



The South African Institute of Chartered Accountants

16 May 2008

Mr NM Nene
Chairperson: Portfolio Committee on Finance
Parliament
PO Box 15
Cape Town
8000

Email: bviljoen@parliament.gov.za

Dear Sir

COMMENT ON THE INSURANCE LAWS AMENDMENT BILL, 2008

In response to your request for comments on the Insurance Laws Amendment Bill, 2008 (the Bill), attached please find the comment letter prepared by the South African Institute of Chartered Accountants (SAICA).

We thank you for the opportunity to provide comments on the Bill. Please do not hesitate to contact us should you wish to discuss any of our comments.

Yours sincerely

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Project Director – Financial Services



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A member of the International Federation of Accountants (IFAC) and the Eastern Central and Southern African Federation of Accountants (ECSAFA)

COMMENT ON THE INSURANCE LAWS AMENDMENT BILL, 2008

Overall we support the proposed amendments in the Bill and specifically the amendments to update the Long-term Insurance Act, 1998, and Short-term Insurance Act, 1998, with changes to other legislation such as the Companies Act, 1973. We do, however, have a few concerns that are outlined below.

Short-term and Long-term Insurance Acts

The references to 'widely-held' companies, brought in by the most recent amendments to the Companies Act, may become outdated once the Companies Bill is finalised. In the most recent drafts of the Companies Bill the references to 'widely-held' and 'limited-interest' companies fall away. References to specific sections on the Companies Act may also change in the future.

We recommend obtaining more clarity on the potential future changes to the Companies Act and the likely timing thereof before finalising the amendments to the insurance laws.

The amendments require insurance companies to appoint an audit committee in terms of the Companies Act requirements. Consideration should be given to including specific requirements for persons appointed to audit committees of insurance companies (such as a requirement that they have adequate knowledge of the insurance industry). The provisions in the Acts could simply refer to a Directive, Board Notice or Regulation to be issued by the Financial Services Board (FSB) detailing the requirements.

While we appreciate that it is important that binder agreements be carefully regulated, in our view, the proposed section 49A(3)(c) banning profit participation in such agreements overlooks the importance and necessity of these arrangements in ensuring a responsible, risk-conscious approach to underwriting by the holders of such binders. We are concerned that wholly remunerating binders on another basis, such as on the level of premiums or claims, might encourage a less responsible, more self-interested approach to underwriting because the binder is wholly insulated from the risk-related implications of their decisions. By analogy, reinsurers often build profit commission arrangements into reinsurance treaties to encourage and reward insurers for responsible underwriting. Similarly, this is important for insurers with binder arrangements.

Short-term Insurance Act

Solvency II refers to a two-tier capital requirement approach. By being specific about the capital adequacy requirement and the obligations attaching thereto in the amendments to section 28 and 29, the implementation of a Solvency II type approach may prove difficult. We recommend being less specific in the Act and referring instead to the requirements in a Directive, Board Notice or Regulation.

The amendments do not specifically address insurers' risk management requirements and the regulator's powers in this regard. Please consider whether there is sufficient scope for the FSB to monitor and intervene in risk management processes within insurers where necessary.

Please note that reference to section 23 in the amendments to section 22 and the reference to section 24 in the amendments to section 23 are incorrect.