

NOTICE 305 OF 2008
FINANCIAL SERVICES BOARD
NOTICE ON PROPOSED VARIATION OF
POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

I, Robert James Gourley Barrow, 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 promulgate a variation of Rule 7.4 of the Policyholder Protection Rules (Short-term Insurance), as published by GN No. R. 1128 in *Gazette* No. 26853 of 30 September 2004 and set out in Schedule A;
- (b) to effect the variation of the Rule for the reasons and objects set out in the Memorandum of Reasons and Objects in Schedule B; and
- (c) to submit, under section 55(4) of the said Short-term Insurance Act, 1998, the proposed variation to the Rule, 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 representations, on the proposed Rule variation. All representations must be sent to the address below and must reach the Registrar within 30 days of publication of this Notice:

Attention: Ms M van Zyl
Financial Services Board
PO Box 35655
MENLO PARK
0102
Facsimilee: (012) 347 1290
E-mail: meloniev@fsb.co.za

The Rules are available on the Financial Services Board's website at <http://www.fsb.co.za>.


R.J.G. Barrow
REGISTRAR OF SHORT-TERM INSURANCE

SCHEDULE A

DEPARTMENT OF FINANCE
VARIATION OF POLICYHOLDER PROTECTION RULES
(SHORT-TERM INSURANCE), 2004

Section 55, Short-term Insurance Act, 1998

The Minister of Finance hereby under section 55(5) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), promulgates the variation of the Policyholder Protection Rules (Short-term Insurance, 2004), proposed by the Registrar of Short-term Insurance after consultation with the Advisory Committee on Short-term Insurance, as set out in the Schedule.

This Notice comes into operation on 1 September 2008.

T A Manuel, MP
Minister of Finance

SCHEDULE

VARIATION OF POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

Section 55, Short-term Insurance Act, 1998

[Note: in this Schedule words in bold between brackets indicate deletions from, and words underlined indicate insertions in, the relevant existing enactment.]

Interpretation

1. In this Schedule "the Rules" means the Policyholder Protection Rules (Short-term Insurance), 2004, as published by GN No. R. 1128 in Gazette No. 26853 of 30 September 2004.

Variation of Rule 7.4

2 The following Rule is hereby substituted for Rule 7.4 of the Rules:

"Rejection of claims

7.4 (a) An insurance party involved **[shall ensure that]** must where **[any]** a decision **[has been made as to the rejection]** rejecting **[of]** any claim under a policy is made after 1 September 2008, or **[as regards]** where the quantum of a claim under a policy is in dispute after 1 September 2008 ensure, that the policyholder concerned is **[In writing informed]** notified, in writing, of the reasons for **[the]** such 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.]** The insurance party involved must, simultaneously with the above, notify the policyholder concerned in writing that the latter may, within 180 days of the date of the communication of the relevant decision, or such longer period as may be arranged for in the policy document,

- (i) make representations to the relevant insurer; or
- (ii) institute legal action,
regarding such decision.

(b) If a claim is rejected 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 **[rejection]** notice contemplated in that paragraph, provided that such **[rejection]** 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."

Short title

3. This Notice is called The Policyholder Protection Rules (Short-term Insurance) Variation Notice, 2008.

SCHEDULE B

MEMORANDUM OF REASONS FOR AND OBJECTS OF VARIATION OF RULE 7.4 OF THE POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

Introductory

1. Rule 7.4(a) currently determines that the insurance party (insurer or intermediary) involved shall ensure that where a decision has been made as to the rejection of any claim under a policy or where the quantum of a claim is in dispute, the policyholder concerned must be informed of the reason for the decision in writing and that the policyholder has a period of not less than 90 days after the date of the relevant decision to make representations to the relevant insurer in respect of such a decision. The 90 days referred to above is in addition to any time-barring period contained in the policy for challenging the decision.

Reason

2. The main reason for proposing variations to Rule 7.4 of the Policyholder Protection Rules (PPRs) is based on specific comments that were made by some judges in a recent Constitutional Court case of B.P. Barkhuizen vs. R.S. Napier regarding the reasonableness and justifiability of the time-barring period for challenging the rejection of a claim.

Objective

3. If there was no provision for a time-barring clause in the Rules, the insured would, in terms of the Prescription Act have a period of three years from the date on which the debt becomes due to institute action against the insurer. The provisions of the Prescription Act were however, tempered by the introduction of a time-barring clause in the PPRs. The time-barring clause introduced in the PPRs had the effect of shortening the three years period to 90 days within which a policyholder has to issue a summons after the rejection of his/her claim by an insurer or when he/she is not in agreement with the quantum of the claim.

4. The rationale for the introduction of the time-barring period in the PPRs was to ensure that claims come to the attention of insurers speedily and that insurers have the advantage of recency to be able to investigate the circumstances leading to the claim. One example of a consequence of not acting speedily could be that evidence can become unavailable or that an essential witness becomes unavailable or forgets the circumstances relating to the claim. However, the counter argument to the above is that while the need for acting speedily certainly is clearly important, the consequences of failing to claim timeously could be to the detriment of the insured. The proposed 180 days time-barring period is an attempt to be fair and reasonable to both insurers and insured persons.

5. As far as the nature and extent of the limitation is concerned, the time-barring period for challenging the rejection of a claim or disputing the quantum of a claim, involves a far-reaching and drastic protection of the insurer to the detriment of the insured. The challenge was for the regulator to decide whether to take action to address this matter.

Decision

6. After lengthy deliberations with the industry representative body and consultations with the Short-term Insurance Advisory Committee it was agreed that the current minimum requirement of a 90 days time-barring period be replaced with a minimum 180 days time-barring period to challenge the rejection of a claim or dispute the quantum of a claim.

Commencement

7. It is currently expected that the so varied Rule 7.4 will come into operation on 1 September 2008.
