


NATIONAL TREASURY

NO. 1439

15 DECEMBER 2017

**SHORT-TERM INSURANCE ACT, 1998: AMENDMENT OF REGULATIONS MADE
UNDER SECTION 70**

I, Malusi KN Gigaba, Minister of Finance, under section 70(1) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), hereby amend the Regulations made under section 70 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998) and published under Government Notice R.1493 in *Government Gazette* 19495 of 27 November 1998 (as amended from time to time) as set out in Schedule A.



MALUSI KN GIGABA
MINISTER OF FINANCE
14/12/2017

SCHEDULE

1. Interpretation

In this Schedule "the Regulations" means the Regulations under the Short-term Insurance Act, 1998 as published in GN R.1493 of 1998 and amended by GN R.462 of 2008, GN R.1076 of 2011, GN R.1582 of 2016.

2. Part 1 of the Regulations is hereby amended by –

- (a) the substitution in Part 1 below "Definitions" for the preamble of the following preamble:

"In these regulations "the Act" means the Short-term Insurance Act, 1998, and any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it, and unless a different meaning is assigned elsewhere in these regulations –";

- (b) the insertion in Regulation 1.1 before the definition "long-term policy" of the following definition:

"**"Companies Act'** means the Companies Act, 2008 (Act No. 71 of 2008);";

- (c) the insertion in Regulation 1.1 after the definition "Companies Act" of the following definition:

"**"effective date'** means the date referred to in regulation 8.2;";

- (d) the insertion in Regulation 1.1 after the definition "effective date" of the following definition:

"**"Independent intermediary'** means a person, other than a representative, who renders services as intermediary and includes a Lloyd's correspondent;";

- (e) the insertion in Regulation 1.1 after the definition "independent intermediary" of the following definition:

"**"insurer'** means a short-term insurer;";

- (f) the insertion in Regulation 1.1 after the definition "Part" of the following definition:

"**"policy'** means a short-term policy;";

- (g) the insertion in Regulation 1.1 after the definition "policy" of the following definition:

"**"Policyholder Protection Rules'** means the Policyholder Protection Rules made under section 55 of the Act;"; and;

- (h) the insertion in Regulation 1.1 after the definition "Policyholder Protection Rules" of the following definition:

"**"representative'** means a natural 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 the short-term policies entered into or to be entered into by the short-term insurer only;";
 - (i) the insertion in Regulation 1.1 after the definition "section" of the following definition:

"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 premium payable under; or
 - (iii) receiving, submitting or processing claims under,

a short-term policy.";
 - (j) the deletion in Regulation 1.1 of the definition "SAFEX".
3. **Part 2 of the Regulations is hereby amended by the deletion of that Part.**
4. **Part 3 of the Regulations is hereby amended by –**
- (a) the substitution in Regulation 3.1 for the definition "equity shares" of the following definition:

"equity shares' in relation to a company, means shares, excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;";
 - (b) the substitution in Regulation 3.1 for the definition "rules of SAFEX" of the following definition:

"rules of SAFEX' means rules issued by SAFEX in terms of section 10(2)(b) read with section 17 of the Financial Markets Act, 2012 (Act No. 19 of 2012);"; and
 - (c) the insertion in Regulation 3.1 after the definition "rules of SAFEX" of the following definition:

"SAFEX' means the South-African Futures Exchange;"
5. **Part 5 of the Regulations is hereby amended by –**
- (a) the substitution in Part 5 below "PART 5" for the heading "LIMITATION ON REMUNERATION TO INTERMEDIARIES" of the following heading:

"REMUNERATION";

- (b) the insertion below "(Section 48)" in the heading of Part 5 of the following heading:

**"PART 5A
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY";**

- (c) the substitution in Regulation 5.1 in Part 5A for subregulation (1) of the following subregulation:

"(1) No consideration shall directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of commission in monetary form.";

- (d) the insertion after Part 5A of the following Part:

**"PART 5B
LIMITATION ON REMUNERATION FOR BINDER FUNCTIONS**

Application of this Part 5B, and definitions

5.6 (1) This Part 5B applies to remuneration provided by an insurer or any person on its behalf to a person for rendering a binder function.

(2) In this Part 5B, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 6 has the meaning assigned to it in that Part, and -

"cell structure" means an arrangement under which a person (cell owner) -

- (a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares;
- (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and
- (c) places insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up.

General principles for determining remuneration for binder functions

5.7 (1) When remuneration is provided by or on behalf of an insurer to any person for rendering a binder function -

- (a) such remuneration must be reasonable and commensurate with the actual cost of performing the binder function, taking into account the nature of the function and the resources, skills and competencies reasonably required to perform it;
- (b) the payment of such remuneration must not result in the person being remunerated more than once for performing a similar function on behalf of the insurer and/or policyholder;

- (c) any actual or potential conflicts between the interests of policyholders and the interests of the person receiving the remuneration must be effectively mitigated; and
- (d) the payment of such remuneration must not impede the delivery of fair outcomes to policyholders.

Remuneration that may be offered or provided to a binder holder

5.8 (1) An insurer may pay a binder holder a fee for services rendered under a binder agreement, if the fee is consistent with the principles referred to in regulation 5.7(1).

(2) Despite subregulation (1), an insurer must not without the prior approval of the Registrar referred to in subregulation (3) pay a binder holder a fee for services rendered under a binder agreement that exceeds the value listed in the Table below, reflected as a percentage of the aggregate of the total premiums payable by policyholders in respect of the policies to which the binder function relates, if that binder holder is –

- (a) a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of policies;
- (b) a non-mandated intermediary that is an associate of another non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of policies.

Table

BINDER FUNCTION		MAXIMUM FEE PAYABLE
Enter into, vary or renew a policy – section 48A(1)(a) ("function (a)")	Function (a) only	3.5%
Determine the wording of a policy – section 48A(1)(b) ("function (b)")	Function (a) and one or more of functions (b) – (d)	5%
Determine premiums under a policy – section 48A(1)(c) ("function (c)")		
Determine the value of policy benefits under a policy – section 48A(1)(d) ("function (d)")	One or more of functions (b) – (d) only	0%
Settle claims under a policy – section 48A(1)(e)		4%

(3) The Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer grant approval to the insurer to pay a binder holder a fee in excess of the fees referred to in subregulation (2) if the Registrar is satisfied that the fee is consistent with the principles referred to in regulation 5.7(1).

(4) Any fee referred to under subregulation (1) payable to a non-mandated intermediary that may perform the service or function contemplated in section 48A(1)(e) of the Act under a binder agreement, may not constitute or be based on a percentage of the difference between an amount claimed or the maximum value of policy benefits payable under a policy and the policy benefits actually provided to a policyholder in settlement of a claim.

(5) Any fee referred to under this regulation 5.8, payable to a non-mandated intermediary that is a binder holder, must be disclosed to a policyholder, which

disclosure must be included in the disclosures contemplated under regulation 6.2(1)(g).

Participation by a binder holder in profits attributable to the policies referred to in a binder agreement

5.9(1) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(2) Subregulation (1) does not prohibit a non-mandated intermediary that is a binder holder and entered into a cell structure with an insurer from receiving dividends in respect of shares held in that insurer as part of that cell structure.

(3) An underwriting manager, in respect of the services rendered under the binder agreement, may share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.”; and

(e) the insertion after Part 5B of the following Part:

**“PART 5C
NOTIFICATION OF CERTAIN ARRANGEMENTS WITH INDEPENDENT
INTERMEDIARIES OR REPRESENTATIVES**

Definitions

5.10 In this Part 5C “**binder function**” has the meaning assigned to it in Part 6; and

Notification of certain arrangements with independent intermediaries or representatives

5.11 An insurer must at least 30 days before entering into an arrangement to pay remuneration to an independent intermediary or representative for a service, function or activity which in the opinion of the insurer does not constitute services as intermediary or a binder function notify the Registrar in writing and in the format determined by the Registrar of the arrangement to be entered into.”.

6. Part 6 of the Regulations is hereby amended by –

(a) the substitution in Regulation 6.1 for the definition “associate” of the following definition:

“‘associate’ –

(a) has the meaning assigned to it in the General Code of Conduct; and

(b) in addition to paragraph (a), includes, in respect of a juristic person, –

(i) another juristic person that has a significant owner or member of its governing body that is also a significant owner or member of the governing body of the first mentioned juristic person; and

- (ii) another juristic person that has a person as a significant owner or member of its governing body who is an associate (within the meaning of paragraph (a)) of a significant owner or member of the governing body of the first mentioned juristic person;";
- (b) the substitution in Regulation 6.1 for the definition "binder agreement" of the following definition:

"binder agreement" means an agreement contemplated in section 48A of the Act;";
- (c) the insertion in Regulation 6.1 after the definition "binder agreement" of the following definition:

"binder function" means any of the functions contemplated in section 48A(1)(a) to (e) of the Act;";
- (d) the substitution in Regulation 6.1 for the definition "commercial lines business" of the following definition:

"commercial lines business" means short-term insurance business in respect of which the policyholder is a juristic person;";
- (e) the insertion in Regulation 6.1 after the definition "enter into" of the following definition:

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);";
- (f) the insertion in Regulation 6.1 after the definition "FAIS Act" of the following definition:

"General Code of Conduct" means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the FAIS Act;";
- (g) the insertion in Regulation 6.1 after the definition "General Code of Conduct" of the following definition:

"governing body" means a person or body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of the financial institution, directs its affairs or has the authority to exercise the powers and perform the functions of the financial institution, and includes—

 - (a) the general partners of an *en commandite* partnership or the partners of any other partnership;
 - (b) the members of a close corporation;
 - (c) the trustees of a trust; and
 - (d) the board of directors of a company;";
- (h) the substitution in Regulation 6.1 for the definition "insurer" of the following definition:

“insurer’ means a short-term insurer or Lloyd’s but excludes SASRIA as defined in section 1 and referred to in the Conversion of SASRIA Act, 1998 (Act 134 of 1998);”;

- (i) the insertion in Regulation 6.1 after the definition “insurer” of the following definition:

“integration’ means policy and policyholder data is in a format that is readily recognisable and capable of being meaningfully utilised immediately by the core insurance systems and applications of the insurer;”;

- (j) the insertion in Regulation 6.1 after the definition “integration” of the following definition:

“inter-related’ has the meaning assigned to in section 1 of the Companies Act;”;

- (k) the insertion in Regulation 6.1 after the definition “inter-related” of the following definition:

“juristic person’ includes—

- (a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere;
- (b) an association, partnership, club or other body of persons of whatever description, corporate or unincorporated; or
- (c) a trust or trust fund;”;

- (l) the substitution in Regulation 6.1 for the definition “policy” of the following definition:

“policy’ means a short-term policy other than a reinsurance policy;”;

- (m) the insertion in Regulation 6.1 after the definition “policy” of the following definition:

“qualifying stake’ means in respect of a person that -

- (a) is a company, that another person, directly or indirectly, alone or together with a related or inter-related person -
 - (i) holds at least 15% of the issued shares of the first mentioned person;
 - (ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the first mentioned person;
 - (iii) has the ability to dispose of or control the disposal of at least 15% of the first mentioned person’s securities; or
 - (iv) holds rights in relation to the first mentioned person that, if exercised, would result in that other person, directly or indirectly, alone or together with a related or inter-related person -
 - (aa) holding at least 15% of the securities of the first mentioned person;

- (bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the first mentioned person; or
 - (cc) having the ability to dispose of or direct the disposal of at least 15% of the first mentioned person's securities;
- (b) is a close corporation, that another person, directly or indirectly, alone or together with a related or inter-related person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;
- (c) is a trust, means that another person has, directly or indirectly, alone or together with a related or inter-related person -
 - (i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;
 - (ii) the power to appoint at least 15% of the trustees; or
 - (iii) the power to appoint or change any beneficiaries of the trust;";
- (n) the insertion in Regulation 6.1 after the definition "qualifying stake" of the following definition:

"related" has the meaning assigned to in section 1 of the Companies Act;";
- (o) the substitution in Regulation 6.1 for the definition "representative" of the following definition:

"representative" has the meaning assigned in Part 1, but excludes an employee of an insurer;";
- (p) the insertion in Regulation 6.1 after the definition "settle a claim" of the following definition:

"significant owner" means a person that, directly or indirectly, alone or together with a related or inter-related person, has the ability to control or influence materially the business or strategy of another person. A person has the ability referred to in that subsection if -

 - (a) the person, directly or indirectly, alone or together with a related or inter-related person, has the power to appoint 15% of the members of the governing body of the other person;
 - (b) the consent of the person, alone or together with a related or inter-related person, is required for the appointment of 15% of the members of a governing body of the other person; or
 - (c) the person, directly or indirectly, alone or together with a related or inter-related person, holds a qualifying stake in the other person;";
- (q) the substitution in Regulation 6.1 for the definition "underwriting manager" of the following definition:

“underwriting manager” means a person that –

- (a) performs one or more binder function; and
- (b) if that person renders services as an intermediary as defined in Part 1 of the Regulations –
 - (i) does not perform any act the result of which is that another person will or does or offers to enter into vary or renew a policy on behalf of an insurer, a potential policyholder or policyholder; and
 - (ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and
- (c) does not have any relationship with an insurer (including the secondment of that person’s employees to an insurer or an associate of an insurer, the outsourcing of that person’s infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees *de facto*, directly or indirectly, performing any act directed towards entering into, varying or renewing a policy on behalf of an insurer, potential policyholder or policyholder; and”;
- (r) the substitution for Regulation 6.2 of the following Regulation:

“Requirements, limitations and prohibitions relating to binder holders

6.2 (1) An insurer, subject to subregulations (1A) to (4) and regulation 6.5, may have a binder agreement with one or more of the following persons only –

- (a) a non-mandated intermediary; or
- (b) an underwriting manager.

(1A) An insurer may only enter into a binder agreement with a person referred to in subregulation (1) if the outsourcing of a binder function to that person –

- (a) is intended to promote the delivery of fair outcomes to customers;
- (b) would not result in a duplication of administrative efforts or costs for the insurer; and
- (c) would not impede the insurer’s ability to on an ongoing basis identify, assess, manage and report on the risks of poor customer outcomes potentially arising from the manner in which the insurer conducts its business.

(2) A non-mandated intermediary referred to under subregulation (1)(a) may not conduct any business with any mandated intermediary that is an associate of that non-mandated intermediary in relation to the same policy or policies of an insurer.

(3) An underwriting manager referred to under subregulation (1)(b) may not conduct any business with a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary that is an associate of that underwriting manager in relation to the same policy or policies of an insurer.

(4)(a) An underwriting manager referred to under subregulation (1)(b) who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing.

- (b) Paragraph (a) does not apply if an underwriting manager enters into a binder agreement with an insurer during a termination period referred to in regulation 6.3(1)(s) in respect of a binder agreement with another insurer and that underwriting manager may not perform any binder functions on behalf of that other insurer during that termination period.”;

- (s) the insertion after Regulation 6.2 of the following Regulation:

“Governance and oversight requirements

6.2A (1) An insurer must before entering into a binder agreement and at all times thereafter –

- (a) have the necessary resources and ability to exercise effective oversight over the binder holder on an ongoing basis, particularly in respect of identifying, assessing, managing and reporting on the risks of poor customer outcomes arising from conducting insurance business through binder agreements;
- (b) satisfy itself of the adequacy of the binder holder’s –
- (i) governance, risk management and internal control framework, including the binder holder’s ability to comply with applicable laws and the binder agreement; and
- (ii) fitness and propriety, including any specific technical expertise required to perform the function to which the binder agreement relate;
- (c) have documented controls in place to ensure the validity, accuracy, completeness and security of any information provided by the binder holder; and
- (d) have appropriate contingency plans in place to address any shortcomings it may identify that could lead to it not being satisfied as to the matters provided for in paragraph (b), including where the binder holder is unable to provide the insurer with the relevant data in the appropriate format.

(2) An insurer must before entering into a binder agreement and at all times thereafter be satisfied that the binder holder has the operational ability to ensure integration between the information technology system of the insurer and the information technology system of the binder holder, which enables the insurer to have access to up-to-date, accurate and complete data held by the binder holder as and when requested by the insurer and as required in terms of the binder agreement and any other regulatory requirements relating to data management, including the requirements in the Policyholder Protection Rules;

- (3) An insurer must regularly review and, where appropriate, act upon the information received from the binder holder to assess the appropriateness and suitability of the functions being performed in terms of the binder arrangement in delivering fair outcomes to policyholders on an ongoing basis.”;
- (t) the substitution in subregulation (1) in Regulation 6.3 for paragraph (d) of the following paragraph:
- “(d) require that the binder holder at all times is fit and proper, and has appropriate governance, risk management, internal controls and information technology systems in place to render the services under the binder agreement;”;
- (u) the substitution in subregulation (1) in Regulation 6.3 for paragraph (f) of the following paragraph:
- “(f) specify the Rand value of the remuneration or consideration contemplated under Part 5B payable by the insurer to the binder holder or, if the Rand value is not fixed or determinable on entering into the agreement, the basis on which the remuneration or consideration payable will be calculated, in respect of each binder function performed under the binder agreement;”;
- (v) the substitution in subregulation (1) in Regulation 6.3 for paragraph (k) of the following paragraph:
- “(k) specify that the insurer has a right to access any data held by the binder holder as and when such data is requested by the insurer;”;
- (w) the substitution in subregulation (1) in Regulation 6.3 for paragraph (p) of the following paragraph:
- “(p) require the binder holder to provide the insurer with access to up-to-date, accurate and complete data (in accordance with Regulation 6.2A(2)) on a daily basis to ensure that the insurer is able to comply with any regulatory requirements relating to data management, including any requirements provided for in the Policyholder Protection Rules;”;
- (x) the insertion after subregulation (5) in Regulation 6.3 of the following subregulations:
- “(6) An insurer must promptly take reasonable steps to rectify any non-adherence to a binder agreement.
- (7) An insurer must retain a copy of a binder agreement for a period of at least 5 years from the date on which a binder agreement is terminated.”;
- (y) the deletion of Regulation 6.4;
- (z) by the substitution for Regulation 6.5 of the following Regulation:
- “Exemption**
- 6.5 (1) Despite regulation 6.2(1),-**
- (a) an insurer may conclude a hold-covered binder agreement with a mandated intermediary or a non-mandated intermediary, if-

- (i) that agreement provides for the entering into policies on an interim and limited-in-time basis only; and
- (ii) the legal liability of the insurer under such policies lapses after a maximum period of 96 hours in respect of personal lines business and 30 days in respect of commercial lines business, unless the insurer, in respect of each policy, confirms its legal liability under that policy in writing prior to the expiry of such period; and
- (iii) no fee for the services rendered under the hold-covered binder agreement is payable to the mandated intermediary or non-mandated intermediary by the insurer.

(2) Despite regulation 6.2(2) or (3), the Registrar may on application from an insurer referred to in regulation 6.2(2) or (3) or an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(2) or (3) exempt, subject to such conditions as the Registrar may impose, the insurer or such person from regulation 6.2(2) or (3), if the Registrar is satisfied that -

- (a) any actual or potential conflict of interest is effectively mitigated;
- (b) the delivery of fair outcomes to policyholders will not be impeded; and
- (c) the person has the operational and financial capability to perform the binder function or to conduct such business.

(3)(a) Regulation 6.3(1)(f) does not apply to a hold-covered binder agreement concluded under sub-regulation (1)(a).

- (b) For purposes of a hold-covered binder agreement, the timeframes referred to under regulations 6.3(1)(p) and (s) are 96 hours in respect of personal lines business and 30 days in respect of commercial lines business.”;

(aa) by the substitution for Regulation 6.6 of the following Regulation:

“Reporting requirements

6.6(1) An insurer must, at least 30 days before entering into a binder agreement, notify the Registrar in writing and in the format required by the Registrar of the proposed binder agreement.

(2) An insurer must, at least 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s), inform the Registrar in writing and in the format required by the Registrar-

- (a) of the date on which the binder agreement will terminate;
- (b) of the reasons for the termination of the binder agreement;
- (c) how the policies to which the binder agreement relates will be dealt with;

- (d) how any legislative requirements relating to the termination of the binder agreement or policies, if one or more policies to which the binder agreement relates will be terminated, will be complied with.”; and

(bb) by the deletion of Regulation 6.7.

7. Part 8 of the Regulations is hereby amended by the substitution for that Part of the following Part:

**“PART 8
TITLE AND COMMENCEMENT**

8.1 These regulations are called the Regulations under the Short-term Insurance Act, 1998.

8.2 The amendments to the Regulations, subject to subregulation 8.3, take effect on 1 January 2018.

8.3 Despite regulation 8.2, the –

- (a) insertion of subregulations (2) and (3) in regulation 5.8 in Part 5B takes effect –
 - (i) on the effective date for binder agreements entered into on or after the effective date;
 - (ii) for binder agreements entered into after 1 January 2017 but before the effective date, the earliest of –
 - (aa) 6 months after the effective date; or
 - (bb) the date on which any amendment to binder fees payable under such binder agreement is made;
 - (iii) for binder agreements entered into before 1 January 2017, the earliest of –
 - (aa) 12 months after the effective date; or
 - (bb) the date on which any amendment to binder fees payable under such binder agreement is made;
- (b) insertion of subregulation (2) in regulation 6.2A in Part 6 takes effect 24 months after the effective date; and
- (c) amendment to paragraph (p) in subregulation (1) in regulation 6.3 in Part 6 takes effect 24 months after the effective date.”