

REPUBLIC OF SOUTH AFRICA

**INSURANCE SECOND
AMENDMENT BILL**

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 87—98]

REPUBLIEK VAN SUID-AFRIKA

**TWEEDE
WYSIGINGSWETSONTWERP OP
VERSEKERING**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 87—98]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Insurance Act, 1943, so as to provide for the circumstances under which a domestic insurer may hold shares in its holding company; and to provide that a domestic insurer may be converted into a public company having a share capital; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Insertion of section 19A in Act 27 of 1943

1. The following section is hereby inserted after section 19 of the Insurance Act, 1943:

“Circumstances under which domestic insurer may hold shares in its holding company 5

19A. (1) If the assets which a domestic insurer holds in respect of its long-term insurance business in any of its policyholder funds include shares in its holding company—

- (a) such shares shall, for the purposes of section 39(2) of the Companies Act, 1973 (Act No. 61 of 1973), be deemed to be held by the said insurer in a representative capacity or as a trustee for the sole benefit of the owners of the policies for which the relevant policyholder fund exists; 10
- (b) such shares shall only be held by the said insurer with the prior approval of the registrar and subject to such conditions as the registrar may impose; and 15
- (c) the said insurer shall not have the right to vote at meetings of the relevant holding company or at meetings of any class of members thereof. 20

- (2) For the purposes of subsection (1)—
- (a) ‘holding company’ means a holding company as defined in section 1 of the Companies Act, 1973; and
- (b) ‘policyholder fund’ means a fund referred to in paragraph (a), (b) or (c) of section 29(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).” 25

Substitution of section 25 of Act 27 of 1943, as amended by section 22 of Act 73 of 1951, section 8 of Act 39 of 1969, section 10 of Act 103 of 1979, section 11 of Act 99 of 1980, section 1 of Act 54 of 1991, section 4 of Act 83 of 1992 and section 8 of Act 104 of 1993

2. The following section is hereby substituted for section 25 of the Insurance Act, 1943: 5

“Amalgamation or transfer of insurance business or conversion of domestic insurer

25. (1) A proposed amalgamation of the whole or any part of any business carried on by a domestic insurer with the whole or any part of any business carried on by any other person (irrespective of whether that other person does **[or does not]** carry on insurance business or not) or a proposed transfer of the whole or any part of any business from a domestic insurer to such other person or the proposed transfer of the whole or any part of any business from such other person to a domestic insurer or a proposed conversion of a domestic insurer which is not a company having a share capital into a public company having a share capital shall not be of any force or effect unless the transaction in respect of the amalgamation, **[or] transfer or conversion** has been confirmed—

(a) except in the case of a transfer contemplated in section 25A, by the court, if any party to the transaction in question is or was carrying on long-term insurance business in the Republic immediately before the commencement of or during the transaction; 20

(b) by the registrar, if no party to the transaction is or was carrying on long-term insurance business in the Republic immediately before the commencement of or during the transaction; 25

(c) in the case of a transfer contemplated in section 25A, by the registrar.

(2) A domestic insurer who is a party to a transaction to which subsection (1)(a) applies shall, before application is made to the court for the confirmation of the transaction, and a domestic insurer who is a party to a transaction to which subsection (1)(b) or **[(1)](c)** applies shall, prior to or simultaneously with the application to the registrar for confirmation of the transaction, furnish the registrar with a copy of the scheme for the proposed amalgamation, **[or] transfer or conversion** and with a copy of every report or statement **[upon] on** which the scheme is based or which is taken into account for the purposes of the scheme, and any party to the transaction in question shall thereafter at the request of the registrar furnish the latter with such other **[information] particulars** relating to the scheme as the registrar may **[specify] require** and as may be available to the relevant party concerned. 40

(3) The registrar may appoint a competent person (who shall be an independent actuary if subsection (1)(a) or **[(1)](c)** applies to the transaction in question) to investigate and report **[upon] on** the said scheme. The parties to the transaction shall bear in equal shares the cost, or if there is only one party, that party shall bear the full cost, of that investigation and report and of any copy of the report which the registrar may **[have deemed] consider** desirable to send to the said parties or party, and the court or the registrar shall not confirm the transaction unless the said cost has been paid or guaranteed to the satisfaction of the registrar. 45

(4) On the direction of the registrar any party to the **[proposed] transaction in question** shall send to every owner of a policy under which the party is liable and to every shareholder or creditor of any business under 50

his control, to which the said scheme relates, a copy of the scheme and of any statement or report mentioned in subsection (2) or (3).

(5) The court or the registrar shall not confirm the transaction in question unless every party thereto who has a principal **[office]** or head office in the Republic has—

- (a) throughout the period of **[twenty-one]** 21 days which commenced not more than **[ninety]** 90 days and not less than **[thirty]** 30 days before the date upon which application is made to the court (if subsection (1) (a) applies in connection with the transaction); or
- (b) throughout any period of **[twenty-one]** 21 days which the registrar **[deems]** considers suitable (if subsection (1)(b) or **[(1)](c)** applies in connection with the transaction),

made available, at the said office, free of charge, to any owner of a policy, shareholder or creditor mentioned in subsection (4), for his inspection, a copy of each of the documents mentioned in subsection (4).

(6) The court or the registrar shall not confirm the transaction in question unless any person who is a party thereto has, upon a date not less than ten days and not more than **[thirty]** 30 days before the commencement of the period of **[twenty-one]** 21 days mentioned in subsection (5), caused to be published in the *Gazette* and in such newspaper or newspapers as the registrar may direct, a notice—

- (a) indicating the nature of the said scheme; and
- (b) stating that the relevant party or parties intend to apply to the court or to the registrar, as the case may be, for confirmation of the transaction; and
- (c) stating the date and hour when, and the place where, the application will be made (if subsection (1)(a) applies to the transaction); and
- (d) indicating the place or places where, and specifying the period during which, the documents mentioned in subsection (5) (which shall be specified in the notice) will be available for inspection **[in terms of]** in accordance with subsection (5).

(7) The registrar, or any person representing the registrar, and any owner of a policy, shareholder or creditor affected or likely to be affected by the said scheme, shall be entitled to appear and to be heard on any application to the court **[under]** in terms of this section, and may make an application to the court on any matter in connection with the scheme.

(8) (a) On an application to the court for confirmation of the transaction in question, the court may confirm the transaction as proposed or with such modifications as the court may think fit to make.

(b) If a domestic insurer which is not a company having a share capital applies to the court for confirmation of a transaction or combination of transactions in respect of a scheme which proposes or is in connection with the demutualisation of the said insurer, such scheme may include, and the court may confirm, the following matters, namely—

- (i) the allotment, issue or transfer to any person by any party to such scheme of shares in the said insurer or in a company which is to become the holding company of any such party, whether in substitution for membership of the said insurer or otherwise;
- (ii) the cessation of membership of the said insurer;
- (iii) the date on which such scheme takes effect, which date may be a date before or after the date of confirmation by the court.

(9) On an application to the registrar for confirmation of the transaction in question, the registrar may confirm the transaction as proposed, or he may suggest that the relevant party or parties **[concerned]** modify the

[proposed] transaction in certain respects, and if **[they]** the party or parties do so, he may confirm the transaction as modified or he may decline to confirm it.

(10) If the registrar has declined to confirm the **[proposed]** transaction, the relevant party or parties **[thereto]** may make an application to the court for confirmation of the **[proposed]** transaction, and thereupon the provisions of subsections (7) and (8) shall apply. 5

(11) **[A transaction confirmed by the court or by the registrar in accordance with this section shall be binding on all persons, and shall have effect]** A domestic insurer may propose, conclude or give effect to any transaction or combination of transactions contemplated in this section notwithstanding anything provided or not provided in the law, memorandum or other document under which any party to the relevant transaction or transactions is constituted or in the articles of association or other rules of any such party, and the transaction or combination of transactions, if confirmed by the court or by the registrar under this section, shall have legal force and be binding on all persons. 10 15

(12) When a transaction has been confirmed as aforesaid, the person controlling the amalgamated business or the person to whom any business has been transferred by the transaction or the domestic insurer converted thereunder, as the case may be, shall within **[sixty]** 60 days as from the date of confirmation by the registrar or the date on which the transaction takes effect in terms of the order of court confirming it, as the case may be, furnish the registrar with— 20

(a) a statement of the assets and liabilities of every party to the transaction— 25

(i) as at the close of business immediately preceding the date on which **[the amalgamation or transfer takes effect in terms of]** the transaction takes effect; and

(ii) as at the commencement of business on **[such]** the said date, which statement shall be attested by the auditor of **[the party concerned]** any such party as exhibiting truly and fairly the said assets and liabilities according to the books and records of that party, and any other **[information]** particulars which may be necessary for that purpose; and 30 35

(b) a copy, certified by the registrar of the court, of the transaction as confirmed by the court and of the order of court confirming the transaction (if the transaction was confirmed by the court); and

(c) a declaration signed by the chairman of every such party, and, if a foreign insurer is such a party, by **[his]** its public officer in the Republic, that to the best of his belief every payment made or to be made or other valuable consideration given or to be given to any person whatsoever on account of the amalgamation, **[or]** transfer or conversion is fully set forth in the transaction as confirmed. 40

(13) Any arrangement entered into between two or more insurers whereby a liability of any one of such insurers towards owners of policies is to be substituted for a liability of any other such insurer towards such owners (whether or not the liability of the first-mentioned insurer is expressed in or created by the said policies or by new policies, or the terms of such new policies are the same as or different from the terms of the original policies), shall be deemed for the purposes of this section to be a scheme for the transfer of the insurance business in question, unless the registrar has expressed himself satisfied that the said owners of policies have been or will be made aware of the nature of **[such]** the substitution and have signified or will signify their consent thereto in writing. 45 50 55

(14) (a) If **[in terms of]** in accordance with this section any business of any insurer has been amalgamated with any business of any other insurer or transferred to any other insurer, every officer (including any Registrar of Deeds, any Master of the Supreme Court and the Registrar of Companies)

in charge of any office in which property or any mortgage or other right is registered in the name of or **[by]** in favour of the first-mentioned insurer or an appointment of or **[in favour of]** by the first-mentioned insurer was made or a licence was issued to or in favour of the first-mentioned insurer, upon production to him of a certificate in which the registrar states that he or the court, as the case may be, confirmed the amalgamation or transfer **[in terms of]** under this section and upon production to him of the title deed, mortgage bond, deed, certificate, letter of appointment, licence or other document in question, shall make such endorsement thereon and such entries in his registers or other books as may be necessary to effect or record the transfer of the property, mortgage, other right, appointment or licence in question to the amalgamated business or the insurer to whom any business was transferred, as the case may be, and no transfer or stamp duty or registration, licence or other fees shall be payable in respect of any endorsement or entry made as aforesaid.

(b) The provisions of paragraph (a) shall, with the necessary changes, apply in respect of a domestic insurer which has been converted in accordance with this section into a public company having a share capital.

(15) Any domestic insurer converted in accordance with this section shall continue its corporate existence in the form of a public company incorporated under the Companies Act, 1973 (Act No. 61 of 1973), and the Registrar of Companies shall register its memorandum and articles in accordance with section 63 of the said Act.”.

Short title

3. This Act shall be called the Insurance Second Amendment Act, 1998.

**MEMORANDUM ON THE OBJECTS OF THE INSURANCE SECOND
AMENDMENT BILL, 1998**

The proposed amendments will enable domestic insurers which are not companies having a share capital to convert into public companies having a share capital.

The insurers which intend to demutualise are corporate bodies constituted under their own Acts of Parliament. After demutualisation they will be companies incorporated under the Companies Act, 1973 (Act No. 61 of 1973). It is necessary to allow them the opportunity to make the transition by amending the Insurance Act, 1943 (Act No. 27 of 1943), since this Act will govern the demutualisation.

In terms of section 39 of the Companies Act, 1973, a company may not hold shares in its holding company. This prevents a life insurer from offering a well-balanced portfolio to its clients. The proposed section 19A enables such an insurer to hold shares in its holding company in certain circumstances.

Section 25 of the Insurance Act, 1943, is important for the sound functioning of the insurance industry. It provides, in particular, valuable protection to policyholders and other persons affected by proposed amalgamations or transfers. The objects of the amendments proposed in this regard are to create legal certainty and to expressly include the contemplated conversions.

In the view of the State Law Adviser the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.