

NOTICE 1215 OF 2009**FINANCIAL SERVICES BOARD****NOTICE ON PROPOSED VARIATION OF
POLICYHOLDER PROTECTION RULES (LONG-TERM INSURANCE), 2004**

I, Dube Phineas Tshidi, Registrar of Long-term Insurance, after consultation with the Advisory Committee on Long-term Insurance, hereby under section 62(3) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), give notice of an intention-

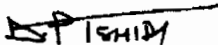
- (a) to promulgate a variation of Rule 16 of the Policyholder Protection Rules (Long-term Insurance), as published by **GN No. R. 1129 in Gazette No. 26854 of 30 September 2004** and set out in Schedule A hereto;
- (b) to submit, under section 62(4) of the said Long-term Insurance Act, 1998, the proposed variation to the Rule together with all written representations received and my comments and those of the said Advisory Committee thereon to the Minister of Finance for consideration under section 62(5) of the said Act.

An explanatory note on the proposed variation of Rule 16 is set out in Schedule B hereto.

All interested persons are 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
Facsimile: (012) 347 1290
E-mail: melonlev@fsb.co.za

The Policyholder Protection Rules (Long-term Insurance) are available on the Financial Services Board's web site at <http://www.fsb.co.za>.



DP Tshidi,
Registrar of Long-term Insurance

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SCHEDULE A

NATIONAL TREASURY

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

Section 62, Long-term Insurance Act, 1998

The Minister of Finance hereby under section 62(5) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), promulgates the variation of the Policyholder Protection Rules (Long-term Insurance), 2004, proposed by the Registrar of Long-term Insurance after consultation with the Advisory Committee on Long-term Insurance, as set out in the Schedule.

This Notice comes into operation on 1 January 2010.

Pravin J Gordan
Minister of Finance

SCHEDULE

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

Section 62, Long-term Insurance Act, 1998

Interpretation

1. In this Schedule "the Rules" means the Policyholder Protection Rules (Long-term Insurance), 2004, as published by GN No. R. 1129 in *Gazette* No. 26854 of 30 September 2004.

Variation of Rule 16

2. The following Rule is hereby substituted for Rule 16 of the Rules:

"Decisions relating to claims and time limitation provisions for the institution of legal claims"

16.1 (a) An insurer must accept, reject or dispute the quantum of any claim under a policy within a reasonable period after receipt of a claim.

(b) An insurer must within 10 days of taking any decision referred to in paragraph (a), in writing, notify the policyholder of its decision.

(c) If the insurer rejects or disputes the quantum of a claim, the notice referred to in paragraph (b) must inform the policyholder -
(i) of the reasons for the decision;
(ii) that the policyholder may within a period of not less than 90 days after the date of receipt of the notice make representations to the relevant insurer in respect of the decision;

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- (iii) of the provisions of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004) and the implications of the Act for the policyholder in an easily understood manner;
 - (iv) in the event that the relevant policy contains a time limitation provision for the institution of legal action, of that provision and the implications of that provision for the policyholder in an easily understood manner; and
 - (v) in the event that the relevant policy does not contain a time limitation provision for the institution of legal action, of the prescription period that will apply in terms of the Prescription Act, 1969 (Act No. 68 of 1969) and the implications of that provision for the policyholder in an easily understood manner.
- (d) If a claim is rejected or a quantum is disputed as contemplated in paragraph (a) on behalf of an insurer by a person other than the insurer, such other person must provide the notice contemplated in paragraph (b) and include in that notice, in addition to the information referred to in paragraph (c), the name and contact details of the insurer and a statement that any recourse or enquiries must be directed directly to that insurer.
- (e) If the policyholder makes representations to the relevant insurer in accordance with paragraph (c)(ii) the insurer must within 30 days of receipt of the representation, in writing, notify the policyholder of its decision.
- (f) If the insurer, despite the representations of the policyholder, confirms the decision to reject or dispute the quantum of a claim, the notice referred to in paragraph (e) must –
- (i) inform the policyholder of the reasons for the decision; and
 - (ii) include the information referred to in paragraph (c)(ii) to (v).
- 16.2 (a) Any time limitation provision for the institution of legal action that may be provided for in a policy entered into before 1 January 2010 may not include the 90 days referred to in Rule 16.1(c)(ii) in the calculation of the time limitation period.
- (b) Any time limitation provision for the institution of legal action that may be provided for in a policy entered into after 1 January 2010 –
- (i) may not include the 90 days referred to in Rule 16.1(c)(ii); and
 - (ii) must provide for a period of not less than 6 months after the expiry of 90 days referred to in Rule 16.1(c)(ii) for the institution of legal action.
- (c) Despite the expiry of the period allowed for the institution of legal action in a time limitation clause provided for in a policy entered into before or after 1 January 2010, a policyholder may request the court to condone non-compliance with the clause if the court is satisfied, among other things, that good cause exists for the failure to institute legal proceedings and that the clause is unfair to the policyholder.
- (d) For the purposes of section 12(1) of the Prescription Act, 1969 (Act No. 68 of 1969) a debt is due after the expiry of the 90 days referred to in Rule 16.1(c)(ii)."

Short title

3. This Notice is called The Policyholder Protection Rules (Long-term Insurance) Variation Notice, 2009.

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SCHEDULE B

EXPLANATORY NOTE: VARIATION OF RULE 16 OF THE POLICYHOLDER PROTECTION RULES (LONG-TERM INSURANCE), 2004

Introduction and background

1. Currently, Rule 16 determines that an insurer must ensure that where a decision has been made to reject a claim under a policy or where the quantum of a claim is in dispute, the policyholder is informed of the reason for the decision in writing. Rule 16 further affords a policyholder a period of not less than 90 days after the date of receipt of the insurer's decision to make representations to the relevant insurer in respect of such a decision. Rule 16, however, also provides that it may not be construed as limiting any contractual or other right any party may have in regard to any claim for policy benefits. This means that where a contractual time limitation clause of a policy provides for a period of less than 90 days to institute legal action, the protection afforded by Rule 16 does not apply.
2. Subsequent to specific comments on the reasonableness and justifiability of a time-barring period for challenging the rejection of a claim under a short-term policy made by the Constitutional Court judges in *Napier v Barkhuizen* 2007 5 SA 323 (CC), the Registrar of Long-term Insurance (after consultation with the Advisory Committee on Long-term Insurance) gave notice on 25 April 2008 in Government Gazette 30987 of his intention to propose a variation of Rule 16 to the Minister of Finance because, although the case relates to a short-term policy, the comments similarly apply to long-term policies.
3. The proposed variation of Rule 16 published on 25 April 2008 focused on extending the minimum period of 90 days for making representations to the insurer to 180 days.
4. In considering the representations made regarding the proposed variation of Rule 16 and reconsidering the *Napier v Barkhuizen*-judgment, specifically the dissenting judgments, it became apparent to the Registrar of Long-term Insurance that the proposed variation of Rule 16 may not be sufficient to address public interest concerns relating to decisions and time-barring provisions under policies.
5. The proposed variation to Rule 16 as published on 25 April 2008 has therefore been amended and representations on the amended version are invited in accordance with section 62(3) of the Long-term Insurance Act, 1998.

Summary of the proposed variation of Rule 16

6. The proposed variation provides for -
 - 6.1 timeous decision-making by insurers;
 - 6.2 policyholders to be informed of the reasons for a claim being rejected or the quantum of a claim being disputed;
 - 6.3 policyholders to be afforded a minimum period of 90 days within which representations relating to a rejected claim or disputed quantum of a claim may be made;
 - 6.4 policyholders to be informed of alternative dispute resolution mechanisms available to them;
 - 6.5 policyholders to be informed or reminded of specific contractual provisions included in

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their policies that may impact on their right to approach the Courts;

- 6.6 the exclusion of the minimum 90 day period within which representation may be made by a policyholder from any time limitation provision for the institution of legal action that *may* be provided for in a policy entered into before or after 1 January 2010; and
- 6.7 any time limitation provision for the institution of legal action that *may* be provided for in a policy entered into after 1 January 2010 to provide for a period of not less than 6 months after the expiry of the 90 day period within which representations may be made by a policyholder. This timeframe is informed by the notice period required for the institution of legal proceedings against certain organs of state under the Institution of Legal Proceedings against certain Organs of State Act No. 40 of 2002.
- 7. The proposed variation further –
 - 7.1 affords policyholders a right to, despite the expiry of a period allowed for the institution of legal action in a time limitation clause provided for in a policy entered into before or after 1 January 2010, request the court to condone non-compliance with the clause if the court is satisfied, among other things, that good cause exists for the failure to institute legal proceedings and that the clause is unfair to the policyholder;
 - 7.2 provides that for the purposes of section 12(1) of the Prescription Act No. 68 of 1969 a debt is due after the expiry of the 90 days period within which representation may be made. This means that where a policy does not address time limitations for the institution of legal proceedings, the date from which prescription may be calculated in respect of a claim can only be calculated from a date after expiry of the 90 day period.
- 8. Where a policyholder refers a complaint to an ombud in terms of the Financial Services Ombud Schemes Act No. 37 of 2004, the latter Act already provides for policyholder protection in respect of time limitations and prescription. Section 15 of the Act provides that the official receipt of a complaint by an ombud or the statutory ombud suspends any applicable time barring terms, whether in terms of an agreement or any law, or the running of prescription in terms of the Prescription Act No. 68 of 1969, for the period from such receipt until the complaint has either been withdrawn by the complainant concerned or determined by any such ombud.

Rationale for the proposed variation of Rule 16

- 9. The rationale for the proposed variation to Rule 16 is to provide –
 - 9.1 for policies that comply with standards of notice and fairness that contemporary notions of consumer protection require in open and democratic societies; and
 - 9.2 a balanced and fair approach to decision-making and time limitations relating to claims under policies.

Commencement

- 10. It is currently expected that the varied Rule 16 will come into operation on 1 January 2010.