

REPUBLIC OF SOUTH AFRICA

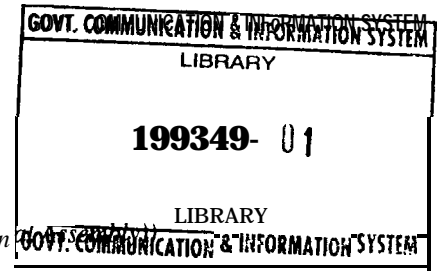
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PORTFOLIO COMMITTEE AMENDMENTS  
TO  
**LONG-TERM INSURANCE BILL**

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(As agreed to by the *Portfolio Committee on Finance (National Assembly)*)

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[B 78A—97]

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REPUBLIEK VAN SUID-AFRIKA

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PORTEFEULJEKOMITEE-AMENDEMENTE  
OP  
**LANGTERMYNVERSEKERINGS-  
WETSONTWERP**

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(Soos goedgekeur deur die *Portefeuljekomitee oor Finansies (Nasionale Vergadering)*)

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[B 78A—97]

ISBN 0621284556

## **AMENDMENTS AGREED TO**

### LONG-TERM INSURANCE BILL [B 78-97]

#### CLAUSE 1

1. On page 10, in line 11, after “event” to insert:
  - , but excluding any contract—
  - (a) of which the contemplated policy benefits—
    - (i) are something other than a stated sum of money;
    - (ii) are to be provided upon a person having incurred, and to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and
    - (iii) are to be provided to any provider of a health service in return for the provision of such service; or
  - (b) (i) of which the policyholder is a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967);
  - (ii) which relates to a particular member of the scheme or to the beneficiaries of such member; and
  - (iii) which is entered into by the scheme to fund in whole or in part its liability to such member or beneficiaries in terms of its rules
2. On page 10, after line 52, to insert the following definition:
  - (xxxix) “regulation” means a regulation under section 72; (xxxiii)
3. On page 12, in line 8, to omit “this Act” and to substitute “entering into a long-term policy”.

#### CLAUSE 4

1. On page 16, in line 14, after “Act” to insert “or”.
2. On page 16, in line 22, to omit “Schedule 6” and to substitute “the regulations”.

#### CLAUSE 6

1. On page 16, to omit all the words in line 40.

#### CLAUSE 8

1. On page 20, in line 8, to omit the second “or”.
2. On page 20, in line 8, after “ ‘assure’ “ to insert “or ‘underwrite’ “.

## CLAUSE 12

1. On page 24, in line 20, to omit “that inadmissible” and to substitute “such”.

## CLAUSE 13

1. In the Afrikaans text, on page 27, in line 1, after “registrasie” to insert “om aldus te doen, ”.

## CLAUSE 21

1. On page 32, in line 42, to omit “and”.

## CLAUSE 25

1. On page 36, after line 18, to insert the following paragraph:

(d) to or in the name of a person acting as a depository institution by virtue of an authorisation under section 2 of the Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992), or of a company contemplated in section 12(1)(s)(i) of the Stock Exchanges Control Act, 1985: Provided that the person or member concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;

## CLAUSE 30

1. On page 40, in line 37, to omit “3” and to substitute “2”.
2. On page 40, in line 38, to omit “4” and to substitute “3”.

## CLAUSE 31

1. On page 40, in line 52, to omit “Schedule 2“ and to substitute “the regulations”.
2. On page 42, in line 2, to omit “3” and to substitute “2”.
3. On page 42, in line 4, to omit “Schedule 2“ and to substitute “the regulations”.
4. On page 42, in line 6, to omit “Schedule 2“ and to substitute “the regulations”.
5. On page 42, in line 9, to omit “30(1)” and to substitute “29(3)”.

## CLAUSE 32

1. On page 42, after line 45, to add the following subsections:

(2) It' the assets which a long-term insurer holds in respect of its long-term insurance business in any of its policyholder funds include shares in its holding company—

- (a) such shares shall, 'for' the purposes of section 39(2) of the Companies Act, be deemed to be held by the long-term insurer in a representative capacity or as a trustee for the sole benefit of the owners of the policies for which the policyholder fund concerned exists, whether the holding company is incorporated in the Republic or not;
- (b) such shares shall only be held by the long-term insurer with the prior approval of the Registrar and subject to such conditions as the Registrar may determine; and
- (c) the long-term insurer shall not have the right to vote at meetings of the holding company or at meetings of any class of members thereof.

(3) For the purposes of subsection (2) "policyholder fund" means a fund referred to in paragraph (a), (b) or (c) of section 29(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

## CLAUSE 34

1. On page 44, in line 7, to omit "money" and to substitute "any asset"
2. On page 44, in line 20, to omit "and" and to substitute "or"

## CLAUSE 37

1. On page 46, in line 15, after "effected," to insert:

or by which a long-term insurer which is not a company having a share capital is to be converted into a public company having a share capital,

## CLAUSE 38

1. On page 48, after line 2, to add the following subsections:

(2) A long-term insurer may propose, conclude or give effect to any transaction or combination of transactions contemplated in section 37(1) notwithstanding anything provided or not provided in the law, memorandum or other document under which any party to the transaction or transactions concerned is constituted or in the articles of association or other rules of any such party.

(3) If a long-term insurer which is not a company having a share capital applies to the Court for approval of a transaction or combination of transactions in terms of a scheme which proposes or is in connection with its demutualisation, such scheme may include, and the Court may approve the following matters, namely—

- (a) the allotment, issue or transfer to any person by any party to such scheme of shares in the long-term insurer or in a company which is to become the holding company of any such party, whether in substitution for membership of the long-term insurer or otherwise;

- (b) the cessation of membership of the long-term insurer;
- (c) the date on which such scheme takes effect, which date may be a date before or after the date of approval by the Court.

#### CLAUSE 40

1. On page 48, after line 29, to add the following:

(b) The exemption from the payment of any duty, tax, registration fee or charge contemplated in paragraph (a) shall only apply in the case of a transaction resulting from-

- (i) a transfer of business compelled by law; or
- (ii) the initiative or at the direction of the Registrar under section 35.

(4) A long-term insurer which is converted into a public company in accordance with this Part shall continue its corporate existence in the form of a public company incorporated under the Companies Act, and the Registrar of Companies shall register its memorandum and articles of association in accordance with section 63 of the Companies Act.

#### CLAUSE 44

1. On page 52, in line 32, to omit all the words after “of” up to and including “contract” in line 33, and to substitute:

protecting the interests of a creditor

#### CLAUSE 47

1. On page 54, after line 41, to add the following subsections:

(2) The receipt shall state the name, address and telephone number of the recipient, the policy number and the name of the long-term insurer on whose behalf the premium is received.

(3) For the purposes of the validity of a long-term policy the payment of a premium under the long-term policy to a person on behalf of the long-term insurer shall be deemed to be payment to the long-term insurer under that long-term policy.

#### CLAUSE 48

1. On page 56, in line 6, to omit “not be deemed to be”.
2. On page 56, in line 7, after “(a)” to insert “not be deemed to be”.
3. On page 56, in line 7, to omit “or”.
4. On page 56, in line 8, after “(b)” to insert:
 

in the absence of evidence to the contrary, be deemed to be
5. On page 56, in line 8, to omit “, or are regarded by the insurer as.”.
6. On page 56, in lines 10 and 11, to omit “, against payment of a fee not exceeding that which may be prescribed by the Registrar.”.

CLAUSE 49

1. On page 56, in line 14, to omit “any person” and to substitute:  
a long-term insurer or a person on behalf of the long-term insurer
2. On page 56, in line 16, to omit “Schedule 5” and to substitute “the regulations”.
3. On page 56, in line 16, to omit “that Schedule” and to substitute “the regulations”.
4. On page 56, in line 17, to omit “that Schedule” and to substitute “the regulations”.

CLAUSE 50

1. On page 56, in line 26, to omit the first “to” and to substitute “with”.

CLAUSE 52

1. On page 58, in line 13, after “date,” to insert:  
the long-term insurer shall notify the policyholder of the non-payment,  
and

CLAUSE 54

1. On page 60, in line 1, to omit “Schedule 6” and to substitute “the regulations”.
2. On page 60, in line 2, to omit “that Schedule” and to substitute “the regulations”.

CLAUSE 57

1. On page 60, in lines 47 and 48, to omit “provisions of Schedule 6 to this Act not been enacted” and to substitute “regulations not been made”.

CLAUSE 60

1. On page 62, in line 40, to omit “him or her” and to substitute “that person”.

## CLAUSE 61

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 60:

Prescription of certain debt

**61.** Debt consisting of interest on an unpaid premium, or on a loan granted by a long-term insurer on sole security of a long-term policy, or on an advance granted by a long-term insurer in respect of an amount which is to be payable under a long-term policy, shall, in the case of a long-term policy entered into after 31 December 1973, not prescribe before the liability of the long-term insurer under the long-term policy prescribes.

## CLAUSE 66

1. On page 66, in line 55, to omit "R20 (00)" and to substitute "R 100 (00)".
2. On page 68, in line 1, to omit "6 months" and to substitute "one year".
3. On page 68, in line 5, to omit "R200 000" and to substitute "RI 000 (00)".
4. On page 68, in line 6, to omit "5" and to substitute "IO".

## CLAUSE 67

1. On page 68, in line 17, to omit "R20 000" and to substitute "R 100 (00)".
2. On page 68, in line 22, to omit "R200 (00)" and to substitute "R 1000" (00)".

## CLAUSE 72

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 71:

**Regulations**

72. (1) The Minister may make regulations not inconsistent with this Act—

(a) prescribing all matters which are required or permitted by this Act to be prescribed by regulation;

- (b) limiting the amount which and the extent to which a long-term insurer may invest in particular kinds and categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;
  - (c) authorizing the Registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (b);
  - (d) prohibiting any consideration from being offered or provided, or limiting the consideration which may be offered or provided, from, by or on behalf of a long-term insurer to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;
  - (e) prohibiting any consideration from being offered or provided, or prescribing the manner in and conditions on which consideration may be offered or provided, from, by or on behalf of any person other than a long-term insurer to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;
  - (f) prescribing different classes of persons to whom consideration contemplated in paragraphs (d) and (e) may be offered or provided, for such services rendered or to be rendered;
  - (g) prescribing periods within which policies and amended policies are to be issued;
  - (h) prescribing that every long-term insurer shall within a specified period as from the close of each financial year of its long-term insurance business furnish the Registrar with a statement of all changes which occurred during the said year in specified matters in relation to the insurer concerned.
- (2) Regulations made under this section may prescribe a fine or a period of imprisonment not exceeding one year for a contravention of or a failure to comply with a provision of the regulations.
- (3) The Minister shall publish any regulations made under this section in the *Gazette*.

#### CLAUSE 73

1. On page 72, in line 6, to omit "7" and to substitute "4".

#### CLAUSE 74

1. On page 72, after line 10, to insert the following paragraph:

- (a) section 25, read with section 19A of that Act, shall continue to apply in relation to a long-term insurer that has before the commencement of this Act notified the Registrar, as defined in the repealed Act, that it intends to apply to the Court for the confirmation of a conversion contemplated in the said section 25, and if such application is made to the Court before 31 December 1999, that application may, if the long-term insurer so elects, be made, continued with and dealt with in accordance with the said provisions as if they had not been repealed by section 73;



### CLAUSE 75

1. On page 72, in line 43, after the second “policies” to insert “or sinking fund policies”.

### SCHEDULE 1

1. On page 80, in item 16(5)(a), to omit “approved” and to substitute “recognised”.
2. On page 80, after “20(c)” to insert “any stock or shares in”

### SCHEDULE 2

Schedule rejected.

### SCHEDULE 3

1. On page 92, to omit “Schedule 3” and to substitute “Schedule 2”.
2. On page 92, after the definition of “market-related policy”, to insert the following definition:
  - “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.
3. On page 94, to omit paragraph 2(a)(v) and to substitute:
  - (v) an amount representing a long-term policy in terms of which the long-term insurer concerned provides or undertakes to provide a policy benefit;
4. On page 94, after paragraph 2(a)(vi), to insert:
  - (vii) an amount representing a reinsurance contract in terms of which the long-term insurer concerned is the policyholder, except to the extent that it represents a claim against a reinsurer in terms of the reinsurance contract; and
5. On page 94, in paragraph 3(a)(v), to omit “the market value” and to substitute:
  - if it is listed on a stock exchange and for which a 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

6. On page 94, in paragraph 3(a)(vi), to omit “SAFEX referred to in Schedule 2” and to substitute:

the South African Futures Exchange referred to in section 17 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989)

7. On page 96, in paragraph 3(a)(viii)(aa), to omit “Schedule 6” and to substitute “the regulations”.

8. On page 100, to omit paragraph 6(4)(a) and to substitute:

(a) no policy shall have a negative liability; and

9. On page 104, from the first line, to omit paragraph (iii) of the proviso to paragraph 10(a) and to substitute the following paragraph:

(iii) allowance shall be made in such calculations for initial expenses incurred by the long-term insurer concerned, which shall not exceed 120 per cent of the maximum commission which may be paid to any intermediary in terms of section 49 in respect of any recurring premium policy, spread over the full premium-paying term, separately for the initial premium and each premium increase after inception, according to the following formula:

Initial expense allowance at duration t =

$$1,2 \times \text{total commission} \times \frac{{}^{x+t}m-1-t}{{}^x n-1} \times (1+j)^t$$

calculated at an interest rate of 4,5% with  $j = 8\%$  for taxed business and at an interest rate of 5% with  $j = 9\%$  for untaxed business where

$x$  = valuation age at entry.  
 $n$  =  $\min \{ \max ( 10.75 - x), ppp \}$  and  
 $ppp$  = premium paying period.

10. On page 104, to add the following paragraph to the proviso to paragraph 10(1):

(v) save for the allowance referred to in paragraph (iii) of this proviso, the value of the said investment account or the said investment portfolio in respect of a linked policy and a market-related policy defined in paragraph I of Part I of this Schedule shall be equal to the value of the corresponding assets as determined in paragraph 4(1) of Part I of this Schedule:

11. On page 106, after paragraph (c), to add the following new subparagraph to paragraph 10:

(2) (a) The calculation of the initial expense allowance may not be based on the current annual premium in respect of policies which have had premium increases since inception as this will cause an understatement of the actuarial liabilities.

(b) In respect of policies which have had premium increases after inception, an approximate method may be used.

(c) The approximate method may be based on the assumption that

the total increase in annual premium since inception occurred half-way during the past duration of the policy as at the valuation date.

(*d*) In respect of future new business the valuator shall use an accurate method.

12. On page 106, in the second line of paragraph 11, after the first "the" to insert "guaranteed".

#### SCHEDULE 4

1. On page 108, in the fifth line, to omit "Schedule 4" and to substitute "Schedule 3".
2. On page 108, to omit subparagraph (*e*) of paragraph 2 and to substitute the following subparagraph:
 

(*e*) an amount representing a long-term policy in terms of which the long-term insurer concerned provides or undertakes to provide a policy benefit;
3. On page 108, after subparagraph (*f*) of paragraph 2, to insert the following subparagraph:
 

(*g*) an amount representing a reinsurance contract in terms of which the long-term insurer is the policy holder, except to the extent that it represents a claim against a reinsurer in terms of the reinsurance contract.
4. On page 108, to omit subparagraph (*a*) of paragraph 3 and to substitute the following subparagraph:
 

(*a*) after taking into account the termination capital adequacy requirements according to the guidelines referred to in paragraph 1, no policy shall have a negative liability;
5. On page 108, to add the following subparagraph to paragraph 3:
 

(*e*) such value shall include the amount of capital adequacy requirements as determined by the guidelines referred to in paragraph 1.
6. On page 110, in paragraph 6, to omit "Schedule 3" and to substitute "Schedule 2".

#### SCHEDULE 5

Schedule rejected.

#### SCHEDULE 6

Schedule rejected.

#### SCHEDULE 7

1. On page 130, in the eighth line, to omit "Schedule 7" and [o substitute "Schedule 4".