
GOVERNMENT NOTICE

NATIONAL TREASURY

No. R. 186

1 March 2007

AMENDMENT OF REGULATIONS UNDER THE LONG-TERM INSURANCE ACT, 1998

I, Trevor Andrew Manuel, Minister of Finance, acting in terms of **section** 72 read with section 49 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), hereby amend the Regulations under the Long-term Insurance Act, 1998, as set out in the Schedule.



/TREVOR A MANUEL, MP
MINISTER OF FINANCE

SCHEDULE

Substitution of Part 3 of the Regulations under the Long-term Insurance Act, 1998 as published in **GN R1492** and amended by **GN R197** of 2000, **GN R164** of 2002 and **GN R1209** of 2003

1. The following Part is hereby substituted for Part 3 of the Regulations under the Long-term Insurance Act, 1998:

“PART 3 LIMITATION ON REMUNERATION TO INTERMEDIARIES (section 49)

Definitions

3.1 In this Part, unless the context otherwise indicates-

“**administrative** work” means work in connection with the handling of enquiries, maintaining administrative records and the receipt and processing of claims under a group scheme;

“**annualised premium**”, in relation to a group scheme or fund policy, means 12/m of the total premiums payable under the group scheme or fund policy during a scheme year, excluding transfer values inwards and credits arising in the group scheme or fund policy to employers of fund members in consequence of the withdrawal of members;

“**benefit** component” means each separately identifiable kind of policy benefit undertaken to be provided under a particular kind of policy;

“**compulsory**”, in relation to an annuity, means that there is an obligation in terms of the rules of a fund to enter into a policy which provides the annuity;

“**credit scheme**” means a group scheme under which every life insured is indebted to or a surety of the policyholder whose insurable interest as policyholder arises solely from that indebtedness or suretyship;

“**fund member policy**” means an individual policy-

- (a) of which a fund is the policyholder;
- (b) under which a specified member of the fund (or the surviving spouse, children, dependants or nominees of the member) is the life insured; and
- (c) which is entered into by the fund exclusively for the purpose of funding that fund's liability to the member (or the surviving spouse, children, dependants or nominees of the member) in terms of the rules of that fund;

“**group scheme**” means a scheme or arrangement which provides for the entering into of one or more policies, other than an individual policy, in terms of

which ~~two~~ or more persons without an insurable interest in each other, for the purposes of the scheme, are the lives insured;

“Independent **intermediary**” means a person, other than a representative, rendering services as intermediary;

“individual policy” means a policy under which a particular person is ~~the~~ life insured, or ~~two~~ or more particular persons having an insurable interest in each other are the lives insured jointly;

“investment policy” means a policy other than a policy which is an ‘excluded policy’ as defined in Part 5;

“**m**” means the number of months in a scheme year;

“multiple premium policy” means a policy under which the premium is payable in ~~two~~ or more amounts;

“policy” means a long-term policy other than a reinsurance policy;

“premium”, in relation to a premium period, means the premium which is payable and received under that policy in respect of every separately identifiable benefit component of that policy:

“premium-paying term”, in relation to a multiple premium policy, other than a group scheme or fund policy, means the whole period during which the several amounts of premium are payable, determined by reference to-

- (a) the longer of-
 - (i) 10 years; or
 - (ii) the number of complete years ~~in~~ the period extending from the date ~~of commencement of~~ the first premium period of the policy to a ~~date-~~
 - ~~(aa)~~ in the case of a fund member policy, 66 years; ~~or~~
 - ~~(bb)~~ in any other case, 75 years, after the date of birth of the life insured under the policy; or
- (b) if it is stated in or ascertainable from the written provisions of the policy at its commencement, and is a shorter period than that determined in accordance with paragraph (a), the shorter of-
 - (i) the particular limited period for which those several amounts of premium are expressed to be payable; or
 - (ii) the period during which those several amounts of premium must ~~be~~ paid before there shall or may-
 - ~~(aa)~~ be provided a policy benefit, otherwise than upon the death of, or upon the occurrence of a health event or a disability event in relation to a ~~life~~ insured under the policy: or
 - ~~(bb)~~ be paid, upon the surrender of the **policy**, consideration the amount of which is stated in or ascertainable from written provisions of the policy at its commencement;

“premium period”, in relation to a policy other than a group scheme or a fund policy, means one of a succession of periods of time, each of 12 months’ duration, the first of which commences on, and ends 12 months after, the date on which the policy is entered into or, if it is a later date, the date on which the obligation of the long-term insurer becomes operative;

“primary commission” means commission which is payable generally in respect of all policies in accordance with this Part other than secondary commission;

“rendering services as intermediary” means the performance by a person other than a long-term insurer or a policyholder, on behalf of a long-term insurer or a policyholder, of any act directed towards entering into, maintaining or servicing a policy or collecting, accounting for or paying premiums or providing administrative services in relation to a policy, and includes the performance of such an act in relation to a fund, a member of a fund and the agreement between the member and the fund;

“replacement event” means a causal event resulting in the levying of a causal event charge in excess of 15% of the investment value or materially equivalent value of a policy, where ‘causal event’, ‘causal event charge’ and ‘investment value’ have the meanings assigned to them in Part 5 and ‘materially equivalent value’ means the value contemplated in sub-regulation 5.2(2)(b) of Part 5;

“replacement policy” means a multiple premium policy which is an investment policy, where the policyholder is or was either the policyholder or the life insured in respect of any other investment policy, and where a replacement event occurs in respect of that other investment policy within a period of 4 months before or after the replacement policy is entered into;

“representative” means a person-

- (a) employed or engaged by a long-term insurer for the purpose of rendering services as intermediary only in relation to policies entered into or to be entered into by-
 - (i) that insurer;
 - (ii) another insurer which is a subsidiary or holding company of that insurer; or
 - (iii) another insurer which has entered into a written agreement with that insurer in terms of which persons employed or engaged by that insurer may render services as intermediary in relation to the other insurer’s policies;

- (b) on conditions of employment or engagement complying with the principle of “Equivalence of Reward”, in terms whereof the remuneration paid by an insurer, whether in cash or in kind, shall substantially be in accordance with this Part, as determined by the Registrar,

but excludes such a person in respect of whom the Registrar has made a determination under regulation 3.2(5);

“Scale A” means the scale of commission set out in Annexure 2 to this Part;

“secondary commission”¹ means commission which is payable, in addition to primary commission, in respect of certain policies only, as provided in and subject to this Part;

“scheme year”, in relation to a group scheme or a fund policy, means a period-

- (a) commencing on the later of -
 - (i) the date that the fund policy or group scheme is entered into with the long-term insurer concerned, or any anniversary of that date; or
 - (ii) the date of the appointment of an independent intermediary for the purposes of rendering services as intermediary in relation to the group scheme or fund policy;
- (b) and ending on the earlier of-
 - (i) the day preceding the commencement of the next scheme year;
 - (ii) the date of termination of the group scheme or fund policy with that long-term insurer; or
 - (iii) the date of termination of the appointment of the independent intermediary rendering services as intermediary in relation to that group scheme or fund policy;

“single premium policy” means a policy under which the premium is payable in one amount only;

“Table” means the Table set out in Annexure 1 to this Part:

“term cover” means a policy under which a long-term insurer undertakes to provide policy benefits only upon-

- (a) the life of a life insured having ended;
 - (b) the life of a life insured having begun;
 - (c) a health event occurring; or
 - (d) a disability event occurring,
- during a specified period only;

“tied”, in relation to a compulsory annuity, means that there is an obligation to enter into the policy concerned with a particular insurer and no other.

General limitations

3.2 ~~(1)~~ No consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of the payment of commission in monetary form.

(2) No commission shall be paid or accepted otherwise than in accordance generally with this Part and more particularly as specified in the Table.

(3) Irrespective of how many persons render services as intermediary in relation to a policy, the total commission payable in respect of that policy shall not exceed the maximum commission payable in terms of regulation 3.4.

(4) No secondary commission shall be paid or **accepted**-

- (a) in respect of a single premium policy;
- (b) except in the case of a policy and benefit component of a kind specified in items 1.1, 2.1, 3.1 and 5.1 of the Table;
- (c) if the policy concerned has terminated before the commencement of its second premium period.

(5) The Registrar may by notice determine that a person or long-term insurer ~~is~~ not complying with the principle of "Equivalence of Reward".

Time of payment of commission

3.3 (1) Primary commission shall not be paid or **accepted before**-

- (a) the first premium period has commenced; or
- (b) the premium in respect of which it is payable has been received by the long-term insurer concerned, except that, in the discretion of that insurer-
 - (i) in the case of a policy and benefit component of a kind specified in items 1.1, 2.1, 3.1 and 5.1 of the Table, primary commission may be paid and accepted in one or more amounts after the policy has been entered into;
 - (ii) in the case of a group scheme or fund policy, primary commission in respect of a particular scheme year may be paid and accepted in one or more amounts **after** the policy has been entered into; and
 - (iii) in any other case, primary commission in respect of a particular premium period may be paid in one or more payments and accepted after the commencement of that premium period.

(2) Secondary commission may ~~be~~ paid and accepted in one or more amounts **after** the second premium period has commenced, at the discretion of the long-term insurer.

(3) If the **full** amount ~~of~~ primary or secondary commission is **paid** in more than one amount aggregating to that full amount, the long-term insurer concerned may pay interest at 15 per cent per annum, or such other rate of interest as may be prescribed by the Registrar from time to time, compounded annually from the earliest date on which the full amount could have been paid, on any outstanding amount, until the full amount has been paid.

Maximum commission payable

3.4 ~~(1)~~ primary commission shall exceed, in respect of each kind of policy and benefit component specified in column 2 of the Table, an amount arrived at by applying, in the case of-

- (a) a single premium **policy**, other than a fund policy and a group scheme, the percentage specified in column 3 ~~of~~ the Table to the amount of the premium concerned;
- (b) a multiple premium policy, other than a fund policy and a group scheme, the percentage specified in column 4 of the Table to the total amount of the premium payable during the premium-paying term, calculated as if the premium payable during the first premium period were payable at that level throughout the premium-paying term of the policy, which commission may be paid and accepted in one or more amounts at ~~the~~ discretion of the long-term insurer: Provided that such commission **shall** not exceed, in the case of a policy and benefit component specified in items 1 - ~~12~~ 1, 3.1 and 5.1 of the Table, an amount equal to the percentage specified in column 5 of the Table of the premium payable during the first premium period of the policy; or
- (c) a fund policy or a group scheme, an amount which shall not exceed ~~12/m~~ of the aggregate commission on the annualised premium as provided for in Scale A.

(2) No secondary commission shall exceed ~~one-third~~ of the amount of the primary commission paid in respect of the policy and benefit component concerned: Provided that if such commission is paid and accepted in more than one amount, the value thereof discounted at 15 per cent per annum, ~~or~~ such other rate of interest as may be prescribed by the Registrar from time to time, compounded annually to the beginning of the second premium period of the policy, shall not exceed one third of the value of the primary commission excluding interest.

Adjustment and refund of commission

3.5 (1) ~~If~~ the provisions of a multiple premium policy are varied so that the total amount of the premium which was payable during the premium-paying term of the policy and which was used for the purpose of the calculation of commission in terms of regulation 3.4(1)(b), is, ~~for any reason-~~

- (a) increased, the primary and secondary commission payable in relation to that increase shall ~~be~~ dealt with in terms of this Part as if-
 - (i) the total amount of the increase payable during the remainder of the premium-paying term were the only premium payable under the policy; **and**
 - (ii) the premium period in which that variation becomes operative were the first premium period of the policy; ~~or~~

(b) reduced, with effect from a date before the end of the second premium period of the policy-

- (i) the primary commission previously calculated in terms of regulation 3.4(1)(b) to be payable shall be recalculated in accordance with this Part in relation to the total amount of premium as so reduced and any amount of commission which has been paid, or would have been payable had the reduction not occurred, and which exceeds the amount payable in accordance with the recalculation, shall be determined by the insurer concerned; such part of that amount as exceeds the percentage in column A of the Table in subregulation (2) shall be reversed and, if already paid, shall be refunded to the insurer by the person to whom it was paid;
- (ii) the secondary commission previously calculated in terms of regulation 3.4(2) to be payable, shall be recalculated in accordance with this Part in relation to the total amount of primary commission as reduced in accordance with subparagraph (i) and any amount of commission which has been paid, or would have been payable had the reduction not occurred, and which exceeds the amount payable in accordance with the recalculation shall be determined by the insurer concerned; such part of that amount as exceeds the percentage in column B of the Table in subregulation (2) shall be reversed and, if already paid, shall be refunded to the insurer by the person to whom it was paid.

(2)(a) If a premium or any part thereof is-

- (i) for any reason refunded by the long-term insurer or, in the case of a multiple premium policy which is **not**-

(aa) a fund policy; or

(bb) a fund member policy other than a fund member policy which funds a retirement annuity fund, or

(cc) a policy in respect of which commission has been paid only after each premium in respect of which it is payable has been received by the long-term insurer concerned (including but not limited to a replacement policy),

for any reason not paid on its due date, including that the policy has been made paid-up or surrendered, but excluding termination upon a health event, a disability event or the death of a life insured, during the first two premium periods in the case of a policy referred to in items 1.1, 2.1, 3.1 and 5.1 of the Table, the commission payable in terms of this Part shall be recalculated by reference to the **scale** and shall not exceed the percentage of maximum commission in column A or B, respectively, and any amount of commission which has already been paid in excess of the commission as so recalculated, shall be reversed by the long-term insurer and refunded to it by the person to whom it was paid:

Premiums received with an equivalent value to monthly premiums for-	Column A Maximum percentage of primary commission payable	Column B Maximum percentage of secondary commission payable
0-6 months	nil	not applicable
7 months	29,17	not applicable
8 months	33,33	not applicable
9 months	37,5	not applicable
10 months	41,67	not applicable
11 months	45,83	not applicable
12 months	50	not applicable
13 months	54,17	8,3
14 months	58,33	16,7
15 months	62,5	25
16 months	66,67	33,3
17 months	70,83	41,7
18 months	75	50
19 months	79,17	58,3
20 months	83,33	66,7
21 months	87,5	75
22 months	91,67	83,3
23 months	95,83	91,7
24 months	100	100

- (ii) in the case of any policy not mentioned in subparagraph (i), for any reason refunded by the long-term insurer, or for any reason not paid on its due date, any commission paid by the long-term insurer shall be reversed and refunded to it by the person to whom it was paid:
- (b) Subparagraphs (i) and (ii) of paragraph (a) shall-
- (i) not apply to the extent that, and for so long as, payment of an unpaid premium is effected by means of the maintenance of the policy in force as contemplated in section 52(2) or (3);
- (ii) be deemed not to have been applicable if and to the extent that, any premium or part thereof which was unpaid is later paid to the long-term insurer, and in that event any reversed commission refunded to the long-term insurer may again be paid to the person by whom it was refunded.

Special provisions concerning fund and fund member policies

3.6 (1) No commission shall be paid or accepted in relation to so much of the premium payable under a fund policy as has already borne commission under a prior, substituted fund policy.

(2) The commission payable in respect of a fund policy or a fund member policy, as provided for in this Part shall be reduced by the value of any consideration provided by the fund concerned, or its members, for services rendered as intermediary in connection with the agreement whereby the fund assumed the obligation concerned to the member.

Commission when policy has different benefit components

3.7 If, in respect of a policy which comprises more than one benefit component, it is not specified in or ascertainable from the written provisions of the policy what portion of the total premium payable is attributable to the different benefit components, the commission payable in terms of this Part shall not exceed that which would have been so payable had the policy comprised, and had the total premium been attributable to, only that benefit component which most closely reflects the main purpose of the policy to the exclusion of other subordinate purposes of the policy.

Voidness of certain agreements

3.8 Any agreement, scheme or arrangement to provide consideration for the rendering of services as intermediary otherwise than in accordance with this Part shall be void.

Special provisions concerning replacement policies

3.9 (1) Commission may only be paid in respect of a replacement policy as a level percentage of the premiums received, and may only be paid once the premium in respect of which it is payable has been received by the long-term insurer concerned, whether or not –

- (a) the replacement policy comprises more than one benefit component; or
- (b) the portion of the total premium attributable to the different benefit components of the replacement policy is specified in or ascertainable from the written provisions of the policy .

(2)(a) The total amount of commission paid on a replacement policy may not exceed the total of the primary and secondary commission that would have been payable in terms of this Part in respect of a policy other than a replacement policy; and

(b) in determining such total amount, the long-term insurer concerned may include interest at 15 per cent per annum, or such other rate of interest as may be prescribed by the Registrar from time to time, compounded annually from the earliest date on which the full amount of primary or secondary commission could have been paid if the policy was not a replacement policy, until such full amount has been paid.

(3) In the event of commission on a replacement policy being paid or accepted otherwise than in accordance with this Part, whether due to the fact that the long-term insurer was not aware at the time of payment that the policy in question was a replacement policy, or for any other reason, then any commission paid by the long-term insurer in excess of the commission payable in accordance with this Part, or paid earlier than permitted in this Part, shall upon identification of the excess or early payment, be reversed and

refunded to the long-term insurer by the person to whom it was paid.

*Annexure 7
Table*

ITEM NO.	KIND OF POLICY AND BENEFIT COMPONENT	MAXIMUM PERCENTAGE			NOTES	
		SINGLE PREMIUM POLICY	MULTIPLE PREMIUM POLICY BASIC PERCENTAGE	LIMIT I.T.O PROVISIO TO REG 3.4(1)(b))	UP-FRONT PAYMENT REG 3.3(1)(b)(i) APPLICABLE	SECONDARY COMMISSION: REG 3.2(4)(b) APPLICABLE
COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6	COLUMN 7
		%	%	%		
1	Individual policy, not elsewhere specified					
1.1	policy benefit not immediate annuity	3,0	3,25	85,0	YES*	YES*
1.2	immediate annuity					
1.2.1	not compulsory	1,5	not applicable	not applicable	NO	NO
1.2.2	compulsory, not tied	1,5	-	-	NO	NO
1.2.3	compulsory, tied	Nil	-	-	NO	NO
2	Fund member policy					
2.1	funding a retirement annuity fund					
2.1.1	upon entry not a transfer	2,5	3,0	75,0	YES*	YES*
2.1.2	upon entry, a transfer from another fund	Nil	Nil	Not applicable	NO	NO
2.2	not funding a retirement annuity fund	3,0	3,0	-	NO	NO
3	Life policy providing term cover only, which is					
3.1	an individual policy	7,5	3,25	85,0	YES*	YES*
3.2	incorporated in group scheme					
3.2.1	which is a credit scheme					
3.2.1.1	with administrative work	22,5	22,5	not applicable	NO	NO
3.2.1.2	without administrative work	7,5	7,5	-	NO	NO
3.2.2	which is not a credit scheme	Scale A	Scale A	-	NO	NO
4	Fund Policy	Scale A	Scale A	-	NO	NO
5	Health policy and disability policy					
5.1	individual, other than term cover only	3,0	3,25	85,0	YES	YES
5.2	providing term cover only					
5.2.1	individual	7,5	3,25	not applicable	NO	NO
5.2.2	incorporated in a group scheme					
5.2.2.1	which is a credit scheme					
5.2.2.1.1	with administrative work	22,5	22,5	not	NO	NO

ITEM NO.	KIND OF POLICY AND BENEFIT COMPONENT	MAXIMUM PERCENTAGE			NOTES	
		SINGLE PREMIUM POLICY	MULTIPLE PREMIUM POLICY		UP-FRONT PAYMENT REG 3.3(1)(b)(i) APPLICABLE	SECONDARY COMMISSION: REG 3.2(4)(b) APPLICABLE
			BASIC PERCENTAGE	LIMIT I.T.O PROVISIO TO REG 3.4(1)(b))		
COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6	COLUMN 7
				applicable		
5.2.2.1.2	without administrative work	7,5	7,5	-	NO	NO
5.2.2.2	which is not a credit scheme	Scale A	Scale A	-	NO	NO
6	Sinking fund policy	3,0	3,0	-	NO	NO
7	Assistance policy	not regulated	not regulated	-		

Notes to table:

* denotes "excluding a replacement policy"

Annexure 2

Scale A

Normal commission

1.

MAXIMUM COMMISSION AS PERCENTAGE OF ANNUALISED PREMIUM UNDER A GROUP SCHEME OR FUND POLICY	ANNUALISED PREMIUM OF WHICH THE AMOUNT-	
	EXCEEDS	DOES NOT EXCEED
%	R	
7,5		142 000
5,0	142 000	245 000
3,0	245 000	529 000
2,0	529 000	1 550 000
1,0	1 550 000	UNLIMITED

Special commission

2. In addition to the normal commission contemplated in paragraph 1, there may be paid, once only and only in respect of the period of 12 months following the date on which the group scheme or fund policy is established, a special commission equal to the lesser of-

- (a) 7,5 per cent of the total premium payable during that period of 12 months; or
- (b) R5 000."

Substitution of Part 6 of the Regulations under the Long-term Insurance Act, 1998 as added by GN R 1218 of 2006

2. The following Part is hereby substituted for Part 6 of the Regulations under the Long-term Insurance Act, 1998:

"PART 6

TITLE AND COMMENCEMENT

6.1 These regulations are called the Regulations under the Long-term Insurance Act, 1998.

6.2 Regulations 1 to 4 came into operation on commencement of the Act and any amendment to Regulation 1 to 4 comes into operation on publication in the Government Gazette or such other date as the Minister of Finance determines."
