

BOARD NOTICE 88 OF 2004**FINANCIAL SERVICES BOARD****NOTICE ON PROPOSED NEW POLICYHOLDER PROTECTION RULES
(SHORT-TERM INSURANCE), 2004**

I, Jeffrey van Rooyen, Registrar of Short-term Insurance, after consultation with the Advisory Committee on Short-term Insurance, hereby under section 55(3) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), give notice of an intention-

- (a) to rescind the Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in Gazette No. 22084 of 23 February 2001;
- (b) to promulgate new Rules, and for the reasons, as respectively set out in Schedule A and the Memorandum of Objects in Schedule B; and
- (c) to submit, under section 55(4) of the said Short-term Insurance Act, 1998, the proposed rescission and new Rules, together with all written representations received, my comments and those of the said Advisory Committee, to the Minister of Finance for consideration and promulgation under section 55 (5) of the said Act.

All interested persons are hereby invited to make written representations in relation to the abovementioned matters so as to reach me within 21 days after the date of publication of this Notice at the following address:

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J. VAN ROOYEN,

Registrar of Short-term Insurance

SCHEDULE A

POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

Section 55, Short-term Insurance Act, 1998

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PART I

DEFINITIONS

1. In these Rules "the Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), including the regulations promulgated under section 70 of the Act, "the FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including any measure or decision referred to in the definition of "this Act" in section 1(1) of that Act, any word or expression to which a meaning has been assigned in the Act or the FAIS Act, bears, subject to context, that meaning and, unless the context otherwise indicates-

"**commencement date**" means the date on which these Rules become binding, as determined and published by the Minister in accordance with section 55(5) of the Act;

"**direct marketer**" means an insurer who, in the normal course of business, carries on business in the form of direct marketing;

"**direct marketing**" means the marketing of a policy, including the entering into thereof, by way of telephone, internet, media insert, direct or electronic mail to a policyholder, and with mention and implementation of one or more transaction requirements to be met;

"**effective date**", in relation to the entering into of any policy, means the date on which any such policy is entered into or varied;

"**ensure**", in relation to a person or body and any matter mentioned in a provision of these Rules, means to take any necessary steps in order that the clear objective of the provision is achieved;

“enter into”, in respect of a policy, includes the renewal or variation of any such policy: Provided that in the case of monthly policies only the renewal after the entering into of the policy effected during every consecutive twelfth month of the currency of the policy shall qualify as a renewal referred to in this definition; and **“entering into”** has a corresponding meaning;

“independent intermediary” or **“intermediary”** means a person who qualifies as an independent intermediary in terms of the definition thereof in section 1(1) of the Act, and with whom an agreement has been entered into by an insurer in compliance with Rule 7.1(a)(i);

“insurance party involved” means, in relation to the entering into of a policy with the policyholder concerned or any other matter connected with such policy, any insurer or independent intermediary, as the case may be, directly involved in such entering into, or in such other matter;

“insurer” means a short-term insurer, and includes any representative of the insurer;

“policy” means any short-term policy where the policyholder is a natural person acting otherwise than solely for the purposes of its own business; but excluding a reinsurance policy;

“policyholder” includes a prospective policyholder;

“previous Rules” means the Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in *Gazette* No. 22084 of 23 February 2001;

“transaction requirement” means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, an insurer by or on behalf of a policyholder and relating to a policy, including any amendment thereof or variation thereto;

“variation”, in relation to a policy, means any variation of the premiums or benefits of the policy, excluding any periodic variation in terms of a contractually determined inflation-connected formula, or otherwise in terms of fixed contractually determined provisions;

“writing” includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and **“written”** has a corresponding meaning.

PART II

OBJECTIVE AND APPLICATION OF RULES

Objective

2. The objective of these Rules is to ensure 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.

Application

- 3.1 Part III of these Rules only applies to the entering into of a policy in respect of which the effective date is a date on or after the commencement date.
- 3.2 No provision of these Rules shall be construed as in any way affecting the duty of any person to comply with any applicable provision of the FAIS Act.

PART III

BASIC RULES FOR DIRECT MARKETERS

- 4.1 (a) A direct marketer must at all times render services honestly, fairly, and with due skill, care and diligence.
- (b) A direct marketer must—
 - (i) in making contact arrangements, and in all communications and dealings with a policyholder, act honourably, professionally and with due regard to the convenience of the policyholder; and
 - (ii) at the commencement of any contact, visit or call initiated by the direct marketer clearly explain the purpose thereof.
- (c) Representations made and information provided to a policyholder by a direct marketer—
 - (i) must be factually correct;
 - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (iii) must be provided timeously so as to afford the policyholder sufficient time to make an informed decision about the proposed transaction;
 - (iv) may, subject to the provisions of these Rules, be provided orally and, at the policyholder's request, confirmed in writing within a reasonable time after such request;

- (v) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
 - (vi) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (vii) need not be duplicated or repeated to the same policyholder unless material or significant changes affecting that policyholder occur, or the relevant services as direct marketer renders it necessary, in which case a disclosure of the changes to the policyholder must be made to the policyholder without delay before a transaction is concluded.
- (d) The direct marketer must disclose to the policyholder the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the policyholder.
- (e) Services as direct marketer must be rendered in accordance with the contractual relationships and reasonable requests or instructions of the policyholder, which must be executed as soon as reasonably possible and with due regard to the interests of the policyholder which must be accorded appropriate priority over any interests of the direct marketer.
- (f) Transactions of a policyholder must be accurately accounted for.
- 4.2** (a) A direct marketer must have appropriate procedures and systems in place to-
- (i) record all verbal and written communications relating to the direct marketing to a policyholder as are contemplated in these Rules;
 - (ii) store and retrieve transaction documentation and all other documentation relating to the policyholder; and
 - (iii) keep the policyholder records and documentation safe from destruction.

- (b) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.
- (c) Disclosure records and documentation must be kept for a period of at least three years and must be available at any time to the registrar for inspection, and copies thereof must at the request of a policyholder be furnished to such holder.

4.3 A direct marketer must, when rendering direct marketing to a policyholder, at the earliest opportunity furnish the policyholder with the following particulars, provided that where a policy is to be entered into, such particulars must be provided prior to the entering into of the policy and, where provided orally, must be confirmed in writing within thirty days:

- (a) its business or trade name, and, unless contact was initiated by the policyholder, its telephone contact details;
- (b) telephone contact details of the public officer of the direct marketer;
- (c) name, class or type of policy involved and a reasonable and appropriate general explanation of the principles of the relevant contract and any information that would reasonably be expected to enable the policyholder to make an informed decision;
- (d) the nature and extent of benefits for the policyholder, manner of deriving or obtaining, or payment or furnishing thereof;
- (e) any restrictions on or penalties for early termination or withdrawal from the policy, or other effects, if any, of such termination or withdrawal;
- (f) commission, consideration, fees, charges or brokerages payable to the direct marketer (if any) by the policyholder or by any other person;
- (g) nature and extent of monetary obligations assumed by the policyholder (including any anticipated or contractual escalations, increases or additions), manner of compliance therewith and consequences of non-compliance;
- (h) where provision is made for increase of premiums, abbreviated disclosures of such contractual increases;
- (i) concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;

- (j) details of manner of instituting claims under the relevant policy; and
- (k) details of manner of lodging complaints, and particulars of the Short-term Insurance Ombudsman, including that the Ombudsman is available for advice on complaints in respect of claims or other matters which have not been satisfactorily resolved by the relevant insurer or intermediary.

4.4 A provision of a Rule in this Part is not applicable to a direct marketer in any case where a compliance duty in respect of the same matter is imposed on the direct marketer by, in terms or by virtue of any other law.

PART IV

RULES ON VOID PROVISIONS AND FORMAT

Void provisions

5.1 A provision of a policy is void to the extent that it provides expressly or by implication –

- (a) that in connection with any claim made under the policy, the policyholder may be obliged to undergo a polygraph, lie detector or truth verification, or any other similar, test or procedure which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer and which is conducted under the control of the insurer or such other person;
- (b) for an inducement of any nature for a policyholder to voluntarily agree to undergo a test or procedure envisaged in paragraph (a) of this Rule where the policyholder submits a claim under the policy;
- (c) that where a policyholder under other circumstances than those contemplated in paragraph (b) of this Rule voluntarily agrees to undergo a test or procedure envisaged in paragraph (a) of this Rule where the policyholder submits a claim under the policy, and the policyholder fails to pass such test, the claim will be repudiated or the policy will become void merely as a result of such failure to pass the test or procedure;
- (d) that in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration;
- (e) that an insurer may repudiate a claim because a premium was not paid on due date, if payment was made during the period of grace referred to in Rule 7.5, whether or not the payment was made prior to the event giving rise to the claim.

- 5.2 Rule 5.1(d) shall not be construed as rendering void a provision of a policy that the parties may, after a dispute under the policy has arisen, voluntarily agree to submit the dispute to arbitration or, in the absence of such a provision, as voiding any agreement between the parties to that effect.

General format of policies

- 6.1 An insurer shall ensure that a policy is only issued to a policyholder concerned if the provisions of the policy are recorded, as regards layout, letter types and spacing, in an easily readable manner and if the wording of every provision of the policy has a reasonably precise ascertainable meaning.
- 6.2 An insurer shall ensure that every policy issued by it on or after a date six months after the commencement date must contain details of complaint resolution systems and procedures, including reference to the full particulars of the relevant Ombud's office having jurisdiction.

PART V

GENERAL RULES

Agreements

- 7.1 (a) (i) An insurer must, where an agreement has been entered into with a person for the rendering of services as independent intermediary in connection with the insurance products of that insurer, furnish the person with a written copy, setting out the terms and conditions thereof: Provided that an insurer may on or after the commencement date only enter into such an agreement if the person has been issued with a licence for the rendering of intermediary services in terms of section 8 of the FAIS Act, or is a representative as contemplated in that Act of any such licensee.
- (ii) An agreement referred to in subparagraph (i) which has been entered into under Rule 10.1 (a) of the previous Rules, as it existed prior to the commencement date, lapses on that date if the relevant person is not on that date such a licensee or such a representative.
- (b) Any such agreement also lapses-
- (i) on any date on which the agreement is lawfully terminated by the parties, irrespective of whether the termination has been mutually agreed upon, or is effected by any one party by notice to the other: Provided that any such lapsing shall not be effective unless-

- (aa) all policyholders holding current policies entered into by the insurer through the relevant person referred to in paragraph (a)(i) have been given prior written notice of the termination in accordance with Rule 7.3(b) (which apply with the necessary changes) by either the insurer or the person involved, or both; and
 - (bb) both insurer and the relevant person are beforehand satisfied that all reasonable steps have been taken for such information to reach all such policyholders;
- (ii)
 - (aa) on the date when a licence held by the person concerned becomes inoperative by virtue of the application to the person as licensee of any provision of section 9 of the FAIS Act relating to provisional or final suspension of the relevant licence, section 10 of that Act relating to withdrawal of the licence or section 11 of that Act relating to lapsing of the licence; or
 - (bb) in the case of any such person acting as a representative contemplated in the FAIS Act, on the date on which the mandate or authority granted in terms of the FAIS Act to the representative by the licensee concerned, is lawfully terminated, or any such representative becomes debarred by virtue of section 14 of the FAIS Act to act as a representative.
- (c) An insurance party involved, shall ensure that in the case of any lapsing contemplated in paragraph (a)(ii) or (b)(ii) all policyholders involved-
 - (i) are without delay informed of the lapsing in accordance with paragraph (b)(i)(aa) and (bb), which apply with the necessary changes; and
 - (iii) are so informed on new arrangements made by the insurer whether for the mandating or authorising of another person as intermediary or for servicing the relevant policies itself.
- (d) An insurer must provide any person with whom an agreement contemplated in paragraph (a) of this Rule has been entered into, with all information reasonably required by such person to comply with any disclosure or other requirements binding on such person by virtue of the Act, these Rules, the FAIS Act or any other law.

Debit orders

7.2 An insurance party involved—

- (a) shall ensure that any debit order to be signed by a policyholder for the payment of premiums to any such party, shall not be drafted to be in favor of any other person (whether conjointly with the insurance party involved or as an alternative) but such first mentioned party;
- (b) shall not unilaterally terminate any current debit order signed by a policyholder without having informed the policyholder in writing of the intention so to terminate the debit order at least 30 days before the effective date of such envisaged termination.

Unilateral termination of policies

- 7.3 (a) An insurer shall not unilaterally terminate any policy without giving notice as set out in paragraph (b) of this Rule.
- (b) The insurer may give notice either-
- (i) direct to the policyholder 30 days prior to the cancellation date; or
 - (ii) by satisfying itself that notice has been given in accordance with subparagraph (i) to the policyholder by the independent intermediary; or
 - (iii) if compliance with subparagraphs (i) or (ii) is not possible, by publication of such notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that relevant policyholders reside, and by forwarding a copy of such notice to the registrar prior to publication.

Repudiation of claims

- 7.4 (a) An insurance party involved shall ensure that where any decision has been made as to the repudiation of any claim under a policy, or as regards the quantum of a claim which is in dispute, the policyholder concerned is in writing informed of the reasons for the decision and that the policyholder may within a period of not less than 90 days after the date of the relevant decision make representations to the relevant insurer in respect of such decision. The 90 days referred to may not be included in any time-barring period contained in the policy for the institution of legal action.
- (b) If a claim is repudiated or a quantum is disputed as contemplated in paragraph (a) on behalf of a short-term insurer by a person other than the short-term insurer, such other person must provide the repudiation notice contemplated in that paragraph, provided that such repudiation notice must also contain the name and contact

details of the insurer and state that any recourse or enquiries must be directed directly to that insurer.

Periods of grace

- 7.5 An insurer shall ensure that a policy contains a provision for a period of grace for the payment of premiums of not less than 15 days after the relevant due date: Provided that in the case of a monthly policy, such provision must apply with effect from the second month of the currency of the policy.

Undersigning of blank or uncompleted forms

- 7.6 No insurance party involved may require, permit or allow a policyholder to sign any blank or partially completed form necessary for the purpose of entering into a policy, where another person will be required, permitted or allowed to fill in other required detail, or enter into any policy where any such underlining and providing of detail have occurred.

PART VI

MISCELLANEOUS

Waiver of rights

8. No insurance party involved may request or induce in any manner a policyholder to waive any right or benefit conferred on the policyholder by or in terms of a provision of these Rules, or recognise, accept or act on any such waiver, and any such waiver is null and void.

Penalties

9. An insurance party involved who contravenes or fails to comply with a provision of these Rules shall be guilty of an offence and on conviction liable to a penalty or fine referred to in section 64(1)(c) or 65(1)(c), as the case may be, of the Act.

Repeal and transitional provision

- 10.1 The previous Rules are hereby repealed.
- 10.2 Anything done under, in terms or by virtue of any provision of the previous Rules is deemed, unless clearly inappropriate, to have been done under, in terms or by virtue of a corresponding provision of these Rules.

Short title and commencement

11. These Rules are called the Policyholder Protection Rules (Short-term Insurance), 2004, and come into operation on a date as determined and published by the Minister in accordance with section 55(5) of the Act.

SCHEDULE B**MEMORANDUM OF OBJECTS OF POLICYHOLDER PROTECTION RULES
(SHORT-TERM INSURANCE), 2004****Introductory**

1. The Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in Gazette No. 22084 of 23 February 2001, were promulgated under section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), which section has the heading "Protection of policyholders". That section (as appears particularly from its subsection (1)(a)) authorises the promulgation of Rules by the Minister of Finance on proposal by the Advisory Committee on Short-term Insurance, or of the Registrar of Short-term Insurance after consultation with that Committee, to ensure that short-term insurance 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.
2. The said Rules cover various matters: obligatory disclosures to prospective policyholders of policy details in order to enable them to make truly informed decisions; certain prohibitions on policy provisions deemed not to be in the interest of the industry and the public; prescriptions on ideal formats of policies, insurer mandates or authorisations to intermediaries, debit orders, unilateral termination of policies, repudiation of policyholder claims and waiver of rights. In addition it contain various provisions on mechanisms for monitoring compliance by the Registrar of Insurance.
3. Currently the main reason for effecting amendments to the Rules is based on the impact of the new Financial Advisory and Intermediary services Act, 2002 (Act No. 37 of 2002), which will have full operative effect as from 30 September 2004 (as recently notified by the Minister of Finance), and which obliges a complete legal reconsideration of several main provisions of the current Rules. This legal obligation flows from the following:
 - (a) FAIS, as regards its effect on the rendering of intermediary and advisory services in respect of financial products as defined therein (which include short-term insurance policies), obliges all short-term insurance intermediaries to acquire, for the lawful rendering of their intermediary services as from 30 September 2004, a licence as a

financial services provider in terms of that Act, or to carry on business as a representative (as defined in that Act) for another such provider.

(b) Further main consequences of the new impact of FAIS are the following:

- (i) all current short-term insurance mandates and authorisations of short-term insurers to intermediaries will have to be changed in order to provide that they will only be valid if such intermediaries are, with effect from 30 September 2004, either licensees or representatives under FAIS;
- (ii) all disclosure requirements contained in the current Rules as regards intermediaries, will then become redundant as FAIS will, through its new General Code of Conduct for Financial Services Providers and Representatives (already published by Board Notice 80 of 2003, in *Gazette* No. 25299 of 8 August 2003), oblige such intermediaries to comply with the disclosure requirements set out in that Code in a more comprehensive and modernized format; and
- (iii) all provisions of current Rules as regards compliance measures, have to be deleted as their current impact mainly relates to only current disclosure requirements, and the said FAIS contains new and more expanded and efficient measures for monitoring compliance by the intermediaries acting as licensees or representatives under FAIS with the provisions of the said General Code, which will in future bind them.

4. The said impact of FAIS simply means that disclosure requirements currently set out in the Rules, as far as they concern intermediaries, will become redundant on 30 September 2004. There will then also be no need for the Rules to contain disclosure requirements as regards short-term insurers, except where insurers do not utilise intermediaries, but only engage in direct marketing of their policies.

In the result, the said Advisory Committee and Registrar are of the view that the Rules should in future only contain disclosure requirements in respect of such direct marketing, that such requirements should be based on the provisions of the said General Code of Conduct in respect of the direct marketing of financial services (then appropriately to be adapted to the direct marketing of financial products), and that the need arises to delete all provisions of the current Rules as regards ordinary disclosures,

and to replace them with new provisions only directed to disclosures in respect of business conducted by means of direct marketing.

5. Furthermore and in addition, the said Advisory Committee and Registrar are of the view that some new Rules have to be added particularly as regards insurer duties to provide their intermediaries with all relevant information in order to enable the latter to discharge their intermediary services properly, termination of policies by short-term insurers, and notification and repudiation of claims.

In view of all the abovementioned new developments, it is the view of the said Advisory Committee and Registrar that the current Rules have to be replaced by a set of new Rules, maintaining all current provisions not affected by FAIS, and otherwise providing for the new legal situation and needs set out above.

Rule by Rule analysis of new proposed Rules

6. (a) General:

In view of the considerations mentioned above, the following current Rules are not reflected in the proposed new Rules: many definitions in Part I, the whole of Part II and current Rules 11.2, 12–13 and 16. Current Rule 17 is proposed to be replaced by new Rule 8 (see below). Furthermore current Rule 18 (the “statutory notice”) is proposed to be deleted as being regarded unnecessary in view of the new provisions adopted from FAIS.

- (b) Rule 1 (definitions): Only contains such existing definitions (some of which have been slightly changed), and some new ones as are appropriate in view of the new contents of the Rules.
- (c) Rules 2 and 3: These new Rules now restate the fundamental objective of the Rules (in accordance with section 55 of the Short-term Insurance Act, 1998), in wider terms than before, indicates that the new Part III (dealing only with disclosure requirements as regards direct marketing), will only apply to “new” policies after the commencement date of the new Rules, and that the new Rules cannot be construed as affecting other applicable duties imposed by FAIS.
- (d) Rule 4: This Rule contains disclosure requirements in respect of direct marketing of short-term insurance policies by insurers (without utilisation of intermediaries). FAIS does not in principle regulate direct marketing of financial products by product suppliers, and such regulation needs therefor to be regulated in the Rules. The provisions of this Rule are based on the modernized provisions of the FAIS General Code, which only applies to the direct marketing of financial services, but which have here been adapted

to apply to the direct marketing of the relevant financial products. Rule 4.4 is new, and provides for non-applicability of Part III where the insurer has already complied with another law imposing a corresponding duty.

- (e) Rules 5 and 6: These Rules restate current Rules 8 and 9, with a new self-explanatory provision appearing in the new Rule 6.2.
 - (f) Rule 7.1: Restates current Rule 10.1 and 11 in a much more expanded manner in order to deal with the new implications of FAIS relating to new requirements for insurer mandates and authorisations, and new provisions for the lapsing thereof. For technical legal reasons the expressions "mandate" and "authorisation" have been replaced by "agreement". New Rule 7.1(d) deals with a new requirement for the provision of information by insurers to their intermediaries which is in modern times regarded as being necessary.
 - (g) Rules 7.2 – 7.6: Restates current Rules 10.2 – 10.6. New rule 7.4 (b) is new, with self-explanatory reasonable contents, and new Rule 7.6 effects a reformulation, in modern terms, of current Rule 10.6.
 - (h) Rule 8: This new Rule restates the relevant provisions on waiver of rights (current Rule 17) in more modern terms to accord with that employed in the FAIS General Code.
 - (i) Rules 9, 10 and 11: These Rules contain the conventional provisions on penalties, repeal, transitional provisions, short title and commencement. It is currently expected that the new Rules will be determined by the Minister of Finance to also come into operation on 30 September 2004.
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