any section of the Act.

We believe that it is appropriate for the report to be provided to the board without delay and in writing.

We are not convinced that it is always necessary to also provide this report to the Registrar, as the current wording appears to include normal risk management reports about potential issues which may possibly prejudice the insurer's financial soundness in future. Such reports may also not require immediate rectification.

It would however be appropriate for the report to be provided to the Registrar and for immediate rectification to take place, if the issue was a current threat rather than a potential future risk. We would therefore like to suggest that this requirement be amended to refer to "… any matter … which … currently prejudices the long-term insurer's ability to comply with …".

We are also very concerned that this requirement should be extended to any other section of the Act. The statutory actuary is not required to monitor compliance will all sections of the Act, and should not therefore be required to report possible non-compliance with any other section of the Act. We would therefore like to urge that this be limited to compliance with sections 20, 29-36, 46 and 52(3).

Amendment to section 20 (8) regarding statutory actuary attendance and speaking at board meeting, and receiving board papers.

The proposed wording now reads that the "statutory actuary shall attend…board meetings." Circumstances may prevent the statutory actuary from attending; furthermore matters being discussed may not involve the statutory actuary. We suggest that the wording be changed to read "shall be entitled to attend and to speak…"

Clause 11: Amendment to section 29 (2) regarding making provision for liabilities and capital adequacy requirement.

It is unclear what the phrase "not made provision for" means. Does this mean that one has not provided sufficient assets for liabilities and CAR? Or does it mean that one has not calculated liabilities and CAR in accordance with the requirements of sections 30 and 31 and Schedule 3?

If it means the former, then this appears to be a repetition of the existing requirements, which seems unnecessary.

If it means the latter, then we would suggest clarifying this by wording it as "it has not calculated the liabilities and …".

Amendment to section 29 (3) regarding when to notify the Registrar (without delay, rather than within 30 days).

We don't have a problem with this change.

Clause 13: Addition of section 29 (4) regarding declaring and paying dividends.

This has been moved from section 30, which is fine.

But the phrase "deemed to fail" is now used instead of "fail". We don't understand why this change has been made. Who will be doing the deeming?

Addition of section 31 (3) regarding the Registrar being able to change the valuation of an asset.

We are uncomfortable with this addition. We are not sure what is meant by "proper value" – it is not a generally used accounting term. On what grounds would the Registrar believe that the value of an asset does not reflect a proper value? If the Registrar has such concerns, why not first discuss these with the insurer? What criteria will be used for appointing another person to place a proper value on that asset? Giving the Registrar the power to calculate the value of an asset in whatever manner he determines seems too wide a discretion.

It would be helpful to understand the motivation and purpose for this change.

We believe that this addition should be removed, or should be significantly reworded to first require any concern to be discussed with the insurer, and for the insurer to first be provided with an opportunity to address the Registrar's concern. Thereafter, if the Registrar is still not satisfied, this section could provide only then for a revised valuation to be determined if appropriate reasons are given for this and if the valuation is determined by another person acceptable to the insurer.

Furthermore, we are concerned by the retrospective nature, in that it only happens once the statutory actuary has submitted the annual returns, which is some time after results have been published.

Clause 14: Addition of section 34 (2) regarding investing in derivatives.

The existing Act allows insurers to invest in derivatives "for the purpose of reducing investment risk". The proposed changes allow insurers to do this subject to having "the asset at the settlement date of the derivative instrument which matches the obligations under that instrument and from which it can discharge those obligations." The proposed change appears to stop insurers investing in any derivative that has an open position. Is this intentional? If so, we would like this to be reconsidered.

Clause 15: Addition of section 36 (3) regarding conducting of an investigation and the production of a report by a person nominated by the Registrar.

We believe that these powers are potentially too wide, and need to be subject to certain conditions. If the Registrar believes that something requires further investigation, then this should first be discussed with the insurer, and the insurer should be provided with an opportunity to address the Registrar's concern. Thereafter, if the Registrar is still not satisfied, then an external investigation can be conducted at the Registrar's request, provided appropriate reasons are provided for this and if the nominated person is acceptable to the insurer.

Clause 16: Addition to section 46 (1) (c) regarding compliance with PPFM.

We are satisfied with the addition of subparagraph (i).

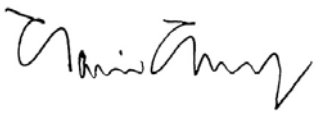
We do however suggest that the definition for PPFM be provided with the other definitions in section 1, rather than in section 46 (2).

Clause 18: Addition of section 49A dealing with binder agreements.

This new section appears to preclude entering into agreements with profit-share arrangements, for example bankassurance type agreements where the bank effectively acts as agents for the life company and participates in the profits from that business. This would appear to be prohibited under this section. Is this intentional? If so, we would request that this be reconsidered.

We have no further comments on the other provisions of the Bill. We wish the Committee well in its deliberations.

Yours sincerely



Garth Griffin
President