

REPUBLIC OF SOUTH AFRICA

SHORT-TERM INSURANCE BILL

(As introduced)

(MINISTER OF FINANCE)

1977-11-11

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[B 79—97]

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KORTTERMYNVERSEKERINGS- WETSONTWERP

(Soos ingedien)

(MINISTER VAN FINANSIES)

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BILL

To provide for the registration of short-term insurers; for the control of certain activities of short-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 Short-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 Short-term Insurance | |

Part II

Registration of short-term insurers 15

- | | |
|---|----|
| 7. Registration required in order to carry on short-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 short-term insurers from carrying on business | |
| 13. Termination of registration | |
| 14. Deregistration of short-term insurers as companies | 25 |

Part III

Business and **administration** of short-term insurers

- | | |
|---|----|
| 15. Limitation on business | |
| 16. Head office and public officer | |
| 17. Financial year and name | 30 |
| 18. Notification of certain appointments and terminations | |
| 19. Auditor | |
| 20. Appointment of auditor by Registrar | |

21. Removal of appointees who are not fit and proper
22. Audit committee
23. Preference shares, debentures, share capital and share warrants
24. Registration of shares in name of nominee
25. Limitation on control and certain shareholding or other interest in short-term 5
insurers
26. Furnishing of information concerning shareholders
27. Effect of registration of shares contrary to Act

Part IV

Financial arrangements 10

28. Maintenance of financially sound condition
29. Assets
30. Kinds and spread of assets
31. Deeming provisions concerning assets
32. Liabilities 15
33. Prohibitions concerning assets and certain liabilities
34. Failure to maintain financially sound condition
35. Returns to Registrar

Part V

Compromise, arrangement, amalgamation and transfer 20

36. Approval of Registrar required for compromise, arrangement, amalgamation or
transfer
37. Application to Registrar
38. Conditions of approval
39. Approved transaction 25

Part VI

Judicial management and winding-up of short-term insurers

40. Judicial management
41. Winding-up by Court
42. Voluntary winding-up 30

Part VII

Business practice, policy contracts and policyholder protection

Business practice

43. Free choice in certain circumstances
44. Prohibition on inducements 35
45. Collection of premiums by intermediaries
46. Receipt for premium paid in cash
47. Copy of policy and inspection of policy records
48. Intermediaries: remuneration and binder agreements
49. Undesirable business practice 40

Policy contracts

50. Limitation on policy benefits in event of death of unborn or of certain minors
51. Voidness of certain provisions of agreements relating to short-term policies
52. Short-term policies entered into by certain minors
53. Misrepresentation 45
54. Validity of contracts

Policyholder protection

55. Protection of policyholders

Part VIII

Provisions relating to Lloyd's

- 56. General
- 57. Appointment of Lloyd's representative
- 58. Returns to Registrar
- 59. Claims against Lloyd's underwriters
- 60. Security to be furnished by Lloyd's Council
- 61. Payment of certain claims against Lloyd's underwriters 10
- 62. Imposition of prohibition on activities of Lloyd's underwriters
- 63. Application of other provisions of Act to Lloyd's

Part IX**Offences and penalties**

- 64. **Offences** by persons other than short-term insurers 15
- 65. **Offences** by short-term insurers
- 66. Penalty for failure to furnish Registrar with returns etc.

Part X**Transitional** and general provisions

Transitional provisions 20

- 67. Continued registration of existing insurers
- 68. Certain existing insurers to cease long-term insurance business or to separate it from short-term insurance business

General provisions

- 69. Special provisions concerning short-term insurers that are not public companies 25
- 70. Amendment, substitution or repeal of Schedules
- 71. Savings
- 72. Interpretation of certain references in existing laws
- 73. 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**

Calculation of additional amounts of assets

Schedule 5**Limitation on remuneration to** intermediaries

Schedule 6

Authorisation of and requirements for collection of premiums by intermediaries

Schedule 7

Lloyd's security

Introductory provisions

5

Definitions

1. (1) In this Act, unless the context otherwise indicates—
- (i) “accident and health policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if a—
 - (a) disability event; 10
 - (b) health event; or
 - (c) death event, contemplated in the contract as a risk, occurs; and includes a reinsurance policy in respect of such a policy; (xxxv)
 - (ii) “Advisory Committee” means the Advisory Committee on Short-term insurance established by section 6; (ii) 15
 - (iii) “approved reinsurance policy” means any proportional short-term reinsurance policy in terms of which the reinsurer is liable for the liabilities of a short-term insurer under short-term policies and any non-proportional short-term reinsurance policy which remains in force until the liabilities under short-term policies have expired, entered into by the short-term insurer with—
 - (a) another short-term insurer, if the policy benefits under that short-term reinsurance policy are to be provided in the Republic; 20
 - (b) an insurer by virtue of section 2 of the Export Credit and Foreign Investments Re-insurance Act, 1957 (Act No. 78 of 1957); 25
 - (c) Lloyd's underwriters in accordance with Part VIII; or
 - (d) an insurer under a reinsurance policy in terms of which the reinsurer furnishes security in the form of—
 - (i) money in the Republic with the short-term insurer by which such reinsurance was entered into and on which the short-term insurer has a prior charge and lien; or 30
 - (ii) an irrevocable guarantee or a letter of credit issued by a bank and in the form prescribed by the Registrar, against losses which may be occasioned by the failure of the reinsurer to discharge its obligations under the said policy or by the termination of such policy for any reason; (xii) 35
 - (iv) “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 20(1) of this Act; (xxxvii)
 - (v) “bank” means a bank registered otherwise than provisionally in terms of the Banks Act, 1990 (Act No. 24 of 1990); (iii) 40
 - (vi) “Board” means the Financial Services Board established by section 2 of the Financial Services Board Act; (xliv)
 - (vii) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (xxix) 45
 - (viii) “company” means a company incorporated in accordance with, and registered under, the Companies Act, or deemed to have been so incorporated and registered; (xxviii)
 - (ix) “Court” means the High Court of South Africa; (xiv)
 - (x) “death event” means the event of the life of a person or an unborn having ended; (vi) 50

- (xi) “director” includes a person who is a member or alternate member of a body performing, 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**; (v)
- (xii) “disability event” means **the** event of the functional ability of the mind or body of a person or **an unborn becoming** impaired; (xxxiv) 5
- (xiii) “engineering policy” **means a contract** in terms of which a person, in return for a premium, **undertakes** to Provide **policy benefits** if **an** event contemplated in the contract as a risk relating to—
 (a) the possession, use or ownership of machinery or equipment, other than a motor vehicle, in **the carrying** on of a business; 10
 (b) the erection of buildings or other structures or the undertaking of other works; or
 (c) the installation of **machinery** or equipment, occurs; and includes **a reinsurance policy** in respect of such a policy; (xvi)
- (xiv) “Financial Services Board Act” ‘means the Financial Services Board Act, 1990 (Act No. 97 of 1990); (ii)
- (xv) “guarantee policy” **means a contract** in terms of which a person, other than a bank, in return for a **premium, undertakes** to provide policy benefits if an event, contemplated in **the policy as a risk relating** to the failure of a person to discharge an obligation, occurs; **and** includes a **reinsurance** policy in respect 20 of such a policy; (ix)
- (xvi) “health event” means **an** event relating to **the** health of the mind or body of a person or an unborn; (xi)
- (xvii) “holding company” means a holding company as defined in section 1 of the Companies Act; (xv) 25
- (xviii) “independent intermediary” means a person, other than a representative, who renders services as intermediary; (xxXii)
- (xix) “liability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the **incurring** of a liability, otherwise than as 30 part of a policy relating to a risk more specifically contemplated in another definition in this section, occurs; **and includes** a **reinsurance** policy in respect of such a policy; (i)
- (xx) “Lloyd’s” means the association of persons generally known as Lloyd’s which is incorporated by the Lloyd’s Act of, 1 871 (34 Vict. c21), passed by the 35 Parliament of the United Kingdom of Great Britain and Northern Ireland; (xxii)
- (xxi) “Lloyd’s broker” means a person permitted by the Lloyd’s Council to perform acts as a broker at Lloyd’s; (xxiv)
- (xxii) “Lloyd’s correspondent” means a person who is permitted by or on behalf of 40 the Lloyd’s Council to act in **the** Republic **as an** agent for or on behalf of a Lloyd’s broker or Lloyd’s **underwriter**; (xxiii)
- (xxiii) “Lloyd’s Council” means the council **known as the** Council of Lloyd’s established by the Lloyd’s Act, 1982, **passed by the Parliament** of the United Kingdom of Great Britain and Northern Ireland, to **manage and** superintend 45 the affairs of Lloyd’s; (xxvi)
- (xxiv) “Lloyd’s representative” means the person **referred** to in section 57; (xxvii)
- (xxv) “Lloyd’s underwriter” means an **underwriting** member of Lloyd’s; (xxv)
- (xxvi) “long-term insurer” means a person **registered** or deemed to be registered as a long-term insurer under the Long-term **Insurance Act, 1997**; (xxi) 50
- (xxvii) “<managing executive” means the **chief executive officer** of a short-term insurer or a manager of that **short-term insurer** who **reports** directly to that chief executive officer; (xlvii)
- (Xxviii) “Minister” means the Minister of Finance or **any other Minister** to whom the administration of this Act may be **assigned** from **time to time**; (xxx) 55
- (xxix) “miscellaneous policy” means a contract **in terms of which** a person, in return for a premium, undertakes to provide **policy benefits** if **an event**, contemplated in the contract as a risk relating to **any matter not otherwise defined** in this section, occurs; and includes a **reinsurance policy in respect** of such a policy; 60
 (x)

- (xxx) "motor policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a motor vehicle, occurs; and includes a reinsurance policy in respect of such a policy; (xxXI) 5
- (xxxxi) "personal lines business" means short-term insurance business in respect of which the policyholder is a natural person; (xxxViii) 5
- (xxxxii) "policy benefits" means one or more sums of money, other than an annuity, or services or other benefits; (xl) 5
- (xxxxiii) "policyholder" means the person entitled to be provided with the policy benefits under a short-term policy; (xxxix) 10
- (xxxiv) "premium" means the consideration given or to be given in return for an undertaking to provide policy benefits; (xii) 10
- (xxXv) "prescribe" means to determine from time to time by notice in the Gazette; (l) 10
- (xxxvi) "property policy" means a COntRaCt in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk other than a risk more specifically contemplated in another definition in this section relating to the use, ownership, loss of or damage to movable or immovable property occurs; and includes a reinsurance policy in respect of such a policy; (Vii) 15
- (xxxvii) "proportional reinsurance" means the reinsurance of a part of a liability under a short-term policy, where premiums are shared in M&C proportion as losses between the reinsurer and the short-term insurer; (xlii) 20
- (xxxviii) "Public Accountants' and Auditors' Act" means the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991); (iii) 25
- (xxxix) "public company" means a company with a share capital which is a public company under the Companies Act; (xliii) 25
- (xl) "Registrar" means the Registrar of Short-term Insurance referred to in section 2(l); (Xiv) 25
- (xii) "repealed Act" means the Insurance Act, 1943, (Act No. 27 of 1943); (xiii) 30
- (xlii) "representative" means a person employed—
 (a) by or working for a short-term insurer and receiving or entitled to receive remuneration; and
 (b) for the purpose of rendering services as intermediary in relation to short-term policies entered into or to be entered into by the short-term insurer only; (xlvi) 35
- (xliii) "risk" means a possibility that a particular event may occur during the period for which a short-term policy is operative; (xlvi) 35
- (xliv) "services as intermediary" means any act performed by a person—
 (a) the result of which is that another person will or does or offers to enter into, vary or renew a short-term policy; or
 (b) with a view to—
 (i) maintaining, servicing or otherwise dealing with;
 (ii) collecting or accounting for premiums payable under; or
 (iii) receiving, submitting or processing claims under, a short-term policy; (iv) 40
- (Xiv) "short-term insurance business" means the business of providing or undertaking to provide policy benefits under short-term policies; (xx) 45
- (xlvi) "short-term insurer" means a person registered or deemed to be registered as a short-term insurer under this Act; (xix) 50
- (xlvii) "short-term policy" means an engineering policy, guarantee policy, liability policy, miscellaneous policy, motor policy, accident and health policy, property policy or transportation policy or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is renewed or varied; (xviii) 55
- (xlviii) "short-term reinsurance policy" means reinsurance policy in respect of a short-term policy; (xvii) 55
- (xlix) "subsidiary" means a company which, in terms of section 1(3) of the Companies Act, is deemed to be a subsidiary company; (viii) 55

- (1) “survival benefit” means a policy benefit which is to be provided in the event of the life of a person or an unborn continuing or having continued for a period; (xxxvi)
- (li) “transportation policy” means a Contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated 5 in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or Other Craft or for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed, occurs; and includes a reinsurance policy in respect of such a policy; (xlix) 10
- (Iii) “unborn” means a human foetus conceived but not born. (xxXiii)
- (2) For the purposes of this Act the life of an unborn shall be deemed to begin at conception.

Part I

Administration of Act

15

Registrar of Short-term Insurance

2. (1) There shall be a Registrar of Short-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.
- (3) The powers and duties of the Registrar may be exercised and shall be carried out— 20
- (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 25 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.
- (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. 30

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 publication thereof, be valid only if it is in writing.
- (2) Whenever the approval of, or a determination or decision by, or the performance 35 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— 40
- (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 changes, in accordance with that 45 section.
- (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 short-term insurer, Lloyd’s or an intermediary, or obtain a copy of or extract from any such 50 document.
- (5) A document which purports to be 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. 55

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 short-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. 5

(3) If any advertisement, brochure or similar document which relates to the business of a short-term insurer, or to a short-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. 10

(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; 15

(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— 20

(i) by notice direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under short-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— 25

(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, 30
as the case may be.

(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 35

(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— 40

(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; 45

(d) to obtain a declaratory order on any point of law relating to this Act or to short-term insurance business generally; or

(e) in connection with any matter relating to short-term insurance business generally where the Registrar considers it to be in the public interest, 50

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—

- (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 Long-term Insurance Act, 1997, if a short-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 5
- (b) upon application of a short-term insurer, determine that a policy or policies forming part of any class of policies defined in section 1 of this Act or in section 1 of the Long-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 be subject to all the— 10
 - (i) provisions of this Act relating to that class of policies; and 15
 - (ii) conditions 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. 20

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. 25

(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 Short-term Insurance 30

6. (1) There shall be an Advisory Committee on Short-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 short-term insurance.

(2) The Advisory Committee shall consist of a chairperson and other members, including persons involved in the short-term insurance industry, from time to time appointed by the Minister after consultation with the Board. 35

(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. 40

(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. 45

(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. 50

Part II

Registration of short-term insurers

Registration required in order to carry on short-term insurance business

- 7.(1) No person shall carry on any kind of short-term insurance business, unless that person— 5
- (a) is registered or deemed to be registered as a short-term insurer, and is authorised to carry on the kind of short-term insurance business concerned, under this Act; or
 - (b) is authorised under section 56 to do so, and carries on that business in accordance with this Act. 10
- (2) Subsection (1) shall not apply to—
- (a) a pension fund organization registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), or exempted under section 2(3)(a) of that Act from the requirement to be so registered, if and in so far as it acts in accordance with that Act; 15
 - (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 short-term policies in respect of any of which the value of the policy benefits to be provided does not exceed R5 000 per member or another maximum amount prescribed by the Minister; 20
 - (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;
 - (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; 25
 - (e) a long-term insurer, if and in so far as it enters into a long-term policy which it is entitled to enter into by virtue of its registration as a long-term insurer;
 - (f) an agricultural co-operative or special farmers' co-operative formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 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; 30
 - (g) the unemployment insurance fund established by the Unemployment Insurance Act, 1966 (Act No. 30 of 1966), if and in so far as it acts in accordance with that Act; or 35
 - (h) 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. 40
- (3) For the purposes of this section a person shall, in the absence of evidence to the contrary, be deemed to be carrying on short-term insurance business in the Republic if that person performs any act in the Republic—
- (a) the object or result of which is that another person will enter into or enters into, or offers to enter into, renew or vary a short-term policy, other than a short-term 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 short-term policy, other than a short-term reinsurance policy, in terms of which that person has undertaken to provide policy benefits, and which act is aimed at— 50
 - (i) maintaining, servicing or otherwise dealing with the short-term policy;
 - (ii) collecting or accounting for premiums payable under the short-term policy; or
 - (iii) receiving or submitting of, or assisting or otherwise dealing with the settlement of, a claim under the short-term policy. 55

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

8. (1) No person shall—
- (a) subject to section 8(1)(a) of the Long-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”, “assure” or “underwrite” or any derivative thereof, unless he, she or it is a short-term insurer; or
 - (b) perform any act which indicates that he, she or it carries on or is authorised to carry on short-term insurance business, unless he, she or it is a short-term insurer authorised to carry on that business.
- (2) Subject to this Act, no person shall render services as intermediary in relation to a short-term policy, unless—
- (a) short-term insurers are the only underwriters in terms of the short-term policy concerned;
 - (b) such person is a Lloyd’s correspondent and Lloyd’s underwriters are the only underwriters in terms of the short-term policy concerned;
 - (c) short-term insurers and Lloyd’s underwriters through a Lloyd’s correspondent are collectively the only underwriters in terms of the short-term policy concerned; or
 - (d) such person does so with the approval of the Registrar.
- (3) The Registrar may from time to time by notice in the Gazette or, in the case of any particular person, by notice to such person, subject to such conditions as the Registrar determines—
- (a) and specifies in the notice, grant to persons generally or to any particular person or category of persons the approval contemplated in subsection (2)(d) to such extent as may be specified by the Registrar in the notice; and
 - (b) at any time withdraw or amend any such approval to such extent as may be determined by the Registrar.
- (4) Subsections (2) and (3) shall not apply in the case of a short-term reinsurance policy unless and to the extent that the Minister so determines by notice in the Gazette.
- (5) An independent intermediary shall not charge, in addition to any remuneration contemplated in section 48, any fee which is payable by a policyholder, unless the amount thereof is disclosed expressly and separately to the policyholder by the intermediary.

Application for registration

9. (1) A person who wishes to carry on short-term insurance business shall apply to the Registrar for registration as a short-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
 - (b) shall, if the Registrar grants such application, register the person concerned as a short-term insurer and issue to that person a certificate of registration, in such form as may be prescribed by the Registrar, authorizing that person to carry on the short-term insurance business concerned and specifying the conditions contemplated in paragraph (a).
- (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 short-term insurance business as its main object; or
 - (ii) is incorporated without a share capital under a law providing specifically for the constitution of a person to carry on short-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;

- (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;
 - (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 short-term insurer or a long-term insurer;
 - (ii) so closely resembles that of another short-term insurer or a long-term insurer that the one is likely to be mistaken for the other;
 - (iii) is identical to that under which another short-term insurer or a long-term insurer was previously registered and reasonable grounds exist for objection to its use by the applicant concerned; or
 - (iv) is misleading or undesirable, 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—

- (a) authorizing the short-term insurer to enter into only certain short-term policies determined by the Registrar;
- (b) authorising the short-term insurer to enter into short-term policies other than certain short-term policies determined by the Registrar;
- (c) authorizing the short-term insurer to enter into certain short-term policies 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 short-term insurer under certain short-term policies determined by the Registrar to an amount or value determined by the Registrar;
- (e) limiting the amount of the premiums that the short-term insurer may contract to receive, during a period determined by the Registrar, in respect of all or certain short-term policies determined by the Registrar that may be entered into by that short-term insurer during that period;
- (f) requiring the short-term insurer to enter into short-term reinsurance policies in terms of which that short-term insurer reinsures at least a portion determined by the Registrar of the liabilities incurred by it in terms of all or certain short-term policies determined by the Registrar that may be entered into by that short-term insurer during a period determined by the Registrar;
- (g) requiring that the provisions of the memorandum and articles of association, or equivalent constitution, of the short-term insurer must be suitable to enable it to carry on short-term insurance business; or
- (h) reasonably necessary to ensure that the short-term insurance business concerned is carried on soundly and in a manner whereby the short-term insurer will be in a position to meet its liabilities,

and different conditions may be determined in respect of different short-term insurers.

Variation of registration conditions

11. (1) The Registrar may—

- (a) upon application of a short-term insurer and having regard, with the necessary changes, to section 9(3)(b);

- (b) when acting in accordance with section 12(2) or (3) or when **giving** an authorisation in accordance with section 34(2)(a) in relation to a short-term insurer; or
- (c) if a short-term insurer has ceased to enter into certain short-term **policies** determined by the Registrar to an extent **which** no longer **justifies** its continued registration in respect of those policies, **and** the short-term insurer has been allowed at least 30 days in which to make representations in respect of the matter,

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

(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 short-term insurer concerned.

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

12. (1) If a short-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 short-term insurance business carried on by it;
- (ii) has failed to comply with a material condition subject to which it is registered or deemed to be registered as a short-term insurer; or
- (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 the inadmissible conduct to the satisfaction of the Registrar; or
- (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 of section 9(3)(b)(i), (iii) or (iv),

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

(2) When the Registrar has given notice to a short-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 the short-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 short-term insurer from carrying on such short-term 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 short-term insurer from carrying on certain short-term insurance business, the Registrar **may** thereafter—

- (a) withdraw **the prohibition** by notice to the short-term insurer;
- (b) act in accordance with section 11(1) and thereupon, by notice to the short-term insurer, withdraw the prohibition and authorise the short-term insurer to **carry** on the short-term insurance business, subject to the conditions determined by **the Registrar**, specified in the new certificate of registration referred to in section 11(2); or

- (c) act in accordance with section 13(2)(c), 40(2) or 41(2), according to whichever provision the Registrar deems most appropriate in the circumstances and in the interests of the policyholders of the short-term insurer.

Termination of registration

13. (1) If a short-term insurer fails to commence the carrying on of its short-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 short-term insurer will not commence the carrying-on of such business within a reasonable period thereafter, the Registrar shall, by notice to the short-term insurer, cancel its registration. 5 10

(2) The Registrar shall—

- (a) if a short-term insurer has ceased to enter into short-term policies to an extent which justifies its continued registration as a short-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 short-term policies to the required extent within a reasonable period thereafter; 15
- (b) if a short-term insurer notified the Registrar of its intention to cease to enter into any more short-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), 20

by notice direct the short-term insurer concerned, with effect from a date specified in the notice, not to enter into any more short-term policies and require it to make arrangements satisfactory to the Registrar to discharge its obligations under all short-term policies entered into before the specified date and, when the Registrar is satisfied that the short-term insurer concerned no longer has any obligations under any such policy, shall, by notice to the short-term insurer and in the Gazette, cancel its registration. 25

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

- (a) discontinued as a result of its amalgamation with, or its transfer to, another short-term insurer as contemplated in Part V, or 30
- (b) wound up as contemplated in Part VI,

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

Deregistration of short-term insurers as companies

14. For the purposes of section 73(5) of the Companies Act in relation to a short-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. 35

Part III

Business and administration of short-term insurers

Limitation on business 40

15. (1) A short-term insurer shall not carry on such business, other than the short-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—

- (a) a particular short-term insurer; or 45
- (b) short-term insurers generally. 50

(2) A short-term insurer shall not carry on such business as the Registrar may determine, other than the short-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—

- (a) a particular short-term insurer; or

- (b) short-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 short-term insurer, or short-term insurers in general, to act so; 5
- (b) after giving at least 30 days' notice of the Registrar's intention to act so in the case of—
- (i) a particular short-term insurer, to that short-term insurer; or
- (ii) short-term insurers generally, in the *Gazette*; and
- (c) after considering any representations received in respect of the matter. 10
- (4) A short-term insurer shall not undertake to provide a survival benefit.
- (5) A short-term insurer, other than an insurer carrying on reinsurance business only, shall not be a long-term insurer as defined in the Long-term Insurance Act, 1997.

Head office and public officer

- 16. (1)** A short-term insurer shall— 15
- (a) have its head office in the Republic;
- (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 20
- (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.
- (2) The public officer shall, as far as it is in his or her power, ensure that the short-term insurer complies with this Act. 25
- (3) Process in any legal proceedings against a short-term insurer may be 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 short-term insurer. 30

Financial year and name

- 17.** A short-term insurer may not change—
- (a) its financial year; or
- (b) its name,
- without the approval of the Registrar. 35

Notification of certain appointments and terminations

- 18.** A short-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. 40

Auditor

- 19. (1)** A short-term insurer shall from time to time appoint, and at all times have, one or more auditors.
- (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. 45
- (3) A short-term insurer shall not appoint as its auditor—
- (a) one of its directors; or

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

(4) If an auditor of a short-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. 5

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

(a) whenever the auditor furnishes copies of a report or other document or particulars contemplated in section 20(5)(b) of the Public Accountants' and Auditors' Act, 1991, also furnish a copy thereof to the Registrar; and 10

(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 short-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 15

(c) inform the Registrar in writing of any matter relating to the affairs of the short-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 28(1) of this Act. 20

(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. 25

(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 short-term insurer by the Act under which that insurer is incorporated or by the Public Accountants' and Auditors' Act, 1991, the auditor shall— 30

(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 35, 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 35

(b) carry out the other duties provided in this Act prescribed by the Minister. 40

Appointment of auditor by Registrar

20. (1) If a short-term insurer for any reason fails to appoint an auditor, 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 short-term insurer.

(2) A person or firm appointed under subsection(1) as auditor of a short-term insurer shall be deemed to have been appointed by the short-term insurer in accordance with this Act. 45

Removal of appointees who are not fit and proper

21. (1) The Registrar may by notice require a short-term insurer to terminate the appointment of a director, managing executive, public officer or auditor of that short-term insurer, if the person or firm concerned is not fit and proper to hold the office concerned. 50

(2) When the Registrar intends to act as contemplated in subsection (1), the Registrar shall give notice to the short-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 **short-term** insurer in terms of subsection (2), that short-term insurer **and** the person or firm concerned may appeal to the board of appeal established by section 26 of the Financial Semites 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 court. 10

Audit committee

22. (1) The board of directors of a short-term insurer shall appoint an audit committee of at least three members of whom at least two shall be members of that board. 15

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

(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 processes applied by the short-term insurer in the day-to-day management of its business; 20

(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 and internal audit staff of the short-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 short-term insurer; and

(d) to advise on a matter referred to the committee by the board of directors. 30

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

Preference shares, debentures, share capital and share warrants

23. A short-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 Act; 45

(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

24. (1) A short-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 short-term insurer— 5
- (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; 10
- (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 short-term insurer or an employee of the short-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; 15
- (d) to or in the name of another person prescribed by the Minister.

Limitation on control and certain shareholding or other interest in short-term insurers 20

25. (1) Subject to this section, no person shall, without the approval of the Registrar, acquire or hold shares or any other interest in a short-term insurer which results in that person, directly or indirectly, alone or with an associate, exercising control over that short-term insurer. 25
- (2) No person shall acquire shares in a short-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 short-term insurer concerned. without first having obtained the approval of the Registrar. 30
- (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; 35
- (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 short-term insurer; and 40
- (c) may be refused if the person concerned, alone or with his, her or its associates, has not already owned shares in the short-term insurer—
- (i) of the aggregate nominal value; and
- (ii) for the minimum period, not exceeding 12 months, that the Registrar may determine. 45
- (4) If the Registrar is satisfied that the retention of a particular shareholding by a particular shareholder will be prejudicial to the short-term insurer the Registrar may apply to the Court in whose area of jurisdiction the head office of the short-term insurer is situated for an order— 50
- (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 short-term insurer; and
- (b) limiting, with immediate effect, the voting rights that may be exercised by 55

- 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 short-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 short-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;
 - (vi) means a trust controlled or administered by it. 30
- (6) For the purposes of this section a person shall be deemed to exercise control over a short-term insurer if that person, alone or with associates—
- (a) holds shares in the short-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 25 per cent or more of the voting rights attached to the issued shares of that short-term insurer; or
 - (c) has the power to determine the appointment of 25 per cent or more of the directors of that short-term insurer, including the power—
 - (i) to appoint or remove, without the concurrence of another person, 25 per cent or more of the directors; or 40
 - (ii) to prevent a person from being appointed as a director without another person’s consent.

Furnishing of information concerning shareholders

26. (1) A short-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 short-term insurer in accordance with such person’s directions or instructions. 50

(2) A person in whose name shares in a short-term insurer are registered, or who wishes shares in a short-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 short-term insurer concerned, furnish it with the information it may require for the purposes of complying with section 24(1).

Effect of registration of shares contrary to Act

27. (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 short-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 short-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

28. (1) A short-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, 20

so as to be in a position to meet its liabilities at all times.

(2) A short-term insurer shall be deemed to have failed to comply with subsection(1) if—

(a) it does not have assets as required by section 29;

(b) it does not have in the Republic assets as required by section 30; or 25

(c) it has not made provision for the liabilities referred to in section 32 in accordance with the requirements of that section.

(3) A short-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. 30

(4) A short-term insurer shall not declare 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).

Assets

29. (1) A short-term insurer shall have assets the aggregate value of which, on any day, is not less than the aggregate of— 35

(a) the aggregate value on that day of its liabilities; and

(b) the additional amount calculated in terms of paragraph 1 of Schedule 4, when the values of those assets and liabilities are calculated in accordance with Schedule 3. 40

(2) A short-term insurer shall, subject to section 31, have assets in the Republic of the kinds specified in Schedule 1, the aggregate value of which on any day is not less than the aggregate of—

(a) the aggregate value on that day of those of its liabilities which are to be met in the Republic; and 45

(b) the additional amount calculated in terms of paragraph 2 of Schedule 4, when the values of those assets and liabilities are calculated in accordance with Schedule 3.

Kinds and spread of assets

30. (1) Subject to section 31 and subsection (2), the assets which a short-term insurer is required in terms of section 29(2) to have in the Republic shall in respect of the particular kinds or categories of assets specified in Schedule 2, when expressed as a 50

percentage of the aggregate value of the liabilities and the additional amount referred to in section 29(2), not exceed the percentage specified in Schedule 2 in relation to those kinds or categories of assets.

(2) The Registrar may, either in advance or at any time after having received a notice referred to in section 28(3), approve the increase of a percentage specified in Schedule 5 2—

- (a) in a particular case;
- (b) for the specified period; and
- (c) subject to such conditions as the Registrar may determine.

Deeming provisions concerning assets

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31. For the purposes of sections 29 and 30—

- (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 short-term insurer to an asset, that asset shall be deemed not to be in the Republic unless the documentary 15 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 short-term insurer if it has been encumbered contrary to section 33(1)(a) in favour of another person, or if it is held by another person contrary to section 33(1)(b), unless the person in 20 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 the laws of the Republic relating to compensation for occupational 25 injuries and diseases;
 - (ii) the government of any country other than the Republic in which the short-term insurer carries on insurance business or intends to carry on such business, or any person acting on behalf of such government, if the short-term insurer has encumbered those assets in favour of, or transferred those assets into the name of, that government or that person 30 in order to comply with the laws of that country relating to short-term insurance; or
 - (iii) another insurer and the encumbrance or transfer takes place in terms of a short-term reinsurance policy.

Liabilities

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32. (1) For the purposes of this Act, the liabilities of a short-term insurer shall include the following:

- (a) The amount which the short-term insurer estimates will become payable in respect of claims incurred under short-term insurance policies—
 - (i) and reported but not yet paid, reduced by the amount which it estimates 40 will be paid in respect of those claims under approved reinsurance policies;
 - (ii) but not yet reported, reduced by the amount which it estimates will be paid in respect of those claims under approved reinsurance policies, being an amount not less than the amount calculated in accordance with 45 Part II of Schedule 3;
- (b) an unearned premium provision, being an amount not less than the amount calculated in accordance with Part II of Schedule 3;
- (c) a contingency reserve, being an amount not less than the amount calculated in accordance with Part 11 of Schedule 3; 50
- (d) an unexpired risk provision if the short-term insurer concerned incurs an underwriting loss in the conduct of its short-term insurance business as reflected in any prescribed return in terms of this Act, and the insurer, in consultation with its auditor, considers it necessary to defray the possible cost of claims together with the costs to carry on the said business. 55

(2) If an unexpired risk provision is considered to be necessary, the insurer shall determine the amount thereof in consultation with its auditor.

(3) For the purposes of subsection (1), an approved reinsurance policy entered into with an insurer as contemplated in paragraph (d) of the definition of “approved reinsurance policy” in section 1, shall not be deemed to cover the liabilities of a short-term insurer calculated in terms of subsection (1)(a), (b) and (c), to an amount exceeding the amount of the security referred to in that paragraph.

Prohibitions concerning assets and certain liabilities

33. (1) A short-term insurer shall not—

- (a) encumber its assets; 10
- (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, unless the short-term insurer is registered to provide policy benefits in terms of a guarantee policy and does so in terms of a guarantee policy,

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 short-term insurer shall not invest in derivatives other than— 20

- (a) derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the short-term insurer’s liabilities under short-term policies in terms of section 29;
- (b) for the purpose of reducing investment risk or for efficient portfolio management; and 25
- (c) in such a manner that the short-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

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34. (1) If a short-term insurer gives notice to the Registrar in terms of section 28(3), or if the Registrar is satisfied that a short-term insurer is failing, or is likely to fail within a reasonable period, to comply with section 28(1), the Registrar may, by notice, direct that short-term insurer to furnish the Registrar, within a specified period, with—

- (a) specified information relating to the nature and causes of the failure; and 35
- (b) its proposals as to the course of action that it should adopt to ensure its compliance with section 28(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— 40

- (a) authorise the short-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 of the short-term insurer, and which the Registrar is satisfied will reasonably ensure that the short-term insurer complies with section 28(1), and the Registrar may, at that time, or at any time thereafter, after further consultation with the auditor, by notice authorise the modification of that course of action to the extent that the Registrar deems appropriate in the circumstances; or 45
- (b) if it is reasonably necessary in the interests of the policyholders of the short-term insurer, at that time, or at any time thereafter, and notwithstanding 50 any steps already taken by the Registrar in accordance with paragraph (a) or any other provision of this Act, act in accordance with section 40(2) or 41(2).

Returns to Registrar

35. (1) A short-term insurer shall furnish the Registrar with returns relating to its business—

- (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 short-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
- (b) reject the return and require the short-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

Approval of Registrar required for compromise, arrangement, amalgamation or transfer

36. (1) No transaction to which a short-term insurer is a party and which constitutes an agreement by which all or any part of the business of a short-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 Registrar.

(2) Any arrangement entered into between two or more insurers whereby a liability of any short-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 short-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.

Application to Registrar

37. When application is made to the Registrar for the approval of a transaction referred to in section 36-

- (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;
 - (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;
 - (iii) upon making the application, provide the Registrar with the application and all other documents relating thereto and supporting 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;
- (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

- (ii) 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) any policyholder, shareholder or creditor of the short-term insurer concerned may, within the period referred to in paragraph (b), file affidavits and other documents relating thereto and may appear before the Registrar and be heard in connection therewith.

Conditions of approval

38. Notwithstanding the provisions of the Companies Act, the approval of the Registrar of a transaction referred to in section 36(1) shall not be granted—
- (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 short-term insurer concerned; or
- (c) unless payment of the costs referred to in section 37(c)(i) has been made or secured.

Approved transaction

39. (1) A transaction referred to in section 36(1) which is approved by the Registrar shall be binding on all persons and shall have effect as approved by the Registrar 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 short-term insurer confirming a transaction referred to in section 36(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 short-term insurer to be a true and correct copy, shall be furnished to the Registrar by the short-term insurer concerned within 60 days of the passing of the resolution.

(3) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 36(1) or 68 shall, upon production by the short-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the approval of the Registrar, 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.

Part VI

35

Judicial management and winding-up of short-term insurers

Judicial management

40. (1) Notwithstanding the provisions of the Companies Act any other law under which a short-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 short-term insurer whether or not it is a company, or to the account referred to in Schedule 7, 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.

(2) The Registrar may make an application under section 427(2) of the Companies Act for a judicial management order in respect of a short-term insurer, or the account referred to in Schedule 7, if he or she is satisfied, whether as contemplated in section 12(3), 34(2) or 62(3) of this Act or otherwise, that it is in the interests of the policyholders of that short-term insurer or Lloyd's underwriters to do so.

(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 short-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 28(1) of this Act;

- (b) in addition to any question which relates to the nature of a short-term insurer as a successful concern, there shall be considered also the question whether any course of action is in the interest of its policyholders;
- (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 short-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;
 - (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; and
- (d) a reference to a company shall be construed as a reference also to the account referred to in Schedule 7, and a reference to a director shall be construed as referring also to a Lloyd's representative.
- (4) If an application to the Court for the judicial management of a short-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;
 - (b) the Registrar may, if satisfied that the application is contrary to the interests of the policyholders of the short-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.
- (5) As from the date on which a provisional or final judicial management order is granted in respect of a short-term insurer—
- (a) any reference in this Act to a short-term insurer shall, unless clearly inappropriate, be construed as a reference to the provisional or final judicial manager, as the case may be;
 - (b) the provisional or final judicial manager of a short-term insurer shall not enter into any short-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

41. (1) Notwithstanding the provisions of the Companies Act or any other law under which a short-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 short-term insurer, or the account referred to in Schedule 7, 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.

(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 short-term insurer, or the account referred to in Schedule 7, if he or she is satisfied, whether as contemplated in section 12(3), 34(2) or 62(3) of this Act, or otherwise, that it is in the interests of the policyholders of that short-term insurer or Lloyd's underwriters to do so.

(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 short-term insurer to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 28(1) of this Act;
- (b) in addition to any question whether it is just and equitable that a short-term insurer, or the account referred to in Schedule 7, should be wound up, there shall be considered also the question whether it is in the interests of the

- policyholders of that short-term insurer or Lloyd's underwriters 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;
- (d) in the following sections of the Companies Act, **namely—** 5
- (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
 - (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;
- (e) section 346(3) of the Companies Act shall not apply where the Registrar makes the application to Court; and
- (f) a reference to a company shall be construed as referring also to the **account 15 referred to in Schedule 7, and a reference to a director shall be construed as referring also to a Lloyd's representative.**
- (4) If an application to the Court for or in respect of the winding-up of a short-term 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 20 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; and**
 - (b) the Registrar may, if satisfied that the application is contrary to the interests of 25 the policyholders of the short-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

Voluntary winding-up

42. No special resolution relating to the winding-up of a short-term insurer as contemplated in section 349 of the Companies Act shall be registered in terms of section 30 200 of that Act, and no special resolution to that effect in terms of the constitution of a short-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 notice to the short-term insurer, declared that arrangements satisfactory to the Registrar have been made to meet all liabilities of the short-term insurer under 35 short-term policies entered into by it prior to the winding-up; or
- (b) if the Registrar, by notice to the short-term insurer, declares that the resolution is contrary to this Act.

Part VII

Business practice, policy contracts and policyholder protection

40

Business practice

Free choice in certain circumstances

43. (1) Subject to subsection (5), if a party to a **contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or 45 otherwise, that a short-term policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to make that policy** or those policy benefits available shall be entitled, and shall 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—
 - (i) as to the short-term insurer with which the policy is entered into and as to the person (if any) who is to render services as intermediary in connection with the transaction; and
 - (ii) 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 the interest of the creditor; and
- (c) if an existing policy is to be made available—
 - (i) as to the person (if any) who is to render services as intermediary 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 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 of the interests of the creditor.

(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 protecting the interests of the creditor concerned, that he or she—

- (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;
- (c) was not subject to any coercion or inducement as to the manner in which he or she exercised that freedom of choice.

(3) Any policy benefits that may be provided under a policy referred to in subsection (1) shall accrue and be paid to a creditor only to the value of the interests of the creditor in the subject-matter of the policy, and any surplus shall accrue and be paid to the policyholder whose policy is used for the protection of the interests of the creditor concerned.

(4) If the provisions of subsections (1) and (3) 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.

(5) (a) Subsection (1) shall not apply in the case of a short-term policy which is required to be made available in relation to a contract in terms of which money is loaned upon the security of the mortgage of immovable property.

(b) In a case where a new policy is to be entered into, the premiums payable under that policy shall be reasonable in relation to the premiums generally charged by insurers under similar policies.

(c) A certificate by the Registrar that he or she is satisfied that the premiums concerned are reasonable, shall for the purposes of this subsection be sufficient proof of the reasonableness of such premiums.

Prohibition on inducements

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

Collection of premiums by intermediaries

45. No independent intermediary shall receive, hold or in any other manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer, other than a short-term reinsurance policy, and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums—

- (a) unless authorised to do so by the short-term insurer concerned as contemplated in Schedule 6; and
- (b) otherwise than in accordance with Schedule 6.

Receipt for premium paid in cash

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

Copy of policy and inspection of policy records

47. (1) A person who enters into or varies a short-term policy which constitutes personal lines business, other than a short-term reinsurance policy, shall be provided by the short-term insurer concerned, within 30 days after so entering into or varying the policy, with a copy of the document which embodies the contract of short-term insurance concerned. 10

(2) The policyholder, and the person who entered into the short-term policy, 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. 15

Intermediaries: remuneration and binder agreements

48. (1) No consideration shall be offered or provided by any person or accepted by any independent intermediary, other than someone who has entered into an agreement contemplated in subsection (2), for rendering services as intermediary, and otherwise than in accordance with Schedule 5. 20

(2) A short-term insurer shall not authorise an independent intermediary to enter into a short-term policy, other than a short-term reinsurance policy, on its behalf, otherwise than in terms of an agreement which has been entered into between that short-term insurer and independent intermediary, or renewed, in writing, and which contains, in addition to any other terms and conditions, a term— 25

(a) setting out the kinds of short-term policies which may so be entered into, the premiums or the basis for the calculation of premiums to be charged in terms of those short-term policies, the wording of those policies and the maximum value of the policy benefits which may be undertaken to be provided under each such kind of short-term policy; 30

(b) if such intermediary is empowered to settle or pay claims under any such short-term policies, setting out the scope of the intermediary's powers to do so and the circumstances under which it may be done;

(c) if such intermediary is by virtue of such agreement entitled to any remuneration other than by way of commission only, setting out the basis on which the intermediary is remunerated for services rendered in terms of such agreement; 35

(d) requiring that such intermediary shall, prior to entering into a short-term policy on behalf of the short-term insurer concerned, disclose to the prospective policyholder the name of the short-term insurer and the fact that the intermediary is acting in terms of the agreement, 40

and a short-term insurer shall not enter into such an agreement by which an independent intermediary is entitled to any remuneration other than by way of commission only in relation to any particular kind of short-term policy, with more than one such independent intermediary. 45

(3) An independent intermediary who is by virtue of an agreement referred to in subsection (2), entitled to any remuneration other than by way of commission only, shall not—

(a) enter into any kind of short-term policy other than the kind to which such agreement relates; 50

(b) on behalf of a short-term insurer, enter into any kind of short-term policy in relation to which the intermediary also renders any other services as intermediary;

(c) enter into any short-term policy in relation to which another independent intermediary— 55

(i) who holds, directly or indirectly, shares or any other interest in the former;

- (ii) in which, or in the business of which, the former holds, directly or indirectly, shares or any other interest;
- (iii) who is the former's debtor or creditor;
- (iv) who is related within the second degree of consanguinity or affinity to the former,

render services as intermediary; or

- (d) enter into a short-term policy in respect of which such intermediary received an application from any person other than a short-term insurer or an independent intermediary.

(4) Notwithstanding the failure of an independent intermediary referred to in subsection (2) to act in accordance with the agreement so referred to, the short-term insurer concerned shall be liable under a short-term policy entered into or issued or purporting to have been entered into or issued on its behalf by such intermediary.

Undesirable business practice

49. (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 short-term insurers; or

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

(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.

(3) If the Registrar is satisfied that a short-term insurer or a person rendering services in respect of short-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 short-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).

(4) A short-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 short-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 short-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.

Policy contracts

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

50. A short-term insurer shall not undertake to provide, or provide policy benefits, in terms of an accident and health 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 short-term insurer or a long term insurer or a friendly society in terms of any policy, exceeds, in the event of the death—

- (a) of that unborn, or of that minor before he or she attains the age of six years, R10 000; or

(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.

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

- 51. A provision of an agreement, the purport of which is that—** 5
- (a) a short-term insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to a short-term policy;
- (b) the person who has entered into the short-term policy declares or admits that a person who acted on behalf of the short-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; 10
- (c) the obligation of a short-term insurer under a short-term policy which constitutes personal lines business, or in relation to any other short-term policy, other than with the written consent or instruction of the insured, is dependent upon the discharging of an obligation of another person under a short-term reinsurance policy; or 15
- (d) a person who has entered into a short-term policy, or the insured under a short-term policy, waives a right to which he or she is, by or under this Act, entitled, 20
- shall be void.

Short-term policies entered into by certain minors

52. 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 short-term policy 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. 25

Misrepresentation

53. (1) Notwithstanding anything to the contrary in a short-term policy contained, whether entered into before or after the commencement of this Act, but subject to subsection (2)— 30

- (a) the policy shall not be invalidated;
- (b) the obligation of the short-term insurer thereunder shall not be excluded or limited; and 35
- (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 renewal or variation thereof. 40

(2) If the age of an insured under an accident and health policy has been incorrectly stated to the short-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 accident and health policy is such as to render such arrangement inequitable, the Registrar may direct the short-term insurer to apply such different method of adjustment to the policy benefits of that accident and health policy as the Registrar considers equitable in relation to the misstatement of age. 45

Validity of contracts

54. (1) A short-term policy, whether entered into before or after the commencement of 50

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.

(2) **If a person has entered into a short-term policy with a short-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the short-term policy, or with another person who is not a short-term insurer but who has in 5 terms of a short-term policy undertaken an obligation as insurer, that person, by notice in writing to such short-term insurer or other person, or the Registrar by notice to such short-term insurer or other person and in the *Gazette*, may cancel the short-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such short-term insurer or other person as if the policy had been cancelled by him or her on 10 account of a breach of contract by such short-term insurer or other person.**

(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. 15

(4) For the purposes of the validity of a short-term policy the payment of a premium under a short-term policy to a person authorised as contemplated in section 45, shall be deemed to be payment to the short-term insurer under that short-term policy.

Policyholder protection

Protection of policyholders 20

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

- (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; 25
- (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).

(2) Without derogating from the generality of subsection (1)(a), a rule may provide 30 that—

- (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 35 legal consequences shall be if that is not done;
- (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 short-term 40 policies; and
- (e) in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 64(1)(c) or 65(1)(c) shall apply.

(3) The Registrar shall publish in the *Gazette* a rule, variation or rescission proposed in terms of subsection (1), together with— 45

- (a) a notice of intention to promulgate the rule, variation or rescission; and
- (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 50 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.

(5) If the Minister approves, whether as proposed or in a modified form, a proposed 55 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.

Part VIII

Provisions relating to Lloyd's

General

56. (1) Subject to this Part, Lloyd's underwriters are empowered to carry on short-term insurance business.

(2) If there is—

(a) enacted any law governing Lloyd's whereby a material change is made in the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or 10

(b) made any bye-law by Lloyd's whereby the rights or obligations of Lloyd's underwriters are materially changed,
the Registrar may act under section 62(1) of this Act.

(3) The Lloyd's Council shall, within 21 days after the enactment of a law or the making of a bye-law contemplated in subsection (2), notify the Registrar accordingly. 15

Appointment of Lloyd's representative

57. (1) Lloyd's shall appoint, and at all times have, a natural person permanently resident in the Republic as its representative, and another natural person as deputy representative, to act as representative in the event of the Lloyd's representative for any reason not being able to perform the functions connected to that office. 20

(2) The appointment of the Lloyd's representative and the deputy representative shall not take effect unless it has been approved by the Registrar.

(3) The Registrar may grant approval for the appointment of the Lloyd's representative and the deputy representative subject to such conditions as the Registrar may determine. 25

(4) The Registrar shall not grant approval for the appointment of the Lloyd's representative and the deputy representative if—

(a) security has not been furnished in terms of section 60; or

(b) the person concerned is not fit and proper to hold the office. 30

(5) The Lloyd's representative shall comply, with the necessary changes, with section 16(1)(u), (c) and (d) and with section 19(1), (2), (3) and (4) in respect of the account referred to in Schedule 7 as if he or she were a short-term insurer.

(6) The Lloyd's representative shall, as far as it is in his or her power, ensure that Lloyd's complies with this Act. 35

Returns to Registrar

58. (1) The Lloyd's Council shall furnish the Registrar with returns in respect of the short-term insurance business carried on by Lloyd's underwriters in the Republic—

(a) in the medium and form;

(b) containing the information; and 40

(c) by the date or within the period,

prescribed by the Registrar, and section 35(2) shall, with the necessary changes, apply thereto.

(2) The Lloyd's representative shall maintain, and within 30 days after the commencement of this Act, furnish the Registrar with a copy of, a list of the names and addresses of all Lloyd's correspondents, and shall notify the Registrar of any change in that list within 30 days of such change having occurred. 45

Claims against Lloyd's underwriters

59. (1) Any claim against any Lloyd's underwriter under a short-term insurance policy entered into by virtue of any act performed by a Lloyd's correspondent, shall be cognizable by any competent court in the Republic.

(2) In any action or other proceedings instituted under subsection (1), the Lloyd's representative may be cited as nominal defendant or respondent. 5

(3) 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 of law, the Lloyd's representative shall have a right of appearance to institute and conduct any proceedings in a competent court in the Republic in relation to a short-term insurance policy entered into by virtue of any act performed by a Lloyd's correspondent. 10

Security to be furnished by Lloyd's Council

60. The Lloyd's Council shall furnish security in accordance with Schedule 7 in order to discharge its obligations to policyholders in the Republic. 15

Payment of certain claims against Lloyd's underwriters

61. (1) Subject to subsection (2), the money standing to the credit of the account referred to in Schedule 7 shall be available to satisfy a final judgment obtained in the Republic against a Lloyd's underwriter in respect of a liability under a short-term policy. 20

(2) The Lloyd's representative shall upon production to him or her of any writ of execution issued under an order of a competent court in respect of a claim referred to in subsection (1), pay such claim out of the money standing to the credit of the account or from any assets referred to in Schedule 7.

Imposition of prohibition on activities of Lloyd's underwriters

62. (1) If and for as long as the Lloyd's Council or the Lloyd's representative fails to comply with the provisions of section 57, 60 or 61 or if the Registrar acts in accordance with section 56(2)— 25

(a) the Registrar may, subject to subsection (2), by notice in the *Gazette*, and with the written approval of the Minister, prohibit Lloyd's underwriters with effect from a date specified in the notice from carrying on short-term insurance business in the Republic; 30

(b) the Registrar shall, unless the Minister determines otherwise, and after having given notice to the Lloyd's Council and the Lloyd's representative, exercise the powers conferred upon the Lloyd's representative by or under this Act in relation to the account referred to in Schedule 7 as if the Registrar were the Lloyd's representative. 35

(2) The Registrar shall not publish the notice contemplated in subsection (1)(a) unless notice in writing has been given to the Lloyd's Council or the Lloyd's representative of the intention to do so and the reasons therefor and has been allowed at least 30 days in which to make representations thereon. 40

(3) Whenever the Minister deems it necessary to discharge the obligations generally of Lloyd's underwriters towards policyholders in the Republic and after having given notice to the Lloyd's Council, the Lloyd's representative and every Lloyd's correspondent thereof or when a notice contemplated in subsection (1) is published in the *Gazette*— 45

(a) the Registrar may—

(i) require the Lloyd's Council to furnish the Registrar with such information as the Registrar deems necessary in connection with the obligations of Lloyd's underwriters towards policyholders in the Republic; or

(ii) act in accordance with section 40(2) or 41 (2), whichever the Registrar deems most appropriate in the circumstances and in the interest of policyholders of Lloyd's underwriters; 50

(b) every Lloyd's correspondent shall, on receipt of such notice and within 60 days of the date thereof, pay into the account referred to in Schedule 7 the money owing by him or her to Lloyd's underwriters.

Application of other provisions of Act to Lloyd's

63. (1) Sections 45 and 48 shall apply with the necessary changes in relation to a Lloyd's correspondent as if the Lloyd's correspondent concerned were an independent intermediary in respect of the Lloyd's broker concerned and the Lloyd's broker were a short-term insurer.

(2) Section 47 shall apply with the necessary changes in relation to a Lloyd's correspondent as if the Lloyd's correspondent concerned were a short-term insurer. 10

(3) Section 21 shall apply with the necessary changes in relation to the Lloyd's representative or deputy representative as if such representative were a director of a short-term insurer and Lloyd's were the short-term insurer.

(4) Section 19(5), (6) and (7) shall apply with the necessary changes in relation to the auditor appointed by virtue of section 57(5) in respect of the account referred to in Schedule 7 as if the reference to section 28(1) in section 19(5)(c) were a reference to section 60. 15

(5) Section 20 shall apply with the necessary changes in relation to the Lloyd's representative or deputy representative in respect of the account referred to in Schedule 7 as if such representative were a short-term insurer. 20

Part IX

Offences and penalties

Offences by persons other than short-term insurers

64. (1) A person, other than a short-term insurer, who—

(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), 21(2) or 26(2); 25

(b) contravenes or fails to comply with a provision of section 8(1)(a) or (b) or (5), 16(2), 22(1), 27(1), 43(1), 44,45, 46 or 48(1) or (3);

(c) where a rule contemplated in section 55(2)(e) so provides, contravenes or fails to comply with a provision of any rule under section 55(5), to the extent so provided; or 30

(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 to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment. 35

(2) A person, other than a short-term insurer, who contravenes or fails to comply with section 7(1)(a) or (b), 8(2), 25(1) or (2) or 49(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. 40

Offences by short-term insurers

65. (1) A short-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), 21(1) or (2), 26(1), 34(2)(a) or 35(2); 45

(b) contravenes or fails to comply with a provision of section 16(1), 17, 18, 22(1) or (2), 24(1), 35(1), 43(1), 44, 45, 46, 47, 48(1) or (2) or 50; or

(c) where a rule contemplated in section 55(2)(e) so provides, contravenes or fails to comply with a provision of any rule promulgated under section 55(5), to the extent so provided, 50

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

(2) A short-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), (2), (4) or (5), 19(1) or (3), 23, 25(1) or (2), 28(1), (3) or (4), 33 or 49(4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R200 000.

5

Penalty for failure to furnish Registrar with returns etc.

66. (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 R1 000 for every day during 10 which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof.

(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 15 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.

(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.

Part X

20

Transitional and general provisions

Transitional provisions

Continued registration of existing insurers

67. (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 25 to carry on short-term insurance business as defined in that Act, shall be deemed to be registered as a short-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 short-term insurance business of providing or undertaking to provide policy benefits in terms of—

- (a) accident and health policies; 30
- (b) engineering policies;
- (c) guarantee policies;
- (d) liability policies;
- (e) miscellaneous policies;
- (f) motor policies; 35
- (g) property policies; or
- (h) transportation 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 40 repealed Act.

(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 45 person under the repealed Act.

(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 50 condition, otherwise than in terms of section 11.

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

68. A person referred to in section 67(1), who was, by virtue of such person's registration under the repealed Act, authorised to carry on both short-term insurance business and long-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 Long-term Insurance Act, 1997, which have the result—

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

General provisions

Special provisions concerning short-term insurers that are not public companies 15

69. (1) Notwithstanding anything to the contrary in any law contained, a short-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.

(2) The provisions of this Act shall prevail over any provision of a law under which a short-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 short-term insurer shall be drawn up and presented in accordance with Generally Accepted Accounting Practice.

Amendment, substitution or repeal of Schedules

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

- (a) Schedule 1, in order to prescribe the kinds of assets which a short-term insurer may hold in relation to its short-term insurance business;
- (b) Schedule 2, in order to prescribe the prudential spreading of assets to be held by a short-term insurer in relation to its short-term insurance business;
- (c) Schedule 3, in order to prescribe the method of calculation of the value of the assets and liabilities of a short-term insurer;
- (d) Schedule 4, in order to prescribe the method of calculation of the additional amount of assets to be held by short-term insurers;
- (e) Schedule 5, in order to regulate the payment of commission and any other remuneration to intermediaries in relation to the entering into of short term insurance policies;
- (f) Schedule 6, in order to regulate the authorisation of and prescribe the requirements for the collection of premiums, under short-term insurance policies by intermediaries; and
- (g) Schedule 7, in order to prescribe the requirements for the calculation and maintenance of the security to be furnished by the Lloyd's Council.

Savings

71. 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 short-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.

Interpretation of certain references in existing laws

72. 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 short-term insurer or a long-term insurer, as the case may be;

5

(b) to any particular kind of short-term insurance business as defined in the repealed Act, shall be construed as a reference to the kind of short-term insurance business referred to in this Act which constitutes that business.

Short title and commencement

73. This Act shall be called the Short-term Insurance Act, 1997, and shall come into 10 operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

(Section 29)

Kinds of assets

Requirement for claim to be asset, and definitions

1. For the purposes of this Schedule and section 29 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— 5
- “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—
- (u) an asset; 10
 - (b) income from such asset; or
 - (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); 15
 - (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— 20
- (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; 25
- “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; 30
- “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— 35
- (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 40 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; 45
- “shares” include share stock. 45

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 50
 - (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 the Table to this Schedule, 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 10

3. The kinds of assets contemplated in section 29(2), 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).	20
2.	A credit balance in an account with, or a deposit, including a negotiable deposit and 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).	25
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 loan 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. 32 of 1961).	30
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).	35
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).	40
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—	45
	(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.	50
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	55

- 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, 5 used by the short-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 10
 (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. 15
 (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 20
 (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 25 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 30 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 35 (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 by mortgages over immovable property in the Republic. 40
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 45 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.
21. Premiums due and payable to the short-term insurer in respect of short-term insurance business carried on in the Republic. 50

Schedule 2

(Section 30)

Limitation on assets

Definitions

1. For the purposes of this Schedule and section 30 and, unless the context otherwise 55 indicates—

“asset-holding intermediary”, in relation to a short-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 short-term insurer or would be its subsidiary if that insurer were a company; 5

(b) the management of the investments of which is under the *de facto* control of the short-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 short-term insurer;

“associated company” means a company— 10

(a) which is an associate, as defined in section 25(5), of a short-term insurer;

(b) which exercises control, as defined in section 25(6), over a short-term insurer; or

(c) over which a short-term insurer exercises control as defined in section 25(6), other than a company which is an asset-holding intermediary or a property company; 15

“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; 20

“equity shares” means equity shares as defined in section I 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) of the Long-term Insurance Act, 1997: 25

“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: 30

(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 short-term insurer, or by the Registrar if the Registrar is not satisfied with that estimate; 35

“multiple” means the futures contracts 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 short-term insurer to its asset-holding intermediary, exceeds the aggregate amount of loans made to it by that asset-holding intermediary; 40

“property company” means a company—

(a) whose ownership of— 45

(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 25(6), over a company whose principal business consists of the ownership of immovable property; or 50

(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; 55

(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 60

(c) which exercises control, as defined in section 25(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.

10

General limitation on assets

2. For the purposes of section 30(1)(b), a short-term insurer shall have assets of the kinds specified in Schedule 1 having a market value which, when expressed as a percentage of the aggregate value of the liabilities of the short-term insurer plus additional assets, 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 short-term insurer, other than a claim thereof against that short-term insurer, shall be deemed to be assets of the short-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—

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

25

(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 assets 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;

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D represents the value of shares, other than equity shares, held by the short-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);

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F represents the value of the equity shares held by the short-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 short-term insurer, other than a claim of the short-term insurer against that asset-holding intermediary, shall be deemed to be liabilities of the short-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 short-term insurer concerned;
- B represents the value of the equity shares held by the short-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 short-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 while 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 an 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 1 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)(b) of the Table to Schedule 1. 5

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

Other derivatives 10

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 15

(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. 20

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 any one institution In the aggregate in respect of margin deposits held with SAFEX	20 2.5	30
03. 03.01	Item 3: In the aggregate	20	35
04. 04.01	Ex item 6: In the aggregate in respect of any one body, council or institution	20	
05. 05.01	Item 7: In the aggregate	20	40
06. 06.01	item 8: In the aggregate	20	
07, 07.01	Item 9: In the aggregate	20	
08. 08.01	Item 10: in the aggregate	20	45
09. 09.01	item II: In the aggregate	20	

Asset limitation number	Column 1 Relevant Schedule 1 item	Column 2 Percentage
10. 10.01	Ex item 12: In the aggregate in respect of any one body corporate	20
11. 11.01	Item 13: In the aggregate	20
12. 12.01 12.01.01 12.01.02	Ex items 14, 16(1), (2), (3) and (4), 17, 19 and 20. 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 company, and linked policies linked thereto— In the aggregate In the aggregate in respect of any one property or property development project or property company	10 5
13. 13.01 13.02	Ex item 15: Computer equipment — in the aggregate Other assets — in the aggregate	5 2,5
14. 14.01 14.01.01 14.01.02 4.01.02.01 4.01.02.02 14.01.02.02.01 14.01.02.02.02 14.01.03 14.01.03.01	Ex items 16(1), (2), (3) and (4), 17 and 20(a): 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 securities other than property shares; and linked policies linked thereto— In the aggregate in the aggregate in respect of ordinary shares, convertible debentures and depository receipts or linked units, issued by a body corporate, other than an asset-holding intermediary, n.e.s., and units in a unit trust scheme in securities other than property shares; and linked policies linked thereto— 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 In the aggregate of those which are listed on a licensed stock exchange 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— not exceeding R2 000 million exceeding R2 000 million in the aggregate in respect of preference shares, other than property shares, and linked policies thereto— In the aggregate in respect of any one body corporate	5 2,5 35 50 2,5 5 10 40 2,5
15. 15.01	Ex items 16(1) and (2), 19 and 20(b) and (c): Loans to, and claims against, or debentures, other than convertible debentures, issued by, associated companies — in the aggregate	5
16. 16.01 16.01.01	Ex item 20(a): Claims under long-term policies other than linked policies— In the aggregate in respect of any one long-term insurer	20
17.	Ex items 16(1) and (2), 19 and 20(b) and (c):	

Asset limitation number	Column 1 Relevant Schedule I 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.—		5
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	10
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 16(5)(b):		15
18.01.02.01	In the 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(c):		
18.01.04.01	In the aggregate	10	20
18.01.05	Ex item 16(c) and (c):		
18.01.05.01	In the aggregate	10	
18.01.05.02	In the aggregate of those listed on a regulated market outside the Republic	5	25
18.01.05.03	In the aggregate of those listed on a stock exchange outside the Republic	10	
19.	Ex items 16(5)(d) and 18:		
19.01	In the aggregate in respect of margin deposits	2,5	30
20.	Ex items 14, 15, 16(1), (2), (3), (4) and (5)(a)(ii) and (c), 17, 19, 20 and 21:		
20.01	In the aggregate	70	
21.	In respect of any one asset not subjected elsewhere in this Table to a specific limitation	2,5	35

Schedule 3

(Sections 29,30 and 32)

Method of calculation of value of assets and liabilities

Part I

40

Valuation of assets

Amounts to be disregarded

1. For the purposes of the calculation of the value of assets contemplated in sections 29 and 30—

(a) there shall be disregarded—

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- (i) any amount of premium, excluding a premium in respect of a short-term reinsurance policy, which is due and payable, including a premium debited to an intermediary or a deferred installment of a premium and which remains unpaid to an insurer, irrespective of whether or not the premium has been paid to an intermediary, after the expiry of a period of 60 days from the date on which it became due and payable in terms of the short-term policy;

- (ii) an amount, excluding a premium in respect of a short-term reinsurance policy, 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 short-term insurance business; 5
 - (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 short-term insurer concerned is the policyholder and
 - (vi) an amount representing a prepaid expense or a deferred expense; and 10
- (b) the value of the assets mentioned in paragraph 2, 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

2. The value of— 15
- (a) 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;
 - (b) a credit balance, deposit or margin deposit referred to in items 2, 3, 10, 16(5)(b) and (d) and 18, shall be the amount thereof; 20
 - (c) an asset referred to in item 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 or 16(1), (2), (3), (4) or (5)(a) or (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;
 - (d) 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; 25
 - (e) 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; 30
 - (f) 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;
 - (g) an asset referred to in item 21, shall be the amount of premiums less— 35
 - (i) the amount or estimated amount of any commission which the short-term insurer owes or for which it is likely to become liable in connection with the premiums;
 - (ii) a provision of 7,5 per cent of that amount, to cover the risk of loss arising from non-receipt by the insurer of any premiums;
 - (h) an asset referred to in item 14, 15, 19 or 20(b) or (c), or an asset not otherwise specified in this paragraph, shall be an amount not exceeding that which could have been obtained on the sale of the asset between a willing seller and a willing buyer, acting at arm's length and in good faith, as estimated by the insurer; 40
 - (i) an asset referred to in item X(a), shall be the amount which would be payable to the policyholder upon the full surrender of the policy on the day on which the value is calculated; 45
 - (j) a derivative not mentioned in subparagraph (e) or (f) shall be calculated as determined by the Registrar from time to time.

Savings

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3. (1) Notwithstanding paragraphs 1 and 2, if the Registrar is satisfied that the value of an asset, when calculated in accordance with paragraph 2, 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 short-term insurer to calculate the value in another manner which the Registrar determines and which will produce a proper value for that asset.

(2) An asset in respect of which no basis of valuation is prescribed in paragraphs 1 and 2 shall be valued in accordance with Generally Accepted Accounting Practice. 5

Part II

Valuation of liabilities

Method of calculating amount referred to in section 32(1) (a)(ii)

4. The minimum amount referred to in section 32(1)(a)(ii), shall be an amount equal to 7 per cent or such other percentage as the Registrar may direct in a particular case, of the total amount of all of the premiums payable to the short-term insurer under short-term policies entered into by it in the period of 12 months preceding the date on which the amount is calculated, reduced by the total amount payable by the short-term insurer as premiums under approved reinsurance policies in respect of the short-term policies concerned. 10
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Method of calculating unearned premium provision

5. (1) In respect of short-term policies, other than short-term reinsurance policies, the minimum amount of the unearned premium provision referred to in section 32(1)(b) shall, subject to subparagraph (3), be the amount calculated by means of the formula— 20

$$(A - B) \times \left(1 - \frac{C}{D}\right) \quad 20$$

in which formula—

A represents the amount remaining after deducting from the total amount of all of the premiums payable to the short-term insurer under all of the short-term policies concerned for the whole of the period for which each of those short-term policies is operative, of— 25

(a) the total amount of so much of those premiums as has been refunded as a result of the cancellation or variation of the policy;

(b) the total amount payable by the short-term insurer as premiums under approved reinsurance policies in respect of the short-term policies concerned; 3(1

B represents the total amount of the consideration, payable by the short-term insurer in terms of section 48 to independent intermediaries in respect of the short-term policies concerned, reduced by the total amount of any consideration payable to the short-term insurer in respect of approved reinsurance policies under which its liabilities in respect of the short-term policies concerned are reinsured: Provided that such reduction shall not exceed an amount equal to the maximum consideration which would have been payable to an independent intermediary in terms of section 48 had those contracts been short-term policies other than short-term reinsurance policies: 35

C represents the number of days in the period from the date of the commencement of the short-term policy until the day on which the calculation is made in accordance with this paragraph: 40

D represents the total number of days during the whole period for which the short-term policy is operative. 45

(2) In respect of short-term reinsurance policies, the minimum amount of the unearned premium provision referred to in section 32(1)(b) shall, subject to subparagraph (3), be an amount equal to 50 per cent of the total amount of all of the premiums payable to the short-term insurer under all those policies for the whole of the period for which they are operative, reduced by the amount remaining after deducting from the total amount of consideration payable by the short-term insurer in respect of those policies, subject to a maximum of 30 per cent of the said premiums, the total amount of any consideration payable to the short-term insurer in respect of approved reinsurance 50

policies under which its liabilities in respect of the short-term policies concerned are reinsured: Provided that such reduction shall not exceed the total amount of consideration paid by the short-term insurer in respect of those policies.

(3) A short-term insurer shall, if the Registrar so approves or by notice requires, arrive at the minimum amount of its unearned premium provision by means of a calculation which is different from that set out in subparagraph (1) or (2) and which the Registrar is satisfied places a more appropriate value on the liabilities concerned.

Method of calculating contingency reserve

6. The minimum amount of the contingency reserve referred to in section 32(1)(c) shall be— 10

- (a) an amount equal to 10 per cent of the total amount of all of the premiums payable to the short-term insurer under short-term policies entered into by it in the period of 12 months preceding the date on which the amount is calculated, reduced by the total amount payable by the short-term insurer as premiums under any approved short-term reinsurance policies in respect of the short-term policies concerned: or 15
- (b) at any time during a period, not exceeding three years, as the Registrar may approve, such lesser amount as the Registrar may approve, subject to the conditions the Registrar determines, if the Registrar is satisfied that the short-term insurer concerned— 20
 - (i) has incurred claims under short-term policies of such extent and as a result of such extraordinary events that it is reasonable to meet all, or such part as the Registrar may approve, thereof from the contingency reserve: and
 - (ii) will be able to restore the reserve to the amount required in terms of 25 subparagraph (a) within that approved period.

Determination of value of other liabilities

7. (1) For the purposes of section 29, the value of the liabilities of a short-term insurer, other than those referred to in paragraphs 5 and 6, shall be determined in accordance with Generally Accepted Accounting Practice. 30

(2) Notwithstanding subparagraph (1), any liability of a short-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 insurer and approved by the Registrar.

Schedule 4 35

(Section 29)

Calculation of additional amounts of assets

1. The additional amount referred to in section 29(1)(b), shall be an amount equal to the greater of the following amounts: 40

- (u) R3 000000 or such smaller amount as the Registrar may, in a particular case and for a determined period, approve; or 40
- (b) 15 per cent of the greater of the amount of the premium income of the short-term insurer after deduction of all premiums payable by it in terms of any short-term reinsurance policies entered into by it in respect of any short-term policies— 45
 - (i) in the previous financial year; or
 - (ii) during the period of 12 months immediately preceding the day on which the calculation is made.

2. The additional amount referred to in section 29(2)(b), shall be an amount equal to the greater of the following amounts: 50

- (a) R3 000000 or such smaller amount as the Registrar may, in a particular case and for a determined period, approve; or

- (b) 15 per cent of the greater of the amount of the premium income of the short-term insurer in respect of the short-term insurance business carried on by it in the Republic after deduction of all premiums payable by it in terms of any short-term reinsurance policies entered into by it in respect of any short-term policies— 5
- (i) in the previous financial year; or
 - (ii) during the period of 12 months immediately preceding the day on which the calculation is made.

Schedule 5

(Section 48) 10

Limitation on remuneration to intermediaries

General limitations

1. (1) No consideration shall, in respect of short-term insurance business carried on in the Republic, 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 commission in monetary form. 15
- (2) No commission shall be paid or accepted otherwise than subject to this Schedule.
- (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 amount payable in terms of paragraph 3. 20

Time and payment of commission

2. Commission shall not be paid or accepted before the date on which the premium in respect of which it is payable has been paid to the short-term insurer.

Maximum commission payable

3. No commission shall exceed, in respect of— 25
- (a) a motor policy, 12.5 per cent of the premium payable under the policy; or
 - (b) any other short-term policy, 20 per cent of the premium payable under the policy.

Reversal of commission

4. If a premium or any part thereof is for any reason refunded by a short-term insurer, the commission payable in terms of this Schedule in respect of that premium, or the part of that premium, which is so refunded shall be refunded to the short-term insurer by the person to whom it was paid. 30

Commission when short-term policy comprises combination of policies

5. If a short-term policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1 the maximum commission payable shall be determined by aggregating the maximum payable in terms of this Schedule in respect of each of the separate kinds of policies comprising the combination by reference to the premium payable for each such policy, and if the premium attributable to each component is not specified in or ascertainable from the policy, the maximum shall not exceed that which would have been payable had the policy been the kind of policy to which the lowest maximum rate of commission applies. 40

Schedule 6

(Section 45)

Authorisation of and requirements for collection of premiums by intermediaries

Authorisation

1. (1) A short-term insurer may, subject to subparagraph (2), in writing authorise an independent intermediary to receive, hold or in any other manner deal with premiums payable to it under short-term policies. 5

(2) A person shall not be authorised, as contemplated in subparagraph (1), unless that person has provided security, to the extent and in accordance with the requirements of this Schedule, in respect of his or her obligations in terms of paragraph 3 by means of— 10

(a) a guarantee policy issued by a short-term insurer registered to do so in accordance with a guarantee facility created by short-term insurers generally for the purposes of providing such security; or

(b) a contract which, but for the fact that the undertaking concerned is given by a bank, would be a guarantee policy, and under which policy benefits are to be provided in the event of the failure of that person to meet those obligations. 15

Requirements in respect of security

2. The security referred to in paragraph 1(2) shall— 20

(a) be in such form as prescribed by the Registrar;

(b) be in favour of the South African Insurance Association or, if the Registrar so determines, in favour of the Registrar, for the benefit of all of the short-term insurers with whose authority the premiums are received, held or in any other manner dealt under by the person concerned;

(c) be provided, before any premium is received, held or in any other manner dealt with by the person concerned; 25

(d) be provided, and renewed annually, in respect of each financial year of the person concerned;

(e) subject to subparagraph (f), be for an amount, being not less than R10000 and not exceeding R50 000000, equal to— 30

(i) in the financial year in which the person concerned is first authorised to receive, hold or in any other manner deal with premiums and in the immediately following financial year, 30 per cent of a reasonable estimate of the total premiums which that person expects to receive in a full financial year; and 35

(ii) in every subsequent financial year of the person concerned, 30 per cent of the total premiums actually received, held or in any other manner dealt with by that person in the previous financial year; and

(f) if the businesses of two or more independent intermediaries are amalgamated, be for an amount determined by reference to the total premiums received, held or in any other manner dealt with in the financial year concerned by the businesses so amalgamated. 40

and, for the purposes of this paragraph, if the person concerned does not have a particular period of 12 months which constitutes his or her financial year, the reference to a financial year shall be construed as a reference to a period of 12 months. 45

Requirements in respect of payment to short-term insurers

3. (1) A person authorised, as contemplated in paragraph 1, shall, within a period of 15 days after the end of every month in which premiums are received, pay to the short-term insurer concerned the total amount of those premiums received during that month reduced by the amount of— 50

- (l) any refund premiums then due and payable by such short-term insurer to any policyholder or prospective policyholder represented by such person; and
 - (b) any consideration payable to that person by the short-term insurer for services as 'intermediary rendered in respect of the short-term policies concerned.
- (2) If more than one person was so authorised by the short-term insurer to receive 5 premiums in relation to the same short-term policy, the period between the receipt thereof from the insured or any person on his or her behalf and payment to the short-term insurer shall not exceed the period contemplated in subparagraph (1).
- (3) A short-term insurer shall not authorise more than one person as contemplated in subparagraph (2) to receive a premium in relation to the same policy if it is a policy 10 forming part of personal lines business.

Returns by authorised persons

4. Every person authorised as contemplated in paragraph 1 shall—
- (a) in respect of each period of 12 months referred to in paragraph 2(e)(ii), furnish the person in whose favour the security is provided, with returns— 15
 - (i) in the medium and form prescribed by the Registrar;
 - (ii) containing information relating to each short-term insurer concerned, of the premiums received after setting off any commission payable to that person for services as intermediary rendered during that period of 12 months; 20
 - (iii) within a period of three months after the end of each such period of 12 months; and
 - (b) in respect of every month in respect of which the authority is in force, furnish the short-term insurer concerned with returns— 25
 - (i) in the form required by that short-term insurer;
 - (ii) containing the information relating to the premiums received, the commission payable to that person and the amounts paid to the short-term insurer; and
 - (iii) within a period of 15 days after the end of the month concerned.

Schedule 7 30

(Section 60)

Lloyd's security

1. Lloyd's, acting through the Lloyd's representative, shall not later than the last day of July of every calendar year, furnish, and shall maintain throughout the following 35 period of 12 months, security in an amount equivalent to the total amount of premiums payable by policyholders, including premiums payable in respect of reinsurance policies, less the amount of premium refunds during the preceding calendar year, and less an amount equivalent to the aggregate of—

- (a) the total amount of all payments in terms of section 60(1)(f) of the repealed Act during the said preceding calendar year; and 40
- (b) the total amount of all commissions paid in accordance with Schedule 5 during that calendar year in respect of short-term insurance business carried on during the year, as reflected in a return prescribed in terms of section 58:

Provided that until another arrangement is made to comply with this paragraph, the trust account referred to in section 60(1)(i) of the repealed Act shall be maintained in 45 operation and shall be deemed to be the trust account required by paragraph 2.

2. The security shall be in the form of a trust account in the name of Lloyd's at a bank.

3. (1) Any money standing to the credit of the account referred to in paragraph 2 which is not required for immediate use, may be invested in assets referred to in 50 Schedule 1 and shall for the purposes of paragraph 1 be valued in accordance with Schedule 3, provided that such investment, when expressed as a percentage of the amount referred to in paragraph 1, does not exceed the limitations specified in Schedule 2.

(2) Any document issued in respect of any investment made under subparagraph (1) shall be held by the Lloyd's representative who shall be competent to realise any asset referred to in subparagraph (1).

(3) All money acquired by virtue of any investment referred to in subparagraph (1) may be withdrawn from such account. 5

(4) Except for the amounts referred to in paragraph 3(3) and section 61, or where the amount of the security required in terms of paragraph (1) reduces, no other amounts shall be withdrawn from the account referred to in paragraph 3(1).

(5) In the event of a withdrawal from the account referred to in paragraph 2 for the purposes of a payment in terms of section 61, the amount of such withdrawal shall be 10 refunded by Lloyd's within 30 days of the date of such payment.

(6) The Lloyd's representative shall furnish the Registrar with a return *in* respect of the trust account referred to in paragraph 2—

(a) in the medium and form;

(b) containing the information; and

(c) by the date and within the period,

prescribed by the Registrar. 15

MEMORANDUM ON THE OBJECTS OF THE SHORT-TERM INSURANCE BILL

1. INTRODUCTION

The Bill proposes the partial replacement 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, by the promulgation of a Short-term Insurance Act. The current Act is proposed to be repealed by the Long-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 short-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 short-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.

2.1.4 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:

2.1.4.1 Disclosure of salient information on products and their costs.

2.1.4.2 "Fit and proper" testing of the executive management of short-term insurers.

2.1.4.3 A more functional approach to supervision as opposed to the current institutional approach.

2.1.5 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.

2.1.6 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:

2.1.6.1 The limited ability of the Registrar to intervene significantly when failure is apparent but not yet imminent.

2.1.6.2 The limited number of options at the disposal of the Registrar if he or she were to intervene.

2.1.6.3 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.

2.1.7 Because of definitional uncertainty in the current Act concerning the business areas of long-term insurers and short-term insurers, respectively, they have progres-

sively 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.

2.1.8 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, 8 classes of short-term business are being defined as opposed to the 6 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.

Significant changes are proposed to the definition of “approved” reinsurance and the definition of “admissible” reinsurance has been deleted to bring our practice more in line with international practice.

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 11

This Part deals with the registration of short-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 III is a significant departure from the current Act in that it proposes to empower the Registrar to regulate ancillary business activities of short-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 professions’ involvement in insurers and formally imposes audit committee discipline on short-term insurers. Take-overs of and share acquisition in short-term insurers are regulated here and a number of new provisions whereby short-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 short-term insurers and to remove persons not suitable.

2.3.5 Part IV

In this Part the financial arrangements of short-term insurers are set out. Although the fundamental principles of the current Act are retained, the ways in which short-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 short-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 policy document within a fixed period in the case of personal lines policies issued by short-term insurers. 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

This Part deals with the manner in which Lloyd's of London operates in the Republic. The Bill provides for supervision focused on Lloyd's underwriters as represented by an approved general representative as opposed to the current Act's focus on the authorisation of local Lloyd's agents.

2.3.9 Part IX

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

2.3.10 Part X

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

2.3.11 Schedule 1

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

2.3.12 Schedule 2

This Schedule sets out the way in which assets held by short-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.

2.3.13 Schedule 3

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

2.3.14 Schedule 4

In this Schedule the method of calculation to determine the additional amount whereby assets of short-term insurers must exceed their liabilities is set out. This method of calculation brings testing in line with international practice.

2.3.15 Schedule 5

This Schedule sets out the maximum commission that may be paid by short-term insurers to intermediaries and is substantially the same as in the current Act.

2.3.16 Schedule 6

The provisions of section 20*bis* of the current Act, dealing with the safeguarding of

collection and payment of premiums by short-term intermediaries on behalf of short-term insurers, have been taken up in this Schedule, essentially retaining the present situation.

2.3.17 Schedule 7

This Schedule fundamentally retains the provisions of the current Act in relation to the provision of security by Lloyd's underwriters in the Republic.

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

(u) 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 short-term insurers is granted is questionable and uncertain.

(b) New approach

Explicit provision is made to determine conditions subject to which new short-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 short-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 short-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 short-term insurers are to restrict their business to insurance business only.

(b) New approach

Short-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 short and long-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 short-term insurer by law, the matter being regulated by RV circular.

(b) New approach

The audit committee is legally defined and imposed on short-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 short-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

This 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 the 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 short-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 short-term insurers to use same as capital instruments.

(b) New approach

The issuing or conversion of those instruments is to be prohibited without the Registrars 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 short-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

Short-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 25% 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 Invalidation 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 short-term insurers

(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 Financial arrangements

Proposals are made in the Bill for a more accurate and conservative method of calculating the technical provisions and contingency reserves of a short-term insurer with specific reference to the security provided by the foreign reinsurance arrangement. The amount of additional assets are now calculated after taking into account any reinsurance.

3.2.2 Approved foreign reinsurance

(a) Current position

Foreign reinsurance is regarded as "approved" only where local security is furnished by way of a deposit.

(b) New approach

The definition of "approved" in this regard is expanded to also allow the required security in the form of an irrevocable guarantee or letter of credit issued by a local registered bank in a prescribed form.

(c) Reason

This proposal expands the form of the security element and is in line with international development. It is important to note that this proposal does not provide a basis for a specific foreign reinsurer to obtain "approved" status.

3.2.3 Calculation of claims provisions

(a) Current position

Claims provisions are calculated net after any reinsurance.

(b) New approach

Those provisions are now to be calculated net after only approved reinsurance.

(c) Reason

It is considered prudent to calculate those provisions after taking into account only reinsurance which is deemed to offer reasonable security.

3.2.4 Calculation of unearned premium provision

(a) Current position

The deduction of commission in this calculation is on a gross commission paid basis subject to the maximum commission limitations. In respect of reinsurance business the Registrar may allow a higher deduction of commission.

(b) New approach

The deduction of commission is now to be on a net basis (i.e. after allowing for actual reinsurance commission received). In respect of reinsurance business the Registrar's discretion is replaced with a reasonable maximum limit of 30%.

(c) Reason

Reinsurance commission received can be regarded as a payment in advance by the reinsurer as a contribution towards the future expenses of the ceding insurer. By netting commission in this calculation it is ensured that the short-term insurer sets aside a portion of this advance payment to cover future administration expenses.

3.2.5 Calculation of the additional amount of assets*(a) Current position*

The amount of additional assets is calculated after taking into account "admissible" reinsurance only, which is reinsurance ceded to local registered insurers and Lloyd's.

(b) New approach

The amount is to be calculated after deduction of any reinsurance.

(c) Reason

As the amount concerned does not represent a provision for a known liability, the security of the reinsurer is of less importance, and in line with international practice of calculating a short-term insurer's solvency margin.

3.2.6 Valuation of outstanding premiums*(a) Current position*

Short-term insurance premiums outstanding for longer than 60 days after the inception date of a policy are disqualified as an insurance asset.

(b) and (c) New approach and reason

The proposals now take into account the market practice of issuing policies with premiums payable in installments and therefore replace the reference to inception date of the policy with the date on which the premium becomes due and payable in terms of the policy.

3.2.7 Limitation on remuneration*(a) Current position*

Lloyd's are allowed to pay 2.5% higher commission than in the case of a local registered insurer.

(b) New approach

This preferential treatment of Lloyd's is being abolished.

(c) Reason

The historic reason for this differentiation was the increased costs involved due to Lloyd's offshore location which, in view of the development in communication technology and the resulting cost saving, is no longer justified.

3.2.8 Provisions relating to Lloyd's*(a) Current position*

The focus of supervision relating to Lloyd's is, from an operational viewpoint, on the authorisation by the Registrar of local Lloyd's agents and from a security point of view, on the maintenance of the trust account.

(b) New approach

The proposals provide for supervision focused from an operational viewpoint, on Lloyd's underwriters represented as per the current Act, by a general representative in the Republic. Lloyd's agents accepting business on behalf of underwriters at Lloyd's, will no longer be subject to authorisation by the Registrar. From a security point of view the *status quo* is maintained.

(c) Reason

Although certain provisions of the Bill apply to intermediaries, their overall conduct of business is not subject to statutory supervision. Similar to any other registered insurer,

Lloyd's through its local representative, must accept responsibility for intermediaries appointed by it.

3.2.9 Personal lines business

(a) Current position

No demarcation between personal lines and corporate/commercial business currently exists.

(b) New approach

A new definition for personal lines business is inserted.

(c) Reason

To limit the scope of certain provisions to cases only where a natural person is the policyholder (e.g. payment of fees by policyholder and issue of policy document).

3.2.10 Policy fees charged by intermediaries

(a) Current position

During 1993 the Minister was empowered to make regulations concerning the charging of policy fees by intermediaries. No such regulations have been made.

(b) New approach

In the case of personal lines business, the disclosure to the policyholder of policy fees charged by an intermediary is to be made compulsory.

(c) Reason

The policyholder should be entitled to see the premium charged by the insurer separately from the fee charged by the intermediary for services rendered.

3.2.11 Copy of policy

(a) Current policy

No statutory obligation currently exists to provide an insured with a copy of the policy.

(b) New approach

The insurer is to be obliged to provide a personal lines insured with a copy of the policy within 30 days after entering into the policy. Any insured/policyholder may also inspect any document which embodies the policy at a fee which may be prescribed by the Registrar.

(c) Reason

This is an area of major concern where personal lines policyholders are not provided with a copy of the policy. It is also aimed at providing essential information where a claim is in dispute.

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 hereto as Annexure A. 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.

A draft Bill was produced and circulated during 1990. Comments were received and processed during 1991, with a semi-final version resulting. As the draft was similar to the 1992 draft of the long-term Bill which attracted severe criticism, it was held back pending the jointly produced long-term draft Bill. In the light of the latter, a joint committee of the FSB and short-term industry was convened which worked through the majority of the industry's concerns in using the long-term draft Bill as basis for a new short-term draft Bill. After the comments on the long-term draft Bill were processed, the second short-term draft was finalised and circulated with the second long-term draft.

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

The Association of Building Societies of South Africa	Afrikaans Handelsinstituut	Association of Chambers of Commerce of South Africa
The Association of Clearing Bankers of South Africa	Association of General Banks	The Association of Law Societies
National African Federated Chamber of Commerce	Johannesburg Stock Exchange	Merchant Bankers' Association
The South African Institute of Chartered Accountants	South African Co-ordinating Consumer Council	The South African Insurance Association
The Registrar of Banks and Building Societies	The Association of Mortgage Lenders of S.A.	The National Black Consumers Association
The General Representative in South Africa for Lloyd's of London	The South African Reinsurance Offices Association	The Life Underwriters Association of South Africa
The Insurance Brokers Council of South Africa	The South African Reserve Bank	The South African Insurance Brokers Association
The South African Risk and Insurance Management Association	The Actuarial Society of South Africa	Public Accountants' and Auditors' Board
Mr H Schwartz MP	The Life Offices' Association of South Africa	The 5A Law Commission
Department of Economics	Department of Mercantile Law	Department: Private Law
University of the Witwatersrand	University of Pretoria	P.U. for C.H.E.
The Master of the Supreme Court	The Registrar of Companies	The Workmen's Compensation Commission

All registered short-term insurers
Members of the Advisory Committee on Short-term Insurance

ANNEXURE B

Policy Board for Financial Services and Regulation

Dr C J de Swardt	Dr R W Burton	Adv H W Krull
Dr H B Falkena	Prof L A Tager	Mr I B Skosana
Mr R C Andersen	Dr W J Kok	Mr H M Vosloo
Mr J H Maree	Mr P T Martin	Mr M J Levett
Dr P B Roodt	Mr R T Bamber	Mr C F Wiese
The Life Underwriters Association of South Africa	The Commissioner for Inland Revenue	Quest Insurance Advisory Services (Pty) Ltd
The Public Accountants' and Auditors' Board	The South African Institute of Chartered Accountants	The South African Chamber of Business
The Life Offices' Association of South Africa	The National Black Consumers Association	The Institute of Retirement Funds of South Africa
The Insurance Brokers Council	The General Representative in SA for Lloyd's of London	The Actuarial Society of South Africa
The South African Insurance Association	The Master of the Supreme Court	The National African Federated Chamber of Commerce
The South African Law Commission	Afrikaans Handelsinstituut	Lavanya Dunray
Old Mutual	The Council of Southern African Bankers	The Registrar of Financial Institutions Mmabatho
Prof G L Marx	Prof J P van Niekerk	Prof M F B Reinecke
Faculty of Economic and Management Sciences	Departement Handelsreg	Randse Afrikaans Universiteit
University of Pretoria	Regsfakulteit: UN ISA	
The South African Reinsurance Offices Association	The South African Co-Ordinating Consumer Council	The South African Insurance Brokers' Association
The South African Reserve Bank	The Black Brokers Association	The Registrar of Financial Institutions Venda
The Registrar of Companies	The Registrar of Banks	The Consulting Actuaries Society of Southern Africa
Mr T Vels	Mr Terry Betty	Mr M J Pattle
Chief Executive	The Business Times	Chairman
Insurance Institute of SA		SARBA
Adv Potgieter	Adv W Schreiner	The Johannesburg
P/a Groep 836	Ombudsman: Short-term Insurance	Stock Exchange
Mr M Ollerhead	Prof S R van Jaarsveld	Prof C F C van der Walt
Chairman	Department: Mercantile Law	Department: Private Law
SARIMA	University of Pretoria	PU for CHE
Mr Dave King	Prof R Vivian	The Association of
Republic Ratings (Pty) Ltd	Dept of Business Economics	Law Societies

Financial Services Board

Dr C J de Swardt	Mr K Nilsson	Mr W J Haslam
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Registered short-term and composite insurers: names and addresses

File No.	Registered Name	Postal Address	
Direct Insurers			
124	ABSA Insurance Company Ltd	P O Box 421, Johannesburg, 2000	(ST)
134	AECI Captive Insurance Company Ltd	P O Box 1122, Johannesburg, 2000	(ST)
3	Aegis Insurance Company Ltd	P O Box 783131, Sand[on], 2146	(ST)
107	African General Insurance Company Ltd	P O Box 31574, Braamfontein, 2017	(ST)
7	Al Insurance Company Ltd	P O Box 31983, Braamfontein, 2017	(ST)
68	Allianz Insurance Ltd	P O Box 62228, Marshalltown, 2107	(ST)
130	Attorneys Insurance Indemnity Fund	P O Box 3062, Cape Town, 8000	(ST)
20	Auto & General Insurance Company Ltd	P O Box 11 250, Johannesburg, 2000	(ST)
10	Aviation Insurance Company Ltd	P O Box 6777, Johannesburg, 2000	(ST)
13	British Engine Insurance Company of SA Ltd	P O Box 11 20, Johannesburg, 2000	(ST)
119	Commercial Umon Insurance Company of SA Ltd	P O Box 3380, Johannesburg, 2000	(ST)
140	Compass Insurance Company Ltd	P O Box 6087, Johannesburg, 2000	(ST)
31	Concord Insurance Company Ltd	P O Box 6480, Marshalltown, 2107	(ST)
18	Constantia Insurance Company Ltd	P O Box 61861, Marshalltown, 2107	(ST)
19	Credit Guarantee Insurance Corporation of Africa Ltd	P O Box 125, Randburg, 2125	(ST)
133	Customer Protection Insurance Company Ltd	P O Box 458, Germiston, 1400	(ST)
120	Denel Versekeringsmaatskappy (Edms) Bpk	P G Box 8322, Hennopsmeer, 0046	(ST)
125	AGF (Southern Africa) Insurance Ltd	P O Box 91211, Auckland Park, 2006	(ST)
131	Escap Limited	P O Box 1091, Johannesburg 2000	(ST)
22	Federated Employers' Mutual Assurance Company Ltd	P O Box 3051, Johannesburg, 2000	(ST)
21	Fedgen Insurance Ltd	P O Box 3051, Johannesburg, 2000	(ST)
139	Furnguard Insurance Company Ltd	P O Box 61063, Marshalltown, 2107	(ST)
24	General Accident Insurance Company SA Ltd	P O Box 32424, Braamfontein, 2017	(ST)
52	Guardian National Insurance Ltd	P O Box 32500, Braamfontein, 2017	(ST)
126	Guardrisk Insurance Company Ltd	P O Box 62018, Marshalltown, 2107	(ST)
29	Hollard Insurance Company Ltd	P O Box 62229, Marshalltown, 2107	(ST)
32	IGI Insurance Company Ltd	P O Box 8199, Johannesburg, 2000	(ST)
110	Intermediaries Guarantee Facility Ltd	P O Box 30619, Braamfontein, 2017	(ST)
106	Lombard Waarborg Versekeringsmaatskappy Beperk	P O Box 61728, Marshalltown, 2107	(ST)
141	Monarch Insurance Company Ltd	P O Box 43, Woodstock, 7915	(ST)
39	Mutual & Federal Insurance Company Ltd	P O Box 1120, Johannesburg, 2000	(ST)
40	Nasionale Versekerers Bpk	P O Box 20161, Alkantrant, 0005	(ST)

File No.	Registered Name	Postal Address	
<u>Direct Insurers</u>			
41	National Employers' General Insurance Company Ltd	P O Box 1120, Johannesburg, 2003	(ST)
129	NBS Insurance Company Ltd	P O Box 3045, Durban, 4000	(ST)
47	New National Assurance Company Ltd	P O Box 1610, Durban, 4000	(ST)
48	New Zealand Insurance Company (SA) Ltd	P O Box 1653, Johannesburg, 2000	(ST)
114	Old Mutual Health Insurance Ltd	P O Box 172, Howard Place, 7450	(ST)
53	Phoenix Assurance of SA Ltd	P O Box 1120, Johannesburg, 2000	(ST)
122	Prefsure Limited	P O Box 3699, Durban, 4000	(ST)
135	Protea Insurance Company Ltd	P O Box 1120, Johannesburg, 2000	(ST)
59	Rand Mutual Assurance Company Ltd	P O Box 61413, Marshalltown, 2107	(ST)
84	Regent Insurance Company Ltd	P O Box 674, Edenvale, 1610	(ST)
117	Sage Specialised Insurances Ltd	P O Box 9745, Johannesburg, 2000	(ST)
63	Santam Beperk	P O Box 653, Cape Town, 8000	(ST)
66	Sentrasure Bpk	P O Box 2851, Randburg, 2125	(ST)
67	Sentraoes (Koöperatief) Bpk	P O Box 114, Ficksburg, 9730	(ST)
70	South African Eagle Insurance Company Ltd	P O Box 61489, Marshalltown, 2107	(ST)
74	South African Special Risks Insurance Association	P O Box 7380, Johannesburg, 2000	(ST)
76	Southern Insurance Association Ltd	Great Westerford, Rondebosch, Cape Town, 7700	(ST)
137	Stanbic Insurance Limited	P O Box 32587, Braamfontein, 2017	(ST)
78	Standard General Insurance Company Ltd	P O Box 4352, Johannesburg, 2000	(LT & ST)
80	Suid-Afrikaanse Nasionale Mediese Fends Bpk	P O Box 45, Sanlamhof, Cape, 7532	(ST)
86	Westchester Insurance Company (Pty) Ltd	P O Box 61689, Marshalltown, 2107	(ST)
<u>Reinsurers</u>			
89	Central Reinsurance Corporation Ltd	P O Box 61248, Marshalltown, 2107	(ST)
90	Gerling Global Reinsurance Company of SA Ltd	P O Box 1634, Houghton, 2041	(LT & ST)
92	Hollandia Reinsurance Company Ltd	P O Box 10842, Johannesburg, 2000	(ST)
93	Keulse Herversekeringsmaatskappy van Suid-Afrika Bpk	P O Box 444, Cape Town, 8000	(LT & ST)
94	Mercantile and General Reinsurance Company of SA Ltd	P O Box 2445, Cape Town, 8000	(LT & ST)
95	Munich Reinsurance Company of SA Ltd	P O Box 6636, Johannesburg, 2000	(LT & ST)
97	Swiss South African Reinsurance Company Ltd	P O Box 7049, Johannesburg, 2000	(LT & ST)