

(28 February 2014 – to date)

[This is the current version and applies as from 28 February 2014, i.e. the date of commencement of the Financial Services Laws General Amendment Act 45 of 2013 – to date]

## LONG-TERM INSURANCE ACT 52 OF 1998

(Gazette No. 19276, Notice No. 1190, dated 23 September 1998. Commencement date: 1 January 1999  
[Proc. No. R127, Gazette No. 19596, dated 18 December 1998])

### As amended by:

*Insurance Amendment Act 17 of 2003 – Government Notice 1041 in Government Gazette 25230, dated 23 July 2003. Commencement date: 1 August 2003 [Proc. R61, Gazette No. 25290, dated 31 July 2003].*

*National Credit Act 34 of 2005 – Government Notice 230 in Government Gazette 28619, dated 15 March 2006. Commencement date: 1 June 2006 [Proc. 22, Gazette No. 28824, dated 11 May 2006].*

*Financial Services Laws General Amendment Act 22 of 2008 – Government Notice 1071 in Government Gazette 31471, dated 30 September 2008. Commencement date: 1 November 2008 [GN 1170, Gazette No. 31561, dated 31 October 2008]*

*Insurance Laws Amendment Act 27 of 2008 – Government Notice 1200 in Government Gazette 31578, dated 5 November 2008. Commencement date: 15 December 2008, unless otherwise indicated [GN 1370, Gazette No. 31726, dated 15 December 2008]; [GN 1078, Gazette No. 34878, dated 23 December 2011].*

*Financial Services Laws General Amendment Act 45 of 2013 – Government Notice 15 in Government Gazette 37237, dated 16 January 2014. Commencement date: 28 February 2014, unless otherwise indicated [Government Notice 120, Gazette No 37351, dated 18 February 2014].*

### Publisher's Note:

*Item 10 of Schedule 2 of the Consumer Protection Act 68 of 2008 provides as follows*

#### *Schedule 2*

#### *10. Exclusion of certain laws*

*The exclusion of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), and the Long Term Insurance Act, 1998 (Act No.52 of 1998), is subject to those sector laws being aligned with the consumer protection measures provided for in this Act within a period of 18 months from the commencement of this Act, failing which, the provisions of this Act will apply.*

It is hereby notified that the Acting President has assented to the following Act which is hereby published for general information: -

Prepared by:

In partnership with:

**ACT**

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

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

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*(Arrangement of Sections amended by section 108 of Act 45 of 2013)*

### **Introductory provisions**

#### **1. Definitions**

- (1) In this Act, unless the context otherwise indicates -

**"Advisory Committee"** .....

*(Definition of "Advisory Committee" deleted by section 67(a) of Act 45 of 2013)*

**"assistance policy"** means a life policy in respect of which the aggregate of -

- (a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and
- (b) the amount of the premium in return for which an annuity is to be provided,

does not exceed R10 000, or another maximum amount prescribed by the Minister; and includes a reinsurance policy in respect of such a policy;

*Publisher's Note:*

See our "Guide to Regulations and Notices" under this Act for the latest notice determining the maximum amount.

**"Auditing Profession Act"** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

*(Definition of "Auditing Profession Act" inserted by section 1(a) of Act 27 of 2008)*

**"auditor"** means an auditor registered in terms of the Auditing Profession Act and appointed in terms of section 19(1) or 21(1)(a) of this Act;

*(Definition of "auditor" substituted by section 1(b) of Act 27 of 2008)*

**"Board"** means the Financial Services Board established by section 2 of the Financial Services Board Act;

**"capital adequacy requirement"** means an amount which a long- term insurer is required to have in terms of paragraph 2 of Schedule 3;

*(Definition of "capital adequacy requirement" inserted by section 2(a) of Act 17 of 2003)*

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

*(Definition of "Companies Act" substituted by section 67(b) of Act 45 of 2013)*

**"company"** means a company incorporated in accordance with, and registered under, the Companies Act, or deemed to have been so incorporated and registered;

**"Court"** means the High Court of South Africa;

**"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;

**"disability event"** means the event of the functional ability of the mind or body of a person or an unborn becoming impaired;

**"disability policy"** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event; and includes a reinsurance policy in respect of such a contract;

**"fair value"** has the meaning assigned to it in financial reporting standards;

*(Definition of "fair value" inserted by section 2(b) of Act 17 of 2003)*

*(Definition of "fair value" substituted by section 1(c) of Act 27 of 2008)*

**"financial reporting standards"** has the meaning assigned to it in section 1 of the Companies Act;

*(Definition of "financial reporting standards" inserted by section 1(d) of Act 27 of 2008)*

*(Definition of "financial reporting standards" substituted by section 67(c) of Act 45 of 2013)*

**"Financial Services Board Act"** means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

**"financial statements"** has the meaning assigned to it *[sic]* section 1 of the Companies Act;

*(Definition of "financial statements" inserted by section 1(d) of Act 27 of 2008)*

*(Definition of "financial statements" substituted by section 67(c) of Act 45 of 2013)*

**"fit and proper requirements"** includes such qualities of competence, integrity and financial standing as may be prescribed by the Registrar by notice in the *Gazette*;

*(Definition of "fit and proper requirements" inserted by section 67(d) of Act 45 of 2013)*

**"fund"** means -

- (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) a medical scheme as defined in section 1 of the Medical Schemes Act; and
- (d) any other person, arrangement or business prescribed by the Registrar;

*(Definition of "fund" substituted by section 1(e) of Act 27 of 2008)*

**"fund policy"** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract;

**"health event"** means an event relating to the health of the mind or body of a person or an unborn;

**"health policy"** means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, but excluding any contract -

- (a) of which the contemplated policy benefits -
  - (i) are something other than a stated sum of money;
  - (ii) are to be provided upon a person having incurred, and to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and
  - (iii) are to be provided to any provider of a health service in return for the provision of such service; or
- (b)
  - (i) of which the policyholder is a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967);
  - (ii) which relates to a particular member of the scheme or to the beneficiaries of such member; and
  - (iii) which is entered into by the scheme to fund in whole or in part its liability to such member or beneficiaries in terms of its rules;

and includes a reinsurance policy in respect of such a contract;

**"holding company"** means a holding company as defined in section 1 of the Companies Act;

**"life event"** means the event of the life of a person or an unborn -

- (a) having begun;
- (b) continuing;
- (c) having continued for a period; or
- (d) having ended;

**"life insured"** means the person or unborn to whose life, or to the functional ability or health of whose mind or body, a long-term policy relates;

**"life policy"** means a contract in terms of which a person, in return for a premium, undertakes to -



- (a) provide policy benefits upon, and exclusively as a result of, a life event; or
- (b) pay an annuity for a period;

and includes a reinsurance policy in respect of such a contract;

**“linked liabilities”** means the liabilities of a long-term insurer in respect of linked policies;

*(Definition of “linked liabilities” inserted by section 2(c) of Act 17 of 2003)*

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

*(Definition of “linked policy” inserted by section 2(c) of Act 17 of 2003)*

**“long-term insurance business”** means the business of providing or undertaking to provide policy benefits under long-term policies;

**“long-term insurer”** means a person registered or deemed to be registered as a long-term insurer under this Act;

**“long-term policy”** means an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied;

**“managing executive”** means the chief executive officer of a long-term insurer and every manager of that long-term insurer who reports directly to that chief executive officer;

*(Definition of “managing executive” substituted by section 2(d) of Act 17 of 2003)*

**“market-related policy”** .....

*(Definition of “market-related policy” inserted by section 2(e) of Act 17 of 2003)*

*(Definition of “market-related policy” deleted by section 1(g) of Act 27 of 2008)*

**“Medical Schemes Act”** means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

*(Definition of “Medical Schemes Act” inserted by section 1(h) of Act 27 of 2008)*

**“Minister”** means the Cabinet member responsible for finance;

*(Definition of “Minister” substituted by section 1(i) of Act 27 of 2008)*

**“official web site”** means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board;

*(Definition of "official web site" inserted by section 67(e) of Act 45 of 2013)*

**"policy benefits"** means one or more sums of money, services or other benefits, including an annuity;

**"policyholder"** means the person entitled to be provided with the policy benefits under a long-term policy;

**"premium"** means the consideration given or to be given in return for an undertaking to provide policy benefits;

**"prescribe"** means to determine from time to time by notice on the official web site, unless notice in the *Gazette* is specifically required by this Act;

*(Definition of "prescribe" substituted by section 67(f) of Act 45 of 2013)*

**"public company"** means a public company as defined in section 1 of the Companies Act, and includes a state-owned company as defined in section 1 of that Act;

*(Definition of "public company" substituted by section 1(j) of Act 27 of 2008)*

*(Definition of "public company" substituted by section 67(g) of Act 45 of 2013)*

**"publish"** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the Registrar, seeks to bring any information to the attention of any other person, or all or part of the public;

*(Definition of "publish" inserted by section 67(h) of Act 45 of 2013)*

**"Registrar"** means the person referred to in section 2;

*(Definition of "Registrar" substituted by section 1(k) of Act 27 of 2008)*

*(Definition of "Registrar" substituted by section 67(i) of Act 45 of 2013)*

**"regulation"** means a regulation under section 72;

**"reinsurance policy"** means a reinsurance policy in respect of a long-term policy;

**"repealed Act"** means the Insurance Act, 1943 (Act No. 27 of 1943);

**"sinking fund policy"** means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money, on a fixed or determinable future date, as policy benefits; and includes a reinsurance policy in respect of such a contract;

**"short-term insurer"** means a person registered or deemed to be registered as a short-term insurer under the Short-term Insurance Act, 1998;

**"statutory actuary"** means an actuary appointed in accordance with section 20(1) or 21(1)(b);

**"subsidiary"** has the meaning determined in accordance with section 3 of the Companies Act;  
*(Definition of "subsidiary" substituted by section 67(j) of Act 45 of 2013)*

**"this Act"** includes any regulation made, or matter prescribed under this Act;  
*(Definition of "this Act" inserted by section 1(l) of Act 27 of 2008)*

**"unborn"** means a human foetus conceived but not born.

**"widely-held company"** .....

*(Definition of "widely-held company" inserted by section 1(m) of Act 27 of 2008)*  
*(Definition of "widely-held company" deleted by section 67(k) of Act 45 of 2013)*

- (2) For the purposes of entering into a long-term policy the life of an unborn shall be deemed to begin at conception.

## **Part I**

### **Administration of Act**

#### **2. Registrar and Deputy Registrar of Long-term Insurance**

- (1) The person appointed as executive officer in terms of section 13 of the Financial Services Board Act is the Registrar of Long- term Insurance and has the powers and duties provided for by or under this Act or any other law.
- (2) The person appointed as deputy executive officer in terms of section 13 of the Financial Services Board Act is the Deputy Registrar of Long-term Insurance.
- (3) The Deputy Registrar of Long-term Insurance exercises or carries out the powers and duties of the Registrar of Long-term Insurance to the extent that such powers have been delegated to the Deputy Registrar under section 20 of the Financial Services Board Act and to such extent that the Deputy Registrar has been authorised under section 20 of the Financial Services Board Act to perform such duties.

*(Section 2 substituted by section 2 of Act 27 of 2008)*  
*(Section 2 substituted by section 68 of Act 45 of 2013)*

#### **3. General provisions concerning Registrar**

- (1) An approval of, or a determination or decision by, or a notice to be given by or to, the Registrar, shall, without derogating from legal rules on the making known or the publication thereof, be valid only if it is in writing.
- (2) Whenever the approval of, or a determination or decision by, or the performance of any other act by the Registrar, is sought by a person under this Act or any other law, application therefor shall be made in writing to the Registrar and the application shall -
  - (a) be made in the form the Registrar requires; and
  - (b) be accompanied by -
    - (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 section.
- (4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, which are held by the Registrar under this Act in relation to a long-term insurer or obtain a copy of or extract from any such document.

*(Section 3(4) substituted by section 69 of Act 45 of 2013)*
- (5) A document which purports to have been certified by the Registrar as a document held in the Registrar's office or to be a copy of such a document, shall be prima facie proof of the content of such a document or copy, and shall be admissible in evidence in any proceedings.

#### **4. Special provisions concerning Registrar and his or her powers**

- (1) When anything is required or permitted to be done under this Act within a particular period, the Registrar may, before the expiry of that period, extend it.
- (2) The Registrar may by notice direct a long-term insurer to furnish the Registrar, within a specified period, with specified information or documents required by the Registrar for the purposes of this Act.
- (3) .....

*(Section 4(3) substituted by section 3(a) of Act 17 of 2003)*

*(Section 4(3) deleted by section 70(a) of Act 45 of 2013)*

(4)

- (a) The Registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply.
- (b) A directive issued in terms of paragraph (a) may-
  - (i) apply generally; or
  - (ii) be limited in its application to a particular person or kinds of persons, which may, for purposes of this subsection, be defined either in relation to categories, types or in any other manner.
- (c) A directive issued in terms of paragraph (a) takes effect on the date determined by the Registrar in the directive.
- (d) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.
- (e) The Registrar may amend or revoke any issued directives.
- (f) The Registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the Registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.

*(Section 4(4)(f) substituted by section 70(b) of Act 45 of 2013)*

*(Section 4(4) substituted by section 3 of Act 27 of 2008)*

(5)

- (a) If a person contravened or is contravening section 7(1)(a) of this Act, the Registrar may -
  - (i) by notice direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under long-term policies already entered into by that person; or
  - (ii) apply to the Court for the sequestration or liquidation of that person, whether he, she or it is solvent or not, in accordance with -
    - (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

(dd) the law under which that person is incorporated,

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

(iii) shall (if necessary) appoint as trustee or liquidator a person nominated by the Registrar.

(6) .....

*(Section 4(6) deleted by section 70(c) of Act 45 of 2013)*

(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 Short-term Insurance Act, 1998, if a long-term insurer has not classified that policy or policies correctly into the appropriate class, and when the Registrar so determines, the policy or policies concerned shall be deemed to form part of the class of policies so determined for the purposes of, and subject to, the provisions of the said Act relating to that class of policies; or

*(Section 4(7)(a) amended by section 3(b) of Act 17 of 2003)*

(b) upon application of a long-term insurer, determine that a policy or policies forming part of any class of policies defined in section 1 of this Act or in section 1 of the Short-term Insurance Act, 1998, 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 -

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

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

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

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

*(Section 4(7)(b) amended by section 3(b) of Act 17 of 2003)*

(8)

(a) The Registrar may-

(i) conduct an on-site visit under Chapter 1A of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); or

(ii) instruct an inspector to conduct an inspection under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).

(b) After an on-site visit or inspection has been carried out in terms of paragraph (a), the Registrar may, in accordance with section 4(2), direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

*(Section 4(8) added by section 70(d) of Act 45 of 2013)*

## 5. Annual report

(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.

(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.

6. ....

*(Section 6 repealed by section 71 of Act 45 of 2013)*

## Part II

### Registration of long-term insurers

## 7. Registration required in order to carry on long-term insurance business

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

- (a) is registered or deemed to be registered as a long-term insurer, and is authorised to carry on the kind of long-term insurance business concerned, under this Act; and
  - (b) carries on that business in accordance with this Act.
- (2) Subsection (1) shall not apply to -
- (a) a pension fund organization registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), if and in so far as it acts in accordance with that Act;
  - (b) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or exempted under section 3(2) of that Act from the requirement to be so registered, if and in so far as it enters into long-term policies in respect of any of which -
    - (i) the value of the policy benefits, other than an annuity, to be provided; or
    - (ii) the amount of the premium in return for which an annuity is to be provided,does not exceed R5 000 per member or another maximum amount prescribed by the Minister;

*Publisher's Note:*

*See our "Guide to Regulations and Notices" under this Act for the latest notice determining the maximum amount.*

- (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, if and in so far as it acts in accordance with that Act;  
*(Section 7(2)(d) substituted by section 4(a) of Act 27 of 2008)*
- (e) the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act No. 13 of 1944), if and in so far as it acts in accordance with that Act;
- (f) a short-term insurer, if and in so far as it enters into a policy which it is entitled to enter into by virtue of its registration as a short-term insurer; or
- (g) an agricultural co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005), or allowed to continue to operate in terms of section 97 of that Act, if and in so far as it conducts long-term insurance business as part of its main objectives, and provides 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.



*(Section 7(2)(g) substituted by section 4(b) of Act 27 of 2008)*

- (3) For the purposes of this section a person shall, in the absence of evidence to the contrary, be deemed to be carrying on long-term insurance business in the Republic, if that person performs any act in the Republic -
- (a) the object or result of which is that another person will enter into or enters into, or offers to enter into or to vary, a long-term policy, other than a reinsurance policy, in terms of which the first-mentioned person undertakes to provide policy benefits to the other person; or
  - (b) in relation to a long-term policy, other than a reinsurance policy, in terms of which that person has undertaken to provide policy benefits, and which act is aimed at -
    - (i) maintaining, servicing or surrendering, or otherwise dealing with, the long-term policy;
    - (ii) collecting or accounting for premiums payable under the long-term policy; or
    - (iii) receiving or submitting of, or assisting or otherwise dealing with the settlement of, a claim under the long-term policy.

#### **8. Prohibition on use of certain words, or performance of certain acts, by certain persons**

- (1) No person shall -
- (a) subject to section 8(1)(a) of the Short-term Insurance Act, 1998, 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 such person is a long-term insurer;  
*(Section 8(1)(a) substituted by section 72(a) of Act 45 of 2013)*
  - (b) perform any act which indicates that he, she or it carries on or is authorised to carry on long-term insurance business, unless he, she or it is a long-term insurer authorised to carry on that business.
  - (c) publish any advertisement, brochure or similar communication which relates to the business of a long-term insurer, or to a long-term policy, and which is misleading or contrary to the public interest or contains an incorrect statement of fact; or  
*(Section 8(1)(c) added by section 72(b) of Act 45 of 2013)*
  - (d) publish any advertisement, brochure or similar communication which relates to a long-term policy that does not prominently include the name of the long-term insurer underwriting the long-term policy.

*(Section 8(1)(d) added by section 72(b) of Act 45 of 2013)*

- (2) No long-term insurer shall change its name, or a translation, shortened form or derivative thereof, without the prior approval of the Registrar.

*(Section 8(2) substituted by section 4 of Act 17 of 2003)*

- (3) No person shall perform any act the object of which is or which results in -
- (a) another person entering into or offering to enter into a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party; or
  - (b)
    - (i) the surrendering of, or collecting of or accounting for premiums payable under;
    - (ii) the receiving or submitting of, or assisting or otherwise dealing with, the settlement of a claim under; or
    - (iii) the maintaining, servicing or otherwise dealing with,
- a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party, without the consent of the Registrar, given either generally or in a particular case.

## **9. Application for registration**

- (1) A person who wishes to carry on long-term insurance business shall apply to the Registrar for registration as a long-term insurer.
- (2) Subject to subsection (3), the Registrar -
- (a) may grant an application made in terms of subsection (1) on such of the conditions contemplated in section 10 as the Registrar may determine; and
  - (b) shall, if the Registrar grants such application, register the person concerned as a long-term insurer and issue to that person a certificate of registration, in such form as may be prescribed by the Registrar, authorising that person to carry on the long-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 long-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 long-term insurance business as its main object;
- (b) if -
- (i) the applicant does not have the financial resources, organisation or management that is necessary and adequate for the carrying on of the business concerned;
  - (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 long-term insurer or a short-term insurer;
  - (ii) so closely resembles that of another long-term insurer or a short-term insurer that the one is likely to be mistaken for the other;
  - (iii) is identical to that under which another long-term insurer or a short-term insurer was previously registered and reasonable grounds exist for objection to its use by the applicant concerned; or
  - (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.

## 10. Conditions of registration

The conditions contemplated in section 9(2)(a) may include conditions -

- (a) authorising the long-term insurer to enter into only certain long-term policies determined by the Registrar;
- (b) authorising the long-term insurer to enter into long-term policies other than certain long-term policies determined by the Registrar;
- (c) authorising the long-term insurer to enter into certain long-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 long-term insurer under certain long-term policies determined by the Registrar to an amount or value determined by the Registrar;
- (e) limiting the amount of the premiums that the long-term insurer may contract to receive, during a period determined by the Registrar, in respect of all or certain long-term policies determined by the Registrar that may be entered into by that long-term insurer during that period;
- (f) requiring the long-term insurer to enter into reinsurance policies in terms of which that long-term insurer reinsures at least a portion determined by the Registrar of the liabilities incurred by it in terms of all or certain long-term policies determined by the Registrar that may be entered into by that long-term insurer during a period determined by the Registrar;
- (g) requiring that the provisions of the Memorandum of Incorporation, or equivalent constitution, of the long-term insurer must be suitable to enable it to carry on long-term insurance business; or  
*(Section 10(g) substituted by section 73 of Act 45 of 2013)*
- (h) reasonably necessary to ensure that the long-term insurance business concerned is carried on soundly in compliance with section 29(1),  
*(Section 10(h) substituted by section 5 of Act 17 of 2003)*  
*(Section 10(h) substituted by section 5 of Act 27 of 2008)*

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

## 11. Variation of registration conditions

- (1) The Registrar may -
  - (a) upon application of a long-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 35(2)(a) in relation to a long-term insurer; or
- (c) if a long-term insurer has ceased to enter into certain long-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the long-term insurer has been allowed at least 30 days in which to make representations in respect of the matter,

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

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

**12. Registrar may under certain circumstances prohibit long-term insurers from carrying on business**

- (1) If a long-term insurer -

- (a) has not furnished all information which is material to an application made to the Registrar under this Act or has furnished information which is false;
- (b) has made a material misrepresentation to members of the public in connection with the long-term insurance business carried on by it;

*(Section 12(1)(b) substituted by section 74(a) of Act 45 of 2013)*

- (bA) no longer meets the conditions under which it was registered;

*(Section 12(1)(bA) inserted by section 74(b) of Act 45 of 2013)*

- (bB) has failed to comply with any other condition imposed under this Act;

*(Section 12(1)(bB) inserted by section 74(b) of Act 45 of 2013)*

- (bC) has failed to comply with any directive issued under this Act;

*(Section 12(1)(bC) inserted by section 74(b) of Act 45 of 2013)*

- (bD) is in the opinion of the Registrar not managed or owned by persons who are fit and proper; or not managed in accordance with the governance and risk management framework prescribed by the Registrar in the *Gazette*;

*(Section 12(1)(bD) inserted by section 74(b) of Act 45 of 2013)*

(bE) has contravened or failed to comply with a provision of this Act; or  
*(Section 12(1)(bE) inserted by section 74(b) of Act 45 of 2013)*

(c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9(3),  
*(Section 12(1)(c) substituted by section 74(c) of Act 45 of 2013)*

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

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

*(Words preceding paragraph (a) substituted by section 74(d) of Act 45 of 2013)*

(a) withdraw the first-mentioned notice;

(b) act in accordance with section 11; or

(c) prohibit the long-term insurer from carrying on such long-term insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.

*(Section 12(2)(c) substituted by section 74(e) of Act 45 of 2013)*

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

(a) withdraw the prohibition by notice to the long-term insurer;

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

(c) act in accordance with section 13(2)(c), 41(2) or 42(2), according to whichever provision the Registrar deems most appropriate in the circumstances and in the interests of the policyholders of the long-term insurer.

### 13. Termination of registration

(1) If a long-term insurer fails to commence the carrying on of its long-term insurance business within a reasonable period after being registered to do so, and if, after allowing that insurer at least 30 days in

which to make representations in respect of the matter, the Registrar is satisfied that the long-term insurer will not commence the carrying on of such business within a reasonable period thereafter, the Registrar shall, by notice to the long-term insurer, cancel its registration.

- (2) The Registrar shall -
- (a) if a long-term insurer has ceased to enter into long-term policies to an extent which no longer justifies its continued registration as a long-term insurer and, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that it will not resume the entering into of long-term policies to the required extent within a reasonable period thereafter;
  - (b) if a long-term insurer has notified the Registrar of its intention to cease to enter into any more long-term policies and has requested so in writing; or
  - (c) if the Registrar considers it appropriate to act so in accordance with section 12(3)(c),

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

*(Words following paragraph (c) substituted by section 75(a) of Act 45 of 2013)*

- (3) When all of the long-term insurance business of a long-term insurer has been -
- (a) discontinued as a result of its amalgamation with, or its transfer to, another long-term insurer as contemplated in Part V; or
  - (b) wound up as contemplated in Part VI,

the Registrar shall by notice on the official web site cancel its registration.

*(Words following paragraph (b) substituted by section 75(b) of Act 45 of 2013)*

#### **14. Deregistration of long-term insurers as companies**

For the purposes of section 82(3) of the Companies Act in relation to a long-term insurer, the reference to the Commission in that section shall be construed as a reference to the Commission acting in concurrence with the Registrar.

*(Section 14 substituted by section 76 of Act 45 of 2013)*

### Part III

#### Business and administration of long-term insurers

##### 15. Limitation on business

- (1) A long-term insurer shall not carry on such business, other than the long-term insurance business which it is authorised to carry on by virtue of its registration under section 9, as the Registrar has prohibited in relation to -
  - (a) a particular long-term insurer; or
  - (b) long-term insurers generally.
- (2) A long-term insurer shall not carry on such business as the Registrar may determine, other than the long-term insurance business which it is authorised to carry on by virtue of its registration under section 9, otherwise than in accordance with and subject to the limitations and conditions which the Registrar may determine in relation to -
  - (a) a particular long-term insurer; or
  - (b) long-term insurers generally.
- (3) The Registrar may only impose a prohibition or determine a limitation and a condition under subsection (1) or (2) by notice on the official web site-

*(Words preceding paragraph (a) substituted by section 77(a) of Act 45 of 2013)*

  - (a) if it is in the interests of the policyholders of a particular long-term insurer, or long-term insurers in general, to act so;
  - (b) after giving at least 30 days' notice of the Registrar's intention to act so in the case of -
    - (i) a particular long-term insurer, to that long-term insurer; or
    - (ii) long-term insurers generally, on the official web site; and

*(Section 15(3)(b)(ii) substituted by section 77(b) of Act 45 of 2013)*
  - (c) after considering any representations received in respect of the matter.
- (4) A long-term insurer, other than an insurer carrying on reinsurance business only, shall not be a short-term insurer as defined in the Short-term Insurance Act, 1998.



**15A. Reinsurers carrying on reinsurance business only, authorised to provide policy benefits under fund policies directly**

Notwithstanding sections 15(4) and 70, a person who is, by virtue of registration under this Act, authorised to carry on reinsurance business only may, subject to section 11, carry on the business of providing or undertaking to provide policy benefits in terms of a fund policy directly to any fund contemplated in the definition of 'fund' in section 1(1).

*(Section 15A inserted by section 6 of Act 17 of 2003)*

**16. Head office and public officer**

- (1) A long-term insurer shall -
  - (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
  - (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 long-term insurer complies with this Act.
- (3) Process in any legal proceedings against a long-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 long-term insurer.

**17. Financial year**

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

**18. Notification of certain appointments, terminations and resignations**

- (1) A long-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director or managing executive appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such appointment or termination or resignation, as the case may be, together with the reasons for any such termination or resignation

- (2) Any such director or managing executive who resigns or whose appointment has been terminated by a long-term insurer shall, at the request of the Registrar, inform the Registrar in writing of any matter relating to the affairs of that insurer of which the director or managing executive became aware in the performance of his or her duties and which may prejudice the insurer's ability to comply with this Act.
- (3) No information furnished by a director or managing executive in terms of subsection (2) may be used in any subsequent criminal proceedings against such director or managing executive.

*(Section 18 substituted by section 7 of Act 17 of 2003)*

## **19. Auditor**

- (1) A long-term insurer shall at all times have one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a public company.

*(Section 19(1) substituted by section 6(a) of Act 27 of 2008)*

*(Section 19(1) substituted by section 78 of Act 45 of 2013)*

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

- (3) .....

*(Section 19(3) deleted by section 6(b) of Act 27 of 2008)*

- (4) If an auditor of a long-term insurer is a firm (as contemplated in the Auditing Profession Act), the Registrar's last approval of the appointment of that firm as auditor 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 of the firm when the appointment of the firm was last approved by the Registrar.

*(Section 19(4) substituted by section 6(c) of Act 27 of 2008)*

- (5) Notwithstanding anything to the contrary in any law contained, the auditor of a long-term insurer shall-
  - (a) whenever the auditor furnishes copies of a report or other document or particulars contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, also furnish a copy thereof to the Registrar; and
  - (b) if the auditor's appointment is terminated for any reason-
    - (i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and
    - (ii) if the auditor would, but for that termination, have had reason to submit a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, submit such a report to the Registrar; and

- (c) inform the Registrar and the board of directors of the long-term insurer, without delay, in writing of any matter relating to the business of the long-term insurer of which the auditor becomes aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, constitutes a contravention of section 29(1) or any other section of this Act or in future may prejudice the insurer's ability to comply with section 29(1) or any other section of this Act, which information must give a description of the matter and must include such other particulars as the auditor considers appropriate.

*(Section 19(5) substituted by section 6(d) of Act 27 of 2008)*

- (6)
- (a) The furnishing, in good faith, by an auditor of a report or information in terms of this section shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject.
- (b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section shall not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.
- (7) The auditor of a long-term insurer must carry out the duties assigned to the auditor of a long-term insurer by this Act, the Act under which that insurer is incorporated and the Auditing Profession Act, and in addition to those duties must-
- (a) in relation to a statement forming part of the returns in respect of which the auditor is required to submit in terms of section 36, examine that statement or part thereof and satisfy himself, herself or itself that it is properly prepared 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, has in all material respects been prepared in accordance with, Chapter IV of the Auditing Profession Act; and
- (b) carry out the other duties prescribed by the Minister.

*(Section 19(7) substituted by section 6(e) of Act 27 of 2008)*

- (8) Without derogating from an auditor's right to do so in respect of anything which is material to the carrying out of the auditor's duties, an auditor shall not be required to examine or express an opinion in relation to a statement forming part of a return, report or certificate or to the particulars thereof, in respect of which a statutory actuary is required, in terms of this Act to make an examination, give an attestation or express an opinion.
- (9) An auditor may rely on the work performed by the statutory actuary in relation to the financial affairs of a long-term insurer, when the auditor expresses an opinion in relation to the financial affairs of that

long-term insurer in terms of this Act or any other law, subject to compliance with the prevailing auditing standards.

## 20. Statutory actuary

- (1) A long-term insurer shall from time to time appoint, and at all times have, an actuary.
- (2) A long-term insurer may appoint an alternate to act in the place of its statutory actuary during his or her absence for any reason.
- (3) No person other than a natural person who is permanently resident in the Republic, is a Fellow of the Actuarial Society of South Africa and has, as an actuary, appropriate practical experience relating to long-term insurance business, shall be appointed as a statutory actuary or his or her alternate.
- (4) No appointment of a statutory actuary or his or her alternate shall take effect unless it has been approved by the Registrar.
- (5) The statutory actuary of a long-term insurer shall -
  - (a) submit to the Registrar, if his or her appointment is for any reason terminated, a statement of what he or she believes to be the reasons for that termination; and
  - (b)
    - (i) without delay, report in writing to the board of directors of the long-term insurer any matter relating to the business of the long-term insurer of which he or she becomes aware in the performance of his or her functions as statutory actuary and which, in his or her opinion, constitutes a contravention of section 29(1) or any other section of this Act relating to the duties of the statutory actuary, or in future may prejudice the long-term insurer's ability to comply with section 29(1) or any other section of this Act relating to the duties of the statutory actuary, which report must give a description of the matter and must include such other particulars as the statutory actuary considers appropriate: Provided that the report must be submitted without delay also to the Registrar where, in the opinion of the statutory actuary, the matter-
      - (aa) materially prejudices the insurer's ability to comply with any of these sections;
      - (bb) does not materially prejudice the insurer's ability to comply with these sections, but the statutory actuary is of the opinion that immediate remedial action must be taken by the long-term insurer; and

- (ii) if steps to rectify the matter are not taken by the board of directors of the long-term insurer to the satisfaction of the statutory actuary within 30 days after the date of the report, without delay inform the Registrar.

*(Section 20(5)(b) substituted by section 7(a) of Act 27 of 2008)*

(6)

- (a) The furnishing, in good faith, by a statutory actuary of a report or information in terms of subsection (5) shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which he or she is subject.
- (b) The failure, in good faith, by a statutory actuary to furnish a report or information in terms of this section shall not confer upon any person a right of action against the statutory actuary which, but for that failure, that person would not have had.

(7) In addition to duties assigned to the statutory actuary by any other law or a code of professional practice, the statutory actuary shall -

- (a) in relation to a statement forming part of the returns in respect of which he or she is required to do so in terms of section 36, examine that statement and satisfy himself or herself that it is properly drawn up so as to comply with the requirements of this Act and attest or, as the case may be, express an opinion in connection with that statement; and
- (b) carry out the other duties provided in this Act or prescribed by the Minister.

(8) A statutory actuary shall -

- (a) have the right of access at all times to the accounting records and other books and documents of the long-term insurer and be entitled to require from the directors or officers of that insurer the information and explanations he or she deems necessary for the carrying out of his or her duties;
- (b) be entitled to -
  - (i) attend and speak at a general meeting of the long-term insurer; and
  - (ii) receive the notices and other communications relating to a general meeting which a member of that long-term insurer is entitled to receive;

*(Section 20(8)(b) substituted by section 7(b) of Act 27 of 2008)*

(c)

- (i) attend and be entitled to speak at any meeting of the board of directors of the long-term insurer on the business of the meeting which concerns the duties conferred on or

assigned to him or her as statutory actuary by or under this Act and by any other law or code of professional practice; and

- (ii) receive the notices and other communications relating to any meeting referred to in subparagraph (i) which a member of the board of directors is entitled to receive.

*(Section 20(8)(c) added by section 7(c) of Act 27 of 2008)*

## **21. Appointment of auditor or statutory actuary by Registrar**

- (1) If a long-term insurer for any reason fails to appoint -

- (a) an auditor in terms of section 19(1), the Registrar may, notwithstanding section 90(1) and (2)(c) of the Companies Act, but subject to section 19 of this Act, appoint an auditor for that long-term insurer;

*(Section 21(1)(a) substituted by section 79 of Act 45 of 2013)*

- (b) an actuary in terms of section 20(1), the Registrar may, subject to section 20, appoint an actuary for that long-term insurer.

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

## **22. Removal of appointees who are not fit and proper**

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

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

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

## **23. Audit committee**

- (1) Despite section 94(2) of the Companies Act, the board of directors of a long-term insurer shall appoint an audit committee.

*(Section 23(1) substituted by section 8(a) of Act 27 of 2008)*

*(Section 23(1) substituted by section 80(a) of Act 45 of 2013)*

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

- (3) The functions of the audit committee, in addition to the functions referred to in section 94(7) of the Companies Act, are-

*(Words preceding paragraph (a) substituted by section 8(b) of Act 27 of 2008)*

*(Words preceding paragraph (a) substituted by section 80(b) of Act 45 of 2013)*

- (a) to assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing and actuarial valuation processes applied by the long-term insurer in the day-to-day management of its business;
- (b) to facilitate and promote communication and liaison concerning the matters referred to in paragraph (a) or a related matter, between the board of directors and the managing executive, auditor, statutory actuary and internal audit staff of the long-term insurer;
- (c) to recommend the introduction of measures which the committee believes may enhance the credibility and objectivity of financial statements and reports concerning the business of the long-term insurer; and
- (d) to advise on a matter referred to the committee by the board of directors.

- (3A) The audit committee may appoint an advisor or request any employee of the long-term insurer to advise or assist it in the performance of the functions referred to in subsection (3).

*(Section 23(3A) inserted by section 8(c) of Act 27 of 2008)*

- (4) If the appointment or composition 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 long-term insurer concerned from the requirements of subsection (1).

*(Section 23(4) substituted by section 8(d) of Act 27 of 2008)*

## **24. Preference shares, debentures, share capital and share warrants**

- (1) Notwithstanding the provisions of the Companies Act, a long-term insurer shall not without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines-

- (a) issue any securities or change the capital structure of the company;
  - (b) reduce its share capital;
  - (c) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 48 of the Companies Act; or
  - (d) conclude a transaction contemplated in section 44 of the Companies Act.
- (2) The conditions referred to in subsection (1) may include a new or varied registration condition contemplated in section 10 or 11.
- (Section 24 amended by section 8 of Act 17 of 2003)*  
*(Section 24 amended by section 9 of Act 27 of 2008)*  
*(Section 24 substituted by section 81 of Act 45 of 2013)*

## **25. Registration of shares in name of nominee**

- (1) A long-term insurer shall not knowingly -
- (a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended beneficial shareholder;
  - (b) register transfer of any of its shares to a person other than the intended beneficial shareholder,
- without the approval of the Registrar.
- (2) Subsection (1) shall not apply to the allotment, issue or registration of the shares of a long-term insurer -
- (a) to or in the name of a trustee or custodian of a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or a representative of such trustee or custodian appointed in terms of section 68(6)(a) of the Collective Investment Schemes Control Act, 2002;  
*(Section 25(a) substituted by section 10(a) of Act 27 of 2008)*
  - (b) to or in the name of an executor of the estate of a deceased shareholder of a company, a trustee of a shareholder whose estate has been sequestrated or an administrator, curator or guardian of a shareholder who is otherwise under disability;  
*(Section 25(b) substituted by section 82 of Act 45 of 2013)*



- (c) for a period of not more than six months, to or in the name of an authorised user or a nominee floated by an authorised user for the purposes contemplated in section 18(2)(1), read with section 36(1)(a), of the Securities Services Act, 2004 (Act No. 36 of 2004), or to or in the name of a company controlled by a long-term insurer or an employee of the long-term insurer, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares;

*(Section 25(c) substituted by section 10(b) of Act 27 of 2008)*

- (d) to or in the name of a participant as defined in section 1 of the Securities Services Act, 2004, or of a nominee contemplated in section 36(1)(b), read with section 39(2)(q), of the Securities Services Act, 2004: Provided that the participant or nominee concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;

*(Section 25(d) substituted by section 10(b) of Act 27 of 2008)*

- (e) to or in the name of another person prescribed by the Minister.

## **26. Limitation on control and certain shareholding or other interest in long-term insurers**

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

*(Section 26(1) substituted by section 9(a) of Act 17 of 2003)*

*(Section 26(1) substituted by section 83(a) of Act 45 of 2013)*

- (2) No person shall, directly or indirectly and without the prior approval of the Registrar, acquire or hold shares in a long-term insurer or a related party of that long-term insurer if-

- (a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, 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 related parties, will amount to 25 per cent or more of the total nominal value of all of the issued shares of the long-term insurer concerned;

- (b) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the total number of those shares, by itself or together with the total number of the shares already owned by that person or by that person and related parties, will amount to 25 per cent or more of all the shares in a specific class of shares issued by the long-term insurer concerned.

*(Section 26(2) substituted by section 9(b) of Act 17 of 2003)*

*(Section 26(2) substituted by section 83(a) of Act 45 of 2013)*

- (2A) A long-term insurer must inform the Registrar if a person, directly or indirectly, acquires shares or any other financial interest referred to in subsection (1) or (2) in that long-term insurer.

*(Section 26(2A) inserted by section 83(b) of Act 45 of 2013)*

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

- (a) may be given -

- (i) subject to the aggregate nominal value of the shares or total number of shares in a specific class of shares or aggregate number of all the shares owned by the person concerned and his, her or its related party not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;

*(Section 26(3)(a)(i) substituted by section 9(c) of Act 17 of 2003)*

*(Section 26(3)(a)(i) substituted by section 83(c) of Act 45 of 2013)*

- (ii) subject to such other conditions as the Registrar may determine;

- (b) shall not be given if it would be contrary to -

- (i) the public interest; or

- (ii) the interests of the policyholders, or of persons who may become policyholders, of the long-term insurer; and

- (c) may be refused if the person concerned, alone or with his, her or its related parties, has not already owned shares in the long-term insurer -

*(Words preceding subparagraph (i) substituted by section 9(d) of Act 17 of 2003)*

- (i) of the aggregate nominal value or number of a specific class; and

*(Section 26(3)(c)(i) substituted by section 83(d) of Act 45 of 2013)*

- (ii) for the minimum period, not exceeding 12 months,

that the Registrar may determine.

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

- (a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding not exceeding 25 per cent of-

- (i) the total nominal value or number of all the issued shares of the long-term insurer; or
  - (ii) all the shares in a specific class of shares issued by the long-term insurer; and  
*(Section 26(4)(a) substituted by section 83(e) of Act 45 of 2013)*
- (b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his, her or its shareholding to 15 per cent of the voting rights attached to all the issued shares of the long-term insurer.  
*(Section 26(4)(b) substituted by section 83(e) of Act 45 of 2013)*
- (5) For the purposes of this section "related party", in relation to -  
*(Words preceding paragraph (a) substituted by section 9(e) of Act 17 of 2003)*
- (a) a natural person, means -
    - (i) a person who is recognised in law or the tenets of a religion as the spouse, life partner or civil union partner of that person;  
*(Section 26(5)(a)(i) substituted by section 83(f) of Act 45 of 2013)*
    - (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;  
*(Section 26(5)(a)(ii) substituted by section 83(f) of Act 45 of 2013)*
    - (iiA) a parent or stepparent of that person;  
*(Section 26(5)(a)(iiA) inserted by section 83(g) of Act 45 of 2013)*
    - (iiB) a person in respect of whom that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the regular care needs of the first-mentioned person;  
*(Section 26(5)(a)(iiB) inserted by section 83(g) of Act 45 of 2013)*
    - (iiC) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii), (iiA) and (iiB);  
*(Section 26(5)(a)(iiC) inserted by section 83(g) of Act 45 of 2013)*
    - (iiD) a person who is in a commercial partnership with that person;  
*(Section 26(5)(a)(iiD) inserted by section 83(g) of Act 45 of 2013)*
    - (iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the long-term insurer concerned;

(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 -

(i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

*(Section 26(5)(b)(i) substituted by section 83(h) of Act 45 of 2013)*

(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;

(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;

(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.

(6) For the purposes of this section a person shall be deemed to exercise control over a long-term insurer if that person, alone or with related parties -

*(Words preceding paragraph (a) substituted by section 9(f) of Act 17 of 2003)*

(a) holds shares in the long-term insurer of which-

(i) the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;

(ii) the total number of shares represents 25 per cent or more of all the shares in a specific class of shares issued by that long-term insurer;

*(Section 26(6)(a) substituted by section 83(i) of Act 45 of 2013)*

- (b) is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or

*(Section 26(6)(b) substituted by section 83(i) of Act 45 of 2013)*

- (c) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board.

*(Section 26(6)(c) substituted by section 83(i) of Act 45 of 2013)*

## **27. Furnishing of information concerning shareholders**

- (1) A long-term insurer shall, whenever required to do so by the Registrar, furnish the Registrar with a return, in the form and containing the particulars and information which the Registrar determines, in respect of its shareholders and of any person who directly or indirectly has the power to require those shareholders to exercise their rights as shareholders in the long-term insurer in accordance with such person's directions or instructions.
- (2) A person in whose name shares in a long-term insurer are registered, or who wishes shares in a long-term insurer to be allotted or issued to such person or to be registered in such person's name, and any person acting on behalf of such person, shall, upon the written request of the long-term insurer concerned, furnish it with the information it may require for the purposes of complying with section 25(1).

## **28. Effect of registration of shares contrary to Act**

- (1) No person shall, despite any other law-

*(Words preceding paragraph (a) substituted by section 84(a) of Act 45 of 2013)*

- (a) either personally or by proxy granted to another person, cast a vote attached to; or
- (b) receive a dividend payable in respect of,

a share in a long-term insurer or a related party of that long-term insurer allotted or issued to such first-mentioned person or registered in such person's name contrary to this Act.

*(Words following paragraph (b) substituted by section 84(b) of Act 45 of 2013)*

- (2) The validity of a resolution passed by a long-term insurer or a related party of that long-term insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1)(a).

*(Section 28(2) substituted by section 84(c) of Act 45 of 2013)*

- (3) A dividend referred to in subsection (1)(b) shall be void.

**Part IV**  
**Financial arrangements**

**29. Maintenance of financially sound condition**

- (1) A long-term insurer shall at all times maintain its business in a financially sound condition by -

- (a) having assets;
- (b) providing for its liabilities and capital adequacy requirement; and  
*(Section 29(1)(b) substituted by section 10(a) of Act 17 of 2003)*
- (c) generally conducting its business,

so as to be in a position to meet its liabilities and capital adequacy requirement at all times.

*(Words following on paragraph (c) substituted by section 10(b) of Act 17 of 2003)*

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

- (a) it does not have assets as required by section 30;
- (b) it does not have in the Republic assets as required by section 31; or
- (c) it has not made provision for the liabilities and the capital adequacy requirement referred to in sections 30 and 31 in accordance with the requirements of those sections and Schedule 3.

*(Section 29(2) substituted by section 11(a) of Act 27 of 2008)*

- (3) A long-term insurer which fails to comply with subsection (1) shall, without delay, notify the Registrar of the failure and furnish the reasons therefor.

*(Section 29(3) substituted by section 11(a) of Act 27 of 2008)*

- (4) A long-term insurer shall not declare or pay a dividend to its shareholders-

- (a) while it fails or is likely to fail to comply with subsection (1);
- (b) if the declaration or payment would result in it failing or being likely to fail to comply with subsection (1); or

- (c) if, after the declaration or payment, the aggregate value of assets required by section 30 would be less than the aggregate value of its liabilities, issued share capital and non- distributable reserves.

*(Section 29(4) added by section 11(b) of Act 27 of 2008)*

- (5) A long-term insurer shall not declare or pay a dividend to its shareholders unless its statutory actuary has certified that the declaration or payment will not be contrary to subsection (4).

*(Section 29(5) added by section 11(b) of Act 27 of 2008)*

### **30. Assets**

- (1) A long-term insurer shall-

- (a) have assets the aggregate value of which, on any day, is not less than the aggregate value, on that day, of its liabilities and capital adequacy requirement; and
- (b) subject to section 32, have, in the Republic, assets, the aggregate value of which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which are to be met in the Republic, and the capital adequacy requirement in respect of those liabilities,

when the values of those assets, liabilities and capital adequacy requirement are calculated as set out in Schedule 3.

*(Section 30(1) substituted by section 11(a) of Act 17 of 2003)*

- (2) .....

*(Section 30(2) substituted by section 11(b) of Act 17 of 2003)*

*(Section 30(2) deleted by section 12 of Act 27 of 2008)*

- (3) .....

*(Section 30(3) deleted by section 12 of Act 27 of 2008)*

### **31. Kinds and spread of assets**

- (1) Subject to section 32, a long-term insurer shall, in the Republic, have assets, other than assets in respect of linked liabilities -

- (a) which have an aggregate value which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which have to be met in the Republic, and its capital adequacy requirement, when the values of those assets are calculated by reference to their fair value and the values of those liabilities, other than the said linked liabilities, and capital adequacy requirement, are calculated as set out in Schedule 3; and

*(Section 31(1)(a) substituted by section 13(a) of Act 27 of 2008)*

- (b) which are of the kinds specified in Schedule 1; and
- (c) which have a fair value which, when expressed as a percentage of the aggregate value of its liabilities and capital adequacy requirement referred to in paragraph (a), does not exceed the percentage specified in the regulations in respect of particular kinds or categories of those assets, unless the Registrar otherwise approves either in advance or at any time after having received the notice referred to in section 29(3)-
  - (i) in a particular case;
  - (ii) for the specified period; and
  - (iii) subject to such conditions as the Registrar may determine.

*(Section 31(1)(c) substituted by section 13(b) of Act 27 of 2008)*

*(Section 31(1) substituted by section 12 of Act 17 of 2003)*

- (2) Subject to subsection (1), the kinds of assets that a long-term insurer has, and the spread of those assets among different kinds, shall -
  - (a) to the satisfaction of the statutory actuary of the long-term insurer, be proper and suitable having regard to the nature of its various liabilities and the time when, the place where, and the manner in which, it is required, or expects to be required, to meet those liabilities; and
  - (b) to the extent so prescribed, comply with any general requirement prescribed by the Registrar for the appropriate matching of assets and liabilities.
- (3) Despite the requirement in subsection (1) that an asset must be valued at fair value, if the Registrar is satisfied that the value of an asset when calculated in accordance with financial reporting standards does not reflect a reasonable value for purposes of this Act, the Registrar may-
  - (a) appoint another person, at the cost of the insurer, to place a reasonable value on that asset, which value so determined will be deemed to be the value of the asset; or
  - (b) direct a long-term insurer to calculate the value in a manner determined by the Registrar, which value so calculated will be deemed to be the value of the asset.

*(Section 31(3) added by section 13(c) of Act 27 of 2008)*

## **32. Deeming provisions concerning assets**

- (1) For the purposes of sections 30 and 31 -

Prepared by:

In partnership with:



- (a) an asset of the kind specified in item 13, 16(2), (3) or (5) or 20(c) of the Table to Schedule 1, shall, subject to paragraph (b), be deemed to be in the Republic;
  - (b) if there is documentary evidence of the title of a long-term insurer to an asset, that asset shall be deemed not to be in the Republic unless the documentary evidence is in the Republic or is held outside the Republic in such a manner and subject to such conditions as the Registrar may determine; and
  - (c) an asset shall be deemed not to be held by a long-term insurer if it has been encumbered contrary to section 34(1)(a) in favour of another person, or if it is held by another person contrary to section 34(1)(b), unless the person in whose favour it is encumbered or the person holding that asset is -
    - (i) the Minister of Labour or the Director-General: Labour, or any person acting on behalf of that Minister or Director-General in accordance with the laws of the Republic relating to compensation for occupational injuries and diseases;
    - (ii) the government of any country other than the Republic in which the long-term insurer carries on insurance business or intends to carry on such business, or any person acting on behalf of such government, if the long-term insurer has encumbered those assets in favour of, or transferred those assets into the name of, that government or that person in order to comply with the laws of that country relating to long-term insurance; or
    - (iii) another insurer and the encumbrance or transfer takes place in terms of a reinsurance policy.
- (2) If the assets which a long-term insurer holds in respect of its long-term insurance business in any of its policyholder funds include shares in its holding company -
- (a) such shares shall, for the purposes of section 39(2) of the Companies Act, be deemed to be held by the long-term insurer in a representative capacity or as a trustee for the sole benefit of the owners of the policies for which the policyholder fund concerned exists, whether the holding company is incorporated in the Republic or not;
  - (b) such shares shall only be held by the long-term insurer with the prior approval of the Registrar and subject to such conditions as the Registrar may determine; and
  - (c) the long-term insurer shall not have the right to vote at meetings of the holding company or at meetings of any class of members thereof.

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

*(Section 32(3) substituted by section 85 of Act 45 of 2013)*

### **33. Liabilities**

- (1) For the purposes of this Act, the liabilities of a long-term insurer shall include its contingent liabilities for policy benefits which have not become claimable, and which are specified in Schedule 3.

*(Section 33(1) substituted by section 13(a) of Act 17 of 2003)*

- (2) .....

*(Section 33(2) deleted by section 13(b) of Act 17 of 2003)*

### **34. Prohibitions concerning assets and certain liabilities**

- (1) A long-term insurer shall not -

- (a) encumber its assets;
- (b) allow its assets to be held by another person on its behalf;
- (c) directly or indirectly borrow any asset;
- (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,
- (e) include in its assets shares held directly or indirectly in its holding company,

*(Section 34(1)(e) added by section 14(a) of Act 17 of 2003)*

without the approval of the Registrar, given generally or in a particular case, and subject to such conditions as the Registrar may determine.

- (2) A long-term insurer shall not invest in derivatives other than for one or more of the following reasons:

- (a) Derivatives designated as an asset in respect of a linked policy;
- (b) derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the long-term insurer's liabilities under long-term policies and capital adequacy requirement in terms of section 30(1);
- (c) for the purpose of efficient portfolio management;

- (d) for the purpose of reducing investment risk:

Provided that-

- (i) in respect of paragraphs (a), (b) and (c), the long-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches the obligations under that instrument and from which it can discharge those obligations;
- (ii) in respect of paragraph (d), the statutory actuary has in writing agreed thereto.  
*(Section 34(2) amended by section 14(b) of Act 17 of 2003)*  
*(Section 34(2) substituted by section 14 of Act 27 of 2008)*

### **35. Failure to maintain financially sound condition**

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

### **36. Returns to Registrar**

Prepared by:

In partnership with:

(1) A long-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.

*(Section 36 (unnumbered first subsection) numbered “(1)” by section 15 of Act 17 of 2003)*

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

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

(3) If the Registrar is satisfied that a statement forming part of the returns furnished by the long-term insurer in terms of subsection (1) or (2) requires further investigation, the Registrar may by notice direct the long-term insurer to furnish him or her by a specific date or within a specific period with a report-

- (a) in the medium and form; and
- (b) containing the required information,

compiled by a person nominated by the Registrar at the cost of the long-term insurer.

*(Section 36(3) added by section 15 of Act 27 of 2008)*

## **Part V**

### **Compromise, arrangement, amalgamation, demutualisation and transfer**

**37. Registrar approval required for compromise, arrangement, amalgamation, demutualisation or transfer**

*(Heading substituted by section 86(a) of Act 45 of 2013)*

- (1) No transaction to which a long-term insurer is a party and which constitutes an agreement by which all or any part of the business of a long-term insurer is transferred to another person, or by which a fundamental transaction or compromise contemplated in Part A of Chapter 5 and section 155 of the Companies Act is effected, or by which a long-term insurer which is not a company having a share capital is to be converted into a public company having a share capital, shall have legal force without the approval of the Registrar.

*(Section 37(1) substituted by section 86(b) of Act 45 of 2013)*

- (2) Any arrangement entered into between two or more insurers whereby a liability of any long-term insurer towards policyholders is to be substituted for a liability of any other insurer towards such policyholders (whether or not the liability of the long-term insurer is expressed in or created by existing policies or by new policies, or the terms of such new policies are the same as or different from the terms of the original policies), shall be deemed for the purposes of this section to be a scheme for the transfer of the insurance business concerned, unless the Registrar is satisfied that the said policyholders have been or will be made aware of the nature of such substitution and have signified or will signify their consent thereto in writing.

### **38. Application to Registrar**

*(Heading substituted by section 87(a) of Act 45 of 2013)*

- (1) When application is made to the Registrar for the approval of a transaction referred to in section 37 -  
*(Words preceding paragraph (a) substituted by section 87(b) of Act 45 of 2013)*

- (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, which particulars must be provided in the form as may be required by the Registrar;

*(Section 38(1)(a)(i) substituted by section 87(c) of Act 45 of 2013)*

- (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 media as the Registrar may determine;

*(Section 38(1)(a)(ii) substituted by section 87(c) of Act 45 of 2013)*

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

*(Section 38(1)(a)(iii) substituted by section 87(c) of Act 45 of 2013)*

- (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;

*(Section 38(1)(c)(i) amended by section 87(d) of Act 45 of 2013)*

(ii) by notice, direct any party to the transaction to provide the Registrar or that person with all information and documents relating to the transaction which the Registrar may require; and

*(Section 38(1)(c)(ii) substituted by section 87(e) of Act 45 of 2013)*

(d) any policyholder, shareholder or creditor of the long-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.

*(Section 38(1)(d) substituted by section 87(f) of Act 45 of 2013)*

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

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

*(Words preceding paragraph (a) substituted by section 87(g) of Act 45 of 2013)*

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

(b) the cessation of membership of the long-term insurer;

(c) the date on which such scheme takes effect, which date may be a date before or after the date of approval by the Registrar.

*(Section 38(3)(c) substituted by section 87(h) of Act 45 of 2013)*

### 39. Conditions of approval

Notwithstanding the provisions of the Companies Act, the approval of the Registrar of a transaction referred to in section 37(1) may be granted subject to such conditions as the Registrar may determine and shall not be granted-

*(Words preceding paragraph (a) substituted by section 88 of Act 45 of 2013)*

- (a) unless the provisions of this Part have been complied with;
- (b) if the transaction is inconsistent with this Act or contrary to the interests of the policyholders of the long-term insurer concerned; or
- (c) unless payment of the cost referred to in section 38(1)(c)(i) has been made or secured.

*(Section 39(c) substituted by section 16 of Act 17 of 2003)*

#### **40. Approved transaction**

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

*(Section 40(1) substituted by section 89(a) of Act 45 of 2013)*

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

*(Section 40(2) substituted by section 89(a) of Act 45 of 2013)*

- (3)
  - (a) The officer in charge of a deeds registry or other office in which is registered any bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 37(1) or 70 shall, upon production by the long-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the 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.

*(Section 40(3)(a) substituted by section 89(b) of Act 45 of 2013)*

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

- (i) a transfer of business compelled by law; or

- (ii) the initiative or at the direction of the Registrar under section 35.
- (4) A long-term insurer which is converted into a public company in accordance with this Part shall continue its corporate existence in the form of a public company incorporated under the Companies Act, and the Commission shall endorse its Memorandum of Incorporation in accordance with section 14 of the Companies Act.

*(Section 40(4) substituted by section 89(c) of Act 45 of 2013)*

## **Part VI**

### **Business rescue and winding-up of long-term insurers**

*(Heading substituted by section 90 of Act 45 of 2013)*

#### **41. Business rescue**

- (1) The Registrar may make an application under section 131 of the Companies Act in respect of a long-term insurer if the Registrar is satisfied, whether in accordance with section 12(3) or 35(2) of this Act, or otherwise, that it is in the interests of the policyholders of the long-term insurer to do so.
- (2) The following acts are subject to the approval of the Registrar:
- (a) The resolution of a long-term insurer to begin business rescue proceedings;
  - (b) the appointment of a business rescue practitioner;
  - (c) the adoption of a business rescue plan; and
  - (d) the exercise of a power by the business rescue practitioner under the Companies Act.
- (3) In the application of Chapter 6 of the Companies Act-
- (a) a reference to the Commission shall be construed as a reference also to the Registrar;
  - (b) the reference to creditors shall be construed as a reference also to the policyholders of the long-term insurer;
  - (c) a reference relating to the inability of a long-term insurer to pay all its debts, shall be construed as relating also to its inability to comply with section 29(1) of this Act;
  - (d) in addition to any question relating to the business of a long-term insurer, there shall be considered also the question whether any proposed action is in the interests of the policyholders.



- (4) If an application to a Court for an order relating to the business rescue of a long-term insurer is made by an affected 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 have been lodged with the Registrar at least 60 days before the application is set down for hearing;
  - (b) the Registrar may, if satisfied that the application is not in the interests of policyholders of the long-term insurer, join in the application as a party and file affidavits and other documents in opposition to the application.
- (5) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a long-term insurer shall not enter into any new long-term policies, unless the practitioner has been granted permission to do so by the Registrar.

*(Section 41 substituted by section 91 of Act 45 of 2013)*

#### **42. Winding-up**

*(Heading substituted by section 92(a) of Act 45 of 2013)*

- (1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a long-term insurer, and in such application the Registrar shall be deemed to be a person authorised under the Companies Act to make an application to the Court for the winding-up thereof.

*(Section 42(1) substituted by section 92(b) of Act 45 of 2013)*

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

*(Section 42(2) substituted by section 92(b) of Act 45 of 2013)*

- (3) In the application of sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act as provided by subsection (1) -

*(Words preceding paragraph (a) substituted by section 92(c) of Act 45 of 2013)*

- (a) a reference which relates to the inability of a long-term insurer to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 29(1) of this Act;
- (b) in addition to any question whether it is just and equitable that a long-term insurer should be wound up, there shall be considered also the question whether it is in the interest of the policyholders of that long-term insurer that it should be wound up;

- (c) notwithstanding any other provision of sections 79 to 81 and item 9 of Schedule 5, there shall be considered whether a person is acting in contravention of section 7(1)(a) of this Act;

*(Section 42(3)(c) substituted by section 92(d) of Act 45 of 2013)*

- (d) the references to the Master, Registrar of Companies, Panel and Commission shall be construed as a reference also to the Registrar; and

*(Section 42(3)(d) substituted by section 92(d) of Act 45 of 2013)*

- (e) the requirement to give security shall not apply where the Registrar makes the application to Court.

*(Section 42(3)(e) substituted by section 92(d) of Act 45 of 2013)*

- (4) If an application to the Court for or in respect of the winding-up of a long-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 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 the policyholders of the long-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

#### **43. Voluntary winding-up**

- (1) No special resolution relating to the winding-up of a long-term insurer as contemplated in sections 79 to 81 of and item 9 of Schedule 5 to the Companies Act shall be filed or registered under that Act, and no special resolution to that effect in terms of the constitution of a long-term insurer which is not a company shall have legal force-

*(Words preceding paragraph (a) substituted by section 93(a) of Act 45 of 2013)*

- (a) unless a copy thereof has been lodged with the Registrar and he or she has, by notice to the long-term insurer, declared that arrangements satisfactory to the Registrar have been made to meet all liabilities of the long-term insurer under long-term policies entered into by it prior to the winding-up; or

- (b) if the Registrar, by notice to the long-term insurer, declares that the resolution is contrary to this Act.

*(Section 43 renumbered to 43(1) by section 93(b) of Act 45 of 2013)*

- (2) Subject to item 9 of Schedule 5 to the Companies Act, the reference to a long-term insurer in this section shall for the purposes of the application of sections 79, 80 and 81 of the Companies Act be construed as a reference to a financially sound long-term insurer.

*(Section 43(2) added by section 93(b) of Act 45 of 2013)*

## **Part VII**

### **Business practice, policies and policyholder protection**

#### ***Business practice***

#### **44. Free choice in certain circumstances**

- (1) 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 otherwise, that a long-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 long-term insurer with which the policy is entered into and as to the intermediary (if any) who is to render services contemplated in section 49 in connection with the transaction;
    - (ii) as to whether or not the policy benefits concerned are to be provided in an event other than the death or disability of the life insured; and
    - (iii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of that debt or other obligation; and
  - (c) if an existing policy is to be made available -
    - (i) as to the intermediary (if any) who is to render services contemplated in section 49 in connection with the transaction; and

(ii) as to whether or not a variation of the policy required for that purpose shall be such as to cause -

(aa) policy benefits to be provided in an event other than the death or disability of the life insured; or

(bb) the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of that debt or other obligation.

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

(a) was given prior written notification of his or her entitlement to the freedom of choice referred to in that subsection;

(b) exercised that freedom of choice; and

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

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

(4) Subsection (1) shall not apply to a long-term insurer if it lends money to one of its policyholders upon the security of a long-term policy issued by itself.

*(Section 44(4) added by section 17 of Act 17 of 2003)*

(5) This section does not apply if the long-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies.

*(Section 44(5) inserted by section 172(2) of Act 34 of 2005)*

#### **45. Prohibition on inducements**

Unless done in accordance with the rules made under section 62, 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 long-term policy, other than a reinsurance policy.

*(Section 45 substituted by section 94 of Act 45 of 2013)*

#### **46. Policy to be actuarially sound**

- (1) A long-term insurer shall not-
- (a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof are actuarially sound;
  - (b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or
  - (c) award a bonus or similar benefit to a policyholder unless-
    - (i) it is done in accordance with the principles and practices of financial management of the long-term insurer; and
    - (ii) the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose.
- (2) For the purposes of subsection (1)(c)(i) “principles and practices of financial management” means a statement approved by the board of directors of the long-term insurer setting out the discretion retained by the board of directors and the parameters within which that discretion must be exercised in respect of long-term policies where the long-term insurer has to exercise its discretion in awarding a bonus or similar benefit.

*(Section 46 substituted by section 16 of Act 27 of 2008)*

#### **47. Receipt for premium paid in cash, and validity of policy**

- (1) When a premium is paid in bank notes or coins, the recipient thereof shall give to the payer a written receipt for it.
- (2)
- (a) The receipt shall state the name, address and telephone number of the recipient, the policy number and the name of the long-term insurer on whose behalf the premium is received.

*(Section 47(2) renumbered to 47(2)(a) by section 18 of Act 17 of 2003)*

- (b) Paragraph (a) does not apply to a receipt issued by a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), or by a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993).

*(Section 47(2)(b) added by section 18 of Act 17 of 2003)*

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

#### **48. Summary, inspection and copy of policy**

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

- (a) those of the representations made by or on behalf of that person to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;
- (b) the premiums payable and the policy benefits to be provided under the policy; and
- (c) the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided,

and shall be provided with that information as soon as possible, but not later than 60 days after the parties enter into or agree to vary the policy.

- (2) The summary referred to in subsection (1) shall be prima facie proof of the agreement, but shall -
- (a) not be deemed to be part of the policy;
  - (b) in the absence of evidence to the contrary, be deemed to be exhaustive of the matters which are material to the assessment of the risks under the policy.
- (3) The policyholder shall be entitled to be provided, upon request, with a copy of the policy.

#### **49. Limitation of remuneration to intermediaries**

No consideration shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer or accepted by any independent intermediary for rendering services as intermediary as referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.

*(Section 49 substituted by section 17 of Act 27 of 2008 with effect from 1 January 2012)*

#### **49A. Binder agreements**

- (1) A long-term insurer may in terms of a written agreement only, and in accordance with any requirements, limitations or prohibitions that may be prescribed by regulation, allow another person to do any one or more of the following on behalf of that insurer:
  - (a) Enter into, vary or renew a long-term policy, other than a long-term reinsurance policy, on behalf of that insurer;
  - (b) determine the wording of a long-term policy;
  - (c) determine premiums under a long-term policy;
  - (d) determine the value of policy benefits under a long-term policy;
  - (e) settle claims under a long-term policy.
  
- (2) A written agreement referred to in subsection (1) must-
  - (a) set out which of the activities referred to in subsection (1) that other person may perform and the particular kinds of long-term policies in respect of which those activities may be performed;
  - (b) set out the particular kinds of long-term policies which may be entered into, varied or renewed by that other person;
  - (c) state if that other person is authorised to determine the wording of the policies referred to in paragraph (a), and if authorised, the extent to which and the circumstances under which the wording may be determined;
  - (d) state if that other person is authorised to determine premiums in respect of the policies referred to in paragraph (a), and if authorised, the gross premiums or the basis for the calculation of gross premiums that may be determined, and the extent to which and the circumstances under which the premiums may be determined;
  - (e) state if that other person is authorised to determine the value of policy benefits, and if authorised, the maximum value of the policy benefits that may be determined under each kind of long-term policy referred to in paragraph (a), and the extent to which and the circumstances under which the benefits may be determined;
  - (f) state if that other person is authorised to settle claims under the policies referred to in paragraph (a), and if authorised, the extent to which and the circumstances under which the claims may be settled;

- (g) state the basis on which that other person will be remunerated for services rendered in terms of paragraphs (b) to (f), which basis must be consistent with any requirements, limitations or prohibitions as may be prescribed by regulation;
  - (h) oblige that other person to-
    - (i) disclose to policyholders of policies referred to in paragraph (a)-
      - (aa) the name of the relevant long-term insurer, and the fact that that other person is acting in terms of an agreement contemplated in this section; and
      - (bb) any remuneration payable to that other person in terms of an agreement contemplated in this section;
    - (ii) include the name of the long-term insurer underwriting the long-term policy in any advertisement, brochure or similar communication which relates to the long-term policy referred to in paragraph (a);
    - (iii) keep and maintain proper books of account and other records in respect of the policies referred to in paragraph (a) and allow the long-term insurer, its statutory actuary and its auditors full and unfettered access to those books of account and records; and
    - (iv) make available to the long-term insurer, its statutory actuary and its auditors the policies referred to in paragraph (a) and any information relating thereto, including the names, identity numbers and contact details of policyholders, insured persons and beneficiaries, upon request;
  - (i) prohibit that other person to delegate, assign or subcontract any of the functions referred to in paragraphs (b) to (f) to another person; and
  - (j) state the circumstances under which the agreement will lapse or may be terminated, and the necessary steps that must be taken to ensure the effective and efficient termination of the agreement taking into account the interests of policyholders.
- (3) A written agreement referred to in subsection (1), subject to any requirements, limitations or prohibitions as may be prescribed by regulation-
- (a) may not authorise that other person to add an amount to any gross premium referred to in subsection (2)(d);
  - (b) may not authorise that other person to deduct any amount from any claims referred to in subsection (2)(f); or



- (c) may provide or prohibit that person to directly or indirectly participate in the profits attributable to the policies referred to in subsection 2(a).
- (4) A person that entered into an agreement contemplated in subsection (1) with a long-term insurer may-
  - (a) render the services contemplated in subsection (1)(a) to (e) in respect of any kind of long-term policy issued by that long-term insurer identified in the agreement only in accordance with any requirements, limitations or prohibitions as may be prescribed by regulation; and
  - (b) not render any of the services contemplated in subsection (1)(a) to (e) in respect of any kind of long-term policy issued by that long-term insurer not identified in the agreement.
- (5) Despite any term to the contrary contained in an agreement contemplated in subsection (1) the long-term insurer that entered into the agreement remains-
  - (a) responsible for compliance with this Act;
  - (b) liable for any claims relating to policies included in the agreement, including any claims that may arise because of the failure of that other person to comply with the agreement; and
  - (c) the owner of any information and documentation relating to the policies contemplated in the agreement, which must, upon termination of the agreement, be returned to the long-term insurer.
- (6) Any party to a written agreement referred to in subsection (1) must make a copy of that agreement available to the Registrar on request.

*(Section 49A inserted by section 18 of Act 27 of 2008 with effect from 1 January 2012)*

50. ....

*(Section 50 amended by section 31 of Act 22 of 2008)*

*(Section 50 repealed by section 96 of Act 45 of 2013)*

### ***Policies***

#### **51. Policy suspended until payment of first premium**

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

- (a) is to be one premium, that premium; or

- (b) are to be two or more premiums, the first of those premiums,

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

*(Words following paragraph (b) substituted by section 97 of Act 45 of 2013)*

## **52. Failure to pay premiums**

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

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

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

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

- (a) inform the policyholder, in the medium prescribed by the Registrar, of the amount of that remaining value and notify him or her that the policy will remain in force, in accordance with the rules of the long-term insurer, until -
  - (i) the policy no longer has any such remaining value, whereupon it will lapse;
  - (ii) the payment of premiums is resumed;
  - (iii) the provisions of the policy are amended, in accordance with the rules of the long-term insurer, so that it becomes a policy which is fully paid-up; or

- (iv) if the policyholder so requests, the policy is surrendered, in accordance with the rules of the long-term insurer, and so much of the remaining value as then remains is, subject to section 54, paid to the policyholder; and

(b) deal with the policy accordingly.

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

### **53. Option for payment of policy benefits in money**

- (1) Despite the terms of an assistance policy entered into before 1 June 2009, the policyholder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money, in which case the sum of money must be equal in value to the policy benefit that would have been provided by the insurer or any person acting on behalf of the insurer had the policy benefit been provided otherwise than as a sum of money.

*(Section 53(1) substituted by section 98(a) of Act 45 of 2013)*

- (2) Where an assistance policy that provides for a policy benefit expressed otherwise than as a sum of money is entered into on or after 1 June 2009, that policy must-

- (a) provide that the policyholder is entitled to demand that the policy benefit be provided as a sum of money in lieu of the benefit on the occurrence of the event insured against; and

- (b) state the amount of the policy benefit that is to be provided as a sum of money, which amount must be equal to the value of the policy benefit expressed otherwise than as a sum of money.

*(Section 53(2)(b) substituted by section 98(b) of Act 45 of 2013)*

- (3) Where a policy benefit expressed otherwise than as a sum of money is provided as a sum of money, the amount of that policy benefit may not exceed the maximum amount referred to in the definition of "assistance policy" in section 1(1) of this Act."

*(Section 53 substituted by section 19 of Act 27 of 2008)*

### **54. Limitation on provisions of certain policies**

- (1) A long-term insurer may not-

- (a) undertake to provide policy benefits, or provide policy benefits, under;

- (b) provide consideration upon the surrender of; or

(c) make a loan upon the security of,

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

(2) The requirements and limitations set out in regulations made under subsection (1) apply from the inception of a policy, if the regulation so provide, irrespective of the fact that the policy was entered into before or after the commencement of this Act or the regulations.

*(Section 54 substituted by section 19A of Act 27 of 2008)*

#### **55. Limitation on policy benefits in event of death of unborn or of certain minors**

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

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

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

#### **56. Voidness of certain provisions of agreements relating to long-term policies**

A provision of an agreement, the purport of which is that -

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

(b) the person who has entered into the long-term policy declares or admits that a person who acted on behalf of the long-term insurer in connection with an offer of that person to do so, or

with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person;

- (c) the obligation of a long-term insurer under a long-term policy is dependent upon the discharging of an obligation of another person under a reinsurance policy; or
- (d) a person who has entered into a long-term policy, or the life insured under a long-term policy, waives a right to which he or she, by or under this Act, is entitled,

shall be void.

#### **57. Life policy in relation to person rendering or liable to render military service**

- (1) A long-term insurer shall not refuse to enter into a life policy on the grounds that the life insured is a person rendering or liable to render military service in accordance with the Defence Act, 1957 (Act No. 44 of 1957).
- (2) Notwithstanding anything to the contrary in a life policy contained, the policy benefits to be provided thereunder in the event of the death of the life insured in the course of or as a result of the rendering of military service in accordance with the Defence Act, 1957, shall not be less than an amount equal to the value for which the policy could be surrendered on the day of the death of the life insured, had the regulations not been made.

#### **58. Long-term policies entered into by certain minors**

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

#### **59. Misrepresentation and failure to disclose material information**

*(Heading substituted by section 19 of Act 17 of 2003)*

- (1)
  - (a) Notwithstanding anything to the contrary contained in a long-term policy, whether entered into before or after the commencement of this Act, but subject to subsection (2)-
    - (i) the policy shall not be invalidated;
    - (ii) the obligation of the long-term insurer thereunder shall not be excluded or limited; and

- (iii) the obligations of the policyholder shall not be increased,

on account of any representation made to the insurer which is not true, or failure to disclose information, whether or not the representation or disclosure has been warranted to be true and correct, unless that representation or non-disclosure is such as to be likely to have materially affected the assessment of the risk under the policy concerned at the time of its issue or at the time of any variation thereof.

- (b) The representation or non-disclosure shall be regarded as material if a reasonable, prudent person would consider that the particular information constituting the representation or which was not disclosed, as the case may be, should have been correctly disclosed to the insurer so that the insurer could form its own view as to the effect of such information on the assessment of the relevant risk.

*(Section 59(1) substituted by section 19 of Act 17 of 2003)*

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

## **60. Validity of contracts**

- (1) A long-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it.
- (2) If a person has entered into a long-term policy with a long-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the long-term policy, or with another person who is not a long-term insurer but who has in terms of a long-term policy undertaken an obligation as insurer, that person, by notice in writing to such long-term insurer or other person, or the Registrar by notice to such long-term insurer or other person and on the official web site, may cancel the long-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such long-term insurer or other person as if the policy had been cancelled by that person on account of a breach of contract by such long-term insurer or other person.

*(Section 60(2) substituted by section 99 of Act 45 of 2013)*

- (3) Any contract entered into before the commencement of this Act the entering into of which is contrary to this Act or 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.

#### **61. Prescription of certain debt**

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

### ***Policyholder protection***

#### **62. Protection of policyholders**

- (1) The Registrar, by notice in the *Gazette*, may-
- (a) make rules not inconsistent with this Act, aimed at ensuring for the purpose of policyholder protection 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;
  - (b) vary or rescind any such rule; and
  - (c) determine the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette*.
- (2) Without derogating from the generality of subsection (1)(a), rules may provide-
- (a) that provisions with a particular import may not appear in a policy and that they shall be void if they do so appear;
  - (b) that particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;
  - (c) that 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 so;
  - (d) for norms and standards with which policies, long-term insurers or types of long-term insurance business must comply;

- (e) for standardised wording, definitions or provisions that must be included in policies;
  - (f) that in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 66(1)(c) or 67(1)(c) shall apply.
- (3) Rules referred to in subsection (2) may-
- (a) apply generally; or
  - (b) be limited in application to a particular kind or type of policies, long-term insurers or long-term insurance business.
- (4)
- (a) Before the Registrar prescribes any rule under this section, the Registrar must-
    - (i) publish notice of the release of the proposed rule in the *Gazette*, indicating that the proposed rule is available on the official web site and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and
    - (ii) submit the draft rules to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.
  - (b) If the Registrar alters a draft rule because of any comment, the Registrar need not publish the alteration before making the rule.
  - (c) After consideration of any comments received in response to the publication and tabling of the draft proposed rule in terms of paragraph (a), the Registrar may publish the final rule in the *Gazette*.
- (5) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2013, must be regarded as having been made under this section, and remains valid and enforceable until repealed or amended by the Registrar.

*(Section 62 substituted by section 100 of Act 45 of 2013)*

### **63. Protection of policy benefits under certain long-term policies**

- (1) Subject to subsections (2), (3) and (4), the policy benefits provided or to be provided to a person under one or more assistance, life, disability or health policies in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy-



*(Words preceding paragraph (a) substituted by section 101(a) of Act 45 of 2013)*

- (a) during his or her lifetime, not be liable to be attached or subjected to execution under a judgment of a court or form part of his or her insolvent estate; or
  - (b) upon his or her death, if he or she is survived by a spouse, child, stepchild or parent, not be available for the purpose of the payment of his or her debts.
- (2) The protection contemplated in subsection (1) shall apply to policy benefits and assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided.

*(Section 63(2) substituted by section 101(b) of Act 45 of 2013)*

- (3) Policy benefits are only protected as provided in -
- (a) subsection (1)(b), if they devolve upon the spouse, child, stepchild or parent of the person referred to in subsection (1) in the event of that person's death; and
  - (b) subsection (1)(a) and (b), if the person claiming such protection is able to prove on a balance of probabilities that the protection is afforded to him or her under this section.
- (4) Policy benefits are protected as provided for in subsection (1)(a) and (b), unless it can be shown that the policy in question was taken out with the intention to defraud creditors.

*(Section 63(4) added by section 101(c) of Act 45 of 2013)*

#### **64. Selection for realisation of protected policies**

If -

- (a) two or more long-term policies referred to in section 63, held by the same policyholder, are attached in execution of a judgment or order of any court at the instance of a creditor; or
- (b) the policyholder of two or more long-term policies referred to in section 63 is found to be or otherwise declared insolvent by a Court,

and only a part of the aggregate realisable value of the policies is protected as contemplated in that section, the judgment creditor or the trustee of the insolvent estate, as the case may be, shall determine which policy or policies shall be realised, wholly or partially, in order to make available to him or her so much of the aggregate realisable value as is not so protected and to which he or she is entitled.

#### **65. Partial realisation of protected policies**

Prepared by:

In partnership with:

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

## Part VIII

### Offences and penalties

#### 66. Offences by persons other than long-term insurers

- (1) A person, other than a long-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), 22(2) or 27(2);  
*(Section 66(1)(a) substituted by section 20(a) of Act 27 of 2008)*
  - (b) contravenes or fails to comply with a provision of section 8(1)(a) or (b), 16(2), 23(1), 28(1), 44(1), 45, 47, 49 or 49A;  
*(Section 66(1)(b) substituted by section 20(a) of Act 27 of 2008)*
  - (c) where a rule contemplated in section 62(2)(f) so provides, contravenes or fails to comply with a provision of any rule to the extent so provided; or  
*(Section 66(1)(c) substituted by section 102(a) of Act 45 of 2013)*
  - (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 R5 million or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

*(Words following paragraph (d) substituted by section 102(b) of Act 45 of 2013)*

- (2) A person, other than a long-term insurer, who contravenes or fails to comply with a provision of section 7(1)(a), 8(3), 20(5)(b) or 26(1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

*(Section 66(2) substituted by section 20(b) of Act 27 of 2008)*

*(Section 66(2) substituted by section 102(c) of Act 45 of 2013)*

## **67. Offences by long-term insurers**

- (1) A long-term insurer which -

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

*(Section 67(1)(a) substituted by section 21 of Act 27 of 2008)*

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

*(Section 67(1)(b) substituted by section 21 of Act 27 of 2008)*

- (c) where a rule contemplated in section 62(2)(f) so provides, contravenes or fails to comply with a provision of any rule to the extent so provided,

*(Section 67(1)(c) substituted by section 103(a) of Act 45 of 2013)*

shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million.

*(Words following paragraph (c) substituted by section 103(b) of Act 45 of 2013)*

- (2) A long-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1)(a), 15(1) or (2), 19(1) or (3), 20(1), (3) or (4), 24, 26(1) or (2), 29(1), 30, 31(1), 34 or 46, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million.

*(Section 67(2) substituted by section 103(c) of Act 45 of 2013)*

## **68. Penalty for failure to furnish Registrar with returns etc**

- (1)

- (a) 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 R5 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof.

- (b) The amount referred to in paragraph (a) must be adjusted by the Registrar annually in order to reflect the Consumer Price Index, as published by Statistics South Africa.

*(Section 68(1) substituted by section 104 of Act 45 of 2013)*

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

### **Transitional and general provisions**

#### ***Transitional provisions***

#### **69. Continued registration of existing insurers**

- (1) A person who immediately prior to the commencement of this Act was registered in terms of the repealed Act, and was, by virtue of that registration, authorised to carry on long-term insurance business as defined in that Act, shall be deemed to be registered as a long-term insurer in terms of this Act and shall, subject to this Act, be authorised, in the case of a person who was so authorised to carry on the long-term insurance business of providing or undertaking to provide policy benefits in terms of -
- (a) assistance policies;
  - (b) disability policies;
  - (c) fund policies;
  - (d) health policies;
  - (e) life policies; or
  - (f) sinking fund policies,

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

- (2) A person referred to in subsection (1) shall, within a period of six months after the commencement of this Act, make application to the Registrar in accordance with section 3(2) for the issuing to such person, as contemplated in section 9(2)(b), of a new certificate of registration in exchange for the certificate of registration issued to such person under the repealed Act.
- (3) Upon receipt of an application in terms of subsection (2), the Registrar shall issue the new certificate of registration specifying the conditions referred to in subsection (1) as if they had been determined by him or her with the necessary changes in terms of section 9, and shall not thereupon vary any of those conditions, or determine a new condition, otherwise than in terms of section 11.

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

A person referred to in section 69(1), who was, by virtue of such person's registration under the repealed Act, authorised to carry on both long-term insurance business and short-term insurance business, other than reinsurance business only, as defined in that Act, shall, within a period of six months after the commencement of this Act, make arrangements satisfactory to the Registrar and in accordance with the appropriate provisions of the Short-term Insurance Act, 1998, as the case may be, which have the result -

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

***General provisions***

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

- (1) Notwithstanding anything to the contrary in any law contained, a long-term insurer which is not a public company shall be subject to section 20 of the Companies Act with the necessary changes as if it were a public company having a share capital.

*(Section 71(1) substituted by section 105(a) of Act 45 of 2013)*

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

- (2A) No exemption granted under any law under which a long-term insurer is incorporated or registered shall constitute an exemption from the provisions of this Act.

*(Section 71(2A) inserted by section 22(a) of Act 27 of 2008)*

- (3) The financial statements of a long-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with financial reporting standards applicable to a public company having a share capital.

*(Section 71(3) substituted by section 22(b) of Act 27 of 2008)*

*(Section 71(3) substituted by section 105(b) of Act 45 of 2013)*

## **72. Regulations**

- (1) The Minister may make regulations not inconsistent with this Act -
- (a) prescribing all matters which are required or permitted by this Act to be prescribed by regulation;
  - (b) limiting the amount which and the extent to which a long-term insurer may invest in particular kinds and categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;
  - (c) authorising the Registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (b);
  - (d) prohibiting any consideration from being offered or provided, or limiting the consideration which may be offered or provided, from, by or on behalf of a long-term insurer to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;
  - (e) prohibiting any consideration from being offered or provided, or prescribing the manner in and conditions on which consideration may be offered or provided, from, by or on behalf of any person other than a long-term insurer to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;
  - (f) prescribing different classes of persons to whom consideration contemplated in paragraphs (d) and (e) may be offered or provided, for such services rendered or to be rendered;
  - (g) prescribing periods within which policies and amended policies are to be issued;
  - (gA) prescribing in respect of section 49A, requirements, limitations or prohibitions relating to-

- (i) the agreements contemplated in section 49A(1);
- (ii) any additions to gross premiums or deductions from claims in respect of policies referred to in the agreements contemplated in section 49A(1);
- (iii) any consideration that may be offered or provided from, by or on behalf of a long-term insurer to a person that enters into an agreement contemplated in section 49A(1) with a long-term insurer;
- (iv) any participation or sharing in the profits attributable to the policies referred to in the agreements contemplated in section 49A(1); and
- (v) the circumstances under which a person who has entered into an agreement contemplated in section 49A(1) may render services in respect of a policy not referred to that person by the relevant insurer or an independent intermediary.

*(Section 72(1)(gA) inserted by section 23(a) of Act 27 of 2008)*

- (h) prescribing that every long-term insurer shall within a specified period as from the close of each financial year of its long-term insurance business furnish the Registrar with a statement of all changes which occurred during the said year in specified matters in relation to the insurer concerned.

(2) Regulations made under this section may-

- (a) differentiate between different kinds of insurers, policies, agreements or contracts, which may, for the purposes of this section, be defined either in relation to categories, types or kinds of insurers or policies or in any other manner;
- (b) be limited in its application to a particular kind of insurer, policy, agreement or contract, which may, for the purposes of this section, be defined either in relation to categories, types or kinds of insurers or policies or in any other manner; and
- (c) prescribe a fine or a period of imprisonment not exceeding one year for a contravention of or a failure to comply with a provision of the regulations.

*(Section 72(2) substituted by section 23(b) of Act 27 of 2008)*

(2A)

- (a) The Minister, despite the definition of 'business of a medical scheme' in section 9(1) of the Medical Schemes Act, may make regulations identifying a kind, type or category of contract as a health policy.

- (b) Regulations under paragraph (a)-
- (i) must be made only-
- (aa) in consultation with the Minister of Health;
- (bb) after consultation between the National Treasury, the Registrar and the Registrar of Medical Schemes established under the Medical Schemes Act; and
- (cc) after having regard to the objectives and purpose of the Medical Schemes Act, including the following principles entrenched therein-
- (A) community rating;
- (B) open enrolment; and
- (C) cross-subsidisation within medical schemes; and
- (ii) must provide for a long-term insurer to submit specified information on any product within a kind, type or category of contract referred to in paragraph (a) to the Registrar and the Registrar of Medical Schemes within any specified timeframes;
- (iii) may provide for matters relating to the design and marketing of any product within a kind, type or category of contract referred to in paragraph (a).
- (c) Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as a health policy in the regulations, is subject to this Act and not the Medical Schemes Act.

*(Section 72(2A) inserted by section 23(c) of Act 27 of 2008)*

- (2B) Before regulations in terms of this Act are promulgated, the Minister must publish the draft regulations in the *Gazette* for public comment and submit the regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.

*(Section 72(2B) inserted by section 23(c) of Act 27 of 2008)*

- (3) The Minister shall publish any regulations made under this section in the *Gazette*.

### **73. Repeal and amendment of laws**

Subject to section 74, the laws specified in Schedule 4 are hereby repealed or amended to the extent set out in the third column of that Schedule.



## 74. Savings

- (1) Notwithstanding the partial repeal of the repealed Act by section 73, the provisions of -
- (a) section 25, read with section 19A of that Act, shall continue to apply in relation to a long-term insurer that has before the commencement of this Act notified the Registrar, as defined in the repealed Act, that it intends to apply to the Court for the confirmation of a conversion contemplated in the said section 25, and if such application is made to the Court before 31 December 1999, that application may, if the long-term insurer so elects, be made, continued with and dealt with in accordance with the said provisions as if they had not been repealed by section 73;
  - (b) section 38, read with sections 38B, 52, 58 and 59 of that Act, shall continue to apply in relation to a policy contemplated in those sections and entered into during the period 1 April 1944 to 20 June 1978;
  - (c) section 38A, read with sections 38B, 52, 58, 59 and 59A of that Act, shall continue to apply in relation to any policy contemplated in those sections and entered into during the period 21 June 1978 to the date immediately before the commencement of this Act;
  - (d) section 62 of that Act shall continue to apply in relation to any industrial and funeral policy contemplated in that section;
  - (e) the Second Schedule to that Act shall continue to apply to industrial and funeral policies.
- (2) Anything done before the commencement of this Act under, in terms of or by virtue of a provision of the repealed Act by or in relation to persons registered in terms of that Act to carry on long-term insurance business as defined in that Act shall, in so far as it was done lawfully and unless it is clearly inappropriate, be deemed to have been done under, in terms of or by virtue of the corresponding provision of this Act.

## 75. Interpretation of certain references in existing laws

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

- (a) to a domestic insurer or a registered insurer, shall be construed as a reference to a long-term insurer or a short-term insurer, as the case may be;
- (b) to a home service policy, a funeral policy or an industrial policy, shall be construed as a reference to an assistance policy;

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

## 76. Short title and commencement

This Act shall be called the Long-term Insurance Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

### Schedule 1 (Section 31)

#### Kinds of assets

##### *Publisher's Note:*

*Schedule 1 has been amended by section 106 of Act 45 of 2013 by the substitution for the expression "in the Gazette", wherever it occurs, of the expression "on the official web site")*

#### 1. Requirement for claim to be asset, and definitions

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

**"contract for differences"** means a contract the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of -

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

**"derivatives"** means -

- (a) an option contract;
- (b) a futures contract; and
- (c) a contract for differences;

*(Definition of "derivatives" substituted by section 24(a) of Act 27 of 2008)*

**"futures contract"** means a standardised contract the effect of which is that –

- (a) a person agrees to deliver to or receive from another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or
- (b) an amount of money will be paid to or received from another person before or on a future date according to whether the pre-arranged value or price of-
  - (i) an asset;
  - (ii) an index as a means of indicator that reflects changes in the value of one or more groups of shares or securities on one or more exchanges;
  - (iii) currency;
  - (iv) rate of interest; or
  - (v) any other factor,

is higher or lower before or on that future date than the pre-arranged value or price;

*(Definition of "futures contract" inserted by section 24(b) of Act 27 of 2008)*

**"listed"**, in relation to an asset referred to in item 16(5) of the Table to this Schedule, means that -

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

**"margin"**, in relation to a stock exchange outside the Republic, means the margin as defined in the regulations issued or approved by the appropriate authority of the country in which the stock exchange is situated or which is required by that stock exchange;

*(Definition of "margin" substituted by section 24(c) of Act 27 of 2008)*

**"margin deposit"** means a margin with SAFEX and a stock exchange outside the Republic;

*(Definition of "margin deposit" substituted by section 24(d) of Act 27 of 2008)*

**"margin with SAFEX"** means the margin as defined in the rules of the South African Futures Exchange referred to in section 18 of the Securities Services Act, 2004 (Act No. 36 of 2004);

*(Definition of "margin with SAFEX" substituted by section 24(e) of Act 27 of 2008)*

**"n.e.s."** means not elsewhere specified in this Schedule;

**"option contract"** means a standardised contract the effect of which is that a person acquires the option-

- (a) to buy from or to sell to another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or
- (b) that an amount of money will be paid to or received from another person before or on a future date according to whether the pre-arranged value or price of-
  - (i) an asset;
  - (ii) an index as a means of indicator that reflects changes in the value of one or more groups of shares or securities on one or more exchanges;
  - (iii) currency;
  - (iv) rate of interest; or
  - (v) any other factor, is higher or lower before or on that future date than the pre-arranged value or price;

*(Definition of "option contract" inserted by section 24(f) of Act 27 of 2008)*

**"regulated market"** means a market situated outside the Republic which is characterised by -

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

**"securities"** includes bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments prescribed by the Registrar;  
*(Definition of "securities" substituted by section 21(a) of Act 17 of 2003)*

**"shares"** includes share stock.

## 2. Derivatives

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

- (a) it is based on an underlying asset of the kind set out in the Table to this Schedule or has the equivalent effect to such an instrument; and
- (b) in the case of -
  - (i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty for which the relevant criteria have been approved by the Registrar subject to such conditions as he or she may determine;  
*(Paragraph 2(b)(i) substituted by section 21(b) of Act 17 of 2003)*
  - (ii) an instrument referred to in item 16(5)(d) of that Table, it is listed; or
  - (iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the Registrar subject to such conditions as he or she may determine.

## 3. Kinds of assets

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

## Table

Item no.	Description of assets
1.	Bank notes and coins, including Krugerrand coins of all denominations, issued or caused to be issued in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).
2.	A credit balance in an account with, or a deposit, including a negotiable deposit or a bill accepted by, or a promissory note issued by, an institution registered under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993). <i>(Paragraph 3 Item 2 substituted by section 24(g) of Act 27 of 2008)</i>
3.	Public deposits with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
4.	Securities issued by, and loans made to, the Government of the Republic in terms of section 19 of the Exchequer Act, 1975 (Act No. 66 of 1975).
5.	Securities and loans guaranteed by a Minister of the Republic under section 35 of the Exchequer Act, 1975.
6.	Securities issued or guaranteed by, and loans made to or guaranteed by, a body, council or institution under the repealed Provincial Government Act, 1961 (Act No. 32 of 1961).
7.	Securities issued by, and loans made to, the Local Authorities Loans Fund Board under the repealed Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984). <i>(Paragraph 3 Item 7 substituted by section 24(h) of Act 27 of 2008)</i>
8.	Securities issued or guaranteed by, and loans made to or guaranteed by, the Rand Water Board under the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950).
9.	Securities issued or guaranteed by, and loans made to or guaranteed by, Eskom under the Eskom Act, 1987 (Act No. 40 of 1987).
10.	Securities issued or guaranteed by, loans made to or guaranteed by, and deposits with, the Land and Agricultural Bank of South Africa under the Land Bank Act, 1944 (Act No. 13 of 1944).
11.	Securities issued or guaranteed, and loans raised or guaranteed, under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989).

12. Securities and loans, n.e.s., which are -
- (a) issued by or made to a body corporate established by a law of the Republic; and
  - (b) approved by the Registrar for the purposes of this Schedule generally by notice on the official web site subject to the conditions determined by the Registrar and specified in the notice.
13. Securities issued by -
- (a) the government of;
  - (b) a local authority in; or
  - (c) a body corporate established by a law of,
- a territory forming part of the Republic but which territory at any time before 27 April 1994 did not form part of the Republic, which securities have been approved by the Registrar for the purposes of this Schedule generally by notice on the official web site and subject to the conditions determined by the Registrar and specified in the notice.
14. Immovable property in the Republic.
15. Motor vehicles, furniture and office equipment, including computer equipment, used by the long-term insurer concerned in the course of its business in the Republic.
- 16.
- (1) Shares and securities issued by a company incorporated in the Republic.  
*(Paragraph 3 Item 16(1) substituted by section 21(c) of Act 17 of 2003)*
  - (2) Shares, debentures and depository receipts which are -
    - (a) issued by an institution incorporated outside the Republic; and
    - (b) listed on a licensed stock exchange in the Republic.
  - (3) Linked units -
    - (a) in respect of institutions one or more of which is or are incorporated outside the Republic; and
    - (b) which are listed on a licensed stock exchange in the Republic.

- (4) Loan stock listed on a licensed stock exchange in the Republic issued by a company incorporated in the Republic.
- (5)
- (a) Listed -
- (i) securities issued by a government of a country other than the Republic; or
- (ii) securities and shares issued by an institution incorporated outside the Republic.  
*(Paragraph 3 Item 16(5)(a) substituted by section 21(d) of Act 17 of 2003)*
- (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, which would have been a bank in terms of the Banks Act, 1990, if it were incorporated in the Republic.  
*(Paragraph 3 Item 16(5)(b) substituted by section 21(d) of Act 17 of 2003)*
- (c) Units which are derived from or linked to one or more assets referred to in paragraphs (a) and (b).
- (d) Derivatives and margin deposits on the assets referred to in paragraphs (a) and (b).
17. Participatory interests in a collective investment scheme registered in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).  
*(Paragraph 3 Item 17 substituted by section 24(i) of Act 27 of 2008)*
18. Derivatives and the margin deposit in the Republic.
19. Claims secured -
- (a) by mortgages over immovable property in the Republic; and
- (b) solely by the policy benefits which are to be provided in the Republic by the long-term insurer in terms of a long-term policy.
20. Other claims, n.e.s., against -
- (a) a long-term insurer in terms of a long-term policy;
- (b) a person in the Republic, excluding premiums due and payable to the long-term insurer in respect of long-term insurance business carried on in the Republic; and  
*(Paragraph 3 Item 20(b) substituted by section 24(j) of Act 27 of 2008)*



- (c) a body corporate and any stock or shares in a body corporate which is not incorporated and registered in the Republic but which, in the opinion of the Registrar, carries on business in the Republic and which has been approved by the Registrar generally by notice on the official web site and subject to the conditions determined by the Registrar and specified in the notice.

*(Paragraph 3 Item 20 substituted by section 21(e) of Act 17 of 2003)*

21. Premiums due and payable to the long-term insurer in respect of long-term insurance business carried on in the Republic.

*(Paragraph 3 Item 21 added by section 24(k) of Act 27 of 2008)*

## **Schedule 2**

*(Schedule 2 repealed by section 22 of Act 17 of 2003)*

## **Schedule 3**

### **(Sections 30 and 31)**

#### **Calculation of values of assets, liabilities and capital adequacy requirement**

#### **1. Definition**

For the purposes of this Schedule 'approved reinsurance policy' means-

- (a) for the purposes of calculating the contingent liabilities of a long-term insurer under unmaturing long-term policies in terms of which the policy benefits are to be provided-
- (i) in the Republic, any proportional reinsurance policy in terms of which the reinsurer is liable for the liabilities under unmaturing policies which remain in force until the contingent liability under unmaturing policies has expired, entered into by the long-term insurer with-
- (aa) another long-term insurer registered to do long-term business of the same class, only if that reinsurance policy is also to be discharged in the Republic; or
- (bb) another insurer approved by the Registrar to the extent and subject to the conditions determined by the Registrar; or
- (cc) any reinsurance effected prior to 1 January 1952, and relating to long-term policies issued before that date; or
- (ii) outside the Republic, a reinsurance policy relating to the contingent liabilities and capital adequacy requirement concerned; or

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

## 2. Calculation of values

The values of assets, liabilities and the capital adequacy requirement shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar, after consulting the Actuarial Society of South Africa, have been complied with in making the calculations.

## 3. Effect of reinsurance

The contingent liabilities under unmatured policies shall be the net of contingent liabilities covered by approved reinsurance policies.

## 4. Amounts to be disregarded

For the purposes of the calculation of the value of assets-

- (a) only such assets actually held by the long-term insurer or those approved by the Registrar in terms of section 34(1)(a) and (b), may be taken into account; and
- (b) there shall be disregarded-
  - (i)
    - (aa) an amount, excluding a premium in respect of a long-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;
    - (bb) any amount of premium that is due and payable, including a premium debited to an intermediary or a deferred instalment of a premium that 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 90 days from the date on which it became due and payable in terms of the long-term policy, but excluding a premium in respect of a long-term reinsurance policy;  
*(Paragraph 4(b)(i) substituted by section 25(a) of Act 27 of 2008)*
  - (ii) an amount representing administrative, organisational or business extension expenses incurred directly or indirectly in the carrying on of long-term insurance business;
  - (iii) an amount representing goodwill or an item of a similar nature;

- (iv) an amount representing a negative liability in respect of a long-term policy in terms of which the long-term insurer concerned provides or undertakes to provide a policy benefit: Provided that this provision shall not be construed as precluding the deduction of a negative liability in respect of a long-term policy from liabilities;
- (v) an amount representing a prepaid expense or a deferred expense; and
- (vi) an amount representing a reinsurance contract in terms of which the long-term insurer is the policyholder, except to the extent that it represents a claim against a reinsurer in terms of the reinsurance contract.

## 5. Calculation subject to certain provisions

For the purposes of the calculation of the value of contingent liabilities-

- (a) where a portion of a future premium is not contractually payable but can become payable at the option of the policyholder, such portion of a future premium and the benefits purchased thereby shall be disregarded, unless it causes an increase in the net liability, in which case it shall be valued; and
- (b) no allowance shall be made for potential profits to be earned from long-term insurance policies which the long-term insurer may enter into in future.

## 6. Registrar may reject certain values

Notwithstanding paragraph 2, if the Registrar is not satisfied that the value of an asset, a contingent liability or the capital adequacy requirement calculated in terms of this Schedule reflects a proper value, the Registrar may-

- (a) direct the insurer to appoint another person, at the cost of the insurer, to place a proper value on that asset, contingent liability or capital adequacy requirement; or
- (b) direct the long-term insurer to calculate the value in another manner which the Registrar determines and which will produce a proper value.

## 7. Valuation of other liabilities

- (1) The liabilities of a long-term insurer, other than its contingent liabilities under long-term policies, shall be determined in accordance with financial reporting standards applicable to public companies.

*(Paragraph 7(1) substituted by section 25(b) of Act 27 of 2008)*

*(Paragraph 7(1) substituted by section 107 of Act 45 of 2013)*

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

*(Schedule 3 substituted by section 23 of Act 17 of 2003)*

**Schedule 4**  
**(Section 73)**  
**Repeal and amendment of laws**

<b>Act no. and year</b>	<b>Short title</b>	<b>Extent of repeal</b>
27 of 1943	Insurance Act, 1943	The whole, excluding section 60 (1)(f)
19 of 1945	Insurance (Amendment) Act, 1945	The whole
73 of 1951	Insurance (Amendment) Act, 1951	The whole
24 of 1956	Pension Funds Act, 1956	Section 39
25 of 1956	Friendly Societies Act, 1956	Section 50
79 of 1959	Insurance Amendment Act, 1959	The whole
10 of 1965	Insurance Amendment Act, 1965	The whole
41 of 1966	Insurance Amendment Act, 1966	The whole
65 of 1968	Financial Institutions Amendment Act, 1968	Sections 1 to 3, inclusive
39 of 1969	Insurance Amendment Act, 1969	The whole
23 of 1970	Financial Institutions Amendment Act, 1970	Section 1
75 of 1970	Second Financial Institutions Amendment Act, 1970	Section 1
91 of 1972	Financial Institutions Amendment Act, 1972	Sections 1 to 4, inclusive
101 of 1976	Financial Institutions Amendment Act, 1976	Sections 1 to 15, inclusive

94 of 1977	Financial Institutions Amendment Act, 1977	Sections 1 to 8, inclusive
80 of 1978	Financial Institutions Amendment Act, 1978	Sections 1 to 6, inclusive
103 of 1979	Financial Institutions Amendment Act, 1979	Sections 1 to 12, inclusive
99 of 1980	Financial Institutions Amendment Act, 1980	Sections 1 to 22, inclusive
36 of 1981	Financial Institutions Amendment Act, 1981	Sections 1 to 4, inclusive
82 of 1982	Financial Institutions Amendment Act, 1982	Sections 1 to 2, inclusive
46 of 1984	Corporation for Public Deposits Act, 1984	Section 20
86 of 1984	Financial Institutions Amendment Act, 1984	Sections 1 to 11, inclusive
106 of 1985	Financial Institutions Amendment Act, 1985	Sections 1 to 9, inclusive
50 of 1986	Financial Institutions Amendment Act, 1986	Sections 1 to 8, inclusive
51 of 1988	Financial Institutions Amendment Act, 1988	Sections 1 to 2, inclusive
54 of 1989	Financial Institutions Second Amendment Act, 1989	Sections 1 to 19, inclusive
64 of 1990	Financial Institutions Amendment Act, 1990	Sections 1 to 8, inclusive
54 of 1991	Financial Institutions Amendment Act, 1991	Section 1
119 of 1991	Financial Institutions Second Amendment Act, 1991	Section 1
41 of 1992	Financial Services Board Amendment Act, 1992	The reference to the Insurance Act, 1943, in the Schedule
83 of 1992	Financial Institutions Amendment Act, 1992	Sections 1 to 13, inclusive
7 of 1993	Financial Institutions Amendment Act, 1993	Section 1
104 of 1993	Financial Institutions Second Amendment Act,	Sections 1 to 20, inclusive

	1993	
113 of 1993	Income Tax Act, 1993	Sections 63 to 66, inclusive
140 of 1993	Revenue Laws Amendment Act, 1993	Section 1
54 of 1996	Insurance Amendment Act, 1996	The whole
31 of 1997	Insurance Amendment Act, 1997	The whole