

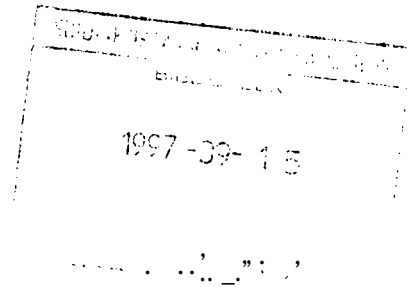
REPUBLIC OF SOUTH AFRICA

LONG-TERM INSURANCE BILL

(As introduced)

(MINISTER OF FINANCE)

[B 78—97]



REPUBLIEK VAN SUID-AFRIKA

LANGTERMYNVERSEKERINGS- WETSONTWERP

(Soos ingedien)

(MINISTER VAN FINANSIES)

[W 78—97]

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BILL

To provide for the registration of long-term insurers; for the control of certain activities of long-term insurers and intermediaries; and for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

Introductory provisions

Section

1. Definitions

Part I

Administration of Act

2. Registrar of Long-term Insurance
3. General provisions concerning Registrar 10
4. Special provisions concerning Registrar and his or her powers
5. Annual report
6. Advisory Committee on Long-term Insurance

Part II

Registration of long-term insurers 15

7. Registration required in order to carry on long-term insurance business
8. Prohibition on use of certain words, or performance of certain acts, by certain persons
9. Application for registration
10. Conditions of registration 20
11. Variation of registration conditions
12. Registrar may under certain circumstances prohibit long-term insurers from carrying on business
13. Termination of registration
14. Reregistration of long-term insurers as companies 25

Part III

Business and administration of long-term insurers

15. Limitation on business
16. Head office and public officer
17. Financial year 30
18. Notification of certain appointments and terminations
19. Auditor
20. Statutory actuary

21.	Appointment of auditor or statutory actuary by Registrar	
22.	Removal of appointees who are not fit and proper	
23.	Audit committee	
24.	Preference shares, debentures, share capital and share warrants	
25.	Registration of shares in name of nominee	5
26.	Limitation on control and certain shareholding or other interest in long-term insurers	
27.	Furnishing of information concerning shareholders	
28.	Effect of registration of shares contrary to Act	
	Part IV	10
	Financial arrangements	
29.	Maintenance of financially sound condition	
30.	Assets	
31.	Kinds and spread of assets	
32.	Deeming provisions concerning assets	15
33.	Liabilities	
34.	Prohibitions concerning assets and certain liabilities	
35.	Failure to maintain financially sound condition	
36.	Returns to Registrar	
	Part V	20
	Compromise, arrangement, amalgamation and transfer	
37.	Court approval required for compromise, arrangement, amalgamation or transfer	
38.	Application to Court	
39.	Conditions of approval	25
40.	Approved transaction	
	Part VI	
	Judicial management and winding-up of long-term insurers	
41.	Judicial management	
42.	Winding-up by Court	30
43.	Voluntary winding-up	
	Part VII	
	Business practice, policy contracts and policyholder protection	
	Business practice	
44.	Free choice in certain circumstances	35
45.	Prohibition on inducements	
46.	Policy to be actuarially sound	
47.	Receipt for premium paid in cash	
48.	Summary, inspection and copy of policy	
49.	Limitation on remuneration to intermediaries	40
50.	Undesirable business practice	
	Policy contracts	
51.	Policy suspended until payment of first premium	
52.	Failure to pay premiums	
53.	Option for payment of policy benefits in money	45
54.	Limitation on provisions of certain policies	
55.	Limitation on policy benefits in event of death of unborn or of certain minors	

56.	Voidness of certain provisions of agreements relating to long-term policies	
57.	Life policy in relation to person rendering or liable to render military service	
58.	Long-term policies entered into by certain minors	
59.	Misrepresentation	
60.	Validity of contracts	5
61.	Interest on unpaid premiums and policy loans	

Policyholder protection

62.	Protection of policyholders	
63.	Protection of policy benefits under certain long-term policies	
64.	Option for realisation of protected policies	10
65.	Partial realisation of protected policies	

Part VIII

Offences and penalties

66.	Offences by persons other than long-term insurers	
67.	Offences by long-term insurers	15
68.	Penalty for failure to furnish Registrar with returns etc.	

Part IX

Transitional and general provisions

Transitional provisions

69.	Continued registration of existing insurers	20
70.	Certain existing insurers to cease short-term insurance business or to separate it from long-term insurance business	

General provisions

71.	Special provisions concerning long-term insurers that are not public companies	
72.	Amendment, substitution or repeal of Schedules	25
73.	Repeal and amendment of laws	
74.	Savings	
75.	Interpretation of certain references in existing laws	
76.	Short title and commencement	

Schedule 1	30
------------	----

Kinds of assets

Schedule 2

Limitation on assets

Schedule 3

Method of calculation of value of assets and liabilities	35
--	----

Schedule 4

Financial soundness method of calculation of value of assets and liabilities

Schedule 5

Limitation on remuneration to intermediaries

Schedule 6

Limitation on provisions of certain policies

Schedule 7

Repeal and amendment of laws

Introductory provisions

Definitions

1. (1) In this Act, unless the context otherwise indicates—
- (i) “Advisory Committee” means the Advisory Committee on Long-term Insurance established by section 6; (i) 10
 - (ii) “assistance policy” means a life policy in respect of which the aggregate of—
 - (a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and 15
 - (b) the amount of the premium in return for which an annuity is to be provided, does not exceed R 10000, or another maximum amount prescribed by the Minister; and includes a reinsurance policy in respect of such a policy; (ii)
 - (iii) “auditor” means an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and appointed in terms of section 19(1) or 21(1)(a) of this Act; (xxvi) 20
 - (iv) “Board” means the Financial Services Board established by section 2 of the Financial Services Board Act; (xxxii)
 - (v) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (xxi) 25
 - (vi) “company” means a company incorporated in accordance with, and registered under, the Companies Act, or deemed to have been so incorporated and registered; (xx) 30
 - (vii) “Court” means the High Court of South Africa; (xii) 30
 - (viii) “director” includes a person who is a member or alternate member of a body pa-forming, in relation to an entity that is not a company, functions similar to those performed by a board of directors in relation to a company; (iv)
 - (ix) “disability event” means the event of the functional ability of the mind or body of a person or an unborn becoming impaired; (xxiv) 35
 - (x) “disability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event; and includes a reinsurance policy in respect of such a contract; (xxv)
 - (xi) “Financial Services Board Act” means the Financial Services Board Act, 1990 (Act No. 97 of 1990); (xxxvii) 40
 - (xii) “fund” means—
 - (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956); 45
 - (c) a medical scheme as defined in section 1 of the Medical Schemes Act, 1967 (Act No. 72 of 1967);
 - (d) a permanent fund, established bona fide for the purpose of providing benefits to members in the event of sickness, accident or unemployment, or of providing benefits to surviving spouses, children, dependants or nominees of deceased members, or mainly for those purposes; and 50
 - (e) any other person, arrangement or business prescribed by the Registrar; (vi)

- (xiii) “fund policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or 5 nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract; (vii)
- (xiv) “health event” means an event relating to the health of the mind or body of a person or an unborn; (viii)
- (xv) “health policy” means a contract in terms of which a person, in return for a 10 premium, undertakes to provide policy benefits upon a health event; and includes a reinsurance policy in respect of such a contract; (ix)
- (xvi) “holding company” means a holding company as defined in section 1 of the Companies Act; (xiii)
- (xvii) “life event” means the event of the life of a person or an unborn— 15
 - (a) having begun;
 - (b) continuing;
 - (c) having continued for a period; or
 - (d) having ended; (xviii)
- (xviii) “life insured” means the person or unborn to whose life, or to the functional 20 ability or health of whose mind or body, a long-term policy relates; (xxxv)
- (xix) “life policy” means a contract in terms of which a person, in return for a premium, undertakes to-
 - (a) provide policy benefits upon, and exclusively as a result of, a life event; 25
 - or
 - (b) pay an annuity for a period;
 and includes a reinsurance policy in respect of such a contract; (xix)
- (xx) “long-term insurance business” means the business of providing or undertak- ing to provide policy benefits under long-term policies; (xvii)
- (xxi) “long-term insurer” means a person registered or deemed to be registered as 30 a long-term insurer under this Act; (xvi)
- (xxii) “long-term policy” means an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied; (xv) 35
- (xxiii) “managing executive” means the chief executive officer of a long-term insurer or a manager of that long-term insurer who reports directly to that chief executive officer; (xxxiv)
- (xxiv) “Minister” means the Minister of Finance or any other Minister to whom the administration of this Act may be assigned from time to time; (xxii) 40
- (xxv) “policy benefits” means one or more sums of money, services or other benefits, including an annuity; (xxviii)
- (xxvi) “policyholder” means the person entitled to be provided with the policy benefits under a long-term policy; (xxvii)
- (xxvii) “premium” means the consideration given or to be given in return for an 45 undertaking to provide policy benefits; (xxix)
- (xxviii) “prescribe” means to determine from time to time by notice in the *Gazette*; (xxxvi)
- (xxix) “public company” means a company with a share capital which is a public company under the Companies Act: (xxx) 50
- (xxx) “Registrar” means the Registrar of Long-term Insurance referred to in section 2(1); (xxxii)
- (xxxi) “reinsurance policy” means a reinsurance policy in respect of a long-term policy; (xi)
- (xxxii) “repealed Act” means the Insurance Act, 1943 (Act No. 27 of 1943); (x) 55
- (xxxiii) “sinking fund policy” means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money, on a fixed or determinable future date, as policy benefits; and includes a reinsurance policy in respect of such a contract; (ii)

- (xxxiv) “short-term insurer” means a person registered or deemed to be registered as a short-term insurer under the Short-term Insurance Act, 1997; (xiv)
- (xxXv) “statutory actuary” means an actuary appointed in accordance with section 20(1) or 21(1)(b); (xxxiii)
- (xxxvi) “subsidiary” means a company which is, in terms of section 1(3) of the Companies Act, deemed to be a subsidiary company; (v) 5
- (xxxvii) “unborn” means a human foetus conceived but not born. (xxiii)
- (2) For the purposes of this Act the life of an unborn shall be deemed to begin at conception.

Part I 10

Administration of Act

Registrar of Long-term Insurance

2. (1) There shall be a Registrar of Long-term Insurance with the powers and duties conferred on or assigned to the Registrar by or under this Act or any other law.
- (2) The executive officer of the Board shall be the Registrar. 15
- (3) The powers and duties of the Registrar may be exercised and shall be carried out—
- (a) personally by the Registrar;
 - (b) by another member of the executive of the Board authorised thereto by the Registrar or, in the Registrar’s absence for any reason, the Board; or
 - (c) by any person who has been appointed by the Board for that purpose and who has been authorised to do so under his or her control by the Registrar, or by the member referred to in paragraph (b), to the extent and subject to the conditions determined, either generally or in any particular case, in that authorisation. 20
- (4) Any decision or action taken by a person referred to in subsection (3)(b) or (c) in the exercise of any power or carrying out of any duty of the Registrar shall, for the purposes of this Act or any other law, be deemed to have been taken by the Registrar. 25

General provisions concerning Registrar

3. (1) An approval of, or a determination or decision by, or a notice to be given by or to, the Registrar, shall, without derogating from legal rules on the making known or the publication thereof, be valid only if it is in writing. 30
- (2) Whenever the approval of, or a determination or decision by, or the performance of any other act by the Registrar, is sought by a person under this Act or any other law, application therefor shall be made in writing to the Registrar and the application shall—
- (a) be made in the form the Registrar requires; and
 - (b) be accompanied by— 35
 - (i) the fees prescribed by the Registrar; and
 - (ii) the information or documents which the Registrar requires.
- (3) If a person with an interest in the matter is aggrieved by a determination made, decision taken or act performed in the exercise or carrying out of the powers or duties of the Registrar, that person may appeal to the board of appeal established by section 26 of the Financial Services Board Act, with the necessary charges, in accordance with that section. 40
- (4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, after consultation with the Advisory Committee, which are held by the Registrar under this Act in relation to a long-term insurer or obtain a copy of or extract from any such document. 45

(5) A document which purports to have been certified by the Registrar as a document held in the Registrar's office or to be a copy of such a document, **shall** be prima facie proof of the content of such a document or copy, and shall be admissible in evidence in any proceedings.

Special provisions concerning Registrar and his or her powers

4. (1) When anything is required or permitted to be done under this Act within a particular period, the Registrar may, before the expiry of that period, extend it.

(2) The Registrar may by notice direct a long-term insurer to furnish the Registrar, within a specified period, with specified information or documents required by the Registrar for the purposes of this Act. 10

(3) If any advertisement, brochure or similar document which relates to the business of a long-term insurer, or to a long-term policy, and which is being, or is to be, published by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Registrar may by notice direct that person not to publish it or to cease publishing it or to effect the changes to it which the Registrar deems fit. 15

(4) If the Registrar has reason to believe that a person is contravening or failing to comply with a provision of this Act, the Registrar may by notice direct that person or any other person to—

- (a) furnish the Registrar within a specified period with any specified information or documents in the possession or under the control of that person which relate to the matter; 20
- (b.) appear before the Registrar at a specified time and place in connection with the matter.

(5) (a) If a person contravened or is contravening section 7(1)(a) of this Act, the Registrar may— 25

- (i) by notice direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under long-term policies already entered into by that person; or
- (ii) apply to the Court for the sequestration or liquidation of that person, whether he, she or it is solvent or not, in accordance with— 30
 - (aa) the Insolvency Act, 1936 (Act No. 24 of 1936);
 - (bb) the Companies Act;
 - (cc) the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - (old) the law under which that person is incorporated, 35

(b) In deciding an application contemplated in paragraph (a)(ii), the Court—

- (i) may take into account whether the sequestration or liquidation of the person concerned would be in the interests of the policyholders concerned;
- (ii) may make an order concerning the manner in which claims may be proven by policyholders; and 40
- (iii) shall (if necessary) appoint as trustee or liquidator a person nominated by the Registrar.

(6) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions thereof relating to jurisdiction, procedure and evidence in relation to a Court, the Registrar shall have a right of appearance to institute and conduct any proceedings in a Court if it is reasonably necessary— 45

- (a) to discharge any duty or responsibility assigned to the Registrar by this Act;
- (b) to compel any person to comply with or to cease contravening this Act;
- (c) to compel any person to comply with a lawful request, directive or instruction made, issued or given by the Registrar under this Act; 50
- (d) to obtain a declaratory order concerning any point of law relating to this Act or to long-term insurance business generally; or

(e) in connection with any matter relating to long-term insurance business generally where the Registrar considers it to be in the public interest, subject to such additional procedural requirements as the Court may order in each case so as to ensure fair and equitable judicial process.

(7) The Registrar may— 5

(a) determine that a policy or policies shall form part of a particular class of policies defined in section 1 of this Act or in section 1 of the Short-term Insurance Act, 1997, if a long-term insurer has not classified that policy or policies correctly into the appropriate class, and when the Registrar so determines, the policy or policies concerned shall be deemed to form part of the class of policies so determined for the purposes of, and subject to, the provisions of the said Act relating to that class of policies; or 10

(b) upon application of a long-term insurer, determine that a policy or policies forming part of any class of policies defined in section 1 of this Act in section 1 of the Short-term Insurance Act, 1997, shall form part of a different class of policies defined in the said section 1 of this Act, and when the Registrar so determines, that policy or policies shall for the purposes of this Act be deemed to form part of the class of policies so determined and it or they shall— 15

(i) be subject to all the provisions of this Act relating to that class of policies; 20

(ii) be subject to the conditions determined by the Registrar; and 20

(iii) notwithstanding paragraph (a), be exempted from the provisions of Schedule 6 to the extent determined by the Registrar:

Provided that the Registrar shall not make a determination under this subsection if the Registrar is satisfied that the determination will be prejudicial to any person or will defeat any object of this Act. 25

Annual report

5. (1) The Registrar shall submit to the Minister a report on the Registrar's activities under this Act during each year ending 31 December, and shall furnish any additional information relating to anything done by the Registrar under this Act that the Minister may require. 30

(2) A copy of the report submitted to the Minister in terms of subsection (1) shall be tabled in Parliament within 30 days after receipt of the report if Parliament is then in session or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

Advisory Committee on Long-term Insurance 35

6. (1) There shall be an Advisory Committee on Long-term Insurance which may on its own initiative, or shall at the request of the Minister or Registrar, investigate and report or advise concerning any matter relating to long-term insurance.

(2) The Advisory Committee shall consist of a chairperson and other members, including persons involved in the long-term insurance industry, from time to time appointed by the Minister after consultation with the Board. 40

(3) A member of the Advisory Committee shall hold office for the period determined by the Minister when the appointment is made.

(4) A member of the Advisory Committee who is not in the full-time employment of the State or the Board shall be paid the remuneration and allowances in respect of any expenses incurred in the performance of the functions of the Advisory Committee, determined by the Board. 45

(5) The Advisory Committee may meet or otherwise arrange for the performance of its functions, and may regulate its meetings as it thinks fit, after consultation with the Board. 50

(6) The expenditure connected with the functions of the Advisory Committee shall be paid out of the funds of the Board, whose approval shall be required for all expenditure proposed to be incurred, or actually incurred, by the Advisory Committee.

(7) The Advisory Committee shall have the powers and carry out the duties conferred on or assigned to it by or under this Act.

Part II

Registration of long-term insurers

Registration required in order to carry on long-term insurance business 5

7. (1) No person shall carry on any kind of long-term insurance business, unless that person—

(a) is registered or deemed to be registered as a long-term insurer, and is authorised to carry on the kind of long-term insurance business concerned, under this Act; and 10

(b) carries on that business in accordance with this Act.

(2) Subsection (1) shall not apply to—

(a) a pension fund organization registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), if and in so far as it acts in accordance with that Act;

(b) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or exempted under section 3(2) of that Act from the requirement to be so registered, if and in so far as it enters into long-term policies in respect of any of which— 15

(i) the value of the policy benefits, other than an annuity, to be provided; or 20
(ii) the amount of the premium in return for which an annuity is to be provided,

does not exceed R5 000 per member or another maximum amount prescribed by the Minister:

(c) a fund established in terms of an agreement referred to in section 23 of the Labour Relations Act, 1995 (Act No. 66 of 1995), if and in so far as it acts in accordance with the provisions of such agreement; 25

(d) a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967), if and in so far as it acts in accordance with that Act:

(e) the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act No. 13 of 1944), if and in so far as it acts in accordance with that Act; 30

(f) a short-term insurer, if and in so far as it enters into a policy which it is entitled to enter into by virtue of its registration as a short-term insurer; or

(g) an agricultural co-operative or special farmers' co-operative formed and incorporated under the Co-operatives Act, 1981 (Act No. 9 I of 1981), if and in so far as it provides, under a scheme or arrangement in terms of its statutes, benefits the amount of which is not guaranteed and in respect of which its liability is limited to the amount standing to the credit of a fund specially maintained for that purpose. 35

(3) For the purposes of this section a person shall, in the absence of evidence to the contrary, be deemed to be carrying on long-term insurance business in the Republic, if that person performs any act in the Republic— 40

(a) the object or result of which is that another person will enter into or enters into, or offers to enter into or to vary, a long-term policy, other than a reinsurance policy, in terms of which the first-mentioned person undertakes to provide policy benefits to the other person; or 45

(b) in relation to a long-term policy, other than a reinsurance policy, in terms of which that person has undertaken to provide policy benefits, and which act is aimed at—

(i) maintaining, servicing or surrendering, or otherwise dealing with, the long-term policy; 50

(ii) collecting or accounting for premiums payable under the long-term policy: or

- (iii) receiving or submitting of, or assisting or otherwise dealing with the settlement of, a claim under the long-term policy.

Prohibition on use of certain words, or performance of certain acts, by certain persons

- 8. (1) No person shall— 5
 - (a) subject to section 8(1)(u) of the Short-term Insurance Act, 1997, without the approval of the Registrar apply to his, her or its business or undertaking a name or description which includes the word “insure” or “assure” or any derivative thereof, unless he, she or it is a long-term insurer; or
 - (b) perform any act which indicates that he, she or it carries on or is authorised to carry on long-term insurance business, unless he, she or it is a long-term insurer authorised to carry on that business.
- (2) No long-term insurer shall change its name without the prior approval of the Registrar.
- (3) No person shall perform any act the object of which is or which results in— 15
 - (a) another person entering into or offering to enter into a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party; or
 - (b) (i) the surrendering of, or collecting of or accounting for premiums payable under;
 - (ii) the receiving or submitting of, or assisting or otherwise dealing with, the settlement of a claim under; or 20
 - (iii) the maintaining, servicing or otherwise dealing with, a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party, without the consent of the Registrar, given either generally or in a particular case. 25

Application for registration

- 9.(1) A person who wishes to carry on long-term insurance business shall apply to the Registrar for registration as a long-term insurer.
- (2) Subject to subsection (3), the Registrar—
 - (a) may grant an application made in terms of subsection (1) on such of the conditions contemplated in section 10 as the Registrar may determine; and 30
 - (b) shall, if the Registrar grants such application, register the person concerned as a long-term insurer and issue to that person a certificate of registration, in such form as maybe prescribed by the Registrar, authorizing that person to carry on the long-term insurance business concerned and specifying the conditions contemplated in paragraph (a). 35
- (3) An application referred to in subsection (1) shall not be granted by the Registrar—
 - (a) unless the applicant—
 - (i) is a public company and has the carrying on of long-term insurance business as its main object; 40
 - (ii) is incorporated without a share capital under a law providing specifically for the constitution of a person to carry on long-term insurance business as its main object;
 - (b) if—
 - (i) the applicant does not have the financial resources, organisation or management that is necessary and adequate for the carrying on of the business concerned; 45
 - (ii) any person who is, or will, from the date of proposed registration, be a director or managing executive of the applicant is not fit and proper to hold the office concerned; 50
 - (iii) the direct or indirect control of the applicant by another person, whether by virtue of shareholding, voting power, the power to appoint directors, or in any other manner, will be contrary to the interests of policyholders;

- (iv) the applicant is not, or will not be, able to comply with this Act; or
- (v) the registration is contrary to the public interest;
- (c) if the proposed name of the applicant, or a translation, shortened form or derivative thereof, is unacceptable because it—
 - (i) is identical to that of another long-term insurer or a short-term insurer; 5
 - (ii) so closely resembles that of another long-term insurer or a short-term insurer that the one is likely to be mistaken for the other;
 - (iii) is identical to that under which another long-term insurer or a short-term insurer was previously registered and reasonable grounds exist for objection to its use by the applicant concerned; or 10
 - (iv) is misleading or undesirable, 10
 unless the applicant has undertaken to adopt, within such period as the Registrar may determine, another name which is acceptable to the Registrar.

Conditions of registration

- 10. The conditions contemplated in section 9(2)(a) may include conditions— 15
 - (a) authorizing the long-term insurer to enter into only certain long-term policies determined by the Registrar;
 - (b) authorizing the long-term insurer to enter into long-term policies other than certain long-term policies determined by the Registrar;
 - (c) authorizing the long-term insurer to enter into certain long-term policies 20 determined by the Registrar only if those policies contain, or do not contain, particular terms or conditions determined by the Registrar;
 - (d) limiting the amount or value of the policy benefits to be provided by the long-term insurer under certain long-term policies determined by the Registrar to an amount or value determined by the Registrar 25
 - (e) limiting the amount of the premiums that the long-term insurer may contract to receive, during a period determined by the Registrar, in respect of all or certain long-term policies determined by the Registrar that may be entered into by that long-term insurer during that period;
 - (f) requiring the long-term insurer to enter into reinsurance policies in terms of 30 which that long-term insurer reinsures at least a portion determined by the Registrar of the liabilities incurred by it in terms of all or certain long-term policies determined by the Registrar that may be entered into by that long-term insurer during a period determined by the Registrar;
 - (g) requiring that the provisions of the memorandum and articles of association, 35 or equivalent constitution, of the long-term insurer must be suitable to enable it to carry on long-term insurance business; or
 - (h) reasonably necessary to ensure that the long-term insurance business concerned is carried on soundly and in a manner whereby the long-term insurer will be in a position to meet its liabilities, 40
 and different conditions may be determined in respect of different long-term insurers.

Variation of registration conditions

- 11. (1) The Registrar may—
 - (a) upon application of a long-term insurer and having regard, with the necessary changes, to section 9(3)(b); 45
 - (b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 35(2)(a) in relation to a long-term insurer, or
 - (c) if a long-term insurer has ceased to enter into certain long-term policies determined by the Registrar to an extent which no longer justifies its 50 continued registration in respect of those policies, and the long-term insurer

has been allowed at least 30 days in which to make representations in respect of the matter,

by notice to the long-term insurer vary a condition, subject to which the long-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10. 5

(2) The Registrar shall, if a variation referred to in subsection (1) is effected, withdraw the certificate of registration issued in terms of section 9 and issue, as contemplated in that section, a new certificate of registration to the long-term insurer concerned.

Registrar may under certain circumstances prohibit long-term insurers from carrying on business 10

12. (1) If a long-term insurer—

- (a) has not furnished all information which is material to an application made to the Registrar under this Act or has furnished information which is false;
- (b) (i) has made a material misrepresentation to members of the public in connection with the long-term insurance business carried on by it; 15
 - (ii) has failed to comply with a material condition subject to which it is registered or deemed to be registered as a long-term insurer;
 - (iii) has contravened or failed to comply with a material provision of this Act, and has thereafter, within a period determined by the Registrar, failed to remedy that inadmissible conduct to the satisfaction of the Registrar; or 20
- (c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9(3)(b)(i), (iii) or (iv),

the Registrar may give notice to the long-term insurer of the Registrar's intention, and of the reasons therefor, to prohibit that long-term insurer, with effect from a date 25 specified in the notice, from carrying on the long-term insurance business specified in that notice.

(2) When the Registrar has given notice to a long-term insurer in accordance with subsection (1), and has allowed that insurer at least 30 days in which to make representations to the Registrar in respect of the matter, the Registrar may, by notice to 30 the long-term insurer—

- (a) withdraw the first-mentioned notice;
- (b) act in accordance with section 11; or
- (c) if it is appropriate and if the Minister has authorised the Registrar in writing to do so, prohibit the long-term insurer from carrying on such long-term 35 insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.

(3) When the Registrar has, in accordance with subsection (2), prohibited a long-term insurer from carrying on certain long-term insurance business, the Registrar may 40 thereafter—

- (a) withdraw the prohibition by notice to the long-term insurer;
- (b) act in accordance with section 11(1) and thereupon, by notice to the long-term insurer, withdraw the prohibition and authorise the long-term insurer to carry on the long-term insurance business, subject to the conditions determined by the Registrar, specified in the new certificate of registration referred to in 45 section 11(2); or
- (c) act in accordance with section 13(2)(c), 41(2) or 42(2), according to whichever provision the Registrar deems most appropriate in the circumstances and in the interest of the policyholders of the long-term insurer.

Termination of registration 50

13. (1) If a long-term insurer fails to commence the carrying on of its long-term

insurance business within a reasonable period after being registered to do so, and if, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that the long-term insurer will not commence the carrying on of such business within a reasonable period thereafter, the Registrar shall, by notice to the **long-term** insurer, cancel its registration. 5

(2) The Registrar shall—

(a) if a long-term insurer has ceased to enter into long-term policies to an extent which no longer justifies its continued registration as a long-term insurer and, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that it will not resume the entering into of long-term policies to the required extent within a reasonable period thereafter; 10

(b) if a long-term insurer has notified the Registrar of its intention to cease to enter into any more long-term policies and has requested so in writing; or

(c) if the Registrar considers it appropriate to act so in accordance with section 12(3)(c), 15

by notice direct the long-term insurer concerned, with effect from a date specified in the notice, not to enter into any more long-term policies and require it to make arrangements satisfactory to the Registrar to discharge its obligations under all long-term policies entered into before the specified date and, when the Registrar is satisfied that the long-term insurer concerned no longer has any obligations under any such policy, shall, by notice to the long-term insurer and in the Gazette, cancel its registration. 20

(3) When all of the long-term insurance business of a long-term insurer has been—

(a) discontinued as a result of its amalgamation with, or its transfer to, another long-term insurer as contemplated in Part V, or 25

(b) wound up as contemplated in Part VI,

the Registrar shall by notice in the Gazette cancel its registration.

Deregistration of long-term insurers as companies

14. For the purposes of section 73(5) of the Companies Act in relation to a long-term insurer, the reference to the Registrar of Companies in that section shall be construed as a reference to the Registrar of Companies acting in concurrence with the Registrar. 30

Part III

Business and administration of long-term insurers

Limitation on business

15. (1) A long-term insurer shall not carry on such business, other than the long-term insurance business which it is authorised to carry on by virtue of its registration under section 9, as the Registrar has prohibited in relation to— 35

(a) a particular long-term insurer; or

(b) long-term insurers generally.

(2) A long-term insurer shall not carry on such business as the Registrar may determine, other than the long-term insurance business which it is authorised to carry on by virtue of its registration under section 9, otherwise than in accordance with and subject to the limitations and conditions which the Registrar may determine in relation to— 40

(a) a particular long-term insurer; or 45

(b) long-term insurers generally.

(3) The Registrar may only impose a prohibition or determine a limitation and a condition under subsection (1) or (2) by notice in the *Gazette*—

(a) if it is in the interests of the policyholders of a particular long-term insurer, or long-term insurers in general, to act so; 50

(b) after giving at least 30 days' notice of the Registrar's intention to act so in the case of—

(i) a particular long-term insurer, to that long-term insurer; or

(ii) long-term insurers generally, in the *Gazette*; and

(c) after considering any representations received in respect of the matter.

(4) A long-term insurer, other than an insurer carrying on reinsurance business only, shall not be a short-term insurer as defined in the Short-term Insurance Act, 1997.

Head office and public officer

16. (1) A long-term insurer shall—

(a) have its head office in the Republic; 10

(b) appoint a natural person who is permanently resident in the Republic as its public officer;

(c) notify the Registrar of the address of that head office and of the name of that public officer; and

(d) if the address of that head office changes, or if that public officer or the name of that public officer changes, notify the Registrar thereof within 30 days after such change. 15

(2) The public officer shall, as far as it is in his or her power, ensure that the long-term insurer complies with this Act.

(3) Process in any legal proceedings against a long-term insurer maybe served at the head office of that insurer or, if no such office is in existence, by service upon the public officer or, if he or she cannot be found or if no person has been appointed as public officer, by service upon the Registrar, which shall be deemed to be service upon the long-term insurer. 20

Financial year 25

17. A long-term insurer may not change its financial year without the approval of the Registrar.

Notification of certain appointments and terminations

18. A long-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director or managing executive appointed by it or whose appointment has been terminated by it, within 30 days after such appointment or termination, together with the reasons for any such termination. 30

Auditor

19. (1) A long-term insurer shall from time to time appoint, and at all times have, one or more auditors. 35

(2) No appointment of an auditor, other than a reappointment not involving a break in the continuity of the appointment, shall take effect unless it has been approved by the Registrar.

(3) A long-term insurer shall not appoint as its auditor—

(a) one of its directors; or 40

(b) a person who is not engaged in public practice as an auditor.

(4) If an auditor of a long-term insurer is a firm (as contemplated in the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991)), the last approval of the Registrar for the appointment thereof shall not lapse by reason of a change in the membership of the firm if at least half of the members, after the change, were members when the appointment of the firm was last approved by the Registrar. 45

(5) Notwithstanding anything to the contrary in any law contained, the auditor of a long-term insurer shall—

(a) whenever the auditor furnishes copies of a report or other document or

- particular contemplated in section 20(5)(b) of the Public Accountants' and Auditors' Act, 1991, also furnish a copy thereof to the Registrar; and
- (b) if the auditor's appointment is terminated for any reason—
- (i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and
- (ii) if the auditor would, but for that termination, have had reason to submit to the long-term insurer a report contemplated in section 20(5)(a) of the Public Accountants' and Auditors' Act, 1991, submit such a report to the Registrar; and
- (c) inform the Registrar in writing of any matter relating to the affairs of the long-term insurer of which the auditor became aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, may prejudice the insurer's ability to comply with section 29(1) of this Act.
- (6) (a) The furnishing, in good faith, by an auditor of a report or information in terms of this section shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject.
- (b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section shall not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.
- (7) In addition to the duties assigned to the auditor of a long-term insurer by the Act under which that insurer is incorporated or by the Public Accountants' and Auditors' Act, 1991, the auditor shall—
- (a) in relation to a statement forming part of the returns in respect of which the auditor is required to do so in terms of section 36, examine that statement or part thereof and satisfy himself, herself or **itself** that it is properly drawn up so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any **annexure** thereto, presents fairly the matters dealt with therein as contemplated in section 20 of the Public Accountants' and Auditors' Act, 1991; and
- (b) carry out the other duties provided in this Act or prescribed by the Minister.
- (8) **Without** derogating from an auditor's right to do so in respect of anything which is material to the carrying out of the auditor's duties, an auditor shall not be required to examine or express an opinion in relation to a statement forming part of a return, report or certificate or to the particulars thereof, in respect of which a statutory actuary is required, in terms of this Act to make an examination, give an attestation or express an opinion.
- (9) An auditor may rely on the work performed by the statutory actuary in relation to the financial affairs of a long-term insurer, when the auditor expresses an opinion in relation to the financial **affairs** of that long-term insurer in terms of this Act or any other law, subject to compliance with the prevailing auditing standards.

Statutory actuary

20. (1) A long-term insurer shall from time to time appoint, and at all times have, an actuary.
- (2) A long-term insurer may appoint an alternate to act in the place of its statutory actuary during his or her absence for any reason.
- (3) No person other than a natural person who is permanently resident in the Republic, is a Fellow of the Actuarial Society of South Africa and has, as an actuary, appropriate practical experience relating to long-term insurance business, shall be appointed as a statutory actuary or his or her alternate.
- (4) No appointment of a statutory actuary or his or her alternate shall take effect unless it has been approved by the Registrar.

- (5) The statutory actuary of a long-term insurer shall—
- (a) submit to the Registrar, if his or her appointment is for any reason terminated, a statement of what he or she believes to be the reasons for that termination; and
 - (b) report to the long-term insurer any matter relating to the business of the long-term insurer of which he or she became aware in the performance of his or her functions as statutory actuary and which, in the opinion of the statutory actuary, may prejudice the long-term insurer's ability to comply with section 29(1), and if steps to rectify the matter are not taken to the satisfaction of the statutory actuary, he or she shall forthwith report the matter to the Registrar.
- (6) (a) The furnishing, in good faith, by a statutory actuary of a report or information in terms of subsection (5) shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which he or she is subject.
- (b) The failure, in good faith, by a statutory actuary to furnish a report or information in terms of this section shall not confer upon any person a right of action against the statutory actuary which, but for that failure, that person would not have had.
- (7) In addition to duties assigned to the statutory actuary by any other law or a code of professional practice, the statutory actuary shall—
- (a) in relation to a statement forming part of the returns in respect of which he or she is required to do so in terms of section 36, examine that statement and satisfy himself or herself that it is properly drawn up so as to comply with the requirements of this Act and attest or, as the case may be, express an opinion in connection with that statement; and
 - (b) carry out the other duties provided in this Act prescribed by the Minister.
- (8) A statutory actuary shall—
- (a) have the right of access at all times to the accounting records and other books and documents of the long-term insurer and be entitled to require from the directors or officers of that insurer the information and explanations he or she deems necessary for the carrying out of his or her duties;
 - (b) be entitled to—
 - (i) attend a general meeting of the long-term insurer;
 - (ii) receive the notices and other communications relating to a general meeting which a member of that long-term insurer is entitled to receive; and
 - (iii) be heard at a general meeting on the business of the meeting which concerns him or her as statutory actuary.

Appointment of auditor or statutory actuary by Registrar

21. (1) If a long-term insurer for any reason fails to appoint—
- (a) an auditor in terms of section 19(1), the Registrar may, notwithstanding sections 269(4) and 271 (1) of the Companies Act, but subject to section 19 of this Act, appoint an auditor for that long-term insurer; and
 - (b) an actuary in terms of section 20(1), the Registrar may, subject to section 20, appoint an actuary for that long-term insurer.
- (2) A person or firm appointed under subsection (1) as auditor or actuary of a long-term insurer shall be deemed to have been appointed by the long-term insurer in accordance with this Act.

Removal of appointees who are not fit and proper

22. (1) The Registrar may by notice require a long-term insurer to terminate the appointment of a director, managing executive, public officer, auditor or statutory actuary of that long-term insurer, if the person or firm concerned is not fit and proper to hold the office concerned.

(2) When the Registrar intends to act as contemplated in subsection(1), the Registrar shall give notice to the long-term insurer concerned, and, unless it is impracticable to do so, to the person or firm concerned, of the Registrar's intention and the reasons therefor. and the person or firm concerned shall thereupon cease to perform the functions of the office concerned pending the final outcome of any action under subsection (3). 5

(3) When notice has been given to a long-term insurer in terms of subsection (2), that long-term insurer and the person or firm concerned may appeal to the board of appeal established by section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section, and any party shall have a right of appeal to the Court against the decision of that board of appeal as if it were a judgment of a lower 10 court.

Audit committee

23. (1) The board of directors of a long-term insurer shall appoint an audit committee of at least three members of whom at least two shall be members of that board.

(2) The majority of the members, including the chairperson of the audit committee, 15 shall be persons who are not employees of the long-term insurer.

(3) The functions of an audit committee shall, *inter alia*, be—

(a) to assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing and actuarial valuation processes applied by the long-term insurer in 20 the day-to-day management of its business;

(b) to facilitate and promote communication and liaison concerning the matters referred to in paragraph (a) or a related matter, between the board of directors and the managing executive, auditor, statutory actuary and internal audit staff of the long-term insurer; 25

(c) to recommend the introduction of measures which the committee believes may enhance the credibility and objectivity of financial statements and reports concerning the business of the long-term insurer: and

(d) to advise on a matter referred to the committee by the board of directors.

(4) If the appointment of an audit committee is, in a particular case, inappropriate or 30 impractical or would serve no useful purpose, the Registrar may, subject to such conditions as the Registrar may determine, exempt the long-term insurer concerned from the requirements of subsection (1).

Preference shares, debentures, share capital and share warrants

24. A long-term insurer shall not— 35

(a) without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines—

(i) issue any debentures;

(ii) issue preference shares other than preference shares compulsorily convertible to ordinary shares; 40

(iii) convert any of its shares into preference shares;

(iv) convert any of its preference shares of a particular class into preference shares of another class;

(v) convert any of its shares, including preference shares, into debentures;

(vi) reduce its share capital in terms of sections 83 and 84 of the Companies 45 Act;

(b) notwithstanding section 101 of the Companies Act, issue share warrants to bearer as contemplated in that section.

Registration of shares in name of nominee

25. (1) A long-term insurer shall not knowingly— 50

(a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended beneficial shareholder;

(b) register transfer of any of its shares to a person other than the intended beneficial shareholder, without the approval of the Registrar.

(2) Subsection (1) shall not apply to the allotment, issue or registration of the shares of a long-term insurer—

- (a) to or in the name of a trustee of a unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies;
- (b) to or in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances contemplated in section 103(3) of the Companies Act;
- (c) for a period of not more than six months, to or in the name of a stockbroker or a company floated by a stockbroker for the purposes contemplated in section 12(1)(s) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or to or in the name of a company controlled by a long-term insurer or an employee of the long-term insurer, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares;
- (d) to or in the name of another person prescribed by the Minister.

Limitation on control and certain shareholding or other interest in long-term insurers

26. (1) Subject to this section, no person shall, without the approval of the Registrar, acquire or hold shares or any other interest in a long-term insurer which results in that person, directly or indirectly, alone or with an associate, exercising control over that long-term insurer.

(2) No person shall acquire shares in a long-term insurer if the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and his, her or its associates, will amount to 25 per cent or more of the total nominal value of all of the issued shares of the long-term insurer concerned, without first having obtained the approval of the Registrar.

(3) The approval referred to in subsection (2)—

- (a) may be given—
 - (i) subject to the aggregate nominal value of the shares owned by the person concerned and his, her or its associates not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;
 - (ii) subject to such other conditions as the Registrar may determine;
- (b) shall not be given if it would be contrary to-
 - (i) the public interest; or
 - (ii) the interests of the policyholders, or of persons who may become policyholders, of the long-term insurer; and
- (c) may be refused if the person concerned, alone or with his, her or its associates, has not already owned shares in the long-term insurer—
 - (i) of the aggregate nominal value; and
 - (ii) for the minimum period, not exceeding 12 months, that the Registrar may determine.

(4) If the Registrar is satisfied that the retention of a particular shareholding by a particular shareholder will be prejudicial to the long-term insurer, the Registrar may apply to the Court in whose area of jurisdiction the head office of the long-term insurer is situated for an order—

- (a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding with a total nominal value not exceeding 25 per cent of the total nominal value of all the issued shares of the long-term insurer; and
- (b) limiting, with immediate effect, the voting rights that may be exercised by

- such shareholder by virtue of his, her or its shareholding to 25 per cent of the voting rights attached to all the issued shares of the long-term insurer.
- (5) For the purposes of this section “associate”, in relation to—
- (a) a natural person, means—
 - (i) his or her spouse; 5
 - (ii) his or her child, parent, stepchild or stepparent and any spouse of any such person;
 - (iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the long-term insurer concerned; 10
 - (iv) a juristic person whose board of directors acts in accordance with his or her directions or instructions;
 - (v) a trust controlled or administered by him or her;
 - (b) a juristic person— 15
 - (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof;
 - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act; 20
 - (iii) which is not a company or a close corporation, means another juristic person which would have been its subsidiary or holding company—
 - (aa) had it been a company; or
 - (bb) in the case where that other juristic person, too, is not a company, had both it and that other juristic person been a company; 25
 - (iv) means any person in accordance with whose directions or instructions its board of directors acts;
 - (v) means another juristic person whose board of directors acts in accordance with its directions or instructions; 30
 - (vi) means a trust controlled or administered by it.
- (6) For the purposes of this section a person shall be deemed to exercise control over a long-term insurer if that person, alone or with associates—
- (a) holds shares in the long-term insurer of which the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof; 35
 - (b) holds shares which entitle such person to exercise more than 25 per cent of the voting rights attached to the issued shares of that long-term insurer; or
 - (c) has the power to determine the appointment of 25 per cent or more of the directors of that long-term insurer, including the power— 40
 - (i) to appoint or remove, without the concurrence of another person, 25 per cent or more of the directors; or
 - (ii) to prevent a person from being appointed as a director without another person’s consent.

Furnishing of information concerning shareholders 45

27. (1) A long-term insurer shall, whenever required to do so by the Registrar, furnish the Registrar with a return, in the form and containing the particulars and information which the Registrar determines, in respect of its shareholders and of any person who directly or indirectly has the power to require those shareholders to exercise their rights as shareholders in the long-term insurer in accordance with such person’s directions or instructions. 50

(2) A person in whose name shares in a long-term insurer are registered, or who wishes shares in a long-term insurer to be allotted or issued to such person or to be registered in such person’s name, and any person acting on behalf of such person,

shall, upon the written request of the long-term insurer concerned, furnish it with the information it may require for the purposes of complying with section 25(1).

Effect of registration of shares contrary to Act

- 28. (1) No person shall—
 - (a) either personally or by proxy granted to another person, cast a vote attached to; or
 - (b) receive a dividend payable in respect of,
 a share in a long-term insurer allotted or issued to such first-mentioned person or registered in such person’s name contrary to this Act.
- (2) The validity of a resolution passed by a long-term insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1)(a).
- (3) A dividend referred to in subsection (1)(b) shall be void.

Part IV

Financial arrangements

Maintenance of financially sound condition 15

- 29. (1) A long-term insurer shall at all times maintain its business in a financially sound condition by—
 - (a) having assets;
 - (b) providing for its liabilities; and
 - (c) generally conducting its business,
 so as to be in a position to meet its liabilities at all times. 20
- (2) A long-term insurer shall be deemed to have failed to comply with subsection(1) if it does not have—
 - (a) assets as required by section 30; or
 - (b) in the Republic assets as required by section31.25
- (3) Along-term insurer which fails to comply with subsection(1) shall, within 30 days after becoming aware of it, notify the Registrar of the failure and furnish the reasons therefor.

Assets

- 30. (1) A long-term insurer shall— 30
 - (a) have assets the aggregate value of which, on any day, is not’ less than the aggregate value, on that day, of its liabilities; and
 - (b) subject to section 32, have, in the Republic, assets the aggregate value of which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which are to be met in the Republic,35
 when the values of those assets and liabilities are calculated by means of—
 - (i) the method set out in Schedule 3; and
 - (ii) the financial soundness method set out in Schedule 4.
- (2) A long-term insurer shall not declare a dividend or pay a dividend to its shareholders if, and for as long as, it fails to comply with subsection (1), or if the declaration or payment of the dividend would result in it failing to comply with subsection (1). 40
- (3) A long-term insurer shall not declare a dividend or pay a dividend to its shareholders unless its statutory actuary has certified that the declaration and payment thereof will not be contrary to subsection (2). 45

Kinds and spread of assets

- 31. (1) Subject to section 32, a long-term insurer shall, in the Republic, have assets, other than assets in respect of linked liabilities referred to in section 33(2)—
 - (a) which have an aggregate value which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which have to be met in the Republic, when the values of those assets are calculated by reference to their market value as defined in Schedule 2 and the values of those liabilities,50

- other than the said linked liabilities, are calculated by means of the method set out in Schedule 3; and
- (b) which are of the kinds specified in Schedule 1; and
 - (c) which have a market value, as defined in Schedule 2, which, when expressed as a percentage of the aggregate value of its liabilities referred to in paragraph 5 (a), does not exceed the percentage specified in Schedule 2 in respect of particular kinds or categories of those assets, unless the Registrar otherwise approves either in advance or at any time after having received the notice referred to in section 30(1)—
 - (i) in a particular case; 10
 - (ii) for the specified period; and
 - (iii) subject to such conditions as the Registrar may determine.
- (2) Subject to subsection (1), the kinds of assets that a long-term insurer has, and the spread of those assets among different kinds, shall—
- (a) to the satisfaction of the statutory actuary of the long-term insurer, be proper 15 and suitable having regard to the nature of its various liabilities and the time when, the place where, and the manner in which, it is required, or expects to be required, to meet those liabilities; and
 - (b) to the extent so prescribed, comply with any general requirement prescribed 20 by the Registrar for the appropriate matching of assets and liabilities.

Deeming provisions concerning assets

32. For the purposes of sections 30 and 31—
- (a) an asset of the kind specified in item 13, 16(2), (3) or (5) or 20(c) of the Table to Schedule 1, shall, subject to paragraph (b), be deemed to be in the Republic;
 - (b) if there is documentary evidence of the title of a long-term insurer to an asset, 25 that asset shall be deemed not to be in the Republic unless the documentary evidence is in the Republic or is held outside the Republic in such a manner and subject to such conditions as the Registrar may determine; and
 - (c) an asset shall be deemed not to be held by a long-term insurer if it has been encumbered contrary to section 34(1)(a) in favour of another person, or if it is 30 held by another person contrary to section 34(1)(b), unless the person in whose favour it is encumbered or the person holding that asset is—
 - (i) the Minister of Labour or the Director-General: Labour, or any person acting on behalf of that Minister or Director-General in accordance with 35 the laws of the Republic relating to compensation for occupational injuries and diseases;
 - (ii) the government of any country other than the Republic in which the long-term insurer carries on insurance business or intends to carry on such business, or any person acting on behalf of such government, if the long-term insurer has encumbered those assets in favour of, or 40 transferred those assets into the name of, that government or that person in order to comply with the laws of that country relating to long-term insurance; or
 - (iii) another insurer and the encumbrance or transfer takes place in terms of a 45 reinsurance policy.

Liabilities

33. (1) For the purposes of this Act, the liabilities of a long-term insurer shall include its contingent liabilities for policy benefits which have not become claimable, and which are specified in Schedules 3 and 4.
- (2) For the purposes of section 31, the linked liabilities of a long-term insurer are 50 those of its liabilities which, in terms of the long-term policy concerned, are in respect of policy benefits the amount of which is not guaranteed by the insurer and is to be determined solely by reference to the value of particular assets or categories of assets

which are specified in the policy and are actually held by or on behalf of the insurer specifically for the purposes of the policy.

Prohibitions concerning assets and certain liabilities

34. (1) A long-term insurer shall not—
- (u) encumber its assets; 5
 - (b) allow its assets to be held by another person on its behalf;
 - (c) directly or indirectly borrow money;
 - (d) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons, 10
- without the approval of the Registrar, given generally or in a particular case, and subject to such conditions as the Registrar may determine.
- (2) A long-term insurer shall not invest in derivatives other than—
- (a) derivatives designated as an asset in respect of a linked policy referred to in section 33(2); 15
 - (b) derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the long-term insurer’s liabilities under long-term policies in terms of section 30(1);
 - (c) for the purpose of reducing investment risk or for efficient portfolio management; and 20
 - (d) in such a manner that the long-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches its obligations under that instrument and from which it can discharge those obligations.

Failure to maintain financially sound condition 25

35. (1) If a long-term insurer gives notice to the Registrar in terms of section 29(3), or if the Registrar is satisfied that a long-term insurer is failing, or is likely to fail within a reasonable period, to comply with section 29(1), the Registrar may, by notice, direct that long-term insurer to furnish the Registrar, within a specified period, with—
- (a) specified information relating to the nature and causes of the failure; and 30
 - (b) its proposals as to the course of action that it should adopt to ensure its compliance with section 29(1).
- (2) When the Registrar has received the information and proposals referred to in subsection (1), the Registrar may, without derogating from the Registrar’s powers under section 11 or 12 or any other provision of this Act— 35
- (a) authorise the long-term insurer concerned, by notice, to adopt a course of action, approved by the Registrar after considering those proposals and after consultation with the auditor and the statutory actuary of the long-term insurer, and which the Registrar is satisfied will reasonably ensure that the long-term insurer complies with section 29(1), and the Registrar may, at that time or at any time thereafter, after further consultation with the auditor and the statutory actuary, by notice authorise the modification of that course of action to the extent that the Registrar deems appropriate in the circumstances; 40
 - or
 - (b) if it is reasonably necessary in the interests of the policyholders of the long-term insurer, at that time, or at any time thereafter, and notwithstanding any steps already taken by the Registrar in accordance with paragraph (a) or any other provision of this Act, act in accordance with section 41(2) or 42(2). 45

Returns to Registrar

36. A long-term insurer shall furnish the Registrar with returns relating to its business— 50
- (a) in the medium and form;
 - (b) containing the information; and
 - (c) by the date or within the period,

prescribed by the Registrar, either generally or in relation to a particular insurer.

(2) If the Registrar is satisfied that a return furnished to him or her in terms of subsection (1) is incomplete or incorrect, he or she may, by notice—

- (a) direct the long-term insurer to furnish the Registrar, within a specified period, with specified information or documents which the Registrar considers necessary to complete or correct the return; or 5
- (b) reject the return and require the long-term insurer to furnish the Registrar, within a specified period, with a new return which is complete and correct.

Part V

Compromise, arrangement, amalgamation and transfer 10

Court approval required for compromise, arrangement, amalgamation or transfer

37. (1) No transaction to which a long-term insurer is a party and which constitutes an agreement by which all or any part of the business of a long-term insurer is transferred to another person, or by which a compromise, arrangement or amalgamation contemplated in Chapter XII of the Companies Act is effected, shall have legal force without the approval of the Court. 15

(2) Any arrangement entered into between two or more insurers whereby a liability of any long-term insurer towards policyholders is to be substituted for a liability of any other insurer towards such policyholders (whether or not the liability of the long-term insurer is expressed in or created by existing 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 concerned, unless the Registrar is satisfied that the said policyholders have been or will be made aware of the nature of such substitution and have signified or will signify their consent thereto in writing. 20 25

Application to Court

38. When application is made to the Court for the approval of a transaction referred to in section 37—

- (a) the parties to the transaction shall jointly—
 - (i) at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction; 30
 - (ii) at least 30 days before lodging the application, cause a notice, in the form and containing the information required by the Registrar, to be published in such official languages in the Gazette and in such other newspapers as the Registrar may determine; 35
 - (iii) before lodging the application, serve upon the Registrar a copy of the notice of motion, and of all accompanying affidavits and other documents relating thereto and to be filed in support of the application;
- (b) a person who has an interest in the matter may, by notice given to the Registrar within 15 days after the publication in the *Gazette* of the notice referred to in paragraph (a)(ii), submit to the Registrar such representations concerning the transaction as are relevant to his, her or its interests; 40
- (c) the Registrar may—
 - (i) appoint a person, at the cost of the parties to the transaction, to enquire into, and report to him or her on, the desirability or otherwise of the transaction; and 45
 - (ii) by notice, direct any party to the transaction to provide the Registrar or that person with all information and documents relating to the transaction which he or she may require;
- (d) the Registrar and any policyholder, shareholder or creditor of the long-term 50

insurer concerned may file affidavits and other documents relating thereto and may appear and be heard at the hearing of the application.

Conditions of approval

39. Notwithstanding the provisions of the Companies Act, the approval of the Court of a transaction referred to in section 37(1) shall not be granted— 5

- (a) unless the provisions of this Part have been complied with;
- (b) if the transaction is inconsistent with this Act contrary to the interests of the policyholders of the long-term insurer concerned: or
- (c) unless payment of the costs referred to in section 38(c)(i) has been made or secured. 10

Approved transaction

40. (1) A transaction referred to in section 37(1) which is approved by the Court shall be binding on all persons and shall have effect as ordered by the Court notwithstanding anything to the contrary contained in the constitution or rules of the parties thereto.

(2) Notice of the passing of a special resolution (if any) by the members of a long-term insurer confirming a transaction referred to in section 37(1), together with a copy of the resolution and of the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by the public officer of the long-term insurer to be a true and correct copy shall be furnished to the Registrar by the long-term insurer concerned, within 60 days of the passing of the resolution, and a certified copy of the order of Court as soon as practicable. 15 20

(3) The officer in charge of a deeds registry or other office in which is registered any bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 37(1) or 70 shall, upon production by the long-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the order of Court concerned, and without payment of any duty, tax, registration fee or other charge, make the endorsements upon the bond, title deed or registration certificate and the entries in his or her registers that are necessary to effect the transfer concerned. 25

Part VI 30

Judicial management and winding-up of long-term insurers

Judicial management

41. (1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, Chapter XV of the Companies Act shall, subject to this section and with the necessary changes apply in relation to the judicial management of a long-term insurer whether or not it is a company, and in such application the Registrar shall be deemed to be a person authorised by section 346 of the Companies Act to make an application to the Court for the winding-up thereof. 35

(2) The Registrar may make an application under section 427(2) of the Companies Act for a judicial management order in respect of a long-term insurer if he or she is satisfied, whether as contemplated in section 12(3) or 35(2) of this Act, or otherwise, that it is in the interests of the policyholders of that long-term insurer to do so. 40

(3) In the application of Chapter XV of the Companies Act as provided by subsection (1)—

- (a) a reference which relates to the inability of a long-term insurer to pay its debts or to meet its obligations shall be construed as relating also to its inability to comply with the requirements prescribed by section 29(1) of this Act: 45
- (b) in addition to any question which relates to the nature of a long-term insurer as a successful concern, there shall be considered also the question whether any course of action is in the interests of its policyholders: 50
- (c) in the following sections of the Companies Act, namely—

- (i) sections 432(2) and 433(b), the reference to the creditors of a company shall be construed as a reference also to the policyholders of a long-term insurer,
 - (ii) sections 432(2)(e) and 433(d), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar: 5
 - (iii) sections 428(3), 432(4) and 433(j), the reference to the Master shall be construed as a reference also to the Registrar; and
 - (iv) section 433(j), the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act. 10
- (4) If an application to the Court for the judicial management of a long-term insurer is made by a person other than the Registrar—
- (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the Court may allow on good cause shown, before the application is set down for hearing; 15
 - (b) the Registrar may, if satisfied that the application is contrary to the interests of the policyholders of the long-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application. 20
- (5) As from the date on which a provisional or final judicial management order is granted in respect of a long-term insurer—
- (a) any reference in this Act to a long-term insurer shall, unless clearly inappropriate, be construed as a reference to the provisional or final judicial manager, as the case may be: 25
 - (b) the provisional or final judicial manager of a long-term insurer shall not enter into any long-term policies unless he or she has been granted permission to do so by the Court in the provisional or final judicial management order or in a variation thereof.

Winding-up by Court 30

42. (1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, Chapter XIV of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a long-term insurer, and in such application the Registrar shall be deemed to be a person authorised by section 346 of the Companies Act to make an application to the Court for the winding-up thereof. 35

(2) The Registrar may, with the written approval of the Minister, make an application under section 346 of the Companies Act for the winding-up of a long-term insurer if he or she is satisfied, whether as contemplated in section 12(3) or 35(2) of this Act, or otherwise, that it is in the interests of the policyholders of that long-term insurer to do so. 40

(3) In the application of Chapter XIV of the Companies Act as provided by subsection (1)—

- (a) a reference which relates to the inability of a long-term insurer to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 29(1) of this Act; 45
- (b) in addition to any question whether it is just and equitable that a long-term insurer should be wound up, there shall be considered also the question whether it is in the interest of the policyholders of that long-term insurer that it should be wound up;
- (c) notwithstanding any other provision of that Chapter, there shall be considered whether a person is acting in contravention of section 7(1)(a) of this Act: 50
- (d) in the following sections of the Companies Act, namely—
 - (i) sections 392, 394(5) and 400, the reference to the Master shall be construed as a reference also to the Registrar;
 - (ii) sections 375(5)(a) and 419(1), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar: and 55
 - (iii) section 400, the reference to a contravention of any provision of that Act

shall be construed as a reference also to a contravention of any provision of this Act; and

- (e) section 346(3) of the Companies Act shall not apply where the Registrar makes the application to Court.
- (4) If an application to the Court for or in respect of the winding-up of a long-term 5 insurer is made by any person other than the Registrar—
 - (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the Court may allow on good cause shown, before the application is 10 set down for hearing; and
 - (b) the Registrar may, if satisfied that the application is contrary to the interests of the policyholders of the long-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

Voluntary winding-up

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43. No special resolution relating to the winding-up of a long-term insurer as contemplated in section 349 of the Companies Act shall be registered in terms of section 200 of that Act, and no special resolution to that effect in terms of the constitution of a long-term insurer which is not a company shall have legal force—

- (a) unless a copy thereof has been lodged with the Registrar and he or she has, by 20 notice to the long-term insurer, declared that arrangements satisfactory to the Registrar have been made to meet all liabilities of the long-term insurer under long-term policies entered into by it prior to the winding-up; or
- (b) if the Registrar, by notice to the long-term insurer, declares that the resolution 25 is contrary to this Act.

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Part VII

Business practice, policy contracts and policyholder protection

Business practice

Free choice in certain circumstances

44. (1) If a party to a contract in terms of which money is loaned, goods are leased or 30 credit is granted, requires, whether as a condition thereof or otherwise, that a long-term policy or its policy benefits be made available and used for the purpose of securing the debt or other obligation of another party under the contract, the person who is so required to make that policy or those policy benefits available shall be entitled, and shall 35 be given prior written notification of that entitlement, to a free choice—

- (a) as to whether he or she wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilise a combination of those options; and
- (b) if a new policy is to be entered into- 40
 - (i) as to the long-term insurer with which the policy is entered into and as to the intermediary (if any) who is to render services contemplated in section 49 in connection with the transaction;
 - (ii) as to whether or not the policy benefits concerned are to be provided in an event other than the death or disability of the life insured; and 45
 - (iii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of that debt or other obligation; and 50
- (c) if an existing policy is to be made available—

- (i) as to the intermediary (if any) who is to render services contemplated in section 49 in connection with the transaction; and
- (ii) as to whether or not a variation of the policy required for that purpose shall be such as to cause—
 - (aa) policy benefits to be provided in an event other than the death 5 or disability of the life insured; or
 - (bb) the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value 10 of that debt or other obligation.

(2) The provisions of subsection(1) shall be deemed not to have been complied with unless the policyholder whose policy is to be made available has confirmed in writing, before the policy is used for the purpose of securing the debt concerned or other obligation, that he or she— 15

- (a) was given prior written notification of his or her entitlement to the freedom of choice referred to in that subsection;
- (b) exercised that freedom of choice; and
- (c) was not subject to any coercion or inducement as to the manner in which he or she exercised that freedom of choice. 20

(3) If the provisions of subsection (1) are not complied with, the security provided by the policy made available and used for the purpose shall be void and the policy benefits shall be provided to the person who made it available.

Prohibition on inducements

45. No person shall provide, or offer to provide, directly or indirectly, any valuable 25 consideration as an inducement to a person to enter into, continue, vary or cancel a long-term policy, other than a reinsurance policy.

Policy to be actuarially sound

46. A long-term insurer shall not—
- (a) enter into any particular kind of long-term policy unless the statutory actuary 30 is satisfied that the premiums, benefits and other values thereof are actuarially sound;
 - (b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or 35
 - (c) award a bonus or similar benefit to a policyholder unless the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose.

Receipt for premium paid *in* cash

47. When a premium is paid in bank notes or coins, the recipient thereof shall give to 40 the payer a written receipt for it.

Summary, inspection and copy of policy

48. (1) A person who enters into or varies a long-term policy, other than a fund policy and a *reinsurance* policy, shall be provided in writing or in another form prescribed by the Registrar, by the long-term insurer concerned, with information, in the form of a 45 summary, relating to at least the following matters, namely—

- (a) those of the representations made by or on behalf of that person to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;
- (b) the premiums payable and the policy benefits to be provided under the policy; 50 and

(c) the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided, and shall be provided with that information as soon as possible, but not later than 60 days after the parties enter into or agree to vary the policy.

(2) The summary referred to in subsection (1) shall be prima facie proof of the agreement, but shall not be deemed to be—

(a) part of the policy; or

(b) exhaustive of the matters which are, or are regarded by the insurer as, material to the assessment of the risks under the policy.

(3) The policyholder shall be entitled, against payment of a fee not exceeding that which may be prescribed by the Registrar, to be provided, upon request, with a copy of the policy.

Limitation of remuneration to intermediaries

49. No consideration shall be offered or provided by any person or accepted by any independent intermediary for rendering services as intermediary as referred to in Schedule 5, other than commission contemplated in that Schedule and otherwise than in accordance with that Schedule.

Undesirable business practice

50. (1) Notwithstanding anything to the contrary in any law contained, the Registrar may, after consultation with the Advisory Committee and in concurrence with the Minister, by notice in the Gazette declare a particular business practice to be undesirable for—

(a) all or a particular category of long-term insurers; or

(b) all or a particular category of persons who render services in respect of long-term policies. 25

(2) The Minister shall not concur to a declaration referred to in subsection (1) unless the Registrar has, at least 30 days before that concurrence is requested, by notice in the Gazette published his or her intention to make the declaration and invited interested persons thereby to make written representations concerning the intended declaration so as to reach him or her within 21 days after the date of publication of that notice. 30

(3) If the Registrar is satisfied that a long-term insurer or a person rendering services in respect of long-term policies is carrying on a business practice which may become the subject of a declaration under this section, he or she may, in concurrence with the Minister, by notice direct that long-term insurer or person to suspend that particular business practice for such period, not exceeding three months, as he or she deems necessary to enable the matter to be dealt with in accordance with subsection (1). 35

(4) A long-term insurer or other person shall not, on or after the date of a notice referred to in subsection (1), or of a directive referred to in subsection (3), carry on the business practice concerned.

(5) The Registrar may, by notice, direct a long-term insurer or other person who, on or after the date of a notice referred to in subsection (1), or a directive referred to in subsection (3), carries on the business practice concerned, to rectify, to the satisfaction of the Registrar, anything which was caused by or arose out of that carrying on of the business practice concerned.

(6) A long-term insurer or other person who is, under subsection (5), directed to rectify anything, shall do so within 60 days after he, she or it is so directed. 45

Policy contracts

Policy suspended until payment of first premium

51. The undertaking of a long-term insurer to provide policy benefits under a long-term policy, other than a fund policy or a reinsurance policy, shall be suspended until the long-term insurer has received, if there—

- (a) is to be one premium, that premium; or
- (b) are to be two or more premiums, the first of those premiums,

or until arrangements to its satisfaction have been made for the provision of the premium by debit order, stop order, credit card or other instrument approved by the Registrar generally by notice in the Gazette.

Failure to pay premiums

52. (1) If a premium under a long-term policy, other than a fund policy or a reinsurance policy, has not been paid on its due date, the policy shall, notwithstanding anything therein to the contrary, in the case of a long-term policy under which there are to be two or more premium payments at intervals of—

- (a) one month or less, remain in force for a period of 15 days after that due date; or
- (b) longer than one month, remain in force for a period of one month after that due date,

or for such longer period as may be determined by agreement between the parties, and 20 if the overdue premium is not paid by the end of any such period, the policy shall be dealt with in accordance with subsection (2).

(2) In the case of a policy contemplated in subsection (1) the remaining value of which, after the satisfaction of any claim of the long-term insurer which is secured solely by the policy benefits to be provided under the policy, is greater than half of the aggregate amount of the premium payments due thereunder during the period of 12 months commencing on the due date of the unpaid premium, the long-term insurer shall—

- (a) inform the policyholder, in the medium prescribed by the Registrar, of the amount of that remaining value and notify him or her that the policy will remain in force, in accordance with the rules of the long-term insurer, until—
 - (i) the policy no longer has any such remaining value, whereupon it will lapse;
 - (ii) the payment of premiums is resumed;
 - (iii) the provisions of the policy are amended, in accordance with the rules of the long-term insurer, so that it becomes a policy which is fully paid-up; or
 - (iv) if the policyholder so requests, the policy is surrendered, in accordance with the rules of the long-term insurer, and so much of the remaining value as then remains is, subject to section 54, paid to the policyholder and
- (b) deal with the policy accordingly.

(3) A long-term insurer shall have rules which to the satisfaction of its statutory actuary prescribe a sound basis on which, and the methods by which, a long-term policy is to be valued and otherwise dealt with for the purposes of subsection (2).

Option for payment of policy benefits in money

53. Notwithstanding the terms of an assistance policy, either party thereto may request that a policy benefit which is expressed otherwise than in a sum of money shall be provided as a sum of money equal in value to the cost that would have been incurred by the long-term insurer had the non-monetary benefit been provided.

Limitation on provisions of certain policies

54. A long-term insurer shall not—

- (a) undertake to provide policy benefits, or provide policy benefits under;
- (b) provide consideration upon the surrender of; or
- (c) make a loan upon the security of,

a long-term policy contemplated in Schedule 6, otherwise than in accordance with the requirements and limitations set out in that Schedule.

Limitation on policy benefits in event of death of unborn or of certain minors

55. (1) A long-term insurer shall not undertake to provide, or provide policy benefits, in terms of a life policy or assistance policy, in the event of the death of an unborn, or of a minor before that minor attains the age of 14 years, the value of which, on its own or when added to the value of policy benefits which to its knowledge are to be provided in that event by a long-term insurer or a short-term insurer or a friendly society in terms of any policy, exceeds, in the event of the death— 5

(a) of that unborn, or of that minor before he or she attains the age of six years, R 10 000; or 10

(b) of that minor after he or she attains the age of six years but before he or she attains the age of 14 years, R30 000,

or such other amount prescribed by the Minister: Provided that this section shall not apply to or prohibit the allocation of profit in respect of such policies on the lives of minors, which allocation does not exceed the profits allocated to other such policies on the lives of persons who are not minors. 15

(2) Subsection (1) shall not apply in relation to a policy in terms of which, in the event of the death of the unborn, or of the minor before he or she attains the age of 14 years, the value of the policy benefits does not exceed an amount equal to the aggregate of all the premiums paid in terms of that policy, plus interest on each premium at a rate prescribed by the Minister, compounded annually. 20

Voidness of certain provisions of agreements relating to long-term policies

56. A provision of an agreement, the purport of which is that—

(a) a long-term insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to a long-term policy; 25

(b) the person who has entered into the long-term policy declares or admits that a person who acted on behalf of the long-term insurer in connection with an offer of that person to do so, or with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person; 30

(c) the obligation of a long-term insurer under a long-term policy is dependent upon the discharging of an obligation of another person under a reinsurance policy; or

(d) a person who has entered into a long-term policy, or the life insured under a long-term policy, waives a right to which he or she, by or under this Act, is entitled, 35

shall be void.

Life policy in relation to person rendering or liable to render military service

57. (1) A long-term insurer shall not refuse to enter into a life policy on the grounds that the life insured is a person rendering or liable to render military service in accordance with the Defence Act, 1957 (Act No. 44 of 1957). 40

(2) Notwithstanding anything to the contrary in a life policy contained, the policy benefits to be provided thereunder in the event of the death of the life insured in the course of or as a result of the rendering of military service in accordance with the Defence Act, 1957, shall not be less than an amount equal to the value for which the policy could be surrendered on the day of the death of the life insured, had the provisions of Schedule 6 to this Act not been enacted. 45

Long-term policies entered into by certain minors

58. A minor who has attained the age of 18 years may, without the consent of his or her guardian as if he or she has attained majority, enter into or vary, or deal with a long-term policy under which he or she is the life insured and pay the premium due under the policy with money which he or she has earned or which is at his or her disposal, and a policy benefit under the policy shall be provided to the minor who may deal with it as he or she thinks fit without the consent of his or her guardian, as if he or she has attained majority. 5

Misrepresentation

59. (1) Notwithstanding anything to the contrary in a long-term policy contained, whether entered into before or after the commencement of this Act, but subject to subsection (2)—

(a) the policy shall not be invalidated;

(b) the obligation of the long-term insurer thereunder shall not be excluded or limited; and 15

(c) the obligations of the policyholder shall not be increased, on account of any representation made to the insurer which is not true, whether or not the representation has been warranted to be true, unless that representation is such as to be likely to have materially affected the assessment of the risk under the policy concerned at the time of its issue or at the time of any variation thereof. 20

(2) If the age of a life insured under a long-term policy has been incorrectly stated to the long-term insurer, the policy benefits shall, notwithstanding subsection (1), be those which would have been provided under that policy in return for the premium payable had the age been correctly stated: Provided that if the nature of that long-term policy, or kind of long-term policy, is such as to render such arrangement inequitable, the Registrar may direct the long-term insurer to apply such different method of adjustment to the policy benefits of that long-term policy, or type of long-term policy, as the Registrar considers equitable in relation to the misstatement of age. 25

Validity of contracts

60. (1) A long-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it. 30

(2) If a person has entered into a long-term policy with a long-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the long-term policy, or with another person who is not a long-term insurer but who has in terms of a long-term policy undertaken an obligation as insurer, that person, by notice in writing to such long-term insurer or other person, or the Registrar by notice to such long-term insurer or other person and in the Gazette, may cancel the long-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such long-term insurer or other person as if the policy had been cancelled by him or her on account of a breach of contract by such long-term insurer or other person. 40

(3) Any contract entered into before the commencement of this Act the entering into of which is contrary to this Act which contains terms prohibited by this Act, shall not be void nor shall the performance of its terms be unlawful merely because of any such fact. 45

Interest on unpaid premiums and policy loans

61. (1) Interest on an unpaid premium, or on a loan made by a long-term insurer on the sole security of a long-term policy or on an advance made by a long-term insurer in respect of an amount which is to be payable under a long-term policy, shall not cease to accrue when that interest has accumulated to, or exceeds, an amount equal to the amount of that unpaid premium, loan or advance. 50

(2) In the case of a long-term policy entered into after 31 December 1973, an

interest-bearing debt referred to in subsection (1) shall not prescribe before the liability of the long-term insurer under the long-term policy prescribes.

Policyholder protection

Protection of policyholders

62. (1) The Advisory Committee, or the Registrar after consultation with the Advisory Committee. may— 5

- (a) propose rules aiming 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 generally; 10
- (b) propose the variation or rescission of any such rule; and
- (c) propose the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette* in terms of subsection (5). 15

(2) Without derogating from the generality of subsection (1)(a), a rule may provide that— 15

- (a) provisions with a particular import may not appear in a policy and that they shall be void if they do so appear;
- (b) particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done; 20
- (c) a policyholder may cancel a policy under particular circumstances and within a determined period, and what the legal consequences shall be if he or she does that;
- (d) different arrangements shall apply in relation to different kinds of long-term policies; and 25
- (e) in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 66(1)(c) or 67(1)(c) shall apply.

(3) The Registrar shall publish in the *Gazette* a rule, variation or rescission proposed under subsection (1), together with—

- (a) a notice of intention to promulgate the rule, variation or rescission: and 30
- (b) an invitation to all interested persons to make written representations in relation to the matter so as to reach the Registrar within 21 days, or a longer period specified in the notice, after the date of publication of the notice.

(4) The Registrar shall submit to the Minister the proposed rule, variation or rescission and all written representations received accompanied by the Registrar's comments and those of the Advisory Committee thereon and, after consideration thereof, the Minister may reject, or approve as proposed, or approve in a modified form which the Minister deems fit, the proposed rule, variation or rescission. 35

(5) If the Minister approves, whether as proposed or in a modified form, a proposed rule, variation or rescission, the Minister shall promulgate it by notice in the *Gazette*, and thereupon it shall be binding on all parties concerned with effect from a date determined by the Minister and specified in the notice. 40

Protection of policy benefits under certain long-term policies

63. (1) Subject to subsections (2) and (3), the policy benefits provided or to be provided to a person under one or more assistance, life, disability or health policies in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy— 45

- (a) during his or her lifetime, not be liable to be attached or subjected to execution under a judgment of a court or form part of his or her insolvent estate; or 50
- (b) upon his or her death, if he or she is survived by a spouse, child, stepchild or parent, not be available for the purpose of the payment of his or her debts.

(2) The protection contemplated in subsection(1) shall apply to-

- (a) assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided; and
- (b) policy benefits and assets so acquired (if any) to an aggregate amount of R50 000 or another amount prescribed by the Minister.
- (3) Policy benefits are only protected as provided in— 5
- (a) subsection (1)(b), if they devolve upon the spouse, child, stepchild or parent of the person referred to in subsection (1) in the event of that person's death; and
- (b) subsection (1)(a) and (b), if the person claiming such protection is able to prove on a balance of probabilities that the protection is afforded to him or her under this section. 10

Selection for realisation of protected policies

64. If—

- (a) two or more long-term policies referred to in section 63, held by the same policyholder, are attached in execution of a judgment or order of any court at the instance of a creditor: or 15
- (b) the policyholder of two or more long-term policies referred to in section 63 is found to be or otherwise declared insolvent by a Court,
- and only a part of the aggregate realizable value of the policies is protected as contemplated in that section, the judgment creditor or the trustee of the insolvent estate, as the case may be, shall determine which policy or policies shall be realised, wholly or 20 partially, in order to make available to him or her so much of the aggregate realizable value as is not so protected and to which he or she is entitled.

Partial realisation of protected policies

65. (1) A judgment creditor or the trustee of the insolvent estate of a policyholder, who is entitled to a part of the realizable value of a long-term policy may, if he or she is in 25 possession of the policy, deliver it to the insurer who is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he or she is entitled.
- (2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of the policy concerned, the person in possession thereof shall, at the request of the 30 judgment creditor or trustee, deliver it to the insurer which is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he or she is entitled.
- (3) On receipt of a long-term policy delivered to it in terms of subsection (1) or (2), the long-term insurer shall— 35
- (a) at the request of the judgment creditor or trustee concerned, pay to him or her a sum equal to that part of the realizable value of the policy to which he or she is entitled: and
- (b) deal with the remaining part of the realizable value of the policy in accordance 40 with section 52(2).

Part VIII

Offences and penalties

Offences by persons other than long-term insurers

66. (1) A person, other than a long-term insurer, who— 45
- (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(3), (4) or (5)(a)(i), 22(2) or 27(2):
- (b) contravenes or fails to comply with a provision of section 8(1)(a) or (b), 16(2), 23(1), 28(1), 44(1), 45, 47 or 49;
- (c) where a rule contemplated in section 62(2)(e) so provides, contravenes or fails to comply with a provision of any rule promulgated under section 62(5), to the 50 extent so provided; or
- (d) furnishes false information in relation to an application referred to in section 9(1) or an application for the approval of the Minister under a provision of this Act.
- shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or 55

to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

(2) A person, other than a long-term insurer, who contravenes or fails to comply with a provision of section 7(1)(a), 8(3), 26(1) or (2) or 50(4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R200 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment. 5

Offences by long-term insurers

67. (1) A long-term insurer which—

(a) contravenes or fails to comply with a provision of a notice, directive or requirement referred to in section 4(2), (3) or (4), 22(1) or (2), 27(1), 31(2), 35(1) or (2)(a) or 36(2); 10

(b) contravenes or fails to comply with a provision of section 7(I)(b), 8(2), 16(1), 17, 18, 23(1) or (2), 25(1), 29(3), 36(1), 44(1), 45, 48(1), 49, 54 or 55(1); or

(c) where a rule contemplated in section 62(2)(e) so provides, contravenes or fails to comply with a provision of any rule promulgated under section 62(5), to the extent so provided, 15

shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000.

(2) A long-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1)(a), 15(1) or (2), 19(1) or (3), 20(1), (3) or (4), 24, 26(1) or (2), 29(1), 30, 31(1), 34, 46 or 50(4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R200 000. 20

Penalty for failure to furnish Registrar with returns etc.

68. (1) A person who fails to furnish the Registrar with a return, information or document, as provided by this Act, within the prescribed or specified period or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding R 1000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof. 25

(2) A penalty contemplated in subsection (1) shall be imposed by notice by the Registrar on the person concerned, and such imposition shall be preceded by the procedures prescribed by the Minister to afford such person a reasonable opportunity to be heard, and shall take effect on a date specified in such notice of the Registrar which may be a date prior to the date of the notice. 30

(3) A penalty so imposed shall constitute a debt due to the Board and shall be recoverable by action by the Board in any court having jurisdiction. 35

Part IX

Transitional and general provisions

Transitional provisions

Continued registration of existing insurers 40

69. (1) A person who immediately prior to the commencement of this Act was registered in terms of the repealed Act, and was, by virtue of that registration, authorised to carry on long-term insurance business as defined in that Act, shall be deemed to be registered as a long-term insurer in terms of this Act and shall, subject to this Act, be authorised, in the case of a person who was so authorised to carry on the long-term insurance business of providing or undertaking to provide policy benefits in terms of— 45

(a) assistance policies;

(b) disability policies;

(c) fund policies;

- (d) health policies;
- (e) life policies; or
- (f) sinking fund policies,

to carry on that business subject, as if they were conditions contemplated in section 9(2)(a) of this Act, to the conditions which had been determined in respect of such person in relation to such person's registration to carry on that business in terms of the repealed Act. 5

(2) A person referred to in subsection (1) shall, within a period of six months after the commencement of this Act, make application to the Registrar in accordance with section 3(2) for the issuing to such person, as contemplated in section 9(2)(b), of a new certificate of registration in exchange for the certificate of registration issued to such person under the repealed Act. 10

(3) Upon receipt of an application in terms of subsection (2), the Registrar shall issue the new certificate of registration specifying the conditions referred to in subsection (1) as if they had been determined by him or her with the necessary changes in terms of section 9, and shall not thereupon vary any of those conditions, or determine a new condition, otherwise than in terms of section 11. 15

Certain existing insurers to cease short-term insurance business or to separate it from long-term insurance business

70. A person referred to in section 69(1), who was, by virtue of such person's registration under the repealed Act, authorised to carry on both long-term insurance business and short-term insurance business, other than reinsurance business only, as defined in that Act, shall, within a period of six months after the commencement of this Act, make arrangements satisfactory to the Registrar and in accordance with the appropriate provisions of the Short-term Insurance Act, 1997, as the case may be, which have the result— 20 25

- (a) that the long-term insurer ceases to carry on that short-term insurance business; and
- (b) that the long-term insurance business concerned is carried on by a long-term insurer and the short-term insurance business concerned is carried on by a short-term insurer. 30

General provisions

Special provisions concerning long-term insurers that are not public companies

71. (1) Notwithstanding anything to the contrary in any law contained, a long-term insurer which is not a public company shall be subject to section 36 of the Companies Act with the necessary changes as if it were a public company having a share capital. 35

(2) The provisions of this Act shall prevail over any provision of a law under which a long-term insurer contemplated in section 9(3)(a)(ii) is incorporated if that provision is inconsistent with this Act.

(3) The financial statements of a long-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with Generally Accepted Accounting Practice. 40

Amendment, substitution or repeal of Schedules

72. The Minister may, from time to time by notice in the *Gazette*, amend, substitute or repeal— 45

- (a) Schedule 1, in order to prescribe the kinds of assets which a long-term insurer may hold in relation to its long-term insurance business;
- (b) Schedule 2, in order to prescribe the prudential spreading of assets to be held by a long-term insurer in relation to its long-term insurance business;
- (c) Schedule 3, in order to prescribe the actuarial valuation basis of the assets and liabilities of a long-term insurer; 50
- (d) Schedule 4, in order to prescribe a financial soundness method of actuarial valuation of the assets and liabilities of a long-term insurer after consultation with the Actuarial Society of South Africa;
- (e) Schedule 5, in order to regulate the payment of commission and any other 55

- remuneration to insurance intermediaries in relation to the entering into of long-term insurance policies; and
- (f) Schedule 6, in order to demarcate between the business of long-term insurers and that of any other financial institution.

Repeal and amendment of laws

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73. Subject to section 74, the laws specified in Schedule 7 are hereby repealed or amended to the extent set out in the third column of that Schedule.

Savings

74. (1) Notwithstanding the partial repeal of the repealed Act by section 73, the provisions of—

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- (a) section 38, read with sections 38B, 52, 58 and 59 of that Act, shall continue to apply in relation to a policy contemplated in those sections and entered into during the period 1 April 1944 to 20 June 1978;
- (b) section 38A, read with sections 38B, 52, 58, 59 and 59A of that Act, shall continue to apply in relation to any policy contemplated in those sections and entered into during the period 21 June 1978 to the date immediately before the commencement of this Act;
- (c) section 62 of that Act shall continue to apply in relation to any industrial and funeral policy contemplated in that section;
- (d) the Second Schedule to that Act shall continue to apply to industrial and funeral policies.

(2) Anything done before the commencement of this Act under, in terms of or by virtue of a provision of the repealed Act by or in relation to persons registered in terms of that Act to carry on long-term insurance business as defined in that Act shall, in so far as it was done lawfully and unless it is clearly inappropriate, be deemed to have been done under, in terms of or by virtue of the corresponding provision of this Act.

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Interpretation of certain references in existing laws

75. Unless it would in a particular case be clearly inappropriate, a reference in a law in force immediately before the commencement of this Act—

- (a) to a domestic insurer or a registered insurer, shall be construed as a reference to a long-term insurer or a short-term insurer, as the case may be;
- (b) to a home service policy, a funeral policy or an industrial policy, shall be construed as a reference to an assistance policy;
- (c) to home service business, funeral business or industrial business, shall be construed as a reference to the business of providing policy benefits under assistance policies;
- (d) to insurance business as defined in the repealed Act, shall, in relation to a long-term insurer, be construed as a reference to long-term insurance business;
- (e) to a life policy, shall be construed as a reference to a life policy, a disability policy, a fund policy or a health policy, as the case may be;
- (f) to life business, shall be construed as a reference to the business of providing policy benefits under long-term policies other than assistance policies;
- (g) to a personal accident policy, shall, in relation to a long-term insurer, be construed as a reference to a disability or health policy;
- (h) to personal accident business, shall, in relation to a long-term insurer, be construed as a reference to the business of providing policy benefits under disability or health policies;
- (i) to a valuator, as defined in the repealed Act, shall be construed as a reference to a statutory actuary.

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Short title and commencement

76. This Act shall be called the Long-term Insurance Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

(Section 31)

Kinds of assets

Requirement for claim to be asset, and definitions

1. For the purposes of this Schedule and section 31 a claim qualifies as an asset in the Republic only if it is enforceable in accordance with the law of the Republic and is realizable in the Republic, and—

“contract for differences” means a contract the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of—

- (a) an asset;
- (b) income from such asset;
- (c) an index of such assets or the income therefrom;

“derivatives” mean—

- (a) an option contract as contemplated in the definition of “securities” in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- (b) a futures contract and an option contract as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989); and
- (c) a contract for differences;

“listed”, in relation to an asset referred to in item 16(5) of the Table to this Schedule, means that—

- (a) there has been granted and not withdrawn, a listing in respect of that asset on a stock exchange outside the Republic, and that transactions in the asset are effected regularly on that stock exchange: or

- (b) transactions in that asset are effected regularly on a regulated market;

“margin”, in relation to a stock exchange referred to in item 16(5)(a)(aa) of the Table to this Schedule, means the margin as defined in regulations issued or approved by the appropriate authority of the state in which the stock exchange is situated or which is required by that stock exchange;

“margin deposit” means a margin with SAFEX and a stock exchange referred to in item 16(5)(a)(aa) of the Table to this Schedule;

“margin with SAFEX” means the margin as defined in the rules of the South African Futures Exchange, referred to in section 17 of the Financial Markets Control Act, 1989;

“n.e.s.” means not elsewhere specified in this Schedule;

“regulated market” means a market situated outside the Republic which is characterised by—

- (a) regular operation; and
- (b) the fact that regulations are issued or approved by the appropriate authority of the state where the market is situated to determine conditions—
 - (i) for the operation of and access to the market; and
 - (ii) to be satisfied by a financial instrument in order for it to be effectively traded in the market;

“securities” include bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments of whatever nature;

“shares” include share stock.

Derivatives

2. An instrument shall be deemed not to be a derivative for the purposes of this Schedule unless—

- (a) it is based on an underlying asset of the kind set out in the Table to this Schedule or has the equivalent effect to such an instrument; and

- (b) in the case of—
- (i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterpart approved by the Registrar subject to such conditions as he or she may determine;
 - (ii) an instrument referred to in item 16(5)(d) of that Table, it is listed; or
 - (iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the Registrar subject to such conditions as he or she may determine.

Kinds of assets

3. The kinds of assets contemplated in section 31(1)(b), are those set out in the following Table:

Table

Item no.	Description of assets
1.	Bank notes and coins, including Krugerrand coins of all denominations, issued or caused to be issued in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).
2.	A credit balance in an account with, or a deposit, including a negotiable deposit or a bill, accepted by, an institution finally registered under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993).
3.	Public deposits with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
4.	Securities issued by, and loans made to, the Government of the Republic in terms of section 19 of the Exchequer Act, 1975 (Act No. 66 of 1975).
5.	Securities and loans guaranteed by a Minister of the Republic under section 35 of the Exchequer Act, 1975.
6.	Securities issued or guaranteed by, and loans made to or guaranteed by, a body, council or institution under the repealed Provincial Government Act, 1961 (Act No. 320f 1961).
7.	Securities issued by, and loans made to, the Local Authorities Loans Fund Board under the Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984).
8.	Securities issued or guaranteed by, and loans made to or guaranteed by, the Rand Water Board under the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950).
9.	Securities issued or guaranteed by, and loans made to or guaranteed by, Eskom under the Eskom Act, 1987 (Act No. 40 of 1987).
10.	Securities issued or guaranteed by, loans made to or guaranteed by, and deposits with, the Land and Agricultural Bank of South Africa under the Land Bank Act, 1944 (Act No. 13 of 1944).
11.	Securities issued or guaranteed, and loans raised or guaranteed, under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989).
12.	Securities and loans, n.e.s., which are— (a) issued by or made to a body corporate established by a law of the Republic; and (b) approved by the Registrar for the purposes of this Schedule generally by notice in the <i>Gazette</i> subject to the conditions determined by the Registrar and specified in the notice.
13.	Securities issued by— (a) the government of; (b) a local authority in; or (c) a body corporate established by a law of, a territory forming part of the Republic but which territory at any time before

- 27 April 1994 did not form part of the Republic, which securities have been approved by the Registrar for the purposes of this Schedule generally by notice in the *Gazette* and subject to the conditions determined by the Registrar and specified in the notice.
14. Immovable property in the Republic.
 15. Motor vehicles, furniture and office equipment, including computer equipment, used by the long-term insurer concerned in the course of its business in the Republic.
 16. (1) Shares and debentures issued by a company incorporated in the Republic.
 - (2) Shares, debentures and depository receipts which are—
 - (a) issued by an institution incorporated outside the Republic; and
 - (b) listed on a licensed stock exchange in the Republic.
 - (3) Linked units—
 - (a) in respect of institutions one or more of which is or are incorporated outside the Republic; and
 - (b) which are listed on a licensed stock exchange in the Republic.
 - (4) Loan stock listed on a licensed stock exchange in the Republic issued by a company incorporated in the Republic.
 - (5) (a) Listed—
 - (i) securities issued by a government of a country other than the Republic; or
 - (ii) securities and shares issued by an institution incorporated outside the Republic, in respect of which the Registrar has approved the—
 - (aa) stock exchange outside the Republic; or
 - (bb) country, other than the Republic, in which the regulated market concerned is situated,
 subject to the conditions determined by the Registrar.
 - (b) A credit balance in an account with, or a deposit, including a negotiable certificate of deposit or a bill, accepted by, an institution incorporated outside the Republic, in a country approved by the Registrar, which would have been a bank in terms of the Banks Act, 1990, if it were incorporated in the Republic.
 - (c) Units which are derived from or linked to one or more assets referred to in paragraphs (a) and (b).
 - (d) Derivatives and margin deposits on the assets referred to in paragraphs (a) and (b).
 17. Units in a unit trust scheme registered in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981).
 18. Derivatives and the margin deposit in the Republic.
 19. Claims secured—
 - (a) by mortgages over immovable property in the Republic; and
 - (b) solely by the policy benefits which are to be provided in the Republic by the long-term insurer in terms of a long-term policy.
 20. Other claims, n.e.s., against—
 - (a) a long-term insurer in terms of a long-term policy;
 - (b) a person in the Republic; and
 - (c) a body corporate which is not incorporated and registered in the Republic but which, in the opinion of the Registrar, carries on business in the Republic and which has been approved by the Registrar generally by notice in the *Gazette* and subject to the conditions determined by the Registrar and specified in the notice.

Schedule 2

(Section 31)

Limitation on assets

Definitions

1. For the purposes of this Schedule and section 31 and, unless the context otherwise indicates—

“asset-holding intermediary”, in relation to a long-term insurer, means an undertaking, other than a company the shares of which are listed on a licensed stock exchange in the Republic—

- (a) which is a subsidiary of the long-term insurer or would be its subsidiary if that insurer were a company;
- (b) the management of the investments of which is under the *de facto* control of the long-term insurer and
- (c) which has assets which are regarded and dealt with, for all intents and purposes, as if they were the assets of the long-term insurer;

“associated company” means a company—

- (a) which is an associate, as defined in section 26(5), of a long-term insurer;
- (b) which exercises control, as defined in section 26(6), over a long-term insurer;

or

(c) over which a long-term insurer exercises control as defined in section 26(6), other than a company which is an asset-holding intermediary or a property company;

“call option” means an option contract under which the holder of the option contract has the right but not an obligation, in accordance with the terms of the contract, to purchase (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the call option contract;

“convertible debenture” means a debenture which is convertible into equity shares of a company;

“equity shares” means equity shares as defined in section 1 of the Companies Act;

“linked policy” means a long-term policy in relation to which the liabilities of the long-term insurer are linked liabilities as defined in section 33(2);

“long position” means long position as defined in the rules of SAFEX;

“market value”, in relation to an asset, means—

- (a) in the case of an asset which is listed on a licensed stock exchange and for which a price was quoted on that stock exchange on the date as at which the value is calculated, the price last so quoted;
- (b) in the case of an asset which is a long-term policy, the amount which on any day would be payable to the policyholder upon the surrender of the policy on that day;
- (c) in any other case, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm’s length, as estimated by the long-term insurer, or by the Registrar if the Registrar is not satisfied with that estimate;

“multiple” means the futures contract’s unit of trading in its description;

“n.e.s.” means not elsewhere specified in this Schedule;

“net loans” means the positive amount (if any) by which the aggregate amount of loans made by a long-term insurer to its asset-holding intermediary, exceeds the aggregate amount of loans made to it by that asset-holding intermediary;

“property company” means a company—

- (a) whose ownership of—
 - (i) immovable property; or
 - (ii) all of the shares in a company—
 - (aa) whose principal business consists of the ownership of immovable property; or
 - (bb) which exercises control, as defined in section 26(6), over a company whose principal business consists of the ownership of immovable property; or
 - (iii) a linked policy, to the extent that the policy benefits thereunder are determined by reference to the value of immovable property, constitutes, in the aggregate, 50 per cent or more of the market value of its assets;

- (b) which derives 50 per cent or more of its income, in the aggregate, from—
- (i) investments in immovable property;
 - (ii) investments in another company which derives 50 per cent or more of its income from investments in immovable property; or
 - (iii) a linked policy to the extent that the policy benefits thereunder are determined by reference to the value of immovable property; or
- (c) which exercises control, as defined in section 26(6), over a company referred to in paragraph (a) or (b);

“put option” means an option contract under which the holder of the option contract has the right but not an obligation in accordance with the terms of the contract to sell (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the put option contract;

“rules of SAFEX” mean the rules of the South African Futures Exchange referred to in section 17 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

“shares” include share stock;

“short position” means short position as defined in the rules of SAFEX.

General limitation on assets

2. For the purposes of section 31(1), a long-term insurer shall have assets of the kinds specified in Schedule I having a market value which, when expressed as a percentage of the aggregate value of the relevant liabilities of the long-term insurer, does not exceed the percentage specified in column 2 of the Table to this Schedule in relation to the particular kinds or categories of assets specified in column 1 of that Table.

Assets of asset-holding intermediary

3. For the purposes of paragraph 2 the assets of the kinds set out in Schedule 1 of an asset-holding intermediary of a long-term insurer, other than a claim thereof against that long-term insurer, shall be deemed to be assets of the long-term insurer—

- (a) in place of the net loans made by it to the asset-holding intermediary, to the extent determined in accordance with the formula—

$$\frac{A}{B} \times C$$

- (b) in place of its shares, other than equity shares, in the asset-holding intermediary, to the extent determined in accordance with the formula—

$$\frac{A}{B} \times D$$

- (c) in place of its equity shares in the asset-holding intermediary, to the extent determined in accordance with the formula—

$$E \times \frac{F}{G}$$

in which formulae—

A represents the market value of each asset or kind or category of asset specified in column 1 of the Table to this Schedule of the asset-holding intermediary;

B represents the aggregate market value of all the assets of the asset-holding intermediary;

C represents the amount of any claim arising from any net loans to the asset-holding intermediary;

D represents the value of shares, other than equity shares, held by the long-term insurer in the asset-holding intermediary, plus or minus the amount to be apportioned to those shares by virtue of the excess or shortfall of the assets of the asset-holding intermediary over its liabilities;

- E represents A minus the sum of the amounts determined in accordance with the formulae referred to in paragraphs (a) and (b);
- F represents the value of the equity shares held by the long-term insurer in the asset-holding intermediary;
- G represents the aggregate value of all equity shares of the asset-holding intermediary.

Liabilities of asset-holding intermediary

4. For the purposes of paragraph 2, the liabilities of an asset-holding intermediary of a long-term insurer, other than a claim of the long-term insurer against that asset-holding intermediary, shall be deemed to be liabilities of the long-term insurer to the extent determined in accordance with the formula—

$$A \times \frac{B}{C}$$

in which formula—

- A represents the aggregate value of those liabilities, plus the value of those of the shares, other than equity shares, in the asset-holding intermediary concerned, which are not owned by the long-term insurer concerned;
- B represents the value of the equity shares held by the long-term insurer in the asset-holding intermediary;
- C represents the aggregate value of all equity shares of the asset-holding intermediary.

Deemed assets

5. For the purposes of paragraph 2, there shall be deemed as assets of a long-term insurer, or, where appropriate, its asset-holding intermediary, in place of the market value of an asset thereof which is a linked policy, those assets of the particular kinds or categories specified in Schedule 1 to the extent, in respect of each such particular kind or category, of an amount which bears the same proportion to the market value of the linked policy as each of those kinds or categories of assets by reference to the value of which the policy benefits are to be determined, is stated in terms of the policy (or, if not so stated, is estimated by the long-term insurer which is liable under the policy), bears to the total of all of the assets to which the policy is linked.

Futures contracts

6. (1) For the purposes of paragraph 2, a futures contract shall be deemed to be the asset or kind of asset to which the futures contract relates. The exposure in consequence of concluding a futures contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned, and the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of a purchased futures contract (long position) shall be added, while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced, and the exposure arising from the use of a sold futures contract (short position) deducted from the particular asset or category of assets whilst the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased.

(2) The balance of any margin deposit shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(b) of the Table to Schedule 1.

(3) For the purposes of this paragraph “exposure” means the number of contracts x multiple x current price, where the current price shall be the “mark-to-market” as defined in the rules of SAFEX on the reporting date.

Option contracts

7. (1) For the purposes of paragraph 2, an option contract shall be deemed to be the asset or kind of asset to which the option contract relates. The exposure in consequence of concluding an option contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned and the assets of the kind

specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of art option contract that results in a positive holding shall be added to the particular asset or category of assets while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule I shall be reduced. The exposure arising from the use of an option contract that results in a negative holding shall be deducted from the particular asset or category of assets, while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased. A positive holding constitutes a call option bought (long call) and a put option sold (short put), and a negative holding constitutes a call option sold (short call) and a put option bought (long put).

(2) The balance of any margin shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(d) of the Table to Schedule 1.

(3) For the purposes of this paragraph “exposure” means the number of contracts x delta x the market value of the underlying asset or kind of assets where “delta” represents the change in option contract premium associated with one percentage point move in the market price of the underlying asset.

Other derivatives

8. Any derivative in relation to which no basis for valuation has been provided in paragraph 6 or 7 shall be—

- (a) deemed to be the asset or kind of asset to which the derivative relates; and
- (b) valued as determined by the Registrar.

Table

(Paragraph 2)

Categories of assets

In this Table particular items or groups of items referred to in Schedule 1, or particular kinds of assets falling within the more general description of those categories in Schedule 1, are specified in column 1. The maximum permitted holding of those specified assets, calculated according to their market value and expressed as a percentage of the liabilities concerned, is specified in column 2.

Asset limitation number	Column 1 Relevant Schedule 1- item	Column 2 Percentage
01. 01.01	Ex item 1: Krugerrand coins — in the aggregate	10
02. 02.01 02.02	Ex items 2 and 18: In the aggregate in respect of arty one institution In the aggregate in respect of margin deposits held with SAFEX	20 2,5
03. 03.01	Item 3: In the aggregate	20
04. 04.01	Ex item 6: In the aggregate in respect of arty one body, council or institution	20
05. 05.01	Item 7: In the aggregate	20
06. 06.01	Item 8: In the aggregate	20
07. 07.01	Item 9: In the aggregate	20

Asset limitation number	Column 1 Relevant Schedule 1- item	Column 2 Percentage
08.	Item 10	
08.01	In the aggregate	20
09.	<i>Item 11:</i>	
09.01	In the aggregate	20
10.	Ex item 12:	
10.01	In the aggregate in respect of any one body corporate	20
11.	Item 13:	
11.01	In the aggregate	20
12.	Ex items 14, 16(1), (2), (3) and (4), 17, 19(a) and 20	
12.01	Immovable property, units in a unit trust scheme in property shares	
	loans or mortgage bonds to or shares or debentures or depository	
	receipts or linked units or loan stock issued by a property com-	
	pany; and linked policies linked thereto—	
12.01.01	In the aggregate	25
12.01.02	In the aggregate in respect of any one property or property deve-	
	lopment project or property company	5
13.	Ex item 15:	
13.01	Computer equipment — in the aggregate	5
13.02	Other assets — in the aggregate	2,5
14.	Ex items 16(1), (2), (3) and (4), 17 and 20(u):	
I 4.01	Shares, convertible debentures or depository receipts or linked	
	units or loan stock , issued by a body corporate, other than an asset-	
	holding intermediary, n.e.s. , and units in a unit trust scheme in se-	
	curities other than property shares; and linked policies linked	
	thereto—	
14.01.01	In the aggregate	75
14.01.02	In the aggregate of those which are not listed on a licensed stock	
	exchange or financial market in the Republic or are listed in the	
	Development Capital Sector of such an exchange or market	5
14.01.03	In the aggregate of those which are listed on a licensed steal ex-	
	change or financial market in the Republic, otherwise than in the	
	Development Capital Sector thereof, and which are issued by any	
	one body corporate which has a market capitalisation—	
14.01.03.01	not exceeding R2 000 million	10
14.01.03.02	exceeding R2 000 million	15
15.	Ex items 16(I) and (2), 19(a) and 20(b) and (c):	
15.01	Loans to, and claims against, or debentures, other than convertible	
	debentures, issued by, associated companies — in the aggregate	5
16.	Ex item 20(a):	
16.01	Claims under long-term policies other than linked policies—	
16.01.01	In the aggregate in respect of any one long-term insurer	20
17.	Ex items 16(I) and (2), 19(a) and 20(b) and (c):	

Asset limitation number	Column 1 Relevant Schedule 1- item	Column 2 Percentage
17.01	Claims against individuals, and claims against, loans to or debentures, other than convertible debentures. issued by, bodies corporate, n.e.s. —	
17.01.01	In the aggregate	25
17.01.02	In the aggregate in respect of any one individual	0,25
17.01.03	In the aggregate in respect of any one body corporate	5
18.	Ex item 16(5) :	
18.01	Securities, shares, credit balances, deposits, units, margin deposits -	
18.01.01	In the aggregate	10
18.01.02	Ex item [6(5)(b):	
18.01.02.01	In *e aggregate	10
18.01.03	Ex item 16(5)(d):	
18.01.03.01	In the aggregate in respect of margin deposits	2,5
18.01.04	Ex item 16(5)(d):	
18.01.04.01	In the aggregate	10
18.01.05	Ex item 16(5)(a)(ii) and (c):	
18.01.05.01	In the aggregate	10
18.01.05.02	In the aggregate in respect of those listed on a regulated market outside the Republic	5
18.01.05.03	In the aggregate in respect of those listed on a stock exchange outside the Republic	10
19.	Items 16(5)(d) and 18:	
19.01	In the aggregate in respect of margin deposits	2,5
20.	Ex items 14, 16(1), (2), (3), (4) and (5)(a)(ii) and (c) and 17:	
20.01	In the aggregate	90
21.	Ex items 14, 15, 16(1), (2), (3), (4) and (5)(a)(ii) and (c), 17, 19 and 20	
21.01	In the aggregate	95
21.02	In respect of any one asset not subjected elsewhere in this Table to a specific limitation	2,5

Schedule 3

(Sections 30 and 31)

Method of calculation of value of assets and liabilities

Part I

Valuation of assets

Definitions

1. For the purposes of this Schedule—
“linked policy” means a long-term policy of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined solely by reference to the value of particular assets or categories of assets which are specified in the policy and are actually held by or on behalf of the insurer specifically for the purpose of the policy;
“market-related policy” means a long-term policy, other than a linked policy, of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined in whole or in part by reference to the value of particular assets or categories of assets.

Amounts to be disregarded

2. For the purposes of the calculation of the value of assets contemplated in sections 30 and 31—

- (a) there shall be disregarded—
- (i) any amount of premium which is due and payable but unpaid, including a premium debited to an intermediary or a deferred installment of a premium;
 - (ii) an amount, other than a premium, which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;
 - (iii) an amount representing administrative, organisational or business extension expenses incurred directly or indirectly in the carrying on of long-term insurance business;
 - (iv) an amount representing goodwill or an item of a similar nature;
 - (v) an amount representing a negative liability or a reinsurance contract in terms of which the long-term insurer concerned is the policyholder; and
 - (vi) an amount representing a prepaid expense or a deferred expense; and
- (b) the value of the assets mentioned in paragraph 3, in which a reference to an item by number means a reference to the item of the Table to Schedule 1, shall be as specified in that paragraph.

Calculation of values

3. The value for the purposes of—

(a) section 31(1)(b) of—

- (i) a Krugerrand coin referred to in item 1, shall be the price which the South African Reserve Bank is prepared to pay for it on the date as at which its value is calculated;
- (ii) a credit balance, deposit or margin deposit referred to in items 2,3, 10, 16(5)(b) and (d) and 18, shall be an amount not exceeding the amount thereof;
- (iii) an asset referred to in items 4,5,6,7,8,9, IO, 11, 12,13 and lo, shall be an amount equal to—
 - (aa) the cost of acquiring the asset less the amount of interest which was due or had accrued at the date of acquisition and which was paid to the long-term insurer concerned after that date and the amount of commission or stamp duty which is included in that cost paid in respect of the acquisition; or
 - (bb) the capital amount repayable upon the redemption of the asset, whichever amount is the lesser or, if the Registrar so authorises, an amount arrived at in accordance with a method of annual adjustment approved by the Registrar;
- (iv) an asset referred to in item 16(1), (3), (4), (5)(a)(ii) and (c) which is listed on a stock exchange and for which a closing price was quoted on that stock exchange on the date as at which the value is determined, shall be the closing price, or the closing price last so quoted.
- (v) an asset referred to in items 16(5)(c) and 17, shall be the price at which the unit would have been repurchased by the unit trust management company on the date as at which the value is calculated, and in the case of a property unit trust, the market value;
- (vi) a futures contract referred to in items 16(5)(d) and 18, shall be determined by the mark-to-market as defined in the rules of SAFEX referred to in Schedule 2;
- (vii) an option contract referred to in items 16(5)(d) and 18 for which a price was quoted on a stock exchange on the date on which the value is calculated, shall be that quoted price;
- (viii) an asset referred to in item 19(b), shall be an amount not exceeding the lesser of—

- (aa) the amount which, had Schedule 6 not been applicable, would have been paid by the long-term insurer had the policy been fully surrendered on the date on which the value is calculated; or
 - (bb) the amount of the loan or advance, including any accumulated interest, less the amount of any unpaid commission for which the long-term insurer is or will be liable in respect of the policy;
- (ix) an asset referred to in item 14, 15, 16(1), (2), (5)(a)(ii), (b) or (c), 19(a) or 20, or an asset not otherwise specified in this paragraph, shall be—
- (aa) in the case of an asset which is interest-bearing and which is redeemable on a specified date or dates, an amount equal to the lesser of—
 - (A) the cost of acquiring the asset less the amount of interest accrued, or stamp duty or commission paid on its acquisition, which is included in that cost; or
 - (B) the capital amount repayable upon the redemption of the asset;
 - (bb) in any other case, an amount not exceeding that which could have been obtained on the sale of the asset in the country where the asset is situated between a willing seller and a willing buyer, acting at arm's length and in good faith, as estimated by the insurer;
- (x) an asset referred to in item 20(a), shall be the amount which would be payable to the policyholder on the full surrender of the policy on the day on which the value is calculated;
- (xi) a derivative not mentioned in subparagraph (vi) or (viii) shall be calculated as determined by the Registrar from time to time: and
- (b) section 30(1)(a) and (b) of—
- (i) assets of the kinds mentioned in the Table to Schedule 1; and
 - (ii) assets similar in nature to the kinds mentioned in the Table to Schedule 1, unless inappropriate,
- shall be calculated on the same basis as prescribed in subparagraph (a).

Savings

4. (1) Notwithstanding paragraphs 2 and 3—
- (a) assets held by or on behalf of a long-term insurer for the purposes of linked policies and market-related policies shall be valued at market value;
 - (b) if the Registrar is satisfied that the value of an asset, when calculated in accordance with paragraph 3, does not reflect a proper value, the Registrar may direct the insurer to appoint another person, at the cost of the insurer, to place a proper value on that asset or the Registrar may direct the long-term insurer to calculate the value in another manner which the Registrar determines and which will produce a proper value for that asset.
- (2) In the case of an asset—
- (a) in respect of which no basis of valuation is prescribed in paragraph 3(a); or
 - (b) referred to in paragraph 3(b)(ii) where the basis prescribed is inappropriate,
- the valuation shall be in accordance with Generally Accepted Accounting Practice.

Part 11

Valuation of liabilities

Definitions

5. In this Part, unless the context otherwise indicates—

“approved reinsurance policy” means—

(a) for the purposes of calculating the contingent liabilities of a long-term insurer under unmaturing long-term policies in terms of which the policy benefits are to be provided—

(i) in the Republic, any proportional reinsurance policy in terms of which the reinsurer is liable for the liabilities under unmaturing policies which remain in force until the contingent liability under unmaturing policies has expired, entered into by the long-term insurer with—

(aa) another long-term insurer registered to do long-term business of the same class, only if that reinsurance policy is also to be discharged in the Republic;

(bb) another insurer approved by the Registrar; or

(cc) any reinsurance effected prior to 1 January 1952, and relating to long-term policies issued before that date; or

(ii) outside the Republic, a reinsurance policy relating to the contingent liabilities concerned; or

(b) for the purposes of calculating the liabilities of a long-term insurer other than contingent liabilities under unmaturing long-term policies, any reinsurance;

“capitalised value” means the value capitalised on the relevant date and calculated having regard to the—

(a) mortality table specified in paragraph 7;

(b) morbidity table specified in paragraph 8; and

(c) assumed rates of interest specified in paragraph 9,

applicable to the policy concerned;

“date of calculation”, in relation to a policy, means the date as at which the contingent liability under the policy is determined;

“modified net premiums” means the net premiums which have been modified, in the case of a long-term policy other than a fund policy or a sinking fund policy, under which the long-term insurer undertakes to provide policy benefits upon the occurrence and solely for the reason of—

(a) a health event, a disability event or the event of the life of the life insured having ended, and under which the premium is payable in specified amounts throughout the period until that event occurs, by—

(i) calculating those net premiums as if that undertaking becomes operative a year later than it actually does; or

(ii) increasing those net premiums by an amount which, on the date that undertaking becomes operative, equals 1,5 per cent of the value of those policy benefits commuted over the whole of that period, whichever modification produces the higher contingent liability under the policy; or

(b) a health event, a disability event or the event of the life of the life insured having ended or having continued for a period, where the premium is payable in specified amounts throughout a particular period, by—

(i) calculating those net premiums as if that undertaking becomes operative a year later than it actually does and as if that particular period were reduced by one year; or

(ii) increasing those net premiums by an amount which, on the date that undertaking becomes operative, equals 1,5 per cent of the value of those policy benefits commuted over the whole of that particular period, whichever modification produces the higher contingent liability under the policy;

“net premiums” means premiums each of such an amount that, if all premiums payable under the life policy concerned had been net premiums, their value, capitalised on the date on which the liability of the long-term insurer under such life policy commenced, would have equalled the capitalised value of the policy benefits, excluding any bonus,

on the said date according to the contingencies upon which such policy benefits are payable, calculated as prescribed in this Schedule.

General requirements

6. (1) For the purposes of this Part a calculation of the liabilities of a long-term insurer shall be deemed to be a calculation on the minimum basis if the applicable requirements of this Schedule have been complied with in making the calculations.

(2) In calculating the contingent liabilities under unmaturing long-term policies referred to in sections 30(1) and 31, a long-term insurer may adopt any reasonable basis which it thinks fit, provided it places a proper value upon the contingent liabilities having regard to—

- (a) the rate of mortality among persons whose lives it has insured which has been experienced in the past and which it estimates will be experienced in the future;
- (b) the rate of morbidity experienced in the past and which is expected to be experienced in the future;
- (c) the average rate of investment return which it has earned in the past and which it estimates it will earn in the future in respect of such of its assets as relate to the long-term insurance business concerned; and
- (d) the expenses of the carrying on of the long-term insurance policy concerned, including commissions and other expenses incurred in connection with the receipt of applications for policies or the collection of premiums:

Provided that the contingent liabilities as determined by means of such calculations are not lower than they would have been had they been calculated on the minimum basis.

(3) Any estimate made by the long-term insurer in terms of subparagraph (2)(u), (b) or (c) shall be subject to revision by the Registrar.

(4) In the calculation on any basis of contingent liabilities under this Part—

- (a) no policy shall be treated as an asset; and
- (b) the capitalised value of any vested bonuses standing to the credit of the policyholder on the date of calculation, and the capitalised value of any reduction of premiums which has been granted as a bonus or which has been obtained by the surrender of a bonus or by the giving of any valuable consideration or in any other way, shall be included in the contingent liability of the long-term insurer under the policy concerned.

(5) Where a portion of a future premium is not contractually payable but can become payable at the option of a policyholder, such portion of a future premium and the benefits purchased thereby shall be disregarded, unless it will increase the liability of the long-term insurer under that policy.

Mortality tables

7. A contingent liability under an unmaturing long-term policy shall—

- (a) in the case of a life policy under which—
 - (i) the policy benefit to be provided is an annuity, be calculated—
 - (aa) in respect of the period before the annuity commences, in accordance with the ultimate mortality tables published by the Actuarial Society of South Africa in the publication titled “S.A. 1956-62 Tables for Assured Lives”; and
 - (bb) in respect of the period from the date on which the annuity commences, in accordance with the mortality tables published by the Institute of Actuaries of England and the Faculty of Actuaries of Scotland and titled “The a (55) Tables for Annuitants”; or
 - (ii) the policy benefit to be provided is another one than an annuity, be calculated in accordance with the ultimate mortality tables published by the Actuarial Society of South Africa in the publication titled “S.A. 1956-62 Tables for Assured Lives”;

- (b) in the case of an assistance policy, be calculated by using the mortality tables titled "English Life Table No. 8 (Males)";
- (c) in the case of disability and health policies, be calculated by using the mortality tables titled "S.A. 1956-62 Tables for Assured Lives" with an age reduction of 3 years;
- (d) in the case of any other long-term policies, where applicable, be calculated by using the mortality tables titled "S.A. 1956-62 Tables for Assured Lives"; or
- (e) in any other case, be calculated by using such other mortality tables as approved by the Registrar.

Morbidity tables

8. A contingent liability under an unmaturred long-term policy shall—
- (a) in the case of a disability policy providing long-term disability income benefits, be calculated in accordance with the morbidity tables titled the "1964 Commissioner's Disability Tables";
 - (b) in the case of health policies or disability policies other than the policies referred to in paragraph (a), be calculated in accordance with past experience in the Republic modified by expected future trends; or
 - (c) in any other case, be calculated in accordance with such other morbidity table as approved by the Registrar.

Rates of interest

9. The calculation of a contingent liability under this Schedule shall be based on a rate of interest per annum of—
- (a) 14 per cent in the case of a life policy under which an annuity is being paid;
 - (b) 10.5 per cent in the case of a disability or health policy under which policy benefits have become payable in more than one payment;
 - (c) 5 per cent in respect of any business, other than annuities being paid at the date of calculation, where any interest, dividends and rents attributable to such business do not attract tax; and
 - (d) 4,5 per cent in any other case.

Method of calculating contingent liabilities

10. For the purposes of the calculation of the contingent liability under an unmaturred long-term policy—
- (a) such liability shall, in the case where the premium or any portion of the premium paid by an individual or a group of persons insured thereunder is paid by the long-term insurer concerned into an investment account or is used by it to purchase units in an investment portfolio administered by it and another portion of such premium (if any) is utilised for insurance cover upon the death of such individual or a member of the group concerned, such liability shall be the gross value of the portion in such investment account or the units in such investment portfolio allocated to such long-term policy, plus an amount calculated in respect of such insurance cover (if any) with due regard to the difference between the amount payable upon the death of such individual or member and the projected value of such portion or unit on the date of such death: Provided that—
 - (i) the value of such portion shall be determined with due regard to, in the case of an investment account, any vested bonuses accrued from such portion to such individual or member or, in the case of an investment portfolio, the price at which such units may be sold;
 - (ii) no amount shall be deducted from the gross value of such portion or units in respect of future payments to be made from such investment portfolio, as the case may be;

- (iii) allowance shall be made in such calculations for initial expenses to be incurred by the long-term insurer concerned, which shall not exceed, in the case of any such long-term policy which provides for an annuity to be paid, 120 per cent of the maximum commission which may be paid to any intermediary in terms of section 49 in respect of such policies and, in the case of any other long-term policy, 120 per cent of the maximum commission which may be paid to any intermediary in terms of the said section 49 in respect of such policies; and
- (iv) such liability shall—
 - (aa) if any insurance cover is, in terms of the long-term policy concerned, an amount guaranteed by the long-term insurer concerned for the full period of the long-term policy concerned, in return for an undertaking by the life insured under such contract to pay a particular premium for such full period or until the occurrence of the death of such individual or member of the group concerned, be not less than the contingent liability which such long-term insurer would have incurred under a long-term policy in terms of which such long-term insurer undertook to pay such guaranteed amount in the event of the occurrence of the death of such person or member occurring during such full period of such long-term policy: and
 - (bb) if any insurance cover is, in terms of the long-term policy concerned, an amount guaranteed by the long-term insurer concerned for a period shorter than the full period of the long-term policy concerned, or if the long-term insurer concerned may, in terms of such long-term policy increase the premium during the period of such long-term policy, be not less than the contingent liability which such long-term insurer would have incurred if such long-term insurer undertook to pay such guaranteed amount in the event of the occurrence of the death of such person or member occurring during such shorter period or before the date on which the long-term insurer may increase the premium, as the case may be;
- (b) in the case of long-term policies, other than long-term policies referred to in paragraph (a) in terms of which, in return for an undertaking to pay a determined premium throughout the period of such policy, a long-term insurer undertakes to pay a sum of money on the occurrence of the death of any person or in the event of a person continuing to live throughout any period, excluding any such policy in terms of which such long-term insurer undertakes, in addition to any other amounts it undertakes to pay, to pay amounts as bonuses which are guaranteed by such long-term insurer—
 - (i) the liability under such policy, in addition to the capitalised value of any vested bonuses or reduction of premiums allowed by such long-term insurer, shall be deemed to be the difference between the capitalised value of the sum insured on the date as at which such liabilities are calculated, according to the contingencies upon which that sum is payable, and the capitalised value on the said date of all future premiums payable under such policy, as if each such premium was a modified net premium as defined in paragraph 5; and
 - (ii) the said calculation shall be based on the exact age, on the date of commencement of the insurance period in terms of the policy, of each person whose life is insured in terms of the policy and on the exact age

- of such person on the date as at which such liabilities are calculated, and on an exact determination of all relevant periods; or
- (iii) the calculation shall be based with reference to all the persons whose lives are insured under such policies, on such ages and periods mentioned in subparagraph (ii) as will produce a result which approximates in the aggregate the result which would have been obtained by means of a calculation made in accordance with that subparagraph;
- (c) the contingent liability in the case of any other long-term policy shall be calculated by reference to the contingencies on which the policy benefits are to be provided and as nearly as is practicable in accordance with this paragraph and paragraph 4, 5, 6, 7 or 8, as the case may be.

Minimum value of contingent liability under long-term insurance policies

11. Any contingent liability of a long-term insurer under any one **unmatured** long-term insurance policy shall not be less than the policy benefit to be provided by the long-term insurer in terms of the policy if the policyholder on the date as at which such contingent liability is calculated, exercised any right which he or she may have in terms of such policy to cancel the policy and to receive payment of any policy benefit which becomes payable or is to be provided in the event of such a cancellation.

Calculation of security reserve for disability and health policies

12. (1) The aggregate contingent liabilities calculated in accordance with this Part in respect of disability policies and health policies shall be increased by a reserve the amount of which shall be—

- (a) in the case of a policy in terms of which the **long-term** insurer may adjust the premiums at intervals of three years or less, 30 per cent; or
- (b) in any other case, 50 per cent,

of the aggregate of the premiums payable in the period of 12 months ending on the date of the valuation, under all those policies.

(2) The aggregate security reserve in respect of disability and health policies shall not be less than the amount of R1,5 million, irrespective of the value determined in accordance with subparagraph (1).

Additional reserves

13. (1) An AIDS reserve, which is appropriate in the opinion of the statutory actuary, shall be created.

(2) A mismatching reserve shall be created, which is appropriate in the opinion of the statutory actuary, in relation to all policy benefits the amount of which is payable in a particular currency and in respect of which the assets are held in a different currency.

Reduction of contingent liabilities

14. The contingent liabilities under **unmatured** policies of a long-term insurer calculated in accordance with this Part shall be **reduced**—

- (a) by the contingent liabilities covered by approved **reinsurance** contracts; and
- (b) in respect of each policy, by the amount of a premium which has not been received by the insurer after deducting therefrom any commission and any **reinsurance** premium payable in respect thereof.

Valuation of other liabilities

15. (1) For the purposes of the methods of valuation referred to in sections 30 and 31, the value of the liabilities of a long-term insurer, other than its contingent liabilities under **unmatured** policies, shall be determined in accordance with Generally Accepted Accounting Practice.

(2) Notwithstanding subparagraph (1), any liability of a long-term insurer in respect of which its creditor has waived any right to have the obligation discharged until all obligations to other creditors have been discharged in full, shall be valued in a manner and for an amount determined by the long-term insurer and approved by the Registrar.

Schedule 4

(Section 30)

Financial soundness method of calculation of value of assets and liabilities

Financial soundness method

1. The value of assets and liabilities referred to in section 30(1)(a) and (b) shall be deemed to have been calculated by the financial soundness method if the applicable requirements of this Schedule and the guidelines issued by the Actuarial Society of South Africa in concurrence with the Registrar, have been complied with in making the calculations.

Amounts to be disregarded

2. For the purposes of the calculation of the value of assets by the financial soundness method, there shall be disregarded—

- (a) an amount of premium which is due and payable but unpaid, including a premium debited to an intermediary or a deferred installment of a premium;
- (b) an amount, other than a premium, which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;
- (c) an amount representing administrative, organisational or business extension expenses incurred directly or indirectly in the carrying on of long-term insurance business;
- (d) an amount representing goodwill or an item of a similar nature;
- (e) an amount representing a negative liability or a reinsurance contract in terms of which the long-term insurer concerned is the policyholder; and
- (f) an amount representing a prepaid expense or a deferred expense.

Calculation subject to certain provisions

3. For the purposes of the calculation of the value of contingent liabilities by means of the financial soundness method—

- (a) no long-term policy shall be treated as an asset;
- (b) where the valuation of net liabilities under **unmatured** policies is done on the assumption that premiums are payable annually in advance, an appropriate deduction in respect of deferred installments of premiums must be made, and the same assumption must apply as regards expenses;
- (c) where a portion of a future premium is not contractually payable but can become payable at the option of the policyholder, such portion of a future premium and the benefits purchased thereby shall be disregarded, unless it causes an increase in the net liability, in which case it shall be valued; and
- (d) no allowance shall be made for potential profits to be earned from long-term insurance policies which the **long-term** insurer may enter into in future.

Only certain assets to be valued

4. For the purposes of the calculation of the value of assets referred to in section 30(1) only such assets actually held by the long-term insurer or those approved by the Registrar in terms of section 34(1)(a) and (b), may be taken into account.

AIDS reserve

5. An AIDS reserve, which in the opinion of the statutory actuary is appropriate, must be created, to provide for a possible deterioration of current mortality and morbidity experience as a result of AIDS.

Effect of reinsurance

6. The contingent liabilities under unmaturing policies shall be net of contingent liabilities covered by approved reinsurance contracts as defined in Part II of Schedule 3.

Valuation of other liabilities

7. The liabilities of a long-term insurer, other than its contingent liabilities under long-term policies, shall be determined in accordance with Generally Accepted Accounting Practice.

Schedule 5

(Section 49)

Limitation on remuneration to intermediaries

Definitions

1. In this Schedule, 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 $\frac{12}{m}$ 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;

“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—

(au) 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 the 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 Schedule 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;

“representative” means a person—

(a) employed or engaged by a long-term insurer for the purpose of rendering services as intermediary in relation only to policies entered into or to be entered into by that insurer, or entered into by another insurer which is a subsidiary or holding company of that insurer; and

(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 Schedule, as determined by the Registrar,

but excludes such a person in respect of whom the Registrar has made a determination under paragraph 2(5);

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

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

“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 Schedule;
- “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

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 Schedule 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 paragraph 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. (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

4. (1) No 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 first premium period, calculated as if the premium 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 1.1, 2.1, 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 $\frac{12}{100}$ of the aggregate commission on the annualised premium as provided for in #tale 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

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 paragraph 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 Schedule 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 paragraph 4(I)(b) to be payable shall be recalculated in accordance with this Schedule 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 subparagraph (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 paragraph 4(2) to be payable, shall be recalculated in accordance with this Schedule in relation to the total amount of primary commission as reduced in accordance with item (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 subparagraph (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 a fund policy or a fund member 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 Schedule shall be recalculated by reference to the following 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 "	29,17	" "
8 "	33,33	" "
9 "	37,5	" "
10 "	41,67	" "
11 "	45,83	" "
12 "	50	" "
13 "	54,17	8,3
14 "	58,33	16,7
15 "	62,5	25
16 "	66,67	33,3
17 "	70,83	41,7
18 "	75	50
19 "	79,17	58,3
20 "	83,33	66,7
21 "	87,5	75
22 "	91,67	83,3
23 "	95,83	91,7
24 "	100	100

- (ii) in the case of a fund member policy which funds a retirement annuity fund, for any reason refunded by the long-term insurer, or 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 five

premium periods in the case of a policy referred to in item 2.1 of the Table, the commission payable in terms of this Schedule shall be recalculated by reference to the following 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 with an equivalent value to annual premiums received for—	Column A Percentage of maximum primary commission payable	Column B Percentage of maximum secondary commission payable
0--11 months	nil	not applicable
12—23 “	20	nil
24 - 35 “	40	25
36 - 47 “	60	50
48—59 “	80	75
More than 60 months	100	100

(iii) in the case of any policy not mentioned in item (i) or (ii), 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) Items (i), (ii) and (iii) of subsubparagraph (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

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 Schedule 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

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 Schedule 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

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

Annexure 1

Table

ITEM No.	KIND OF POLICY AND BENEFIT COMPONENT	MAXIMUM PERCENTAGE			NOTES	
		SINGLE PREMIUM POLICY	MULTIPLE PREMIUM POLICY		UP-FRONT PAYMENT: PAR. 3(b)(i) APPLICABLE	SECONDARY COMMISSION: PAR. 2(4)(b) APPLICABLE
	BASIC PERCENTAGE		LIMIT I.T.O. PROVISIO TO PAR. 4(1)(b)			
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 to					
2.1.2.1	a fund chosen by the member	1.5	not applicable	not applicable	NO	NO
2.1.2.2	a fund not chosen by the member	nil			NO	NO
2.2	not funding a retirement annuity fund	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		NO	NO
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					

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	R
7,5		110 000
5,0	110 000	190 000
3,0	190 000	410 000
2,0	410 000	1 200 000
1,0	1 200 000	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.

Schedule 6

(Section 54)

Limitation on provisions of certain policies

Definitions

1. In this Schedule—

“excess premium” means a premium which is received by, or which becomes due to, a long-term insurer during a premium period, and which—

- (a) by itself exceeds;
 (b) when aggregated with all premiums already received, and still to be received, during that premium period, exceeds; or
 (c) is the first of increased recurrent premiums which, if it had been received by the long-term insurer at that increased rate during that premium period, would have caused the total value of the premiums received by the long-term insurer during that premium period to exceed,

by a rate of more than 20 per cent, the higher of the total value of the premiums received by the long-term insurer during any one of the two premium periods immediately preceding that premium period: Provided that if a premium is increased during the second premium period, the percentage increase shall be determined in relation to the first premium period only;

“extended restriction period” means a restriction period—

- (a) which has not expired;
 (b) which includes every earlier restriction period any part of which runs concurrently with it; and
 (c) the commencement date of which, from time to time, is the commencement date of the earliest restriction period which runs concurrently with it;

“free surrender value” means the value of the consideration which the long-term insurer would provide if the policy is surrendered on the day preceding the date of commencement of an extended restriction period;

“fund member policy” means a long-term policy other than a fund policy—

- (a) of which a fund is the sole policyholder;
- (b) under which a specified member of the fund (or the surviving spouse, child, dependant or nominee of the member) is the life insured;
- (c) which is entered into by the fund for the purpose of exclusively funding the fund’s liability to that member (or the surviving spouse, children, dependants or nominees of the member) in terms of the rules of the fund: and
- (d) if the fund holding the policy is a fund contemplated in paragraph (c) of the definition of “benefit fund” in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), only in so far as provision is made therein for unemployment benefits;

“linked benefit” means a policy benefit, the value of which is not guaranteed by the long-term insurer and is determined solely by reference to the value of particular assets or particular categories of assets which are specified in the policy and which are actually held by or on behalf of the long-term insurer specifically for the purpose of the policy;

“policy” means a long-term policy, whether entered into before or after the commencement of this Act, excluding—

- (a) a reinsurance policy;
- (b) a fund policy; or
- (c) a fund member policy, for as long as no right under the policy is transferred by the fund to a life insured under the policy, or is transferred to any person except another fund for the direct or indirect benefit of a life insured under the policy;

“policy benefit” means one or more sums of money, services or other benefits, including an annuity, but excluding a loan in respect of a policy or consideration upon the surrender of a policy;

“premium” means the premium which is stipulated in the policy, or otherwise agreed upon between the parties to the policy, to be provided to the long-term insurer, including any part of a premium;

“premium period” means one of a succession of periods, each of 12 months’ duration, the first of which begins on, and ends 12 months after, the first day of the month in which the first premium, or any part thereof, is received by the long-term insurer or, if it is a later date, the first day of the month in which the undertaking of the long-term insurer to provide policy benefits under the policy, becomes operative;

“restricted amount” means an amount equal to—

- (a) the aggregate of the free surrender value, and the total value of the premiums received by the long-term insurer during the extended restriction period concerned, plus interest on the free surrender value and each premium at the rate of 5 per cent per annum compounded annually; less
- (b) the aggregate of all payments already made by the long-term insurer in respect of the policy, whether as a policy benefit (other than a policy benefit referred to in subparagraph (2) of paragraph 2) or upon the surrender of any part of the policy, during the extended restriction period concerned, plus interest on each payment at 5 per cent per annum compounded annually;

“restriction period” means a period of 5 years which commences, if the date concerned is 1 January 1994 or later—

- (a) on the date when the first premium period begins; or
- (b) during a premium period after the first such period, on the first day of the month in which an excess premium is received by the insurer.

Limitations on policies

2. (1) Subject to subparagraphs (2), (3), (4) and (5), a long-term insurer, and any person who acts as intermediary between a long-term insurer and any person in respect of a policy or proposal for a policy, shall not undertake to provide, or provide—

- (a) a policy benefit under a policy during an extended restriction period:

- (b) upon the full or partial surrender of a policy during an extended restriction period—
 - (i) if the policy has previously been partially surrendered during the extended restriction period concerned, any further consideration; or
 - (ii) if the policy has not been previously partially surrendered during the extended restriction period concerned, any consideration the value of which exceeds the restricted amount less the capital (excluding capitalised interest) of a loan already provided in respect of the policy during that extended restriction period: Provided that where the policy is fully surrendered and the full value of the consideration to be provided thereupon exceeds the amount thus determined by not more than R2 500 the full consideration may be provided;
 - (c) a loan under or on security of a policy during an extended restriction period—
 - (i) if such a loan has previously been provided in respect of the policy during the extended restriction period concerned; or
 - (ii) if such a loan has not previously been provided in respect of the policy during the extended restriction period concerned, the amount of which exceeds the restricted amount: or
 - (d) directly or indirectly, by means of one or more policies, during an extended restriction period, any benefit (whether as policy benefits or loans in respect of policies or consideration upon the surrender of policies, or any combination thereof) which achieves substantially the result that is achieved by an annuity, but which is not, and is not expressly stipulated in the policy or policies to be, an annuity.
- (2) Subparagraph (1)(a) shall not apply to a policy benefit which is to be provided and is provided under the policy 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.
- (3) Subparagraph (1)(a) shall not apply to a policy benefit which is an annuity-
- (a) the payments of which are to be made, and are made, at intervals not exceeding 12 months;
 - (b) at least one of the payments of which is to be made and, except due to the prior death of the life insured, is made, within 31 days before the expiry of the extended restriction period concerned; and
 - (c) the total amount of the payments of which in any period of 12 months does not differ, by a rate of more than 20 per cent. from the total amount of the payments thereof in the immediately preceding period of 12 months, except in the case of an annuity—
 - (i) which constitutes a linked benefit, where the difference, during the period concerned, results solely from the determination of the value of the relevant assets;
 - (ii) payable in terms of a policy with two or more policyholders or lives insured and where the difference results solely from a reduction in the annuity payable during the period concerned consequent upon the death of one of those policyholders or lives insured; or
 - (iii) where the difference results solely from a reduction in the annuity payable during the period concerned consequent upon the surrender of a part of the policy.
- (4) Subparagraph (1) shall not apply in the event of—
- (a) the death, placement under curatorship or sequestration of the estate of a policyholder who is a natural person; or
 - (b) the winding-up, liquidation, placement under curatorship or judicial management, by an order of Court, of a policyholder which is a juristic person.

(5) Subparagraph (1)(c) and (d) shall not apply to a premium advance made under non-forfeiture provisions in a policy.

General exclusion

3. This Schedule shall not apply in respect of anything done, before or after the commencement of this Schedule, in relation to a policy entered into before the commencement of this Schedule if, from a date prior to 1 March 1993, the policy expressly provided, in writing, for it to be done.

Schedule 7

(Section 73)

Repeal and amendment of laws

Act no. and year	Short title	Extent of repeal
27 of 1943	Insurance Act, 1943	The whole, excluding section 60(1)(f)
19 of 1945	Insurance (Amendment) Act, 1945	The whole
730f 1951	Insurance (Amendment) Act, 1951	The whole
24 of 1956	Pension Funds Act, 1956	Section 39
25 of 1956	Friendly Societies Act, 1956	Section 50
79 of 1959	Insurance Amendment Act, 1959	The whole
10 of 1965	Insurance Amendment Act, 1965	The whole
41 of 1966	Insurance Amendment Act, 1966	The whole
65 of 1968	Financial Institutions Amendment Act, 1968	Sections 1 to 3, inclusive
39 of 1969	Insurance Amendment Act, 1969	The whole
23 of 1970	Financial Institutions Amendment Act, 1970	Section 1
75 of 1970	Second Financial Institutions Amendment Act, 1970	Section 1
91 of 1972	Financial Institutions Amendment Act, 1972	Sections 1 to 4, inclusive
101 of 1976	Financial Institutions Amendment Act, 1976	Sections 1 to 15, inclusive
94 of 1977	Financial Institutions Amendment Act, 1977	Sections 1 to 8, inclusive
80 of 1978	Financial Institutions Amendment Act, 1978	Sections 1 to 6, inclusive
103 of 1979	Financial Institutions Amendment Act, 1979	Sections 1 to 12, inclusive
99 of 1980	Financial Institutions Amendment Act, 1980	Sections 1 to 22, inclusive
360f 1981	Financial Institutions Amendment Act, 1981	Sections 1 to 4, inclusive
82 of 1982	Financial Institutions Amendment Act, 1982	Sections 1 to 2, inclusive
46 of 1984	Corporation for Public Deposits Act, 1984	Section 20
86 of 1984	Financial Institutions Amendment Act, 1984	Sections 1 to 11, inclusive
106 of 1985	Financial Institutions Amendment Act, 1985	Sections 1 to 9, inclusive
50 of 1986	Financial Institutions Amendment Act, 1986	Sections 1 to 8, inclusive
51 of 1988	Financial Institutions Amendment Act, 1988	Sections 1 to 2, inclusive
54 of 1989	Financial Institutions Second Amendment Act, 1989	Sections 1 to 19, inclusive
64 of 1990	Financial Institutions Amendment Act, 1990	Sections 1 to 8, inclusive
54 of 1991	Financial Institutions Amendment Act, 1991	Section 1
119 of 1991	Financial Institutions Second Amendment Act, 1991	Section 1
41 of 1992	Financial Services Board Amendment Act, 1992	The reference to the Insurance Act, 1943, in the Schedule
83 of 1992	Financial Institutions Amendment Act, 1992	Sections 1 to 13, inclusive
7 of 1993	Financial Institutions Amendment Act, 1993	Section 1
104 of 1993	Financial Institutions Second Amendment Act, 1993	Sections 1 to 20, inclusive
113 of 1993	Income Tax Amendment Act, 1993	Sections 63 to 66, inclusive
140 of 1993	Revenue Laws Amendment Act, 1993	Section 1
54 of 1996	Insurance Amendment Act, 1996	The whole
31 of 1997	Insurance Amendment Act, 1997	The whole

MEMORANDUM ON THE OBJECTS OF THE LONG-TERM INSURANCE BILL

1. INTRODUCTION

The Bill proposes the repeal of the Insurance Act, 1943 (Act No. 27 of 1943), (the "current Act") in terms of which the insurance industry is regulated and supervised in the Republic and the simultaneous promulgation of a Long-term Insurance Act, to partially replace it. The rest of the current Act is being replaced by the Short-term Insurance Bill introduced together with this Bill.

2. BACKGROUND

The following is a short background of the Bill's introduction.

2.1 The need for a new insurance enactment

The reasons for rewriting the current Act are set out below:

- 2.1.1 The current Act dates back to 1943. This brings forth the following problems:
 - 2.1.1.1 The long-term insurance industry has continually undergone major and significant changes since the current Act became effective. This necessitated continual amendments to the current Act to remain abreast of the changes. Over time these amendments resulted in:
 - an unsystematic enactment with similar topics dealt with in different areas of the current Act;
 - the current Act becoming progressively more difficult to interpret;
 - the current Act very often being outdated in relation to the practical realities applying in the industry, particularly in relation to products;
 - the current Act failing to clearly regulate expanded and ancillary activities of long-term insurers, leaving those activities unsupervised and unregulated; and
 - outmoded nomenclature and terminology being used in the current Act.
 - 2.1.2 Politicoeconomic changes in the relationship pattern between large businesses and individual consumers require that consumer protection measures had to be altered and, in most cases, expanded.
 - 2.1.3 The current Act contains a number of provisions which are obsolete and no longer find application, having been overtaken by legal and social developments. Examples thereof are the changes relating to military service and the abolition of marital power *over* married women. In fact, section 44 of the current Act was recently declared unconstitutional by the Constitutional Court as it violated the rights of married women.
 - 2.1.4 The developments surrounding bank and long-term insurance business demarcation, following the repeal of the 6th Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), and the resultant transfer of demarcation supervision from the Commissioner for Inland Revenue to the Financial Services Board, requires that a more flexible approach be adopted which is not feasible under the current Act.
 - 2.1.5 Changes in regulatory policy and its underlying approaches require an expanded and different legislative base which cannot be sustained by the current Act. Examples thereof are:
 - 2.1.5.1 Disclosure of salient information on products and their costs.
 - 2.1.5.2 "Fit and proper" testing of the executive management of long-term insurers.
 - 2.1.5.3 A more functional approach to supervision as opposed to the current institutional approach.
 - 2.1.6 Expected future trends in the industry, following on a post sanctions and more internationalised environment, require that legislative provision be made for meaningful supervision thereof and the disciplines subject to which it is to take place.
 - 2.1.7 Recent practical experience in the event of insurance failures have highlighted

a number of shortcomings in the current Act, most notably in the following areas:

- 2.1.7.1 The limited ability of the Registrar to *intervene* significantly and actively when failure is apparent but not yet imminent.
- 2.1.7.2 The limited number of options at the disposal of the Registrar if he or she were to *intervene*.
- 2.1.7.3 The rigidity of the framework within which the Registrar has to function and the lack of capacity which he *or* she has to adopt a flexible approach or apply his or her judgment when action is necessary.
- 2.1.8 Because of definitional uncertainty in the current Act concerning the business areas of long-term insurers and short-term insurers, respectively, they have progressively encroached on each other's traditional markets. This underscores the need for better demarcation between the industries and also the need to have two separate Acts.
- 2.1.9 It has been necessary to amend the current Act from time to time to cater for industry specific needs. If those amendments related to the general provisions in the current Act, it has always been problematical to amend the general provision in relation to one industry whilst retaining the *status quo* in relation to the other. That also required the splitting of the current Act into two industry specific Bills, i.e. one for life insurance and one for non-life insurance.

2.2 Guiding principles in drafting the Bill

The following principles were considered important in drafting the Bill and were adhered to as far as possible:

- 2.2.1 The Bill was designed to be free-standing and complete as far as possible, so as to reduce the need to refer to extraneous sources for information.
- 2.2.2 There was a consistent endeavour to produce a more "user friendly" Bill. The language and content have been simplified to ease interpretation and to promote clarity.
- 2.2.3 The provisions of the current Act were reconsidered as to their purpose and significance and, **unless necessary, they were** deleted or reformulated.
- 2.2.4 A deliberate attempt was made to create regulatory flexibility by providing the Registrar with circumscribed discretionary power, without creating uncertainty as to the legal position where the discretion is not exercised.
- 2.2.5 Whenever the powers of the Registrar are extended to increase his or her ability to act swiftly and decisively, sufficient new checks and balances were introduced to protect fundamental rights.
- 2.2.6 Due to the costs associated with complying with regulation, there was an endeavour not to impose any new or more costly regulatory requirements than the ones currently in force, unless absolutely necessary. Wherever unnecessary costs resulted from regulation under the current Act, those are being removed.
- 2.2.7 It was accepted that the regulatory dispensation, if too strict, could implicitly preserve vested interests by raising the threshold of entry into the industries significantly. Consequently provision is being made to allow lower thresholds for new entrants without sacrificing regulatory standards.
- 2.2.8 Competitive neutrality is being preserved between the long-term and short-term insurance industries as well as between individual insurers and care is being taken not to create systemic benefits in any particular direction.
- 2.2.9 Industry involvement and input was obtained on an extensive basis in an inclusive process so as to ensure widespread industry acceptance and subsequent compliance.
- 2.2.10 The role of the professions in the industries and the reliance placed on them by the supervisor are significantly redefined, with the professions assuming

increased responsibility to promote corporate governance and internal discipline.

- 2.2.11 The common law principles of insurance are disturbed as little as possible, so as to preserve the basis on which the industry and its clients have obtained their present interest in the financial sector.

2.3 Summary of major changes in the Bill

The following is a short overview of fundamental changes that are proposed by the Bill. The instances where new approaches are proposed in relation to existing issues are dealt with separately later in the memorandum.

2.3.1 Definitions

The Bill provides for major changes to the definitions applying in the current Act. The definitions are being significantly rewritten. In particular, 6 classes of long-term business are being defined as opposed to the 3 classes of the current Act. That is necessary to follow product development in the industry and to delineate more clearly between long-term and short-term insurance. It also allows for more detailed and specific reporting and supervision.

2.3.2 Part I

Part I deals with the administration of the Act and creates the office of Registrar and its general powers. This section has been changed by granting more specific powers to the Registrar and the provision of statutory access to Court by the Registrar, which will enable him or her to act, particularly to enforce the legislation by way of civil court action. An Advisory Committee is established and its general functioning is provided for. Certain procedural changes in the way which the Registrar interacts with the industries, are also proposed.

2.3.3 Part II

This Part deals with the registration of long-term insurers. A number of new provisions are found here, such as deeming provisions to facilitate action against unregistered concerns and to create a presumption which domiciles insurance obligations for regulatory purposes. It also contains a range of new provisions in relation to the conditions subject to which registration may take place, allowing greater flexibility and adding remedies at the disposal of the Registrar where conditions are not adhered to.

2.3.4 Part 111

Part 111 is a significant departure from the current Act in that it proposes to empower the Registrar to regulate ancillary business activities of long-term insurers where such activities may pose a risk to insurance assets. Those provisions also confer the power on the Registrar to continuously delineate between the business areas of the two insurance industries to prevent further encroachment on each other's markets. It regulates, in an extended manner, the auditing and actuarial professions' involvement in long-term insurers and formally imposes audit committee discipline on insurers. Take-overs of and share acquisition in long-term insurers are regulated here and a number of new provisions whereby long-term insurers are precluded from introducing certain kinds of capital into their capital structures are proposed here. The Registrar is allowed to apply "fit and proper" testing to the executive management of long-term insurers and to remove persons not suitable.

2.3.5 Part IV

In this Part the financial arrangements of long-term insurers are set out. Although the fundamental principles of the current Act are retained, the ways in which long-term insurers are to be tested for financial soundness are to be different, as solvency should be demonstrated nationally as well as internationally, and the latter is becoming more important. The new tests are more comprehensive and focused. A significant new feature

is the facility whereby the Registrar may enforce remedial action to assist a potentially ailing insurer in the early stages, whereas the current Act prescribes drastic action. The need for such provisions has been demonstrated empirically in the recent past.

2.3.6 Parts V and VI

In these Parts provision is made for the winding up of long-term insurers, judicial management, as well as the procedures for amalgamation and transfer of business. They remain substantively the same as in the current Act with certain improvements.

2.3.7 Part VII

This is a significant new Part in that it creates various consumer protection measures. The majority of such measures in the current Act are retained, sometimes reformulated and improved. The first major change is an obligation to provide a summary of policy provisions at an early stage. The second is the establishment of a mechanism whereby business practice rules with the force of subordinate legislation may be formulated by the Minister with the assistance of the Registrar and Advisory Committee, to deal quickly and focused with malpractice that occur in particular areas, following a transparent procedure.

2.3.8 Part VIII

In this Part the criminal offences to be enacted by the Bill are set out as well as the penalties attaching thereto.

2.3.9 Part IX

This Part sets out the transitional provisions necessary to effect the practical implementation of the Bill.

2.3.10 Schedule 1

This Schedule proposes the kinds of assets that may be held by a long-term insurer. No major changes are proposed to the current Act's provisions thereon.

2.3.11 Schedule 2

This Schedule sets out the way in which assets held by long-term insurers are to be spread amongst the kinds of approved assets referred to in Schedule 1. The proposals are substantially the same as the current Act's provisions.

2.3.12 Schedule 3

Schedule 3 contains the prescribed basis of actuarial valuation of the assets and liabilities of long-term insurers. It follows the current Act and has been changed to some degree, so as to make it more appropriate.

2.3.13 Schedule 4

This Schedule proposes the financial soundness basis of actuarially valuing the assets and liabilities of long-term insurers. This is not contained in the current Act but is imposed on the industry presently by way of a RV Circular. Its inclusion in the Bill is therefore new but its content is fundamentally the same as at present.

2.3.14 Schedule 5

This Schedule sets out the maximum commission that may be paid by long-term insurers to intermediaries and is substantially the same as in the current Act. It has been totally reformulated so as to prevent certain present malpractice and to be clearer and more user friendly.

2.3.15 Schedule 6

This Schedule proposes to delimit the investment products (for terms in excess of 5 years) that long-term insurers may market, particularly in relation to banks. It is the successor to section 59D in the current Act and is identical in substance other than in relation to style and a number of technical adjustments required.

2.3.16 Schedule 7

This Schedule lists the laws that have to be repealed in part or in full upon enactment of the Bill and is of a technical nature.

3. DIFFERENCES IN APPROACH TO ISSUES BETWEEN THE CURRENT ACT AND THE BILL

Hereinafter it is attempted to shortly indicate where different principles were adopted in the approach to existing issues in the Bill. It follows a system whereby the principle of the provision of the *current* Act is stated (paragraph (a)), followed by the principle proposed in the Bill (paragraph (b)) and a short explanation of the reason therefor (paragraph (c)).

3.1 General principles

The following are general principles followed in drafting the Bill.

3.1.1 Industry definitional anomalies

(a) *Current position*

The present definitions enabled progressive encroachment by the long-term and short-term insurance industries on each other's traditional markets, and resulted in the incorrect application of statutory mechanisms to place products on the market.

(b) *New approach*

Definitions have been reformulated so as to enable both industries to do what they are presently doing in practice, even if it means direct competition in the same markets.

(c) *Reason*

It is not possible to extract the industries from markets where they have developed vested interests, thereby removing any possible reversion to historically prevailing demarcation. Instead they will have access to common markets but further encroachment will be stopped.

3.1.2 Conditional registration

(a) *Current position*

The Registrar's power to determine conditions subject to which registration of long-term insurers is granted is questionable and uncertain.

(b) *New approach*

Explicit provision is made to determine conditions subject to which new long-term insurers may be registered and which shall function as a specific regulatory mechanism on an individual and focused basis.

(c) *Reason*

Regulatory difficulties are experienced when specialist long-term insurers are registered and in relation to the determining of limiting conditions so as to enable lower capitalisation levels and the control of specific risk areas.

3.1.3 Variation of conditions of registration

(a) *Current position*

Conditional registration is questionable in law and where it does happen, changes to the conditions are problematical.

(b) *New approach*

Circumstances under which the conditions may be changed subsequent to registration are set out and the Registrar is enabled to act swiftly and lawfully if required.

(c) *Reason*

The proposal follows from the need to be able to restrict or amend the contractual capacity of a long-term insurer given proper cause, with a clear legal basis and a clear procedure.

3.1.4 Insuring the human foetus

(a) *Current position*

No mention is made of insuring a foetus and as a result of the current legal status of a foetus, it is uncertain if insurance may be effected in relation to it.

(b) *New approach*

Explicit provision is proposed for insuring a foetus and a deeming provision is introduced whereby a foetus “lives” for the purposes of insurance contracts.

(c) *Reason*

This will settle the legal issue surrounding the insurance of a foetus, particularly significant in relation to medical advances in the treatment in *utero* of a foetus. The legal status of a foetus is not otherwise affected thereby.

3.1.5 Power to enforce the Act by court order

(a) *Current position*

The Registrar is only clearly given access to court as litigant, for the purposes of judicial management and liquidation. The Registrar’s power to litigate is dubious in relation to other matters.

(b) *New approach*

The Registrar will be able to litigate in a number of instances, particularly in relation to the enforcement of the Act, by obtaining orders against recalcitrant persons. For example, if the Registrar prohibits a misleading advert and the person concerned carries on with it, the remedy is a Court order. An unregistered person may be sequestered to the benefit of its policyholders.

(c) *Reason*

It is a speedy remedy, the cost of enforcement is primarily transferred to the transgressor and the need for inappropriate criminal sanction as coercive methodology is removed in part.

3.1.6 Deeming provision of carrying on insurance business

(a) *Current position*

Whether or not a person is carrying on insurance business in the Republic is a factual question. That places a heavy burden of proof on the Registrar particularly when fragmentation of activities takes place.

(b) *New approach*

The performance of any one of a number of acts may create *prima facie* proof that insurance business is being conducted.

(c) *Reason*

The *prima facie* proof facilitates the domiciliation of an entity for the purposes of registration and also legal action against unregistered persons.

3.1.7 “Fit and proper” testing

(a) *Current position*

The identity, skills and integrity of the executive management are solely at the discretion of the shareholders.

(b) *New approach*

The executive management, including directors, have to demonstrate whether they are fit and proper at the time of application for registration and may be removed by the Registrar if no longer fit and proper, subject to appeal.

(c) *Reason*

The need to be able to insist on appropriate skills and integrity in management is internationally recognised and the right to remove improper management at any time after registration is required to prevent subsequent problems.

3.1.8 Limitation on business

(a) *Current position*

There is no provision in terms of which long-term insurers are to restrict their business to insurance business only.

(b) New approach

Long-term insurers retain their current contractual capacity but the Registrar is enabled to identify activities and prescribe that certain types of activities, which are not desirable to be conducted by insurers, may not be conducted and that they should be conducted elsewhere, for instance by a subsidiary. It will also enable the Registrar to prevent encroachment by the long-term and short-term insurance industries on each other's markets.

(c) Reason

The rationale stems from the carrying on of non-insurance related risks into an insurer, accounting for such risks, formulating returns for those activities and problems relating to supervising the risk management associated therewith. Demarcation between the industries will also remain an ongoing issue.

3.1.9 Auditor

(a) Current position

The auditor is only required to report in relation to limited irregularities that an audit may produce.

(b) New approach

The auditor's responsibilities are extended to report more widely in relation to irregularities, and the auditor is indemnified if and when that is done, on a basis similar to the one in the Banks Act, 1990 (Act No. 94 of 1990).

(c) Reason

The need to enable the auditor to report on irregularities is underscored by recent experience. The extension of that responsibility must be introduced by law and requires an indemnity if compliance is to be expected.

3.1.10 Audit committee

(a) Current position

No audit committee is required for a long-term insurer by law, the matter being regulated by RV Circular.

(b) New approach

The audit committee is legally defined and imposed on long-term insurers, with a discretion to the Registrar to exempt smaller insurers.

(c) Reason

The need to formalise and enforce audit committee discipline legally on long-term insurers is generally accepted.

3.1.11 Financial soundness

(a) Current position

Financial soundness is equated with solvency and upon insolvency strict and severe consequences follow.

(b) New approach

Financial unsoundness is extended to include, for instance, poorly spread assets. Remedies at the disposal of the Registrar become more varied and flexible, ranging from the prohibition to issue new policies, changes to conditions of registration as well as a business plan of action to remedy a problematical situation.

(c) Reason

The need to extend the concept of what is financially unsound, stems from practical experience, as does the need to have varied and more appropriate remedies at the disposal of the Registrar.

3.1.12 Undesirable business practice

(a) Current position

Presently included but subject to a long and cumbersome procedure before a practice is declared undesirable.

(b) New approach

A practice will be undesirable upon so being declared by the Registrar after consultation with the Advisory Committee and with the consent of the Minister,

whereafter the procedure to confirm the declaration then follows on essentially the same terms as before.

(c) *Reason*

That will enable the Registrar to immediately put a stop to the practice concerned without undue delay, and still guarantee sufficient procedural safeguards to the affected parties.

3.1.13 Consumer protection (in relation to business practice)

(a) *Current position*

Currently **there** is very little to overtly protect consumers against predatory business practices which plague the industry from time to time.

(b) *New approach*

The Advisory Committee will be actively engaged in the formulation of business practice rules with the force of subordinate legislation, aimed at consumer protection.

(c) *Reason*

The need for focused, flexible and speedy corrective measures in the event of unacceptable practices has been demonstrated on numerous occasions. This mechanism is proposed to fulfil that need and will involve a more balanced solution to the issues than when only the Registrar and industry are involved.

3.1.14 Derivative instruments

(a) *Current position*

Derivative instruments did not exist when the current Act was passed and were never intended as investment assets, and uncertainty prevails as to their status.

(b) *New approach*

Derivative instruments are to be allowed as insurance assets under defined conditions relating to their nature and purpose and the markets where they are traded.

(c) *Reason*

Due to the high risk associated with speculative transactions and their ability to expose insurers to undue risk, they have to be regulated with care. This position is in keeping with international practice on derivatives.

3.1.15 Formality in communication

(a) *Current position*

No formal requirements are determined for communication between the Registrar and the industry.

(b) *New approach*

It is proposed that requests or applications to the Registrar to make a decision must be in writing and decisions made by the Registrar have to be in writing for either to be valid.

(c) *Reason*

This requirement facilitates free and open oral communication, but compels writing for binding decisions and establishes a proper record of matters *in* relation to appeals to the Appeal Board.

3.1.16 Prohibition to carry on business

(a) *Current position*

The Registrar may prohibit a long-term insurer from doing business under circumstances associated with its solvency and where it carries on business in conflict with the current Act.

(b) *New approach*

The Registrar is enabled to do so under extended circumstances associated with other reasons, such as dishonesty, failure to comply with a lawful instruction or failure to comply with the provisions of the Bill. A formal procedure is prescribed.

(c) *Reason*

The proposal follows from the need to be able to prohibit the insurer from

continuing to assume liabilities under policies where it may not be able to meet same, with a clear legal basis and a clear procedure.

3.1.17 Types of shares

(a) *Current position*

The current Act is vague as to preference shares, debentures, and their variations, as well as the ability of long-term insurers to use same as capital instruments.

(b) *New approach*

The issuing or conversion of those instruments is to be prohibited without the Registrar's consent, which may be conditional.

(c) *Reason*

The nature of those instruments are very close, if not identical, to debt, the taking up of which is generally prohibited by long-term insurers. The Bill proposes to clarify the position without ruling the instruments totally inapplicable.

3.1.18 Nominee shareholders

(a) *Current position*

No restriction on nominee shareholders.

(b) *New approach*

Long-term insurers are to be prohibited from registering shares in the name of nominees, subject to certain exceptions and the approval of the Registrar.

(c) *Reason*

Nominee share holding makes enforcement of restriction on shareholding very difficult.

3.1.19 Control and shareholding

(a) *Current position*

Change in control requires the Registrar's consent. Acquisition of more than 257. shares requires similar consent.

(b) *New approach*

The same position will essentially apply although conditionality and graded acquisition may be required. Control is defined anew and an obligation to furnish information concerning shareholders is imposed whilst the registration of shares contrary to the Bill is to be penalised.

(c) *Reason*

The proposed regime follows from needs identified in practical experience.

3.1.20 Invalidity of certain provisions

(a) *Current position*

No explicit provisions as to invalidity of contractual terms.

(b) *New approach*

A number of terms biased against policyholders, and which may have unfair consequences in relation to the conclusion of the contract, are to be invalidated.

(c) *Reason*

The proposals will restore a balance between the parties to the extent that the issues are to be determined on the basis of the actual facts of the transaction.

3.1.21 Prohibition on intermediaries to place business with unregistered insurer

(a) *Current position*

The current Act prohibits any person from inducing a proposed policyholder to enter into an insurance contract with an unregistered insurer.

(b) *New approach*

A person rendering services as an independent intermediary in relation to a reinsurance policy, is now to be excluded from the above prohibition unless the Minister decides otherwise. Foreign reinsurers conducting business in South Africa will, however, have to register in terms of the Bill.

(c) Reason

Due to the limited reinsurance capacity currently available in the Republic and the distinction being drawn by supervisors internationally between reinsurance and direct business, it is considered appropriate to enable foreign reinsurers a more transparent way of accepting risks emanating from the Republic, but only through an independent intermediary.

3.2 Specific principles

The following are specific principles followed in drafting the Bill.

3.2.1 Classes of business

(a) Current position

Only three classes of business exist, resulting in convoluted interpretation and simulation to conduct certain types of business.

(b) New approach

Six classes of business are proposed by which recognition is given to what is happening in reality and which will enable proper reporting and regulation.

(c) Reason

By clearly defining the new classes, the industry is able to conduct certain components of its business openly, specialist insurers can be established, further encroachment on other markets is prevented and focused regulation is made possible.

3.2.2 Dividends

(a) Current position

A long-term insurer may not pay dividends if insolvent or if payment will cause it to become insolvent.

(b) New approach

The above is retained but the actuary will be required to certify that it is financially sound to pay the dividend concerned.

(c) Reason

Enforcing actuarial involvement of the dividend declaration limits the powers of the directors and limits the possibility that shareholders may be advantaged at the expense of policyholders.

3.2.3 Financial soundness

(a) Current position

There is only a statutory prescribed basis for valuating an insurer's solvency, with the financial soundness method being imposed by way of RV Circular.

(b) New approach

The statutory basis is retained but the financial soundness basis is to be imposed on insurers by law.

(c) Reason

The financial soundness basis is presumed to be the basis that will be relied on more in future and its legal status therefore requires confirmation.

3.2.4 Policy to be actuarially sound

(a) Current position

Only a positive obligation is imposed to ensure that products and premiums are financially sound, and not that bonus declarations are sound.

(b) New approach

The actuary is to be required to certify that a policy, including the premium, is actuarially sound, and that the bonus declaration is sound.

(c) Reason

The positive duty ensures that the actuary applies his or her mind regularly to the pricing of products and their profitability, and that the directors' ability to declare bonuses is subject to actuarial veto.

3.2.5 Summary of policy

(a) *Current position*

No obligation exists to give details of policy contract before actual delivery to policyholder.

(b) *New approach*

Insurer is to be obliged to state underwriting criteria, benefits and premium in a written summary within set time period.

(c) *Reason*

Here is a problem area in that policyholders do not always understand the nature of the transaction. This is aimed at providing essential information and to rectify incorrect information that may void a claim.

3.2.6 Military service

(a) *Current position*

Extensive protection of benefits when military service is performed by a policyholder.

(b) *New approach*

Protection is scaled down to a more equitable arrangement.

(c) *Reason*

The principle of extending such protection is not considered valid and it could confer competitive advantages on the industry.

3.2.7 Protection of policies on insolvency

(a) *Current position*

Protection is granted subject to a maximum amount and with special benefits in relation to married women.

(b) *New approach*

Policy protection will be scaled down and gender differentiation will be eliminated.

(c) *Reason*

Undue protection gives the industry a competitive advantage in relation to other industries and women are legally emancipated removing the need for special provisions. (Section 44 of current Act already declared unconstitutional.)

4. CONSULTATION ON THE BILL

The process followed in drafting the Bill was an inclusive one, and the draft was circulated as widely as possible. A list of interested parties to whom the draft Bill was circulated the first time is attached as Annexure A. A press release was issued simultaneously. A circulation list for the second circulation is attached as Annexure B. A press release was issued, notifying all interested parties of the draft Bill and inviting their comments. The process leading up to the drafting of the Bill commenced about 11 years ago when the first draft of the Bill was produced and circulated in 1986. Subsequently discussions and a round of negotiations were entered into with the industry. That resulted in a set of principles being agreed on with the industry in 1990. Those principles were embodied in a draft Bill in 1992. That draft drew severe industry criticism, resulting in a joint FSB and industry committee being formed to draft a new draft Bill. That draft Bill was circulated in 1993. The same committee thereafter processed the comments received and produced the present draft. That draft was circulated for final comment in 1995.

5. COMMENTS RECEIVED

In all cases where the draft Bill was circulated, comments were received from interested parties and, where possible, incorporated in the Bill. Due to the voluminous nature of the Bill, it is not possible to provide details thereon. Although a number of matters may not be to the full satisfaction of some parties involved, broad consensus was achieved on the substance and principles of the Bill, and it is not possible or desirable to appease everybody concerned.

6. POLICY BOARD FOR FINANCIAL SERVICES AND REGULATION

The draft Bill was circulated to the Policy Board for Financial Services and Regulation, and approved.

7. CONSTITUTION

The Financial Services Board and the State Law Adviser are of the view that the procedure set out in Section 75 of the Constitution, 1996, should be followed with regard to this Bill.

ANNEXURE A

A A Life Assurance Ass Ltd	ABSA Life Limited	ACA Insurers Ltd
African Life Ass Co Ltd	African Peoples' Org Bur Soc	Anchor Life Ass Co Ltd
Bourne Brothers Ins (Pty) L[d	Brummers Funeral Ins Co Ltd	Cape of Good Hope Ass Ltd
Charter Life Ins Co Ltd	CU Life Ass Co of SA Ltd	Crusader Life Ass Corp Ltd
Fedlife Ass Ltd	Gerling Global Re Co Ltd	Goodall & Co Funeral Soc Ltd
Grobbelaar Versekeringssmpy	Haven Life Ass Co Ltd	Hollandia Life Re Co Ltd
HTG Lewens Beperk	IGI Life Ass Co Ltd	Cologne Reinsurance Co of SA Ltd
Liberty Life Ass Ltd	Mercantile & General Re Co	Metropolitan Life Ltd
Sanlam	Munich Re Co of SA Ltd	Ginsburg MaJan Aktuarisse (Eiendoms) Bpk
Graaff's Trust		Swiss-SA Reinsurance Co Ltd
		Dr A S Jacobs Special Economic Advisor
Quest Insurance Advisory Service (Pty) Ltd	S A Reinsurance Offices Ass	public Accountants' and Auditors' Board
SACOB	The Ass of Law Societies	National African Federated Chamber of Commerce
The Registrar of Companies	Cover Magazine	S A Insurance Brokers Ass
S A Reserve Bank	Insurance Brokers Council of South Africa	Prof G L Marx Faculty of Economic and Management Sciences University of Pretoria
Vhae	Black Brokers Association	Actuarial Society of SA
Momentum Health Ltd	Momentum Lewensvers Bpk	
NBS Insurance Co Ltd	New Era Life Ins Co Ltd	Norwich Life SA Ltd
Onderlinge AVBOB	Protea Ass Co Ltd	Rentmeester Versekeraars
RMA Life Ass Co Ltd	Rogers Ins Co (pry) Ltd	Saambou Lewensvers Bpk
Safrican Ass Ltd	Sage Life Ltd	Sentry Ass of SA Ltd
Old Mutual	SA Trade Union Ass Soc Ltd	SA Polisie Versekeringfonds
Southern Life Ass Ltd	Standard General Ins Co	Universal Ass Co Ltd
South African Co-ordinating Consumer Council	Time Life Ins Ltd	Life Offices' Association of SA
SA Law Commission	SA Insurance Ass	The SA Institute of Chartered Accountants

The Registrar of Deposit-Taking Institutions	The Master of the Supreme Court	National Black Consumers Ass
General Representative in SA for Lloyd's of London	Afrikaans Handelsinstituut	African National Congress
Pan Africanist Congress of Azania	Life Underwriters Ass	SA Ass of Consulting Actuaries
Institute of Retirement Funds of SA	Inkatha Freedom Party	S A Society of Consulting Actuaries
Commissioner for Inland Revenue		

ANNEXURE B

Old Mutual	Ombudsman for Long-term Insurance	SA Law Commission
Afrikaans Handelsinstituut	Lavanya Dunray	Ombudsman for Short-term Insurance
The Council of SA Bankers	Prosperity Insurance Co	Prof MFB Reinecke, RAU
Prof G L Marx Faculty of Economic and Management Sciences University of Pretoria	Prof J P van Niekerk Dept Handelsreg Regs fakulteit: UNISA	SA Insurance Brokers Association
S A Reinsurance Offices Ass	South African Co-ordinating Consumer Council	The Registrar of Financial Institutions
SA Reserve Bank	Black Brokers Association	Consulting Actuaries Society of Southern Africa
The Registrar of Companies	The Registrar of Banks	The Commissioner for Inland Revenue
The Ass of Law Societies	Life Underwriters Ass	The SA Institute of Chartered Accountants
Quest Insurance Advisory Service (Pty) Ltd	Public Accountants' and Auditors' Board	National Black Consumers Ass
SACOB	Life Offices' Ass of SA	General Representative in SA for Lloyd's of London
Institute of Retirement Funds of SA	Insurance Brokers Council of SA	The Master of the Supreme Court
Actuarial Society of SA	SA Insurance Association	ABSA Life Limited
National African Federated Chamber of Commerce	A A Life Assurance Ass Ltd	African Peoples' Org Bur Soc
ACA Insurers Ltd	African Life Ass Co Ltd	AVBOB Lewens
Anchor Life Ass Co Ltd	Assupol	Brummers Funeral Ins Co Ltd
Bonlife	Boume Brothers Ins (Pty) Ltd	Crusader Life Ass Corp Ltd
Cape of Good Hope Ass Ltd	Charter Life Ins Co Ltd	Gerling Global Re Co Ltd
CU Life Ass Co of SA Ltd	Fedlife Ass Ltd	Hollandia Life Re Co Ltd
Goodall and Co Funeral Soc Ltd	Grobbelaar Versekeringsmpy	IGI Life Ass Co Ltd
Hollard Ins	HTG Lewens Beperk	Mercantile and General Re Co

Cologne Reinsurance Co of SA Ltd	Liberty Life Ass Ltd	Momentum Health Ltd
Metropolitan Life Ltd	Momentum Lewensvers Bpk	New Era
Munich Re Co of SA Ltd	NBS Life	Regent Life
Norwich Life	Protea Life	Rogers Ins Co (Pty) Ltd
Rentmeester Versekerers	RMA Life	Saambou Lewensvers Bpk
SA Mutual	SA Trade Union Ass Soc Ltd	Sanlam
SAFLIFE	Sage Life	Standard General Ins Co
Sentry Ass of SA Ltd	Southern Life Ass Ltd	Universal Ass Co Ltd
Swiss-SA Reinsurance Co Ltd	Time Life Ins Ltd	