

REPUBLIC OF SOUTH AFRICA

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# INSURANCE BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
the Bill published in Government Gazette No. 39403 of 13 November 2015)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

**[B 1—2016]**

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# BILL

To provide for a legal framework for the prudential supervision of insurance business in the Republic that is consistent, where relevant, with international standards for insurance regulation and supervision; to introduce a legal framework for microinsurance to promote financial inclusion; to replace certain parts of the Long-term Insurance Act, 1998, and the Short-term Insurance Act, 1998; and to provide for matters connected therewith.

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

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## CHAPTER 1

## INTERPRETATION AND OBJECTIVE OF ACT

## Definitions

1. In this Act, unless the context indicates otherwise—
  - “**accident**” means an external, violent, accidental and visible event; 5
  - “**ancillary own funds**” consist of items, other than basic own funds, that may be called up by the insurer or controlling company, as the case may be, to absorb losses, excluding items that have been called up or paid;
  - “**associate**” has the meaning set out in the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; 10
  - “**Auditing Profession Act**” means the Auditing Profession Act, 2005 (Act No. 26 of 2005);
  - “**auditor**” means an auditor registered in terms of the Auditing Profession Act;
  - “**basic own funds**” consist of— 15
    - (a) the excess of assets over liabilities (including technical provisions that constitute the liability of the insurer arising from insurance obligations, calculated in the prescribed manner) valued in accordance with prescribed requirements, adjusted in accordance with prescribed requirements; and
    - (b) subordinated liabilities; 20
  - “**board of directors**” means—
    - (a) the board of directors of a company registered under the Companies Act;
    - (b) the board of directors of a co-operative registered under the Co-operatives Act; or
    - (c) the governing body of a person other than a company or co-operative; 25
  - “**branch of a foreign reinsurer**” means an operating entity of a foreign reinsurer that is not a legal entity separate from the foreign reinsurer;
  - “**captive insurer**” means an insurer that only insures first party risks;
  - “**cell captive insurer**” means an insurer that only conducts insurance business through cell structures; 30
  - “**cell structure**” means an arrangement under which a person (cell owner)—
    - (a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares;
    - (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and 35
    - (c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up; 40
  - “**commercial lines**” means non-life insurance business other than in respect of personal lines;
  - “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
  - “**control**” in respect of the definition of controlling company, and sections 10, 17 and 22(2), has the meaning defined in section 2 of the Companies Act; 45
  - “**control function**” means each of the following:
    - (a) The risk management function;
    - (b) the compliance function;
    - (c) the internal audit function;
    - (d) the actuarial function; 50
  - “**controlling company**” means the holding company of, or another juristic person that controls, an insurance group, which is located in the Republic, licensed under Chapter 4;
  - “**Co-operatives Act**” means the Co-operatives Act, 2005 (Act No. 14 of 2005);
  - “**death event**” means the event of the life of a person or an unborn having ended; 55
  - “**director**” means a member of a board of directors and any alternate of such a member;
  - “**disability event**” means the event of a person becoming so physically or mentally impaired, whether totally or partially, or temporarily or permanently, that the person is unable to— 60

- (a) continue his or her employment or own occupation, profession or trade;
  - (b) participate in any employment, occupation, profession or trade that is reasonably suitable for that person given, amongst other matters, his or her education, skills, experience or age; or
  - (c) fully carry on the functions required for normal activities of life, including as a result of losing a limb or sense organ, or the use thereof; 5
- “discretionary participation features”** means insurance obligations under a life insurance policy—
- (a) that may be a significant portion of the total insurance obligations under the policy; 10
  - (b) the amount or timing of which are contractually at the discretion of the insurer; and
  - (c) that are contractually based on—
    - (i) in full or in part, the performance of a specified pool of policies or a specified type of policy; 15
    - (ii) realised and unrealised investment returns on a specified pool of assets held by the insurer; or
    - (iii) the profit or loss of the insurer that issues the policy;
- “eligible own funds”** comprise the sum of basic own funds and those ancillary own funds approved by the Prudential Authority as meeting the prescribed criteria for such funds, adjusted in accordance with the prescribed tiering restrictions; 20
- “encumber”** means any pledge, restriction or limitation (including any contractual obligation that must be fulfilled before a contractual right may be exercised) that limits access to, or the use or disposal of, an asset;
- “Financial Institutions (Protection of Funds) Act”** means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); 25
- “Financial Sector Conduct Authority”** has the meaning defined in the Financial Sector Regulation Act;
- “Financial Sector Regulation Act”** means the Financial Sector Regulation Act, 2016; 30
- “first party risks”** means—
- (a) in respect of a captive insurer, the operational risks of—
    - (i) the group of companies of which the insurer is a part;
    - (ii) any associate of a company that is part of the group of companies referred to in subparagraph (i); or 35
    - (iii) any joint arrangement that a company that is part of the group of companies referred to in subparagraph (i) participates in;
  - (b) in respect of a cell captive insurer, the operational risks of the cell owner and the operational risks of—
    - (i) the group of companies of which the cell owner is a part; 40
    - (ii) any associate of a company that is part of the group of companies referred to in subparagraph (i); or
    - (iii) any joint arrangement that a company that is part of the group of companies referred to in subparagraph (i) participates in;
- “fit and proper requirements”** means— 45
- (a) in relation to a key person, qualities of competence and integrity as may be prescribed; and
  - (b) in relation to a significant owner, qualities of integrity and financial standing as may be prescribed;
- “foreign branch of an insurer”** means an operating entity of an insurer that is part of the insurer in terms of its organisation and is not a legal entity separate from the insurer, but is established outside of the Republic; 50
- “foreign reinsurer”** means an institution authorised and supervised by a regulatory authority to perform business similar to reinsurance business as defined in this Act under the laws of a country other than the Republic; 55
- “governing body”** means a person or a body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of, directs the affairs of, or has the authority to exercise the powers and perform the functions of another person;
- “group of companies”** means— 60
- (a) a group of companies as defined in section 1 of the Companies Act; and
  - (b) any group of juristic persons;



**“head of a control function”** means a person appointed by an insurer or a controlling company to ensure the performance of a control function, and includes a person appointed through an outsourcing arrangement;

**“health event”** means an event relating to the health of the mind or body of a person or an unborn, other than a disability event;

**“insurance business”** means life insurance business or non-life insurance business conducted or regarded as being conducted in the Republic, and includes reinsurance business;

**“insurance group”** means the group of entities designated by the Prudential Authority under section 10;

**“insurance obligations”** means all obligations (other than the obligations of the policyholder), whether those obligations constitute an obligation to pay one or more sums of money, render services or meet any other obligations, under or arising from insurance policies, and, in respect of life insurance policies, include any guarantees and discretionary participation features;

**“insurance policy”** means a life insurance policy or a non-life insurance policy;

**“insurer”** means a person licensed to conduct insurance business under this Act, and includes, unless specifically otherwise provided for in this Act, Lloyd’s, a Lloyd’s underwriter and a reinsurer;

**“inter-related”** has the meaning defined in section 1 of the Companies Act;

**“intra-group transaction”** means any arrangement or agreement in terms of which an insurer, directly or indirectly, relies on another person that is part of that insurer’s insurance group or a related or inter-related person of the aforementioned person, for the fulfilment of an obligation;

**“joint arrangement”** has the meaning set out in the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body;

**“key person”** means—

- (a) a director;
- (b) a senior manager;
- (c) a head of a control function;
- (d) an auditor referred to in section 32;
- (e) a trustee of a trust referred to in section 41; and
- (f) a representative and a deputy representative of Lloyd’s or a branch of a foreign reinsurer referred to in section 34;

**“life event”** means the event of the life of a person—

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

**“life insurance business”** means any activity conducted with the purpose of entering into or meeting insurance obligations under a life insurance policy;

**“life insurance policy”** means any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations—

- (a) on the happening of a life event, health event, disability event or death event; or
- (b) on or from a fixed determinable date or at the request of the policyholder, but excludes—
  - (i) a deposit with an institution authorised under the Banks Act, 1990 (Act No. 94 of 1990), the Mutual Banks Act, 1993 (Act No. 124 of 1993), or the Co-operative Banks Act, 2007 (Act No. 40 of 2007); and
  - (ii) participatory interests in a collective investment scheme registered in terms of the Collective Schemes Control Act, 2002 (Act No. 45 of 2002), and includes a renewal or variation of that arrangement;

**“life insured”** means the person to whom a death, disability, health or life event under an insurance policy relates, which person may be or may not be the policyholder;

**“Lloyd’s”** means the association of persons generally known as Lloyd’s which is incorporated by the Lloyd’s Act of 1871 (34 Vict. c21), passed by the Parliament of the United Kingdom of Great Britain and Northern Ireland;

**“Lloyd’s underwriter”** means an underwriting member or non-underwriting member of Lloyd’s;

**“microinsurance business”** means insurance business—

- (a) conducted in respect of any of the following classes and sub-classes of insurance business set out in Schedule 2—
  - (i) life insurance business, classes 1, 3, 4 or 9; and
  - (ii) non-life insurance business, in the sub-class personal lines in—
    - (aa) classes 1, 2, 9, 11, 14 or 17; and
    - (bb) class 10, but only to the extent that the insurance obligations directly relate to the classes referred to in item (aa); and
- (b) in the case of life insurance business and class 14 referred to in paragraph (a)(ii)(aa), in respect of which the aggregate value of the insurance obligations relating to each life insured under an insurance policy does not exceed the maximum amounts prescribed; and
- (c) in the case of non-life insurance business other than class 14 referred to in paragraph (a)(ii)(aa), in respect of which the aggregate value of the insurance obligations under an insurance policy does not exceed the maximum amounts prescribed; and
- (d) in respect of which the aggregate value of the insurance obligations under all insurance policies issued by the same insurer to the same policyholder does not exceed the maximum amounts prescribed under paragraphs (b) and (c);

**“microinsurer”** means an insurer licensed to conduct only microinsurance business;

**“Minister”** means the Minister of Finance;

**“non-life insurance business”** means any activity conducted with the purpose of entering into or meeting insurance obligations under a non-life insurance policy;

**“non-life insurance policy”** means any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations that fully or partially indemnifies loss on the happening of an unplanned or uncertain event, other than—

- (a) a life event; or
- (b) a death event or disability event not resulting from an accident, and includes a renewal or variation of that arrangement;

**“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);

**“operational risk”** for the purposes of the definition of first party risks, means the risk of incurring losses as a result of inadequate or failed internal processes, people and systems, or from external events and excludes any risks associated with the insurance obligations of an insurer;

**“outsourcing”** means an arrangement of any form between an insurer or a controlling company and another person, whether that person is supervised under any law or not, and includes an arrangement where the other person is—

- (a) a related or inter-related person of the insurer or controlling company, irrespective of that other person being located outside of the Republic; or
- (b) an insurer and the function or activity (such as pricing and actuarial services) it performs for the insurer or controlling company, whether under an insurance policy or not, is not part of the insurance provided to that insurer,

but excludes the rendering of a financial service as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), other than binder functions referred to in section 49A(1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or section 48A(1) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

**“person”** has the meaning defined in the Financial Sector Regulation Act;

**“personal lines”** means non-life insurance business where the policyholder is a natural person, acting otherwise than solely for the purposes of the person’s own business; and

**“policyholder”** means—

- (a) the person with whom or with which an insurer enters into a life insurance policy or a non-life insurance policy; or
- (b) the successor in title of the person referred to in paragraph (a);

**“premium”** means any direct or indirect, or partially or fully subsidised, consideration given or to be given in return for an undertaking to meet insurance obligations;

**“prescribed”** means prescribed by the Prudential Authority by Prudential Standard;

- “Prudential Authority”** has the meaning as defined in section 1 of the Financial Sector Regulation Act;
- “Prudential Standard”** means a Prudential Standard prescribed by the Prudential Authority under section 63;
- “public company”** has the meaning as defined in section 1 of the Companies Act; 5
- “regulatory action”** means the exercise of any power or function, or the taking of any action, by the Prudential Authority under this Act or another Act of Parliament;
- “regulatory authority”** means—
- (a) an organ of state responsible for the regulation, supervision or enforcement of any law; or 10
  - (b) a body similar to an organ of state referred to in paragraph (a) that is designated in terms of the laws of a foreign country as being responsible for the regulation, supervision or enforcement of legislation;
- “reinsurance business”** means—
- (a) insurance business conducted by an insurer with another insurer, where the first-mentioned insures the risks associated with the insurance obligations of the last-mentioned insurer; or 15
  - (b) business similar to the insurance business referred to in paragraph (a) conducted by a person that is authorised by a regulatory authority to perform business similar to insurance business under the laws of a country other than the Republic, with an insurer; 20
- “reinsurer”** means a person licensed to conduct reinsurance business only in the reinsurance class and sub-classes set out in Schedule 2, and, unless specifically provided for otherwise in this Act, includes a branch of a foreign reinsurer so licensed; 25
- “related”** has the meaning as defined in section 1 of the Companies Act;
- “related person”** has the meaning set out in section 2 of the Companies Act;
- “rider benefit”** means an additional insurance obligation under a life insurance policy or a non-life insurance policy, which obligation is ancillary to the primary insurance obligations assumed under that policy; 30
- “securities”** has the meaning as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012);
- “senior manager”** means—
- (a) the chief executive officer or the person who is in charge of an insurer or a controlling company; or 35
  - (b) a person, other than a director or a head of a control function—
    - (i) who makes or participates in making decisions that—
      - (aa) affect the whole or a substantial part of the business of an insurer or a controlling company; or
      - (bb) have the capacity to significantly affect the financial standing of an insurer or a controlling company; or 40
    - (ii) who oversees the enforcement of policies and the implementation of strategies approved by the board of directors,
- and “senior management” has a corresponding meaning;
- “significant owner”** has the meaning as defined in section 1 of the Financial Sector Regulation Act; 45
- “state-owned insurer”** means a state-owned company that conducts insurance business and is—
- (a) established under or whose establishment is authorised under an Act of Parliament; and 50
  - (b) a public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “third party risks”** means, in respect of a cell captive insurer, risks other than first party risks;
- “this Act”** includes any Prudential Standard; and 55
- “winding-up”** means any process for dissolving an insurer or insurance group that includes the selling of all assets, paying off creditors and policyholders, and distributing any remaining assets.

## General interpretation of Act

2. (1) This Act must be interpreted and applied in a manner that— 60
- (a) gives effect to the objective of this Act set out in section 3; and

- (b) facilitates compliance with the principles referred to in section 4.
- (2) When interpreting, applying or complying with this Act, a court, the Prudential Authority or any other person may consider appropriate international standards relating to insurance regulation and supervision.
- (3) (a) If there is an inconsistency between any provision of this Act and a provision of any other legislation that— 5
- (i) provides for the regulation of insurance business; or
  - (ii) affects or impedes the appropriate operation or implementation of a provision of this Act,
- the provision of this Act prevails, unless that other legislation by explicit reference, and not merely by reference to other legislation in general, provides that the other legislation applies in the event of a conflict. 10
- (b) Subject to paragraph (a), this Act applies concurrently with and in addition to the Companies Act and the Co-operatives Act unless specifically provided for otherwise in this Act. 15
- (c) Paragraph (a) does not apply—
- (i) to the Financial Sector Regulation Act; and
  - (ii) to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- (4) (a) Despite any other law, but subject to paragraph (b), if other legislation confers a power on or imposes a duty upon another organ of state— 20
- (i) in respect of a matter regulated under this Act or the regulation of insurance business; or
  - (ii) that affects or impacts on the appropriate exercise of powers and the performance of duties under this Act by the Prudential Authority,
- that power or duty must be exercised or performed in consultation with the Prudential Authority, and any decision taken in accordance with that power or duty must be taken with the concurrence of the Prudential Authority, irrespective of when that other legislation was enacted, unless that other legislation by explicit reference, and not merely by reference to other legislation in general, provides that such concurrence is not required. 25
- (5) Any reference to “company”, “holding company”, “non-profit company”, “profit company”, “public company”, “state-owned company” or “subsidiary” means a reference to a company, holding company, non-profit company, profit company, public company, state-owned company or subsidiary, as the case may be, as defined in the Companies Act. 30
- (6) (a) The Companies Act applies to any insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) or a controlling company that is not a public company, to the extent that the Companies Act— 35
- (i) can apply to it; and
  - (ii) applies to a public company. 40
- (b) Paragraph (a) must not be interpreted as requiring an insurer or a controlling company that is not a public company to submit information to the Commission or Commissioner (as defined in the Companies Act) that a public company is required to submit to the Commission or Commissioner under the Companies Act.
- (7) If, in terms of this Act, information or a document is required to be publicly available, published, disclosed, produced or provided, it is sufficient if— 45
- (a) an electronic original or a reproduction thereof is published, disclosed, produced or provided by electronic communication in a manner and form such that the information or document can conveniently be printed by the recipient within a reasonable time and at a reasonable cost; or 50
  - (b) a notice of the availability of that information or document, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient thereof, together with instructions for receiving the complete information or document.

## Objective of Act 55

**3.** The objective of this Act is to promote the maintenance of a fair, safe and stable insurance market for the benefit and protection of policyholders, by establishing a legal framework for insurers and insurance groups that—

- (a) facilitates the monitoring and the preservation of the safety and soundness of insurers; 60
- (b) enhances the protection of policyholders and potential policyholders;

- (c) increases access to insurance for all South Africans; and
- (d) contributes to the stability of the financial system in general.

## CHAPTER 2

### CONDUCTING INSURANCE BUSINESS AND INSURANCE GROUP BUSINESS

5

#### *Part 1*

#### *General principles for conducting insurance business or insurance group business*

##### **Principles**

- 4. An insurer and a controlling company must, at all times—
  - (a) conduct its business with integrity; 10
  - (b) conduct its business with due skill, care and diligence;
  - (c) act in a prudent manner;
  - (d) organise and control its affairs responsibly and effectively; and
  - (e) deal with the Prudential Authority in an open and cooperative way.

#### *Part 2*

15

#### *Insurance business and other business of insurers*

##### **Insurance business and limitations on other business**

- 5. (1) No person may conduct insurance business in the Republic unless that person is licensed under this Act.
- (2) A person is regarded as conducting insurance business in the Republic if— 20
  - (a) the person conducts business similar to insurance business outside the Republic; and
  - (b) that person or another person, in relation to the business referred to under paragraph (a), directly or indirectly acts in the Republic on behalf of the first-mentioned person, including, but not limited to, by rendering a financial service within the meaning of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), in respect of that business; 25
- (3) A person to whom an insurer has outsourced a function or activity is not regarded as conducting insurance business.
- (4) An insurer may not, without the approval of the Prudential Authority, conduct any business other than insurance business in the Republic, including any insurance business performed on behalf of another person. 30
- (5) An insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) may not, without the approval of the Prudential Authority, conduct any business, including business similar to insurance business, outside the Republic. 35
- (6) (a) Despite any approval under subsection (4) or (5), the Prudential Authority may direct an insurer to cease conducting business referred to in subsection (4) or (5), if the Prudential Authority reasonably believes that the business may—
  - (i) impede or is likely to impede the financial soundness of the insurer; or
  - (ii) introduce a risk or risks that cannot be appropriately mitigated. 40
- (b) An insurer who is directed under paragraph (a) must, within the period agreed with the Prudential Authority, which period must not exceed three months after a directive referred to in paragraph (a) is issued, submit to the Prudential Authority for approval a plan to reorganise its business.
- (c) An insurer whose plan was approved under paragraph (b) must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the plan. 45
- (d) The Prudential Authority may restrict or prohibit certain activities or transactions of the insurer until the plan is implemented.
- (7) (a) A state-owned insurer may not conduct insurance business that is not explicitly authorised under the Act of Parliament that established it or authorised its establishment. 50
- (b) The Minister may, by notice in the *Gazette*, exempt a state-owned insurer from one or more provisions of this Act, if those provisions overlap or duplicate an applicable regulatory scheme established in terms of any other legislation.

- (c) The Minister may grant an exemption under paragraph (b) subject to any limits or conditions necessary to ensure the achievement of the objective of this Act.
- (8) (a) The Prudential Authority may prescribe that, for the purposes of this Act—
- (i) certain types, kinds or categories of insurance business are, subject to any requirements prescribed, excluded from the application of this Act; or 5
  - (ii) certain types, kinds or categories of business constitute insurance business to which this Act applies.
- (b) The Prudential Authority, when making a Prudential Standard under paragraph (a), must have regard to—
- (i) any existing Act of Parliament that regulates that business; 10
  - (ii) the nature, size, complexity or type of that business;
  - (iii) the persons that conduct that business;
  - (iv) the nature or type of any insurance obligations;
  - (v) the threshold below which it is not possible for a person to effectively retain and manage insurance risk. 15
- (9) (a) No person may—
- (i) without the approval of the Prudential Authority, apply to that person's business or undertaking a name or description which includes the word "assure", "insure" or "underwrite", or any derivative thereof, unless that person is licensed as an insurer under this Act; or 20
  - (ii) perform any act which indicates that, that person carries on or is authorised to carry on insurance business, unless that person is licensed as an insurer under this Act.

### **Part 3**

#### ***Branches of foreign reinsurers and Lloyd's underwriters*** 25

#### **Conducting of insurance business by branches of foreign reinsurers and Lloyd's underwriters**

6. (1) A foreign reinsurer may conduct insurance business in the Republic through a branch of that foreign reinsurer if the foreign reinsurer—
- (a) is granted a licence under Chapter 4; 30
  - (b) establishes a representative office in the Republic in accordance with Chapter 5; and
  - (c) establishes a trust in the Republic in accordance with Chapter 6.
- (2) A Lloyd's underwriter may conduct insurance business in the Republic if Lloyd's— 35
- (a) establishes a representative office in the Republic in accordance with Chapter 5; and
  - (b) establishes a trust in the Republic in accordance with Chapter 6.
- (3) All the sections of this Act apply to a branch of a foreign reinsurer, a Lloyd's underwriter and Lloyd's, unless specifically provided for otherwise in this Act. 40

#### **Claims against branches of foreign reinsurers or Lloyd's underwriters**

7. (1) (a) Any claim against a branch of a foreign reinsurer or a Lloyd's underwriter in respect of an insurance policy relating to the insurance business for which it is licensed under this Act must be recognised by any competent court in the Republic.
- (b) In any action or other proceedings instituted under subsection (1), the representative referred to in section 34 may be cited as a nominal defendant or respondent, and the summons or application commencing the proceedings may be served on him or her. 45
- (c) The representative may institute and conduct any proceedings in a competent court in the Republic as a nominal plaintiff or an applicant on behalf of the branch of a foreign reinsurer or a Lloyd's underwriter. 50
- (2) The trust referred to in section 41 must—
- (a) meet the insurance obligations under an insurance policy referred to in subsection (1), if a branch of a foreign reinsurer or a Lloyd's underwriter fails to meet any insurance obligations under that insurance policy after— 55
    - (i) a court has given a final judgment in respect of a claim; or
    - (ii) the Prudential Authority has directed the payment of that claim,

- and any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor; or
- (b) pay a penalty imposed under this Act or under the Financial Sector Regulation Act, if a branch of a foreign reinsurer or Lloyd's fails to pay that penalty within the time allowed for payment, and any appeal or review proceedings in relation thereto have not been completed or have not been instituted within the period allowed therefor.

#### ***Part 4***

#### ***Insurance groups***

#### **Application of Part** 10

8. This Part does not apply to branches of foreign reinsurers, Lloyd's underwriters or Lloyd's.

#### **Notification by insurer on becoming part of group of companies**

9. An insurer must, within 30 days of becoming part of a group of companies, notify the Prudential Authority thereof. 15

#### **Designation of insurance group and licensing of controlling company**

10. (1) (a) The Prudential Authority may, for the purpose of facilitating the prudential supervision of insurers, designate as an insurance group—
- (i) an insurer;
  - (ii) any company that is part of the group of companies of which the insurer is a part; and
  - (iii) any associate, or related or inter-related person of any company that is part of the group of companies referred to in paragraph (ii).
- (b) An insurance group designated in terms of subsection (1) need not include all the companies, associates, or related and inter-related persons referred to in subsection (1). 25
- (2) The holding company of, or another juristic person that controls, an insurance group designated under subsection (1) and which is located in the Republic must, within 30 days of the designation, apply to be licensed as a controlling company of that insurance group under Chapter 4.
- (3) The Prudential Authority must keep designations in terms of subsection (1) under review, including if the Prudential Authority becomes aware of a change in the risk profile of the insurance group. 30
- (4) The Prudential Authority may amend or revoke a designation in terms of subsection (1).
- (5) The Prudential Authority must publish a notice on the official web site of each designation and each amendment and revocation of a designation under subsection (1). 35

#### **Responsibility of board of directors of controlling company**

11. (1) The board of directors of a controlling company is responsible for meeting the requirements imposed on a controlling company and an insurance group under this Act.
- (2) The board of directors of a controlling company must, as soon as reasonably possible, notify the Prudential Authority of any change in the structure or material change in the risk profile of the insurance group that may impact on the scope of the insurance group designated under section 10. 40

#### **Transparent insurance group structure**

12. (1) The Prudential Authority may, for the purpose of facilitating the prudential supervision of insurers, direct a controlling company to amend the structure of the insurance group, in accordance with a plan submitted to, and approved by, within a period agreed by the Prudential Authority. 45
- (2) (a) The controlling company whose restructuring plan was approved as contemplated in subsection (1) must submit a monthly progress report to the Prudential 50

Authority that sets out the measures taken and the progress made with implementing the restructuring plan.

(b) The Prudential Authority may restrict or prohibit certain activities or transactions of the insurance group until the restructuring plan is implemented.

(3) The Prudential Authority may take such regulatory action that the Prudential Authority determines is necessary and appropriate if— 5

(a) the Prudential Authority does not approve the restructuring plan; or

(b) the controlling company—

(i) fails to submit a restructuring plan;

(ii) fails to report as provided for under subsection (3)(a); or 10

(iii) fails to implement an approved restructuring plan.

## CHAPTER 3

### KEY PERSONS AND SIGNIFICANT OWNERS

#### *Part 1*

#### *Fit and proper requirements* 15

#### **Fit and proper requirements for key persons and significant owners**

**13.** (1) The Prudential Authority may prescribe fit and proper requirements for key persons and significant owners of an insurer or a controlling company.

(2) Key persons and significant owners must, at all times, comply with the prescribed fit and proper requirements. 20

#### *Part 2*

#### *Appointment and termination of key persons*

#### **Approval of appointment of certain key persons**

**14.** (1) The appointment of any of the following key persons must be approved by the Prudential Authority, and takes effect only if the Prudential Authority approves the appointment: 25

(a) In the case of an insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) or a controlling company, a director and an auditor referred to in section 32; and

(b) in the case of a branch of a foreign reinsurer or Lloyd's— 30

(i) an auditor referred to in section 32;

(ii) a representative and a deputy representative of Lloyd's or a branch of a foreign reinsurer referred to in section 34; and

(iii) a trustee of a trust referred to in section 41.

(2) (a) In the case of an auditor, subsection (1) does not apply in respect of the reappointment of an auditor that does not involve a break in the continuity of the appointment. 35

(b) Where the appointed auditor is a firm defined under the Auditing Profession Act, both the firm and the partner that takes responsibility for compliance with section 32 must be approved by the Prudential Authority. 40

(c) The Prudential Authority's approval of a firm as defined under the Auditing Profession Act does not lapse by reason of a change in the membership of the firm if at least half of the members of the firm, after the change, were members when the appointment of the firm was approved by the Prudential Authority, and the partner that takes responsibility for compliance with section 32 is not affected by this change. 45

#### **Notification of appointment and change in circumstances of certain key persons**

**15.** (1) An insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) and a controlling company must, within 30 days, notify the Prudential Authority of the appointment of—

(a) a senior manager; or 50

(b) a head of a control function.



(2) The representative of a branch of a foreign reinsurer and Lloyd's must, within 30 days, notify the Prudential Authority of the appointment of—

- (a) a senior manager; or
- (b) a head of a control function.

(3) An insurer, a controlling company, and a representative of a branch of a foreign reinsurer and Lloyd's must, within 30 days of becoming aware, notify the Prudential Authority of a change in circumstances that may adversely affect the fit and proper status of a key person. 5

### **Termination of appointment of key persons**

**16.** (1) An insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) and a controlling company must notify the Prudential Authority of the termination of the appointment of a key person, within 30 days of such termination. 10

(2) The representative of a branch of a foreign reinsurer and Lloyd's must notify the Prudential Authority of the termination of the appointment of a key person referred to in paragraphs (b) to (e) of the definition of "key person", within 30 days of such termination. 15

(3) A branch of a foreign reinsurer or Lloyd's must notify the Prudential Authority of the termination of the appointment of a representative or a deputy representative of that branch of a foreign reinsurer or Lloyd's, within 30 days of such termination.

(4) (a) Any key person, other than an auditor, of an insurer or a controlling company who resigns or whose appointment has been terminated, must at the request of the Prudential Authority, notify the Prudential Authority in writing of any matter relating to the affairs of that insurer or controlling company of which the key person became aware in the performance of that key person's role, responsibilities, duties or functions, and which may prejudice the ability of the insurer or controlling company to comply with this Act. 20 25

(b) No information furnished by a key person under paragraph (a) may be used by the Prudential Authority in any subsequent criminal proceedings against such a key person.

(5) Any auditor of an insurer or a controlling company who resigns or whose appointment is terminated must submit to the Prudential Authority— 30

- (a) a written statement on the reasons for the resignation or the reasons that the auditor believes are the reasons for the termination; and
- (b) any report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act that the auditor would, but for the termination, have had reason to submit. 35

## **Part 3**

### ***Changes in control of insurer or controlling company and nominees***

#### **Changes in control of insurer or controlling company**

**17.** (1) (a) This section and the provisions of the Financial Sector Regulation Act relating to significant owners do not apply to branches of foreign reinsurers, Lloyd's underwriters or Lloyd's. 40

(b) The provisions of the Financial Sector Regulation Act relating to significant owners apply, with the necessary changes, to controlling companies.

(c) This section applies in addition to the Financial Sector Regulation Act.

(2) An insurer or a controlling company must, within 30 days of becoming aware, notify the Prudential Authority of any arrangement referred to in the provisions of the Financial Sector Regulation Act relating to significant owners. 45

(3) The Prudential Authority may only approve an arrangement referred to in the provisions of the Financial Sector Regulation Act relating to significant owners—

- (a) if the Prudential Authority is satisfied that the— 50
  - (i) proposed significant owner meets and is reasonably likely to continue to meet the prescribed fit and proper requirements;
  - (ii) the likely influence of the proposed significant owner, will be reasonably likely to result in, or will continue to result in—
    - (aa) the insurer or controlling company complying with the governance framework requirements, financial soundness requirements and reporting and public disclosure requirements of this Act; 55

- (bb) the business plan of the insurer or controlling company being sound;
  - (cc) key persons of the insurer or controlling company meeting the fit and proper requirements prescribed under this Act; and
  - (dd) any other licensing requirements and licensing conditions being met; and
- (iii) approval will not be contrary to the interests of policyholders or the public interest;
- (b) subject to the condition that the aggregate value of the interest held by the significant owner and related parties of the significant owner may not exceed or decrease below the percentage that may be determined by the Prudential Authority, without further approval by the Prudential Authority.
- (4) If the Prudential Authority is satisfied that the retention of a particular interest by a particular significant owner will be prejudicial to the insurer or controlling company, or to the policyholders of the insurer, the Prudential Authority may, in addition to any other action that the Prudential Authority may take in terms of this Act, after consultation with the insurer or controlling company—
  - (a) direct that owner to reduce, within a specified period, the proportion of the voting rights or the interest held by that owner in the insurer or controlling company to a percentage specified;
  - (b) direct that owner to dispose of, within a specified period, the full interest held by that owner in the insurer or controlling company, directly or indirectly, alone or with a related person; or
  - (c) limit, with immediate effect, the voting rights that may be exercised by that owner by virtue of the proportion of the voting rights or the interest held.
- (5) (a) Despite any other law, no person may, in respect of an interest in an insurer or a controlling company, or a related person of an insurer or a controlling company, issued to that person or registered in that person's name contrary to this Act—
  - (i) either personally or by proxy granted to another person, cast a vote attached to that interest; or
  - (ii) receive a dividend or any other money in respect of that interest.
- (b) A resolution passed by an insurer or a controlling company contrary to paragraph (a)(i), or a payment referred to in paragraph (a)(ii), is void.
- (6) (a) Despite anything to the contrary in the Competition Act, 1998 (Act No. 89 of 1998), the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b) of the Competition Act, and the Competition Tribunal may not make an order in terms of section 16(2) of the Competition Act, if—
  - (i) the merger constitutes an acquisition of shares for which approval is required in terms of this section; and
  - (ii) the Prudential Authority has, in the prescribed manner, issued a notice to the Commissioner specifying the names of the parties to the merger and certifying that the merger is a merger contemplated in subparagraph (i), and it is in the public interest that the merger is subject to the Financial Sector Regulation Act only.
- (b) Sections 13(6) and 14(2) of the Competition Act do not apply to a merger in respect of which the Prudential Authority has issued a certificate contemplated in paragraph (a)(ii).
- (c) For the purposes of paragraphs (a) and (b), 'merger' means a merger as defined in section 12 of the Competition Act.

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

- 18.** (1) An insurer that is a profit company registered under the Companies Act or a controlling company may not, without the approval of the Prudential Authority—
- (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 holder of a beneficial interest;
  - (b) register a transfer of any of its shares to a person other than the intended holder of a beneficial interest.
- (2) The Prudential Authority may prescribe the circumstances in which approval under subsection (1) is not required.

**Part 4****Key persons or significant owners not fit and proper****Key person or significant owner not fit and proper or no longer fit and proper**

**19.** (1) The Prudential Authority may, if the Prudential Authority reasonably believes that a key person does not comply or no longer complies with the fit and proper requirements, in addition to any other action that the Prudential Authority may take under this Act, direct the insurer or controlling company to make arrangements to the satisfaction of the Prudential Authority to address the non-compliance, which arrangements may include— 5

- (a) providing additional education or training to that key person; 10
- (b) utilising external resources to support that key person;
- (c) outsourcing the functions and duties of that key person; or
- (d) suspending or removing a person from the appointment as a key person.

(2) If an insurer fails to make arrangements contemplated in subsection (1) to address the non-compliance of a key person with the fit and proper requirements prescribed, the Prudential Authority, in addition to any other action that the Prudential Authority may take under this Act, may— 15

- (a) impose additional reporting requirements on the insurer or controlling company; or
- (b) in the case of an insurer— 20
  - (i) vary the insurer's licensing conditions; or
  - (ii) suspend or withdraw the insurer's licence.

(3) The Prudential Authority may, if the Prudential Authority reasonably believes that a significant owner does not meet or no longer meets the fit and proper requirements, in addition to any other action that the Prudential Authority may take, take any of the actions referred to in section 17(4). 25

**Assessing if key person or significant owner is fit and proper**

**20.** The Prudential Authority, in assessing if a key person or significant owner is fit and proper or continues to be fit and proper, may request the verification of information, or may verify information at the Prudential Authority's disposal by making enquiries to any organ of state, credit bureau or other source of relevant information concerning that key person or significant owner. 30

**CHAPTER 4****LICENSING, SUSPENSION AND WITHDRAWAL OF LICENCE****Application of Chapter** 35

**21.** (1) Sections 22 and 23 do not apply to a Lloyd's underwriter or Lloyd's.

**Requirements for licence**

**22.** (1) In order to qualify for licensing as an insurer—

- (a) a person— 40
  - (i) that intends to conduct microinsurance business only, must be a profit company or a non-profit company registered under the Companies Act or a co-operative registered under the Co-operatives Act;
  - (ii) that intends to conduct reinsurance business only, must be a public company or state-owned company registered under the Companies Act or a branch of a foreign reinsurer; and 45
  - (iii) in any other case, subject to section 70, must be a public company or state-owned company registered under the Companies Act;
- (b) a person's primary business activity must be the conducting of insurance business and operations arising directly therefrom;
- (c) a person must demonstrate that— 50
  - (i) its key persons and significant owners meet the prescribed fit and proper requirements;

- (ii) it has a sound business plan;
- (iii) it has adequate operational management capabilities to conduct the classes and sub-classes of insurance business set out in Schedule 2 that it wishes to conduct;
- (iv) if it is a branch of a foreign reinsurer and the requirements imposed by the foreign jurisdiction in which the institution is authorised and supervised have not been determined as equivalent to this Act under section 65, the laws of the country under which the institution is authorised and supervised establish a regulatory framework equivalent to that established by this Act;
- (v) if it is part of an insurance group, that its controlling company will be able to meet the requirements for insurance groups as set out in this Act; and
- (vi) it will be able to comply with the governance framework requirements, financial soundness requirements and reporting and public disclosure requirements of this Act;
- (d) that person's licensing must not be contrary to the interests of prospective policyholders or the public interest.
- (2) In order to qualify for licensing as a controlling company, a holding company of, or another juristic person that controls, an insurance group must demonstrate that—
  - (a) its key persons and significant owners meet the prescribed fit and proper requirements;
  - (b) it has a sound business plan; and
  - (c) it will be able to comply with the governance framework, financial soundness, reporting and public disclosure requirements of this Act.
- (3) The Prudential Authority, prior to licensing, may require a person to change its proposed name (or a translation, shortened form or derivative thereof), if the proposed name is unacceptable because it—
  - (a) is identical to that of another insurer or controlling company;
  - (b) so closely resembles that of another insurer or controlling company that the one is likely to be mistaken for the other;
  - (c) is identical to or so closely resembles that under which another insurer or controlling company was previously licensed, and reasonable grounds exist for objection to its use; or
  - (d) is misleading or undesirable.

## Licensing

- 23.** (1) An application for a licence must be made to the Prudential Authority.
- (2) The Prudential Authority must, in the case of a branch of a foreign reinsurer, only grant or refuse an application after consultation with the regulatory authority that regulates the foreign reinsurer.
- (3) (a) The Prudential Authority must grant or refuse an application within 120 days of the date on which the application was submitted to the Prudential Authority, or such longer period agreed between the Prudential Authority and the applicant.
- (b) If the Prudential Authority requested additional information in terms of section 60(4)(a)(i), then the period between the date on which the additional information was requested and when the information was provided to the Prudential Authority is not considered when determining the 120 days referred to in paragraph (a).
- (4) (a) The Prudential Authority must, on granting an application, issue a licence and publish a notice of the licensing on the official web site.
- (b) The licence of an insurer must specify—
  - (i) the full name of the insurer and any translation, shortened form or derivative of the name of the insurer that may be used in conducting business;
  - (ii) the type of insurance business for which the insurer is licensed;
  - (iii) the classes and sub-classes of insurance business that the insurer may conduct; and
  - (iv) any conditions referred to in section 25(8) subject to which the licence is granted.

- (c) The licence of a controlling company must specify—
- (i) the full name of the controlling company and any translation, shortened form or derivative of the name of the controlling company that may be used in conducting business; and
  - (ii) any conditions referred to in section 25(9) subject to which the licence is granted. 5
- (5) An insurer and controlling company must ensure that—
- (a) a reference to the fact that such a licence is held is contained in all business documentation and advertisements and other marketing material; and
  - (b) its licence is at all times available to any person requesting proof of its licence status under the authority of a law, or for the purpose of entering into a business relationship with the insurer or controlling company. 10
- (6) An insurer or controlling company may not change its name or any translation, shortened form or derivative of the name of the insurer or controlling company that may be used in conducting business without the approval of the Prudential Authority. 15
- (7) A licence granted under this Act cannot be transferred to another person.

### **Lloyd's underwriters and Lloyd's licensed**

- 24.** (1) Lloyd's underwriters and Lloyd's, subject to subsection (2), are licensed to conduct—
- (a) non-life insurance business in all the classes and sub-classes set out in Table 2 of Schedule 2, in respect of commercial lines; and 20
  - (b) non-life insurance business in sub-class 17 set out in Table 2 of Schedule 2 in respect of personal lines.
- (2) Lloyd's underwriters and Lloyd's may only with the approval of the Prudential Authority conduct non-life insurance business in the classes and sub-classes, other than sub-class 17, set out in Table 2 of Schedule 2 in respect of personal lines. 25
- (3) The Prudential Authority may impose licensing conditions similar to those referred to in section 25(8) on a Lloyd's underwriter or Lloyd's.

### **Licence conditions**

- 25.** (1) An insurer, other than a microinsurer or a reinsurer, must be licensed to conduct life or non-life insurance business, and may not be licensed to conduct both. 30
- (2) An insurer, in addition to being licensed to conduct life or non-life insurance business, must be licensed to conduct one or more of the classes or sub-classes of insurance business set out in Schedule 2.
- (3) An insurer that is licensed to conduct a specific class or sub-class of insurance business may provide the rider benefits as may be prescribed in respect of that class or sub-class of insurance business. 35
- (4) An insurer licensed under this Act—
- (a) may only conduct insurance business in the classes or sub-classes of insurance business set out in Schedule 2 for which it is licensed in accordance with subsection (2); and 40
  - (b) must conduct the insurance business for which the insurer is licensed in accordance with the requirements that may be prescribed in respect of each of the classes or sub-classes of insurance business under this Act or any other Act of Parliament. 45
- (5) A captive insurer may not insure third party risks.
- (6) (a) Only a cell captive insurer may conduct insurance business through cell structures.
- (b) A cell captive insurer may not insure—
    - (i) first party risks and third party risks in the same cell structure; 50
    - (ii) the risks associated with the insurance obligations of another licensed insurer.
- (7) A reinsurer that is licensed to conduct both life and non-life insurance business may not be licensed to conduct reinsurance business in respect of classes 6 to 8 set out in Table 1 of Schedule 2.
- (8) The Prudential Authority may, in the case of an insurer, impose licensing conditions in addition to subsections (1) to (7), which may include conditions— 55
- (a) relating to the insurance business arrangements, including, but not limited to, the outsourcing arrangements or cell structures that the insurer may enter into;

- (b) relating to the persons with whom the insurer may conduct insurance business;
- (c) relating to reinsurance arrangements;
- (d) limiting the scope and size of the insurance business that may be conducted to that set out in the application for a licence referred to in section 23; 5
- (e) prohibiting particular terms or conditions from being included in insurance policies entered into under a specific class or sub-class of business;
- (f) limiting the amount or value of the benefits that may be provided under insurance policies entered into under a specific class or sub-class of business;
- (g) limiting the amount of the premiums that the insurer may contract to receive, during a specific period, in respect of all or specific insurance policies entered into by the insurer during that period; 10
- (h) requiring that the provisions of the Memorandum of Incorporation of an insurer that is a company or the equivalent constitution, deed or founding instrument of an insurer that is not a company— 15
  - (i) must be suitable to enable it to carry on insurance business; and
  - (ii) may not be amended without the approval of the Prudential Authority; or
- (i) that are reasonably necessary to ensure that the insurance business is conducted in a financially sound manner or in accordance with this Act.
- (9) The Prudential Authority may, in the case of a controlling company, impose licensing conditions, which may include conditions— 20
  - (a) requiring the controlling company of the insurance group to limit its business to the acquiring, holding and managing of another company or companies;
  - (b) requiring that the provisions of the Memorandum of Incorporation of a controlling company that is a company or the equivalent constitution, deed or founding instrument of a controlling company that is not a company— 25
    - (i) must be suitable to enable it to be the controlling company of an insurance group; and
    - (ii) may not be amended without the approval of the Prudential Authority; or
  - (c) that are reasonably necessary to ensure that the insurance business is conducted in a financially sound manner or in accordance with this Act. 30
- (10) The Prudential Authority may determine different conditions in respect of different types or kinds of insurers or controlling companies, and different classes and sub-classes of insurance business.

### **Variation of licence conditions**

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- 26.** (1) The Prudential Authority may amend, delete, replace or vary any licensing conditions or impose other or additional licensing conditions—
- (a) on application by an insurer or controlling company;
  - (b) when it is in the public interest;
  - (c) when, in the case of an insurer, it is in the interests of the policyholders or potential policyholders of the insurer; or 40
  - (d) when, in the case of a controlling company, it is in the interests of maintaining the financial soundness of any insurer that is part of the insurance group;
  - (e) when revoking a suspension of a licence;
  - (f) in the circumstances referred to in section 48; or 45
  - (g) in the case of an insurer, if an insurer has ceased to enter into insurance policies relating to a class or sub-class of insurance business, to the extent that its licence for that class or sub-class of insurance business is no longer justified.
- (2) An amendment, a deletion, a replacement or a variation of any licensing condition, or the imposition of other licensing conditions pursuant to subsection (1) may be made for a specific period subject to certain conditions being met. 50
- (3) If a variation of licence conditions results in an insurer no longer being licensed for a specific class or sub-class referred to in Schedule 2, the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to— 55
- (a) discharge its obligations under all insurance policies entered into in respect of that class or sub-class before the variation;
  - (b) ensure the orderly resolution of that insurance business of the insurer; or
  - (c) transfer that insurance business to another insurer under section 50 by a specified date. 60

(4) The Prudential Authority, on varying, amending or imposing other licensing conditions, must publish a notice thereof on the official web site.

### **Suspension of licence**

**27.** (1) The Prudential Authority may suspend a licence of an insurer or controlling company in full or in part, if it appears to the Prudential Authority, on the basis of available information, that the insurer or controlling company— 5

- (a) no longer meets a licence condition under which it is licensed;
- (b) failed to comply with any other condition imposed under this Act or the Financial Sector Regulation Act;
- (c) contravened or failed to comply with a provision of this Act or the Financial Sector Regulation Act; 10
- (d) failed to comply with any court order, notice, directive, undertaking, request, determination, decision or exemption given under this Act or the Financial Sector Regulation Act;
- (e) failed to make arrangements to the satisfaction of the Prudential Authority to address the non-compliance of a key person with the fit and proper requirements prescribed, or a responsibility, function or requirement imposed on that person under this Act; 15
- (f) failed to give effect to a decision of the Financial Services Tribunal established under the Financial Sector Regulation Act; 20
- (g) if it were then to apply for licensing under section 23, would not be able to meet the requirements referred to in that section; or
- (h) failed to pay levies or fees payable in respect of the licence within 60 days after they became payable.

(2) The Prudential Authority may, at any time, in addition to subsection (1), suspend the licence of a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's in full or in part, if it appears to the Prudential Authority, on the basis of available information, that the circumstances referred to in section 48 justify the suspension. 25

(3) (a) The Prudential Authority may suspend a licence of an insurer or controlling company under subsection (1) or (2), subject to any condition that the Prudential Authority may determine. 30

(b) The Prudential Authority may revoke any suspension under subsection (1) or (2), if satisfied that the insurer or controlling company has complied with all the conditions to which the suspension was made subject.

(4) (a) The Prudential Authority must publish a notice of any suspension, the reasons therefor, and any terms attached thereto on the official web site and in any other media that the Prudential Authority deems appropriate. 35

(b) The suspension of a licence of an insurer or controlling company takes effect on the date specified in the notice referred to in paragraph (a).

(5) (a) The Prudential Authority must publish a notice of any revocation of a suspension and the reasons therefor on the official web site and in the same media that the suspension notice was published under subsection (4)(a). 40

(b) The revocation of a suspension of a licence of an insurer or controlling company takes effect on the date specified in the notice referred to in paragraph (a).

### **Consequences of suspension of licence**

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**28.** (1) From the date on which a suspension takes effect as referred to in section 27(4)(b), the Prudential Authority must take all measures necessary to safeguard the interests of policyholders of an insurer or an insurer that is part of an insurance group.

(2) From the date on which a suspension takes effect, the insurer may not enter into new insurance policies in the class or sub-classes to which the suspension relates, but must continue to conduct the insurance business for which it was licensed in respect of insurance policies entered into before the effective date of the suspension. 50

(3) The Prudential Authority, subsequent to suspending the licence of an insurer or a controlling company, may—

- (a) if the insurer or controlling company remedies the circumstances that informed the suspension to the satisfaction of the Prudential Authority within a reasonable period, revoke the suspension and, if appropriate, vary the licence conditions of the insurer or controlling company; or 55
- (b) withdraw the licence.

## Withdrawal of licence

**29.** (1) The Prudential Authority may withdraw a licence of an insurer or controlling company in full or in part, if it appears to the Prudential Authority, on the basis of available information, that—

- (a) an insurer or controlling company— 5
    - (i) did not furnish all information which is material to an application for a licence;
    - (ii) made a material misrepresentation to members of the public in connection with the insurance business carried on by it;
    - (iii) obtained the licence by making false statements or by any other irregular means; 10
    - (iv) fails to submit any plan, scheme or strategy required under this Act, or fails to comply with any approved plan, scheme or strategy, or submits a plan, scheme or strategy that is inadequate; or
    - (v) subsequent to the suspension of its licence under section 27, fails to remedy the circumstances that informed the suspension to the satisfaction of the Prudential Authority within a reasonable period; 15
  - (b) in the case of an insurer, the insurer—
    - (i) notified the Prudential Authority of its intention to cease to enter into any new insurance policies; 20
    - (ii) failed to commence with conducting insurance business within a period of 12 months after being licensed to do so;
    - (iii) ceased to enter into insurance policies to an extent which does not justify its continued licensing as an insurer; or
    - (iv) no longer conducts insurance business as a result of a transfer or transaction contemplated in section 50; 25
  - (c) in the case of a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's, the circumstances referred to in section 48 justify the withdrawal; or
  - (d) any proceedings referred to under Chapter 9 have been finalised.
- (2) An insurer or a person in control of the affairs of the insurer must notify the Prudential Authority in writing of the occurrence of a circumstance contemplated in subsection (1)(b)(ii) to (iv) or (d). 30
- (3) A controlling company or a person in control of the affairs of the controlling company must notify the Prudential Authority in writing of the occurrence of a circumstance contemplated in subsection (1)(d). 35
- (4) (a) Prior to the withdrawal of a licence of an insurer, in the circumstances referred to under subsection (1) other than subsection (1)(b)(i), the Prudential Authority must direct the insurer—
- (i) not to dispose of or encumber any assets or liabilities, or incur any additional liability, without the approval of the Prudential Authority; 40
  - (ii) not to enter into any new insurance policies from a date specified; and
  - (iii) to make arrangements to the satisfaction of the Prudential Authority to—
    - (aa) discharge its obligations under all insurance policies entered into before the date referred to in subparagraph (ii);
    - (bb) ensure the orderly resolution of the business of the insurer; or 45
    - (cc) transfer that insurance business to another insurer under section 50 by a specified date.
- (b) If an insurer fails to comply with a directive under paragraph (a), the Prudential Authority may initiate any proceedings under Chapter 9.
- (5) (a) The Prudential Authority must publish a notice of withdrawal of the licence and the reasons therefore on the official web site and in any other media that the Prudential Authority deems appropriate. 50
- (b) The withdrawal of a licence of an insurer or controlling company takes effect on the date specified in the notice referred to in paragraph (a).



## CHAPTER 5

## GOVERNANCE

*Part 1**Insurers and insurance groups*

<b>Governance framework</b>	5
<b>30.</b> (1) An insurer and a controlling company must adopt, implement and document an effective governance framework that provides for the prudent management and oversight of—	
(a) in the case of an insurer, its insurance business, and which adequately protects the interests of its policyholders; or	10
(b) in the case of a controlling company, the insurance group's business (including the business of all persons that are part of the insurance group), and which adequately protects the interests of policyholders of the insurers that are part of the insurance group.	
(2) The governance framework must—	15
(a) be proportionate to the nature, scale and complexity of the insurance business and the risks of the insurer, or the business and risks of the insurance group, as the case may be;	
(b) include effective systems of corporate governance, risk management and internal controls; and	20
(c) address, and provide for, the matters prescribed.	
(3) (a) The board of directors of an insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) is responsible for meeting the requirements imposed on an insurer under this Act, irrespective of the delegation or outsourcing of any responsibilities.	25
(b) The board of directors of a controlling company is responsible for meeting the requirements imposed on a controlling company under this Act, irrespective of the delegation or outsourcing of any responsibilities.	
(c) The representative of a branch of a foreign reinsurer is responsible for meeting the requirements imposed on it and a branch of a foreign reinsurer under this Act, irrespective of the delegation or outsourcing of any responsibilities.	30
(d) The representative of Lloyd's is responsible for meeting the requirements imposed on it, Lloyd's underwriters and Lloyd's under this Act, irrespective of the delegation or outsourcing of any responsibilities.	
(4) The Prudential Authority may prescribe governance principles and requirements relating to—	35
(a) in the case of an insurer (other than a branch of a foreign reinsurer or Lloyd's)—	
(i) the composition and governance of the board of directors, including requirements relating to independence;	40
(ii) the roles and responsibilities of the board of directors (in addition to those provided for in the Companies Act);	
(iii) the duties of directors; and	
(iv) the structure of the board of directors, including the committees that must be established.	45
(b) risk management, including in respect of—	
(i) a risk management system;	
(ii) a risk management strategy;	
(iii) a risk management policy; and	
(iv) own risk and solvency assessments;	50
(c) internal control, including in respect of an internal control system;	
(d) control functions, including in respect of—	
(i) required control functions;	
(ii) requirements for control functions; and	
(iii) roles, responsibilities and functions of control functions and heads of control functions; and	55

- (e) outsourcing by an insurer or a controlling company, including in respect of—
  - (i) an outsourcing policy, and the matters that must be included and addressed in that policy;
  - (ii) the principles and requirements with which any outsourcing, and remuneration paid in respect of outsourcing, must comply; 5
  - (iii) the requirements with which an insurer or a controlling company, and any person that will perform an outsourced function or activity, must comply;
  - (iv) the matters that must be included or addressed, or may not be included in an outsourcing contract; 10
  - (v) the functions or activities that may not be outsourced, or may only be outsourced after the Prudential Authority has been notified of the proposed outsourcing, and the information that must accompany that notification;
  - (vii) matters relating to any outsourcing of which the Prudential Authority must be informed; and 15
  - (viii) limitations on or requirements for sub-outsourcing.

### **Failure to maintain governance framework**

**31.** (1) An insurer or a controlling company must have procedures in place to identify any non-compliance with section 30, and in the case of a branch of a foreign reinsurer and Lloyd's, also with Part 2 of this Chapter and Part 2 of Chapter 6. 20

(2) (a) An insurer or a controlling company that fails to comply with section 30 must, without delay—

- (i) notify the Prudential Authority of the failure and the reasons for the failure;
- (ii) within 30 days after the notification referred to in subparagraph (i), submit a compliance scheme to the Prudential Authority for approval that sets out the measures that the insurer or controlling company will implement within a four month-period to remedy any non-compliance. 25

(b) The Prudential Authority may, if appropriate, extend the four-month period referred to in paragraph (a)(ii) by two months and, in exceptional circumstances, extend that period by an appropriate period of time, taking into account all relevant factors. 30

(3) An insurer or a controlling company whose compliance scheme was approved as contemplated in subsection (2) must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the compliance scheme. 35

(4) The Prudential Authority may, until a compliance scheme is implemented—

- (a) restrict or prohibit certain activities or transactions of the insurer or insurance group; or
- (b) in the case of an insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) and a controlling company, impose conditions or limitations on the insurer, controlling company, or board of directors of the insurer or controlling company; 40
- (c) in the case of a branch of a foreign reinsurer, impose conditions or limitations on the branch or the representative of the branch; or
- (d) in respect of Lloyd's, impose conditions or limitations on Lloyd's underwriters, Lloyd's or the representative of Lloyd's. 45

(5) The Prudential Authority may—

- (a) in the case of an insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) and a controlling company, require the board of directors or senior management, or both, of the insurer or controlling company to demonstrate that the governance framework requirements provided for in this Part and any other prescribed requirements are being complied with; or 50
- (b) in the case of a branch of a foreign reinsurer or Lloyds, require the representative of a branch of a foreign reinsurer or Lloyds to demonstrate that the governance framework requirements provided for in this Part and any other prescribed requirements are being complied with. 55

(6) If the Prudential Authority reasonably believes that the effectiveness of the governance framework of an insurer or controlling company or a part thereof requires further investigation, the Prudential Authority may direct the insurer or controlling company to secure an independent review of the governance framework by a person to 60

be approved by the Prudential Authority at the cost of the insurer or controlling company.

(7) The Prudential Authority may—

- (a) in the case of an insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) and a controlling company, direct an insurer, a controlling company, or the board of directors or other key persons of the insurer or controlling company, to strengthen or effect improvements to the insurer or controlling company's governance framework or a part thereof; 5
- (b) in the case of a branch of a foreign reinsurer or Lloyd's, direct a branch of a foreign reinsurer, Lloyd's or the representative or other key person of a branch of a foreign reinsurer or Lloyd's, to strengthen or effect improvements to the governance framework or a part thereof of the branch of a foreign reinsurer or Lloyd's. 10

(8) This section does not limit any other action that the Prudential Authority may take in terms of this Act. 15

## Auditor

**32.** (1) (a) An insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) and a controlling company must at all times have an auditor appointed by the insurer and the controlling company, respectively.

(b) Sections 90 to 93, inclusive, of the Companies Act apply to an insurer referred to in paragraph (a) and a controlling company. 20

(2) The representative of a branch of a foreign reinsurer and Lloyd's must appoint an auditor to audit the information and statements identified in section 47.

(3) (a) If an insurer, a controlling company, or a representative of a branch of a foreign reinsurer or Lloyd's for any reason fails to appoint an auditor under subsection (1) or (2), the Prudential Authority may— 25

- (i) despite the Companies Act, appoint an auditor for that insurer or controlling company;
- (ii) appoint an auditor for the purpose set out in subsection (2).

(b) A person or firm appointed under paragraph (a) is deemed to have been appointed by that insurer, controlling company, or representative of a branch of a foreign reinsurer or Lloyd's in accordance with this Act. 30

(4) The auditor must, in addition to the requirements of the Financial Sector Regulation Act, without delay, submit a detailed written report to the Prudential Authority, and also to the board of directors in the case of an insurer referred to in subsection (1) and a controlling company, on any matter of which the auditor becomes aware in the performance of the auditor's functions and duties referred to in subsection (6), and which, in the opinion of the auditor— 35

- (a) in respect of the business of the insurer or insurance group, may be contrary to the governance framework requirements of this Act, or amounts to inadequate maintenance of internal controls; 40
- (b) in respect of a significant owner of the insurer or controlling company, constitutes a contravention of any section of this Act.

(5) In the case of a branch of a foreign reinsurer or Lloyd's, the auditor must, in addition to subsection (4), without delay, submit a detailed written report to the Prudential Authority on any matter of which the auditor becomes aware in the performance of the auditor's functions and duties referred to in subsection (6), and which, in the opinion of the auditor, is likely to prejudice the ability of the branch of a foreign reinsurer or Lloyd's to hold the required security in the trust. 45

(6) The auditor of an insurer or a controlling company must— 50

- (a) audit the financial soundness of an insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) or controlling company in the manner prescribed; 55
- (b) audit the security held in a trust referred to in section 41 in the manner prescribed;
- (b) perform the duties and functions assigned to the auditor of an insurer or a controlling company under this Act, the Companies Act and the Auditing Profession Act; and
- (c) perform any other duties or functions prescribed.

**Audit committee**

**33.** (1) Section 94 of the Companies Act, except section 94(2), applies to an insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) and a controlling company.

(2) An insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) and a controlling company must appoint an audit committee. 5

(3) The audit committee must—

(a) be structured to ensure that it has the necessary authority, independence, resources, expertise and access to all relevant employees and information to perform its functions; and 10

(b) in addition to the functions referred to in section 94(7) of the Companies Act, perform the functions as may be prescribed.

**Part 2**

***Additional governance requirements for representative offices of branches of foreign reinsurers and Lloyd's*** 15

**Representative office**

**34.** (1) A foreign reinsurer that is licensed to conduct reinsurance business or Lloyd's must establish a representative office in the Republic.

(2) (a) A foreign reinsurer or Lloyd's must appoint, and at all times have, a representative and a deputy representative. 20

(b) A representative and a deputy representative must be natural persons permanently residing in the Republic for as long as he or she remains a representative and a deputy representative.

(3) The representative must—

(a) ensure compliance— 25

(i) with South African legislation, including this Act and any other legislation regulating the conduct of insurers; and

(ii) by the trustee or trustees with South African legislation, including this Act and the trust deed referred to in section 41; and

(b) notify the Prudential Authority in writing of any non-compliance in terms of paragraph (a). 30

(4) The Prudential Authority may prescribe requirements relating to the roles, responsibilities and functions of a representative and deputy representative in addition to those specified in subsection (3).

**CHAPTER 6** 35

**FINANCIAL SOUNDNESS****Part 1*****Insurers and insurance groups*****Application of Part**

**35.** This Part does not apply to branches of foreign reinsurers, Lloyd's underwriters or Lloyd's. 40

***Financially sound condition*****Maintenance of financially sound condition**

**36.** (1) An insurer must at all times maintain its business in a financially sound condition, by holding eligible own funds that are at least equal to the minimum capital requirement or solvency capital requirement, as prescribed, whichever is the greater. 45

(2) A controlling company in respect of an insurance group must at all times maintain the insurance group in a financially sound condition, by holding group eligible own funds that are at least equal to the group solvency capital requirement as prescribed.

(3) If the Prudential Authority reasonably believes that any value calculated by an insurer or a controlling company in respect of its financial soundness does not reflect a reasonable value for the purposes of this Act, the Prudential Authority may direct the insurer or controlling company—

- (a) to appoint, at the cost of the insurer or controlling company, a suitably qualified person to be approved by the Prudential Authority to determine a reasonable value, which value so determined will be deemed to be the value; 5
- or
- (b) to calculate the value in a manner determined by the Prudential Authority, which value so calculated will be deemed to be the value. 10

(4) If the Prudential Authority reasonably believes that any principle, method, assumption, technique, adjustment, calibration, parameter, calculation or model of an insurer or controlling company used or applied in respect of its financial soundness requires further investigation, the Prudential Authority may direct the insurer or controlling company to secure an independent review thereof, at the cost of the insurer or controlling company, by a person to be approved by the Prudential Authority. 15

(5) The Prudential Authority may direct an insurer, a controlling company, or the board of directors or other key persons of the insurer or controlling company, to change, amend, strengthen or effect improvements to any principle, method, assumption, technique, adjustment, calibration, parameter, calculation or model of an insurer or controlling company used or applied in respect of its financial soundness. 20

(6) The Prudential Authority may prescribe—

- (a) in respect of the calculation of financial soundness, the principles, methods and assumptions that must be used in the calculation, and any approvals required in respect of such principles, methods and assumptions; 25
- (b) in respect of assets—
  - (i) the principles, methods and assumptions that must be used in the valuation of assets;
  - (ii) limitations relating to the—
    - (aa) type and kind of assets that may be taken into account for calculating financial soundness; 30
    - (bb) maximum and minimum percentages of certain assets that may be taken into account for calculating financial soundness;
    - (cc) location of assets that may be taken into account for calculating financial soundness; and 35
    - (dd) use of assets; and
  - (iii) custody arrangements in respect of assets.
- (c) in respect of technical provisions, the—
  - (i) methods and assumptions that must be used in the valuation and calculation of technical provisions; 40
  - (ii) simplified methods and techniques to calculate technical provisions, to ensure that actuarial and statistical methods are proportionate to the nature, scale and complexity of the risks supported;
- (d) in respect of liabilities other than technical provisions, the methods and assumptions that must be used in the valuation of those liabilities; 45
- (e) in respect of eligible own funds—
  - (i) the tiering and classification of basic own funds and ancillary own funds;
  - (ii) the quantitative limits in respect of each tier referred to in subparagraph (i);
  - (iii) adjustments to own fund items; 50
  - (iv) interests and transactions that must be disregarded; and
  - (v) the criteria that ancillary own funds must comply with;
- (f) in respect of the minimum capital requirement—
  - (i) the calculation and calibration of the minimum capital requirement;
  - (ii) the frequency at and the circumstances under which the minimum capital requirement must be calculated or estimated; 55
- (g) in respect of the solvency capital requirement or group solvency requirement—
  - (i) the frequency at and the circumstances under which the solvency capital requirement or the group solvency requirement must be calculated or estimated; 60
  - (ii) the standard formula for calculating the solvency capital requirement or the group solvency capital requirement, and—

- (aa) the methods, assumptions, and standard parameters to be used in respect of the standard formula or any module or sub-module thereof;
- (bb) the—
  - (a) subset of standard parameters that, subject to approval by the Prudential Authority, may be replaced by insurer-specific or insurance group-specific parameters; 5
  - (b) standardised methods to be used by an insurer or a controlling company to calculate the insurer-specific or insurance group-specific parameters; and 10
  - (c) criteria in respect of governance and the completeness, accuracy, and appropriateness of the data used for insurer-specific or insurance group-specific parameters;
- (cc) the methods and adjustments relating to ring-fenced funds that must be used to reflect the reduced scope for risk diversification in respect of those funds; and 15
- (dd) any simplified calculations for specific sub-modules and risk modules, and the criteria that must be met for an insurer or a controlling company to be able to use each of those simplifications;
- (iii) requirements for the use of a full or partial internal model to calculate the solvency capital requirement, group solvency capital requirement or a part thereof, including the— 20
  - (aa) governance, use test, statistical quality, calibration, model validation, modeling and documentation standards that apply to those full or partial internal models; 25
  - (bb) process for applying for the Prudential Authority's approval of a full or a partial internal model; and
  - (cc) responsibilities of the insurer, controlling company, board of directors and senior managers in respect of a full or a partial internal model; 30
- (h) in respect of reinsurance business or reinsurance arrangements—
  - (i) requirements for the recognition and treatment of reinsurance for financial soundness;
  - (ii) limitations on the extent of the reinsurance business that an insurer or a reinsurer may place with another insurer or reinsurer individually or in aggregate; 35
  - (iii) the principles and requirements with which any reinsurance arrangement must comply;
  - (iv) the matters that must be included or addressed, or may not be included, in a reinsurance arrangement; and 40
- (i) requirements in respect of—
  - (i) investments;
  - (ii) the use of financial instruments, including derivatives;
  - (iii) off-balance sheet transactions;
  - (iv) intra-group transactions; 45
  - (v) transactions that may increase, encumber or reduce assets or liabilities; or
  - (vi) financial or other exposures to entities that are part of an insurance group.

### Capital add-on

37. (1) The Prudential Authority may direct a capital add-on for an insurer or an insurance group, if the Prudential Authority reasonably believes that— 50
- (a) the risk profile of the insurer or the insurance group deviates significantly from the assumptions underlying the solvency capital requirement calculation or the group solvency capital requirement calculation;
  - (b) the governance framework of an insurer or a controlling company deviates significantly from the requirements of this Act. 55
- (2) (a) In the circumstances referred to in subsection (1)(a), the capital add-on that is imposed by the Prudential Authority must be such that the solvency capital requirement or group solvency capital requirement after the capital add-on is in line with the underlying prescribed assumptions of the solvency capital requirement or group solvency capital requirement. 60

(b) In the circumstances referred to in subsection (1)(b), the capital add-on that is imposed by the Prudential Authority must reflect the significance of the deviation of the governance framework from the requirements of the Act.

(3) The Prudential Authority, if an insurer's minimum capital requirement exceeds its solvency capital requirement, may direct the capital add-on to be applied to the minimum capital requirement of the insurer. 5

(4) The Prudential Authority must review any capital add-on imposed at least once a year and remove the capital add-on when the Prudential Authority is satisfied that an insurer or controlling company has remedied the deficiencies that led to its imposition.

## Capital and securities

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**38.** (1) An insurer or controlling company that is a profit company, or an insurer that is a co-operative whose constitution provides for membership shares to be issued to members, may not, without the approval of the Prudential Authority—

(a) authorise any additional shares, convert shares from one type to another type of shares or repurchase any of its shares; 15

(b) issue securities other than shares;

(c) reduce its share capital;

(d) allow a subsidiary to directly or indirectly acquire shares in it; or

(e) conclude a transaction contemplated in section 45 (loans or other financial assistance to directors) of the Companies Act. 20

(2) The Prudential Authority may prescribe the circumstances in which approval under subsection (1) is not required.

## Failure to maintain financially sound condition

**39.** (1) (a) An insurer or a controlling company must have procedures in place to identify deteriorating financial soundness that may cause a failure to comply with section 36. 25

(b) An insurer or a controlling company may not declare or pay a dividend to its shareholders or make a surplus or profit distribution to its members—

(i) if it fails or is likely to fail to comply with section 36; or

(ii) if the declaration, payment or distribution would result in it failing or being likely to fail to comply with section 36. 30

(2) (a) An insurer or a controlling company that fails to—

(i) hold assets or invest those assets in accordance with any prescribed requirements, limitations or conditions; or

(ii) provide for its technical provisions or other liabilities in accordance with prescribed requirements, must, without delay, notify the Prudential Authority of the failure, the reasons for the failure and the measures to be implemented to comply with the requirements. 35

(b) The Prudential Authority may take any measures the Prudential Authority considers necessary to address the failure referred to in paragraph (a). 40

(3) An insurer must, without delay, notify the Prudential Authority of its failure to meet or of any risk that it may in the following three months fail to meet its minimum capital requirement or solvency capital requirement.

(4) A controlling company must, without delay, notify the Prudential Authority of its failure to meet or of any risk that it may in the following three months fail to meet its group solvency capital requirement. 45

(5) (a) If an insurer gives notice to the Prudential Authority under subsection (3) that it is failing or may in the following three months fail to meet its minimum capital requirement, or if the Prudential Authority reasonably believes that an insurer is failing or may in the following three months fail to meet its minimum capital requirement, the Prudential Authority may— 50

(i) direct the insurer to, within one month, submit a short-term recapitalisation scheme to the Prudential Authority for approval that sets out the measures that the insurer will implement within a period not exceeding three months after the submission of the short-term recapitalisation scheme to— 55

(aa) restore its eligible own funds to at least the level of its minimum capital requirement; or

(bb) reduce its risk profile to ensure compliance with its minimum capital requirement; or

(ii) take any action referred to in Chapter 4 or Chapter 9.

(b) The Prudential Authority may, if appropriate, extend the three month-period referred to in paragraph (a)(i) by three months and, in exceptional circumstances, extend that period by an appropriate period of time, taking into account all relevant factors.

(6) (a) If an insurer gives notice to the Prudential Authority under subsection (3) that it is failing or may in the following three months fail to meet its solvency capital requirement, or if the Prudential Authority reasonably believes that an insurer is failing or may in the following three months fail to meet its solvency capital requirement, the Prudential Authority may direct the insurer to, within the period agreed with the Prudential Authority, which period may not exceed two months, submit a recapitalisation strategy to the Prudential Authority for approval that sets out the measures that the insurer will implement within a period agreed with the Prudential Authority, which period may not exceed six months, to—

(i) re-establish the level of eligible own funds necessary for complying with the solvency capital requirement; or

(ii) reduce its risk profile to ensure compliance with the solvency capital requirement.

(b) The Prudential Authority may, if appropriate, extend the six month-period referred to in paragraph (a) by three months and, in exceptional circumstances, extend that period by an appropriate period of time, taking into account all relevant factors.

(7) (a) If a controlling company gives notice to the Prudential Authority under subsection (4) that it is failing or may in the following three months fail to meet its group solvency capital requirement, or if the Prudential Authority reasonably believes that a controlling company is failing or may in the following three months fail to meet its group solvency capital requirement, the Prudential Authority may direct the controlling company to, within the period agreed with the Prudential Authority, which period may not exceed two months, submit a recapitalisation strategy to the Prudential Authority for approval that sets out the measures that the controlling company will implement within a period agreed with the Prudential Authority, which period may not exceed six months, to—

(i) re-establish the level of eligible own funds necessary for complying with its group solvency capital requirement; or

(ii) reduce its risk profile to ensure compliance with its group solvency capital requirement.

(b) The Prudential Authority may, if appropriate, extend the six month-period referred to in paragraph (a) by three months and, in exceptional circumstances, extend that period by an appropriate period of time, taking into account all relevant factors.

(8) An insurer or a controlling company whose short-term recapitalisation scheme or recapitalisation strategy was approved must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the scheme or strategy.

(9) The Prudential Authority may restrict or prohibit certain activities or transactions of the insurer, controlling company or insurance group until the capital requirements are complied with and the financial soundness of the insurer or insurance group has been restored.

(10) A short-term recapitalisation scheme or recapitalisation strategy must include the matters as prescribed.

(11) This section does not limit any other action that the Prudential Authority may take in terms of this Act.

## Part 2

### *Security requirements for branches of foreign reinsurers and Lloyd's*

#### **Security to be held in trust**

40. (1) A branch of a foreign reinsurer must provide and maintain security in respect of its insurance business conducted in the Republic in the form of assets valued in accordance with prescribed requirements that are at least equal to the technical provisions for the insurance business calculated in accordance with this Act.

(2) Lloyd's must provide and maintain security in respect of the insurance business conducted by Lloyd's underwriters in the Republic in the form of assets valued in accordance with prescribed requirements that are at least equal to the aggregate of the



technical provisions for the insurance business of each Lloyd's underwriter in the Republic calculated in accordance with this Act.

(3) The security referred to in subsections (1) and (2) must—

- (a) comply with any matters prescribed;
- (b) be held in trust and be provided to the trustees of the trust referred to in section 41; and
- (c) be reported on by the representative of the branch of a foreign insurer or Lloyd's in accordance with Chapter 7.

(4) The security referred to in subsection (1) may not be accessed by a foreign reinsurer or Lloyd's without the approval of the Prudential Authority.

(5) The Prudential Authority may prescribe matters referred to in section 36(6) in respect a branch of a foreign reinsurer, Lloyd's underwriters, Lloyd's or the security referred to in subsection (1) or (2).

(6) Section 36(3), (4) and (5) apply with the necessary changes to a branch of a foreign insurer, Lloyd's underwriter, Lloyd's and any security referred to in subsection (1) or (2).

### **Trust and trustees**

**41.** (1) A branch of a foreign reinsurer or Lloyd's must establish a trust in the Republic in accordance with the Trust Property Control Act, 1988 (Act No. 57 of 1988).

(2) The trust and the trust deed must comply with any prescribed requirements and be approved by the Prudential Authority.

(3) The Prudential Authority may, at any time, direct that the trust deed be varied or substituted, or that an additional trustee must be appointed, if the Prudential Authority reasonably believes that it is in the public interest, the interests of policyholders or potential policyholders of the insurer, or in the interest of maintaining the security referred to in section 40.

(4) The Prudential Authority may prescribe requirements relating to the—

- (a) roles, responsibilities and functions of trustees; and
- (b) roles, responsibilities and functions of the representative of a branch of a foreign reinsurer or Lloyd's in respect of the trust.

(5) Despite the Trust Property Control Act, 1988 (Act No. 57 of 1988), if any trustee of a trust fails to comply with any requirements of this Act or any provision of the trust deed, the Prudential Authority, on notice to the branch of a foreign reinsurer or Lloyd's and the trustee, may exercise the powers of that trustee under the trust deed.

### **Failure to provide or maintain security**

**42.** (1) A branch of a foreign reinsurer or Lloyd's must, without delay, notify the Prudential Authority of its failure to provide or maintain the security referred to in section 40 or any risk of non-compliance with the security requirements in the following three months.

(2) The Prudential Authority may, in the circumstances referred to in subsection (1)—

- (a) direct a branch of a foreign reinsurer or Lloyd's to submit a recovery scheme to the Prudential Authority for approval that sets out the measures that the branch of a foreign reinsurer or Lloyd's will implement to restore the security; or
- (b) withdraw the licence of the branch of a foreign reinsurer or Lloyd's underwriters and Lloyd's.

(3) In the circumstances referred to in subsection (2)(a), the Prudential Authority, despite the Trust Property Control Act, 1988 (Act No. 57 of 1988), is deemed to be the sole trustee of the trust and may exercise the powers of that trustee under the trust deed.

(4) A branch of a foreign reinsurer or Lloyd's whose recovery scheme was approved must submit a monthly progress report to the Prudential Authority that sets out the measures taken and the progress made with implementing the recovery scheme.

(5) The Prudential Authority may restrict or prohibit certain activities or transactions of the branch of a foreign reinsurer or Lloyd's underwriters until the security requirements are complied with.

(6) A recovery scheme must include the matters as prescribed.

(7) This section does not limit any other action that the Prudential Authority may take in terms of this Act.

## CHAPTER 7

### REPORTING AND PUBLIC DISCLOSURES

#### Information concerning beneficial interests

**43.** (1) An insurer (other than branch of a foreign reinsurer, Lloyd's underwriters or Lloyd's) and a controlling company must, when required to do so by the Prudential Authority, provide the Prudential Authority with any information the Prudential Authority may require in the form, manner and containing the particulars which the Prudential Authority determines, in respect of—

- (a) the names of its shareholders, other holders of a beneficial interest, and the size of their shareholding and other beneficial interests, as the case may be; and
- (b) the name of any person who, directly or indirectly, has the power to require the shareholders referred to in paragraph (a) to exercise their rights as shareholders in the insurer or controlling company in accordance with such person's directions or instructions.

(2) A person, or any person acting on behalf of that person, must, at the request of an insurer or a controlling company, provide the insurer or controlling company with the information it may require for the purposes of complying with subsection (1), if—

- (a) shares in an insurer or an insurance group are registered in that person's name;
- (b) that person wishes to have shares in an insurer or a controlling company allotted, issued or registered in that person's name.

#### Information for supervisory purposes

**44.** (1) In addition to any specific or general requirement provided for elsewhere in this Act, an insurer and a controlling company must provide the Prudential Authority with any information the Prudential Authority may require in the form, manner and at the intervals determined by the Prudential Authority for the supervision and enforcement of this Act (including the resolution of an insurer or a controlling company).

(2) An insurer and a controlling company must, when providing information, ensure that the information—

- (a) is complete in all material respects, comparable and consistent from one reporting period to another; and
- (b) is relevant, reliable and comprehensible.

#### Annual disclosures

**45.** (1) An insurer and a controlling company must annually, by no later than 4 months after its financial year end, publicly disclose the prescribed quantitative and qualitative information in full, or by way of prominent references to information equivalent in nature and scope disclosed publicly under any other law or legal obligation, in the form and manner as may be prescribed.

(2) (a) The Prudential Authority may approve the non-disclosure of specific information if the disclosure thereof—

- (i) may afford the competitors of the insurer or controlling company undue advantage;
- (ii) is subject to contractual obligations of secrecy and confidentiality;
- (iii) may negatively impact on the financial soundness of the insurer or controlling company; or
- (vi) may negatively impact on the financial stability of the insurance sector.

(b) If the Prudential Authority approves the non-disclosure of specific information, the Prudential Authority may direct the insurer or the controlling company to include a statement to this effect and the reasons therefore in its disclosure.

(3) (a) In the event of any major development affecting the relevance of the information disclosed in accordance with subsection (1), an insurer or a controlling company must publicly disclose appropriate information on the nature and effects of that major development, unless the Prudential Authority has approved that such disclosure need not be made.

(b) For the purposes of paragraph (a), “a major development” means any non-compliance with this Act or any review, investigation or verification required by the Prudential Authority in accordance with this Act.

(c) In the circumstances referred to in paragraph (a), an insurer or a controlling company must immediately publicly disclose the extent of non-compliance, an explanation of the reasons for the non-compliance, the consequences thereof, and the remedial measures taken by the insurer, unless the Prudential Authority has approved that such disclosure need not take place. 5

### **Annual financial statements and accounting requirements**

46. (1) An insurer (other than a foreign branch of an insurer, Lloyd’s underwriter or Lloyd’s) and a controlling company must annually prepare, in respect of the relevant financial year of the insurer or controlling company, annual financial statements in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body. 10

(2) The Prudential Authority may prescribe additional statements that must be included in the annual financial statements of an insurer or a controlling company after consultation with any relevant regulatory authority. 15

### **Auditing requirements**

47. (1) An insurer (other than a branch of a foreign reinsurer, Lloyd’s underwriter or Lloyd’s) and a controlling company must annually cause the following to be audited and reported on by its auditor in accordance with auditing pronouncements as defined in section 1 of the Auditing Profession Act— 20

- (a) such of the information referred to in sections 44 and 45 as prescribed; and
- (b) the annual financial statements referred to in section 46.

(2) The audited annual financial statements of the insurer or a controlling company must be submitted to the Prudential Authority and made available to the public within the prescribed period after its financial year-end. 25

(3) A branch of a foreign reinsurer and Lloyd’s must annually cause the following to be audited and reported on by its auditor in accordance with auditing pronouncements as defined in section 1 of the Auditing Profession Act— 30

- (a) such of the information referred to in sections 44 and 45 as prescribed; and
- (b) the security held in the trust referred to in section 41.

(4) The audit of the security held in the trust referred to in section 41 must be submitted to the Prudential Authority and made available to the public within the prescribed period after the audit. 35

(5) The Prudential Authority may, in addition to auditing pronouncements as defined in section 1 of the Auditing Profession Act, prescribe auditing standards or requirements in respect of the information referred to sections 41, 44 and 45.

### **Additional information relating to foreign reinsurers, Lloyd’s underwriters or Lloyd’s** 40

48. (1) A branch of a foreign reinsurer and Lloyd’s must as soon as reasonably possible notify the Prudential Authority of any—

- (a) changes to a law (including any subordinate laws) under which the head office of a foreign reinsurer or Lloyd’s is authorised or supervised to perform business similar to insurance business; and 45
- (b) any actions taken by a regulatory authority in the country in which the head office of a foreign reinsurer or Lloyd’s is located relating to the non-compliance of that foreign reinsurer, Lloyd’s underwriter or Lloyd’s with the laws referred to in paragraph (a).

(2) The Prudential Authority may, on notification under subsection (1), or upon becoming aware of the changes or actions referred to in subsection (1), in addition to any other action that the Prudential Authority may take—

- (a) impose additional reporting requirements and increase financial soundness monitoring activities; or
- (b) take actions under sections 26 to 29 (inclusive). 55

## Additional matters relating to Chapter

- 49.** (1) If the Prudential Authority reasonably believes that any information provided in accordance with this Chapter is incomplete or incorrect, the Prudential Authority may—
- (a) direct the insurer or controlling company to provide the Prudential Authority, within a specified period, with specified information or documents to complete or correct information; or 5
  - (b) reject the information and direct the insurer or controlling company to provide the Prudential Authority, within a specified period, with new information which is complete and correct. 10
- (2) If the Prudential Authority reasonably believes that information or a part thereof requires further investigation, the Prudential Authority may direct the insurer or controlling company to secure a report from a person to be approved by the Prudential Authority, at the cost of the insurer or controlling company, by a specified date or within a specific period, and in the form, manner and containing the information as required by the Prudential Authority. 15

## CHAPTER 8

### TRANSFERS OF BUSINESS AND OTHER SIGNIFICANT TRANSACTIONS

#### Transfer, fundamental transaction or change of institutional form

- 50.** (1) An insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) may not, without the approval of the Prudential Authority, transfer all or any part of its assets and liabilities relating to its insurance business to another insurer. 20
- (2) A branch of a foreign reinsurer or a Lloyd's underwriter may not, without the approval of the Prudential Authority, transfer all or any part of its assets and liabilities relating to its insurance business conducted in the Republic to another insurer. 25
- (3) An insurer (other than a branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) or a controlling company may not, without the approval of the Prudential Authority—
- (a) participate in any fundamental transaction or compromise contemplated in Part A of Chapter 5 or section 155 of the Companies Act; or 30
  - (b) convert from one type of company to another, convert from a co-operative to a company, or in any other way change the type of person it was on the date that it was licensed as an insurer or controlling company.
- (4) The Prudential Authority must only grant an approval referred to under subsections (1) to (3) if the Prudential Authority is satisfied— 35
- (a) that the transfer, transaction or change will not impede the financial soundness of an insurer or controlling company that is a party to the transfer, transaction or change;
  - (b) in the case of an insurer, that the transfer, transaction or change does not negatively impact on the interest of policyholders; 40
  - (c) in the case of a controlling company, that the transfer, transaction or change does not negatively impact on the interests of policyholders of the insurers that are part of the insurance group; and
  - (d) that any prescribed procedures have been complied with.
- (5) The Prudential Authority may— 45
- (a) prescribe the processes that an insurer and controlling company must comply with in respect of transfers, transactions or changes, which may include processes for informing and consulting policyholders; and
  - (b) appoint a person, at the cost of the insurer or controlling company, to assess the transfer, transaction or change and express a view on the desirability or otherwise thereof. 50
- (6) A transfer, transaction or change referred to in subsections (1) to (3) that is approved by the Prudential Authority is binding on and enforceable against all persons.
- (7) Any person in charge of a deeds registry or other office in which any mortgage bond or movable or immovable property is registered which is to be transferred in accordance with an approved transfer, transaction or change referred to in subsections (1) to (3) must, on receipt of the relevant bond, title deed or registration certificate and 55

a certified copy of the Prudential Authority's approval, take the measures necessary to effect the transfer.

(8) Any transfer, transaction or change referred to in subsections (1) to (3) that is effected without the approval of the Prudential Authority is void.

## **Acquisitions or disposals** 5

**51.** (1) An insurer (other than branch of a foreign reinsurer, Lloyd's underwriter or Lloyd's) or a controlling company must, prior to making a material acquisition or disposal, obtain the approval of the Prudential Authority.

(2) The Prudential Authority must prescribe what constitutes a material acquisition or disposal for the purposes of subsection (1). 10

(3) The Prudential Authority may refuse to approve a material acquisition or disposal if the Prudential Authority reasonably believes that such an acquisition or disposal will impede—

- (a) in the case of an insurer, the financial soundness of the insurer;
- (b) in the case of a controlling company— 15
  - (i) the financial soundness of an insurer that is part of the insurance group; or
  - (ii) the ability of the Prudential Authority to determine— 20
    - (aa) how the different types of business of the insurance group are conducted;
    - (bb) the risks of the insurance group and each person that is part of that insurance group; or
    - (cc) the manner in which the governance framework is organised and conducted for the insurance group and each person that is part of that insurance group. 25

(4) Despite any other law, any acquisition or disposal that is effected in contravention of this section is void.

## **CHAPTER 9**

### **RESOLUTION**

## **Application of Chapter** 30

**52.** (1) (a) This Chapter does not apply to a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's.

(b) Despite subsection (a), section 59 applies to a trust referred to in section 41.

(2) The Prudential Authority, in addition to any other action that the Prudential Authority may take under this Act, may act in accordance with this Chapter— 35

- (a) if an insurer or controlling company fails to— 40
  - (i) submit any plan, scheme or strategy required under this Act; or
  - (ii) comply with any plan, scheme or strategy approved under this Act;
- (b) if the Prudential Authority reasonably believes that a plan, scheme or strategy submitted under this Act is inadequate; or
- (c) in the circumstances referred to in section 29(4)(b).

(3) The Prudential Authority, in addition to any other action that the Prudential Authority may take under this Act, may act in accordance with section 59 in respect of a trust referred to in section 41—

- (a) if a branch of a foreign reinsurer or Lloyd's fails to— 45
  - (i) provide or maintain the security referred to in section 41 in the trust;
  - (ii) submit any plan or scheme required under this Act; or
  - (iii) comply with any plan or scheme approved under this Act;
- (b) if the Prudential Authority reasonably believes that a plan or scheme submitted under this Act is inadequate; or 50
- (c) in the circumstances referred to in section 29(4)(b).

## **Part 1**

### **Statutory management**

#### **Appointment of statutory manager**

**53.** (1) Despite any other law, the Prudential Authority may appoint a statutory manager in terms of section 5A of the Financial Institutions (Protection of Funds) Act in respect of any insurer or controlling company. 5

(2) If a statutory manager is appointed under this section, no business rescue or winding-up proceedings referred to in this Chapter may be commenced in respect of an insurer or a controlling company until the appointment of the statutory manager is terminated. 10

## **Part 2**

### **Curatorship**

#### **Appointment of curator**

**54.** (1) Despite any other law—

- (a) the court may, on application by the Prudential Authority; or 15
- (b) the Prudential Authority may by agreement with an insurer or controlling company and without the intervention of the court, appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act in respect of any insurer or controlling company.

(2) In addition to any powers or functions that may be afforded by a court to a curator on appointment under subsection (1), but subject to section 5 of the Financial Institutions (Protection of Funds) Act, a curator on appointment—

- (a) is vested with the power to take and implement any decision in respect of the insurer or the controlling company that would have required an ordinary resolution or a special resolution of shareholders or members of the insurer or controlling company in terms of the provisions of the— 25
  - (i) Companies Act;
  - (ii) Co-operatives Act;
  - (iii) Memorandum of Incorporation or the equivalent constitution, deed or founding instrument of an insurer that is not a company; or 30
  - (iv) rules of any securities exchange registered under the Financial Markets Act, 2012 (Act No. 19 of 2012), on which any securities of the insurer or controlling company are listed;
- (b) is vested with all executive powers which would ordinarily be vested in, and exercised by, the key persons (other than an auditor or the head of a control function) of the insurer or controlling company, whether by law or in terms of its Memorandum of Incorporation or the equivalent constitution, deed or founding instrument of an insurer that is not a company, and the present key persons shall be divested of all such powers in relation to the business; 35
- (c) must take immediate control of, manage and investigate the business and operations of and concerning the insurer or controlling company, together with all assets, interests and liabilities relating to such business, subject to the control of the Prudential Authority in accordance with the provisions of section 5(6) of the Financial Institutions (Protection of Funds) Act, and with all such rights and obligations as may be pertaining thereto; 40 45
- (d) must at all times give consideration to the best interests of the policyholders of the insurer or, in the case of a controlling company, the best interests of policyholders of the insurers that are part of the insurance group;
- (e) must exercise the powers vested in the curator with a view to conserving the business and, with the prior approval of the Prudential Authority, may— 50
  - (i) alienate or dispose of any of the property or transfer any of the liabilities or insurance business of the insurer or controlling company;
  - (ii) cancel any guarantee issued by the insurer, other than a guarantee that constitutes an insurance obligation under a life insurance policy, or controlling company prior to the latter being placed under curatorship, 55
    - excluding such guarantee which the insurer or controlling company is

- required to make good within a period of 30 days as from the date of the appointment of the curator; and
- (iii) raise funding on behalf of the insurer or controlling company, despite any contractual obligations of the insurer or controlling company, to provide security over the assets of the insurer or controlling company in respect of such funding; 5
  - (f) in the case of an insurer, must continue to conduct the insurance business for which the insurer is licensed, but may not enter into new insurance policies without the approval of the Prudential Authority;
  - (g) must take custody of the cash, cash investments, shares, other securities or investments held or administered by the insurer or controlling company, and of other property (movable or immovable) or effects belonging to or held by or on instructions of the insurer or controlling company or any entity directly or indirectly controlled by, affiliated to or associated with the insurer or controlling company; 10
  - (h) must notify the Prudential Authority should the curator deem it necessary or expedient that application be made to the court—
    - (i) for the extension of the curator's powers to any other company (including any holding company or subsidiary) or other related or inter-related person or person associated with the insurer or controlling company; 15
    - (ii) for the winding-up of the insurer or controlling company; or
    - (iii) for any relief as envisaged in the Financial Sector Regulation Act against the insurer or controlling company or any of its key persons; 20
  - (i) may, in the curator's discretion and depending on available resources, make full or part payments to policyholders in identified circumstances, after the prior approval of the Prudential Authority has been obtained; 25
  - (j) may conduct any investigation with a view to locating the assets belonging to, administered or controlled by the insurer or controlling company, including such assets held by way of securities, in cash or liquid form; 30
  - (k) may incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the insurer or controlling company and operations of the insurer or controlling company, and to pay same from the assets held, administered or under the control of the insurer or controlling company; 35
  - (l) may engage, after consultation with the Prudential Authority, such assistance of a legal, accounting, administrative, or other professional or technical nature, as the curator may reasonably deem necessary for the performance of the curator's duties, and the curator may defray reasonable charges and expenses thus incurred from the assets held or under control of the insurer or controlling company; 40
  - (m) may institute or prosecute any legal proceedings on behalf of the insurer or the controlling company, and defend any litigation against the insurer or controlling company;
  - (n) may invest such funds as are not required for the immediate purposes of the business, with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990), or other liquid instrument approved by the Prudential Authority; 45
  - (o) may take control of and operate or freeze existing banking accounts of the insurer or the controlling company and of its subsidiaries or related persons, and of any director of the insurer or controlling company, insofar as any money belonging to the insurer or controlling company has been deposited into such latter banking account; 50
  - (p) may open and operate any new banking accounts for the purposes of the curatorship; and
  - (q) may claim all costs, charges and other expenditure reasonably incurred by the curator in the execution of duties in terms of this section, including the curator's own remuneration, as administration costs, in the event of the winding-up of the insurer or controlling company ensuing. 55
- (3) A curator, when acting in accordance with subsection (2), must consider the expected effect on the creditors of the insurer or controlling company and whether— 60
- (a) creditors are treated in an equitable manner; and

- (b) when acting under subsection (2)(e)(i), a reasonable probability exists that a creditor will not incur greater losses, as at the date of the proposed disposal, transfer or disposal and transfer, than would have been incurred if the insurer or controlling company had been wound-up on the date of the proposed disposal, transfer or disposal and transfer. 5

(4) A claim for damages in respect of any loss sustained by or damage caused to any person as a result of the cancellation of a guarantee referred to in subsection (2)(e)(ii), other than a guarantee that constitutes an insurance obligation under a life insurance policy, or provision of security, may be instituted against the insurer or controlling company after the expiration of a period of 6 months from the date of the cancellation. 10

(5) An insurer or a controlling company may not begin or enter business rescue or be wound-up while under curatorship within the meaning of the Financial Institutions (Protection of Funds) Act, unless the curator applies for the business rescue or winding-up.

### PART 3

15

#### *Business Rescue*

#### **Application of Companies Act to business rescue of insurers and controlling companies**

55. (1) Despite any other law under which an insurer or controlling company is established or incorporated, Chapter 6 of the Companies Act applies, subject to this section and with the necessary changes, in relation to an insurer or a controlling company, to the exclusion of any similar provisions under the Co-operatives Act or any other law under which an insurer or controlling company is established or incorporated, and in such application the Prudential Authority must be deemed to be an affected person. 20 25

(2) In the application of Chapter 6 of the Companies Act—

- (a) a reference to the Commission must be construed as a reference also to the Prudential Authority;
- (b) the reference to creditors must be construed as a reference also to the policyholders of the insurer; 30
- (c) a reference relating to the inability of an insurer or a controlling company to pay all its debts, must be construed as relating also to its inability to comply with the financial soundness requirements of this Act; and
- (d) in addition to any question relating to the business of an insurer, it must be considered if any proposed action is in the interests of policyholders of an insurer or, in the case of a controlling company, the interests of policyholders of the insurers that are part of the insurance group. 35

#### **Business rescue applications and resolutions**

56. (1) The Prudential Authority may make an application under section 131 of the Companies Act in respect of an insurer or a controlling company, if the Prudential Authority reasonably believes that it is in the interests of the insurer's policyholders or, in the case of a controlling company, the interests of policyholders of the insurers that are part of the insurance group to do so. 40

(2) (a) If an application to a court for an order relating to the business rescue of an insurer or a controlling company is made by an affected person other than the Prudential Authority— 45

- (i) 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 Prudential Authority at least 14 days before the application is set down for hearing; 50
- (ii) the Prudential Authority may, if the Prudential Authority reasonably believes that the application is not in the interests of policyholders of the insurer, or, in the case of a controlling company, the interests of policyholders of the insurers that are part of the insurance group, join the application as a party and file affidavits and other documents in opposition to the application. 55

(b) Any order granted by the court in circumstances where paragraph (a)(i) has not been complied with is void.



- (3) (a) Any resolution of an insurer or a controlling company to begin business rescue proceedings is subject to the approval of the Prudential Authority.
- (b) An insurer or a controlling company may file a resolution under section 129 of the Companies Act only after the Prudential Authority has approved the resolution.
- (c) Any resolution of an insurer or a controlling company that is not approved by the Prudential Authority under paragraphs (a) or (b), is void. 5
- (4) Despite the provisions of the Companies Act, the following acts are subject to the approval of the Prudential Authority:
- (a) The appointment of a business rescue practitioner; and
- (b) the adoption of a business rescue plan. 10
- (5) Despite the provisions of the Companies Act, if the Prudential Authority does not approve a resolution referred to in subsection (3)(a) or (b), or the appointment or plan referred to in subsection (4)(a) or (b), the Prudential Authority must apply to court—
- (a) for the winding-up of the insurer or controlling company under section 58; or
- (b) to place the insurer or controlling company under curatorship in terms of section 54. 15
- (6) As from the date on which a business rescue practitioner is appointed, the business rescue practitioner of an insurer may not enter into any new insurance policies, unless the practitioner has been granted prior approval to do so by the Prudential Authority.

#### **Part 4**

20

#### **Winding-up**

#### **Application of Companies Act to winding-up of insurers and controlling companies**

- 57.** (1) Despite any other law under which an 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 an insurer or a controlling company, and to the exclusion of any similar provisions under the Co-operatives Act or any other law under which an insurer or controlling company is established or incorporated, and in such application the Prudential Authority is deemed to be a person authorised under the Companies Act to make an application to the court for the winding-up thereof. 25 30
- (2) In the application of sections 79 to 81 of, and item 9 of Schedule 5 to, the Companies Act as provided by subsection (1)—
- (a) a reference which relates to the inability of an insurer or a controlling company to pay its debts must be construed as relating also to its inability to comply with the financial soundness requirements of this Act; 35
- (b) a reference to an insurer or a controlling company in this section and section 58 must, 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 insurer or a financially sound controlling company;
- (c) in addition to any question whether it is just and equitable that an insurer or a controlling company should be wound-up, there must be considered also the question whether it is in the interest of the policyholders of an insurer or, in the case of a controlling company, the interests of policyholders of the insurers that are part of the insurance group that it should be wound-up; 40
- (d) the references to the Commissioner, Commission, Master or Panel must be construed as a reference also to the Prudential Authority; and 45
- (e) the requirement to give security does not apply where the Prudential Authority makes the application to court.

#### **Winding-up applications and resolutions**

- 58.** (1) The Prudential Authority may make an application under the Companies Act for the winding-up of an insurer or a controlling company, if the Prudential Authority reasonably believes that it is in the interests of the policyholders of that insurer or, in the case of a controlling company, it is in the interests of policyholders of the insurers that are part of the insurance group to do so. 50

- (2) (a) If an application to the court for or in respect of the winding-up of an insurer or a controlling company is made by any person other than the Prudential Authority—
- (i) the application may 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 Prudential Authority at least 14 days, or such shorter period as the court may allow on good cause shown, before the application is set down for hearing; and 5
  - (ii) the Prudential Authority may, if the Prudential Authority reasonably believes that the application is contrary to the interests of the policyholders of the insurer concerned or, in the case of a controlling company, the interests of policyholders of the insurers that are part of the insurance group, join the application as a party and file affidavits and other documents in opposition to the application. 10
- (b) Any order granted by the court in circumstances where paragraph (a)(i) has not been complied with is void.
- (3) (a) Any resolution of an insurer or a controlling company to begin winding-up proceedings is subject to the approval of the Prudential Authority. 15
- (b) An insurer or a controlling company may file a resolution under section 80 of the Companies Act only after the Prudential Authority has approved the resolution.
- (c) Any resolution of an insurer or a controlling company that is not approved by the Prudential Authority under paragraph (a) or (b) is void. 20
- (4) Despite the provisions of the Companies Act, the appointment of a trustee or a liquidator is subject to the approval of the Prudential Authority.
- (5) Despite the provisions of the Companies Act, if the Prudential Authority does not approve a resolution referred to in subsection (3)(a) or (b), or the appointment referred to in subsection (4), the Prudential Authority may apply to court to place that person under curatorship in terms of the Financial Institutions (Protection of Funds) Act. 25

#### **Winding-up of trusts referred to in section 41**

- 59.** (1) (a) Despite the Trust Property Control Act, 1988, 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 trust referred to in section 41, to the exclusion of Trust Property Control Act, 1988, and in such application the Prudential Authority is deemed to be the person authorised under the Companies Act to make an application to the court for the winding-up thereof. 30
- (b) The Prudential Authority may make an application under the Companies Act for the winding-up of a trust referred to in section 41, if the Prudential Authority reasonably believes that it is in the interests of the policyholders of a branch of a foreign reinsurer or Lloyd's underwriters to do so. 35
- (c) If an application to the court for or in respect of the winding-up of a trust referred to in section 41 is made by any person other than the Prudential Authority—
- (i) the application may 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 Prudential Authority at least 14 days, or such shorter period as the court may allow on good cause shown, before the application is set down for hearing; and 40
  - (ii) the Prudential Authority may, if the Prudential Authority reasonably believes that the application is contrary to the interests of the policyholders of the branch of a foreign reinsurer or Lloyd's underwriters concerned, join the application as a party and file affidavits and other documents in opposition to the application. 45
- (d) Any order granted by the court in circumstances where paragraph (c)(i) has not been complied with is void. 50
- (2) (a) Any decision of a trustee or any other person to dissolve a trust referred to in section 41, must be approved by the Prudential Authority.
- (b) Any decision referred to in paragraph (a) not approved by the Prudential Authority is void.

## CHAPTER 10

### ADMINISTRATION OF ACT

#### *Part 1*

#### *Applications and notifications*

#### **Applications** 5

- 60.** (1) A written application must be submitted to the Prudential Authority—
- (a) in respect of an application for the granting of a licence under this Act;
  - (b) in respect of any other application for approval under this Act;
  - (c) if any determination, decision, exemption or the performance of any other act is required by the Prudential Authority under this Act. 10
- (2) A written application referred to in subsection (1) must be—
- (a) submitted in the form and manner determined by the Prudential Authority;
  - (b) accompanied by the information determined by the Prudential Authority; and
  - (c) accompanied by the prescribed fees.
- (3) A person must promptly amend an application referred to under subsection (1) if any information provided to the Prudential Authority on application becomes inaccurate prior to the Prudential Authority approving or declining an application. 15
- (4) The Prudential Authority, in respect of any application referred to in subsection (1)—
- (a) may— 20
    - (i) require a person to furnish additional information, to verify that information, or verify any information that accompanied the application, in the manner specified by the Prudential Authority; and
    - (ii) take into consideration any other information, derived from whatever source, including another regulatory authority; 25
  - (b) must, after considering the application—
    - (i) grant the application, if the Prudential Authority reasonably believes that the person complies with the requirements for that application; or
    - (ii) refuse the application, if the Prudential Authority reasonably believes that the person does not comply with the requirements for that application; and 30
  - (c) where an application is refused, must notify the applicant of the refusal.
- (5) The Prudential Authority may grant any application subject to any conditions.
- (6) Any approval, determination, decision or exemption by the Prudential Authority is valid only if it is in writing. 35
- (7) If the Prudential Authority under subsection (4)(a)(i) required a person to furnish additional information or required a person to verify any information the Prudential Authority need not deal further with an application, until the person has furnished or verified the information.

#### **Notifications** 40

- 61.** Any notification by a person under this Act must be—
- (a) submitted in the form and manner determined by the Prudential Authority; and
  - (b) accompanied by the information determined by the Prudential Authority.

#### *Part 2* 45

#### *Powers and functions of Prudential Authority*

#### **General powers and functions of Prudential Authority**

- 62.** (1) The Prudential Authority, in addition to other powers or functions conferred on the Prudential Authority by or in terms of any other provision of this Act or any other Act of Parliament— 50

- (a) must take steps the Prudential Authority considers necessary to implement a regulatory framework that supports the objectives of the Act, including supervising and enforcing compliance with this Act;
  - (b) must take steps the Prudential Authority considers necessary to protect policyholders in their dealings with insurers; 5
  - (c) must determine the form, manner and period (if a period is not specified in this Act) in which any documentation, information or report must be published, disclosed, provided or submitted, that an insurer or a controlling company is required to publish, disclose, provide or submit under this Act; and
  - (d) may, at regular intervals, determine or amend any rate, parameter or percentage referred to or specified in this Act or a Prudential Standard relating to financial soundness by publishing a notice on the official web site. 10
- (2) The Prudential Authority, in performing the powers and functions provided for, by or under this Act, including the making of Prudential Standards, must have regard to—
- (a) the objective of this Act; 15
  - (b) international regulatory and supervisory standards; and
  - (c) the principle that requirements imposed on insurers or insurance groups and the exercise of supervisory powers should be proportionate to the purpose for which they are intended.

## **Prudential Standards 20**

- 63.** (1) The Prudential Authority may prescribe Prudential Standards on any matter that is required or permitted to be prescribed in terms of this Act.
- (2) A Prudential Standard may—
- (a) apply to insurers, controlling companies, key persons or significant owners generally; 25
  - (b) apply to insurance business or the conducting of insurance business generally; or
  - (c) be limited in application to particular kinds or types of insurers, controlling companies, key persons or significant owners, or to particular types, or classes or sub-classes of insurance business, which may be defined— 30
    - (i) in relation to insurers, insurance groups, key persons or significant owners, either in relation to a category, kind or in any other manner; and
    - (ii) in relation to insurance groups, either in relation to a category, kind or with reference to the business of the insurance groups or in any other manner. 35
- (3) (a) A Prudential Standard may—
- (i) impose requirements for approval by the Prudential Authority in respect of specified matters; or
  - (ii) be made applicable to existing actions, activities, transactions, policies and appointments. 40
- (b) Where a Prudential Standard is made applicable to existing actions, activities, transactions, policies and appointments, the Prudential Standard must allow for a reasonable period within which the Standard must be complied with.
- (4) A Prudential Standard referred to in section 47(5) with respect to auditing standards and requirements, applies despite any contrary requirement in Regulations or 45 an instrument made under an Act of Parliament.

## **Publication by Prudential Authority**

- 64.** The Prudential Authority must publish and regularly update the following on the official web site—
- (a) the objectives of supervision and the Prudential Authority's powers and functions; 50
  - (b) the general criteria and methods used in the supervisory review process;
  - (c) aggregate statistical data on key aspects of the application of the financial soundness and prudential framework referred to in Chapter 6;
  - (d) information and analysis about the financial condition of the insurance sector; 55 and
  - (e) subject to confidentiality considerations, and in so far as it does not jeopardise other supervisory objectives, information on—
    - (i) failed insurers, controlling companies or insurance groups;

- (ii) supervisory and regulatory actions taken in respect of insurers or controlling companies.

### **Determination of another jurisdiction as equivalent**

**65.** (1) The Prudential Authority may by notice on the official web site determine that the requirements imposed by a foreign jurisdiction are equivalent to this Act if the Prudential Authority is satisfied that the laws, and supervisory and information sharing frameworks, established in that foreign jurisdiction meet the objects of this Act. 5

(2) The Prudential Authority may amend or repeal any determination under subsection (1) from time to time.

### **Unlicensed insurance business 10**

**66.** (1) If a person contravened or is contravening section 5(1) of this Act, the Prudential Authority, in addition to any other action that the Prudential Authority may take under this Act or the Financial Sector Regulation Act, may—

- (a) direct that person to make arrangements satisfactory to the Prudential Authority to discharge all or any part of the obligations under insurance policies entered into or purported to be entered into by that person; or 15
- (b) apply to the court for the sequestration or liquidation of that person, whether he, she or it is solvent or not, in accordance with the Insolvency Act, 1936 (Act No. 24 of 1936), the Companies Act, the Co-operatives Act or the law under which that person is established or incorporated. 20

(2) In deciding an application contemplated in paragraph (1)(b), the court—

- (a) may take into account whether the sequestration or liquidation of the person concerned would be in the interests of the policyholders concerned;
- (b) may make an order concerning the manner in which claims may be proven by policyholders; and 25
- (c) must appoint as trustee or liquidator a person nominated by the Prudential Authority.

### **Penalties for non-submission or late submission**

**67.** (1) A person who fails to—

- (a) submit any document or information required in or under this Act to be submitted to the Prudential Authority; 30
- (b) publish any document or information required in or under this Act to be published; or
- (c) submit or publish any document or information referred to in paragraph (a) or (b) within the specified period, is liable to a penalty not exceeding R5 000 for every day during which the failure continues, unless the Prudential Authority, on good cause shown, waives the penalty or any part thereof. 35

(2) The amount referred to in subsection escalates annually, from the effective date of this Act, by the Consumer Price Index (CPI) annual inflation rate published by Statistics South Africa, as defined in section 1 of the Statistics Act, 1999 (Act No. 6 of 1999). 40

### **Offences**

**68.** (1) Any person commits an offence and is on conviction liable to a fine not exceeding R10 million if that person—

- (a) contravenes or fails to comply with a provision of section 5(1), (9) or 29(2) or (3); or 45
- (b) fails to comply with a request under sections 43(2).

(2) A holding company of or another juristic person designated under subsection 10(1) commits an offence and is on conviction liable to a fine not exceeding R10 million if that holding company of or another juristic person contravenes or fails to comply with a provision of section 10(2). 50

(3) A key person commits an offence and is on conviction liable to a fine not exceeding R10 million if that person contravenes or fails to comply with a provision of section 16(4).

(4) An auditor commits an offence and is on conviction liable to a fine not exceeding R10 million if that auditor contravenes or fails to comply with a provision of sections 16(5), 32(4), 32(5) or 32(6).

(5) A significant owner commits an offence and is on conviction liable to a fine not exceeding R10 million if that owner fails to comply with a directive issued under section 17(4). 5

(6) An insurer commits an offence and is on conviction liable to a fine not exceeding R10 million if that insurer fails to comply with a directive issued under section 29(4).

## CHAPTER 11

### GENERAL PROVISIONS

10

#### Regulations relating to certain classes of insurance business set out in Schedule 2

**69.** (1) The Minister, despite the definition of “business of a medical scheme” in section 9(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), may make regulations identifying a kind, type or category of contract as an insurance policy that may be entered into under the— 15

- (a) risk class of life insurance business in Table 1 of Schedule 2;
  - (b) accident and health class of non-life insurance business in Table 2 of Schedule 2; or
  - (c) the travel class of non-life insurance business in Table 2 of Schedule 2.
- (2) Regulations under subsection (1)— 20

- (a) must be made only—
  - (i) in consultation with the Minister of Health;
  - (ii) after consultation between the National Treasury, the Prudential Authority and the Registrar of Medical Schemes established under the Medical Schemes Act, 1998; and 25
  - (iii) after having regard to the objectives and purpose of the Medical Schemes Act, 1998, including the principles of community rating, open enrolment and cross-subsidisation within medical schemes entrenched therein; and
- (b) must provide for insurers to submit specified information on any product within a kind, type or category of contract referred to in subsection (1) to the Prudential Authority and the Registrar of Medical Schemes within any specified timeframes; 30
- (c) may provide for matters relating to the design and marketing of any product within a kind, type or category of contract referred to in subsection (1).

(3) Where the Minister has made regulations referred to in subsection (1), the kind, type or category of contract identified in the regulations as an insurance policy that may be entered into under the classes referred to in subsection (1), is subject to this Act and not the Medical Schemes Act, 1998. 35

- (4) Before regulations in terms of this section are promulgated, the Minister must—
- (a) publish notice of the release of the draft regulations in the *Gazette*, indicating that the draft regulations are 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
  - (b) submit the draft regulations to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation. 45

#### Special exemption of certain insurers from requirement to be public company

**70.** The following persons are exempt from section 22(1)(a)(iii) of this Act—

- (a) a mutual association licensed under section 30(1) of the Compensation for Occupational Injuries and Diseases, 1998 (Act No. 130 of 1998), at the date on which this Act comes into operation for as long as it remains so licensed; 50
- (b) the AVBOB Mutual Assurance Society established in terms of the AVBOB Mutual Assurance Society Incorporation (Private) Act, 1951 (Act No. 7 of 1951);
- (c) the Attorney Insurance Fidelity Fund NPC (registration number 1993/03588/08) for as long as it remains registered as a non-profit company under the Companies Act; and 55

- (d) the Home Loan Guarantee Company NPC (registration number 1990/001845/08) for as long as it remains registered as a non-profit company under the Companies Act.

#### **Consequential amendments and transitional arrangements**

**71.** (1) (a) The Acts referred to in Schedule 1 are hereby amended in the manner set out in that Schedule. 5

(b) The amendment of the Acts does not affect the transitional arrangements, which are set out in Schedule 3.

#### **Delays and exemptions**

**72.** The Prudential Authority, to facilitate the implementation of this Act, may, by notice in the *Gazette*— 10

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding two years from the date when that section takes effect; or
- (b) where practicalities require the progressive or incremental application of a specific provision of this Act, exempt any insurer, controlling company, key person or significant owner from that provision for a period and on conditions determined in the notice. 15

#### **Short title and commencement**

**73.** (1) This Act is called the Insurance Act, 2016, and comes into operation on a date fixed by the Minister by proclamation in the *Gazette*. 20

(2) The Minister may set different dates for different provisions of this Act to come into operation.

## SCHEDULE 1

## LAWS AMENDED

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of amendment or repeal</i>
52 of 1998	Long-term Insurance Act	<p><b>1.</b> The substitution for section 1 of the following section:</p> <p><b><u>“Definitions</u></b></p> <p><b><u>1.</u></b> (1) Any word or expression to which a meaning has been assigned in the Insurance Act, 2016, bears, subject to the context, that meaning and, unless the context otherwise indicates—</p> <p><b><u>“Court”</u></b> means the High Court of South Africa;</p> <p><b><u>“Financial Sector Conduct Authority”</u></b> means the authority established in terms of section 56 of the Financial Sector Regulation Act, 2016;</p> <p><b><u>“insurer”</u></b> has the meaning set out in section 1 of the Insurance Act, 2016;</p> <p><b><u>“long-term insurance business”</u></b> means life insurance business as defined in section 1 of the Insurance Act, 2016;</p> <p><b><u>“long-term insurer”</u></b> means an insurer licensed to conduct life insurance business under the Insurance Act, 2016;</p> <p><b><u>“long-term policy”</u></b> means a life insurance policy as defined in the Insurance Act, 2016;</p> <p><b><u>“official web site”</u></b> 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 Financial Sector Conduct Authority;</p> <p><b><u>“prescribe”</u></b> means prescribed by the Financial Sector Conduct Authority by notice on the official web site, unless notice in the <i>Gazette</i> is specifically required by this Act;</p> <p><b><u>“publish”</u></b> 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 Financial Sector Conduct Authority, seeks to bring any information to the attention of any other person, or all or part of the public;</p> <p><b><u>“regulation”</u></b> means a regulation made under section 72;</p> <p><b><u>“short-term insurer”</u></b> means an insurer licensed to conduct non-life insurance business under the Insurance Act, 2016; and</p> <p><b><u>“this Act”</u></b> includes any regulation made, or matter prescribed under this Act.</p>



<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of amendment or repeal</i>
		<p>(2) Any reference to a specific type of policy under this Act must be deemed to be a reference to the class or sub-class of insurance business set out in Schedule 2 of the Insurance Act, 2016, that best corresponds to that type of policy.”.</p> <p>2. The whole of sections 4(5), 4(7), 5, 7, 8(1)(a), 8(2), 9-35, 37-43, 69-71, 72(1)(b), 72(1)(c), 72(2A), and 73-75, and Schedules 1 and 3 are hereby repealed.</p> <p>3. The repeal of sections 3, 4(1), 4(2), 4(4), 4(8), 36, 66-68, 72 insofar as it relates to the prudential supervision of insurance business. The authority afforded under these sections may continue to be exercised by the Financial Sector Conduct Authority in respect of supervising conduct of business under the Act</p> <p>4. To amend section 3 by the insertion of the following subsection after subsection (2):</p> <p>“(2A) (a) Sections 13, 14, 15, 16, 24, 25, 26 and 27 of the Insurance Act, 2016 are deemed to be sections also made under this Act.</p> <p>(b) The authority afforded to and obligation placed on the Prudential Authority in the sections of the Insurance Act, 2016 referred to in paragraph (a) may be exercised by the Financial Sector Conduct Authority in respect of supervising conduct of business under this Act.”.</p>
53 of 1998	Short-term Insurance Act	<p>1. The substitution for section 1 of the following section:</p> <p><b>“Definitions</b></p> <p>1. (1) Any word or expression to which a meaning has been assigned in the Insurance Act, 2016, bears, subject to the context, that meaning and, unless the context otherwise indicates—</p> <p><b>“Court”</b> means the High Court of South Africa;</p> <p><b>“insurer”</b> has the meaning set out in section 1 of the Insurance Act, 2016;</p> <p><b>“long-term insurer”</b> means an insurer licensed to conduct life insurance business under the Insurance Act, 2016;</p> <p><b>“official web site”</b> 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 Financial Sector Conduct Authority;</p> <p><b>“prescribe”</b> means to determine from time to time by notice on the official web site, unless notice in the <i>Gazette</i> is specifically required by this Act;</p>

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of amendment or repeal</i>
		<p><b>“publish”</b> 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 Financial Sector Conduct Authority, seeks to bring any information to the attention of any other person, or all or part of the public;</p> <p><b>“Financial Sector Conduct Authority”</b> means the authority established in terms of section 56 of the Financial Sector Regulation Act, 2016;</p> <p><b>“regulation”</b> means a regulation under section 70;</p> <p><b>“short-term insurance business”</b> means non-life insurance business as defined in section 1 of the Insurance Act, 2016;</p> <p><b>“short-term insurer”</b> means an insurer licensed to conduct non-life insurance business under the Insurance Act, 2016;</p> <p><b>“short-term policy”</b> means a non-life insurance policy as defined in the Insurance Act, 2016; and</p> <p><b>“this Act”</b> includes any regulation made, or matter prescribed under this Act.</p> <p>(2) Any reference to a specific type of policy under this Act must be deemed to be a reference to the class or sub-class of insurance business set out in Schedule 2 of the Insurance Act, 2016 that best corresponds to that type of policy.”.</p> <p><b>2.</b> The whole of sections 4(5), 4(7), 5, 7, 8(1)(a), 9-34, 36-42, 56, 57, 59-62, 63(3)-(7), 67-69, 70(1)(b), 70(1)(c), 70(2A), 71 and 72, and Schedules 1-3 are hereby repealed.</p> <p><b>3.</b> The repeal of sections 3, 4(1), 4(2), 4(4), 4(8), 35, 58, 63(1), 63(2), 64-66 and 72 insofar as it relates to the prudential supervision of insurance business. The authority afforded under these sections may continue to be exercised by the Financial Sector Conduct Authority in respect of supervising conduct of business under the Act.</p> <p><b>4.</b> The amendment of section 3 by the insertion of the following subsection after subsection (2):</p> <p>“(2A) (a) Sections 13, 14, 15, 16, 24, 25, 26 and 27 of the Insurance Act, 2016 are deemed to be sections also made under this Act.</p>

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of amendment or repeal</i>
		<p><u>(b) The authority afforded to and obligation placed on the Prudential Authority in the sections of the Insurance Act, 2016 referred to in paragraph (a) may be exercised by the Financial Sector Conduct Authority in respect of supervising conduct of business under this Act.”.</u></p> <p><b>5.</b> The amendment of section 63 by the insertion of the following subsection after subsection (2):</p> <p><u>“(2A) Section 55 shall apply with the necessary changes to a Lloyd’s underwriter. ”.</u></p>

## SCHEDULE 2

### CLASSES AND SUB-CLASSES

In this Schedule—

**“beneficiary”** means—

- (a) in the case of an insurance policy other than a group insurance policy, the—
  - (i) the person stated in the insurance policy or a person nominated by the policyholder as the person in respect of whom the insurer should meet the insurance obligations; or
- (b) in the case of a group insurance policy—
  - (i) a member of the association or fund, or an employee; or
  - (ii) a person nominated by the member referred to in subparagraph (i) in respect of whom the insurer should meet the insurance obligations, which person is not the association, fund or employer;

**“fully guaranteed”** means where the total insurance obligations under an insurance policy payable at the end date of the insurance policy or, in respect of an annuity, at each annuity instalment, are at the start of the policy—

- (a) stated in the insurance policy in Rand terms; or
- (b) stated in or ascertainable from the insurance policy with reference to the growth rate used in calculating the policy’s investment value or, in the case of an annuity, each annuity installment, which growth rate is stated in the insurance policy as a fixed rate of return or stated return linked to inflation over the full term of the insurance policy;

**“fund”** means—

- (a) in respect of life insurance business—
  - (i) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
  - (ii) a pension fund organisation as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956); and
- (b) in respect of non-life insurance business, a medical scheme as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

**“group”** in respect of the classes of insurance business, relates to an insurance policy entered into with—

- (a) an autonomous association of persons united voluntarily to meet their common or shared economic and social needs and aspirations (other than obtaining insurance), which association is democratically-controlled;
- (b) an employer; or
- (c) a fund,

where the association, employer or fund holds the insurance policy exclusively for the benefit of a beneficiary;

**“individual”** in respect of the classes of insurance business, relates to an insurance policy entered into with a person (whether individually risk rated or underwritten on a group basis) and—

- (a) includes—
  - (i) an insurance policy where a credit provider is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are debtors of that credit provider;
  - (ii) an insurance policy where an employer is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are directors or employees of that employer; but
- (b) excludes—
  - (i) a group insurance policy; and
  - (ii) subject to (a)(i) and (ii), an insurance policy where the persons who are the life insureds under the policy are two or more persons without an insurable interest in each other;

**“inflation”** means any rate of inflation published by Statistics South Africa, or any successor body, from time to time;

**“investment value”** means the value of an insurance policy calculated as the accumulated basic premium and investment return stated in or ascertainable from the insurance policy, less deductions specifically provided for in the insurance policy;

**“linked”** means where the insurance obligations under an insurance policy are—

- (a) not fully guaranteed or partially guaranteed; and
- (b) determined solely by reference to the value of particular assets or categories of assets which are specified in the insurance policy and are actually held by or on behalf of the insurer specifically for the purposes of the insurance policy;

**“lump sum”** means a single stated sum of money;

**“market related”** means where the insurance obligations under an insurance policy—

- (a) are not partially guaranteed or fully guaranteed;
- (b) are determined solely by reference to the value of particular assets or categories of assets which are specified in the insurance policy, but are not actually held by or on behalf of the insurer;
- (c) do not include any discretionary participation features;

**“partially guaranteed”** means where some, but not all, the insurance obligations under an insurance policy at the end date of the insurance policy or, in respect of an annuity, at each annuity installment, are at the start of the insurance policy—

- (a) stated in the insurance policy to be no less than an amount in Rand terms; or
- (b) stated in or ascertainable from the insurance policy to be no less than an amount calculated with reference to a growth rate used in calculating the policy’s investment value or, in the case of an annuity, each annuity installment, which growth rate is stated in the insurance policy as a fixed rate of return or stated return linked to inflation over the full term of the insurance policy;

**“start of the policy”** means the date on which an insurance policy is entered into between an insurer and a policyholder;

**“underwritten on a group basis”** means where the risks covered under an insurance policy are rated based on the characteristics of a group of people together, as opposed to that of the individual or individuals to whom the policy relates.

TABLE 1

## CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS

## LIFE INSURANCE

	CLASS	SUB-CLASS	DESCRIPTION
1.	<b>RISK</b>	a. Individual Death	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a death event
		b. Individual Health	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a health event, which sum is not linked to the costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class
		c. Individual Disability—lump sum	Lump sum payable on the happening of a disability event
		d. Individual Disability—recurring payment	Specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a disability event
		e. Group Death	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a death event
		f. Group Health	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a health event, which sum is not linked to the costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class
		g. Group Disability—lump sum	Lump sum payable to a beneficiary on the happening of a disability event
		h. Group Disability—recurring payment	Specified or determinable equal or unequal sums of money payable at specified intervals to a beneficiary on the happening of a disability event

	CLASS	SUB-CLASS	DESCRIPTION
2.	<b>FUND RISK</b>	a. Death	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a fund on the happening of a death event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund
		b. Disability—lump sum	Lump sum payable to a fund on the happening of a disability event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund
		c. Disability—recurring payment	Specified or determinable equal or unequal sums of money payable to a fund at specified intervals payable on the happening of a disability event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund
3.	<b>CREDIT LIFE</b>		Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals to satisfy all or part of a financial liability to a credit provider— *on the happening of a death event, health event or a disability event; *in the event of unemployment, or other insurable risk that is likely to impair a person's ability to earn an income or meet credit obligations
4.	<b>FUNERAL</b>	a. Individual	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority to cover cost associated with a funeral or the rendering of a service on the happening of a death event

CLASS		SUB-CLASS		DESCRIPTION
		b.	Group	Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority payable to a beneficiary to cover costs associated with a funeral or the rendering of a service on the happening of a death event
5.	LIFE ANNUITIES	a.	Guaranteed (fully or partially)	Specified or determinable equal or unequal sums of money payable at specified intervals from the start of the policy, or a fixed or determinable date— * for the remainder of the life of the policyholder; or * to one or more dependants or nominees after the death of the policyholder
		b.	Market related	
		c.	With Discretionary Participation features	
6.	INDIVIDUAL INVESTMENT	a.	Guaranteed (fully or partially)	Lump sum or periodic payments payable— * on or from a fixed or determinable date, whether payable as a result of a life event, disability event or death event of a person or not; or * at the request of the policyholder
		b.	Market related	
		c.	Linked	
		d.	With Discretionary Participation features	
7.	FUND INVESTMENT	a.	Guaranteed (fully or partially)	Benefits provided for the purpose of funding in whole or in part the obligation of a fund to provide investment benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund
		b.	Market—related	
		c.	Linked	
		d.	With Discretionary Participation features	
8.	INCOME DRAWDOWN	a.	Guaranteed (fully or partially)	Specified or determinable equal or unequal sums of money payable at specified intervals from the start of the policy, or a fixed or determinable date linked to a life event until the value of the investment is exhausted; or a lump sum or specified or determinable equal or unequal sums of money payable at specified intervals equal to the remaining value of the investment to the estate, or one or more dependents or nominees after the death of the policyholder
		b.	Market related	
		c.	Linked	
		d.	With Discretionary Participation features	
9.	REINSURANCE	a.	Proportional in respect of a class or sub-class referred to above	
		b.	Non-proportional in respect of a class or sub-class referred to above	



TABLE 2

## CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS

## NON-LIFE INSURANCE

	CLASS		SUB-CLASS	DESCRIPTION
1.	<b>MOTOR</b>	a.	Personal lines	Covers damage or loss resulting from the possession, use or ownership of motor vehicles and other vehicles operating on land, excluding railway rolling stock and warranty business
		b.	Commercial lines	
2.	<b>PROPERTY</b>	a.	Personal lines	Covers damage to or loss resulting from the possession, use or ownership of property (other than classes 1 above and 3 to 8 below)
		b.	Commercial lines	
3.	<b>AGRICULTURE</b>	a.	Personal lines	Covers damage or loss to crop, forestry, agricultural equipment, other agricultural activities and livestock <sup>1</sup>
		b.	Commercial lines	
4.	<b>ENGINEERING</b>			Covers damage to or loss resulting from the possession, use or ownership of machinery or equipment; the erection of buildings or other structures; the undertaking of other works; or the installation of machinery or equipment, and includes loss of revenue
5.	<b>MARINE</b>	a.	Personal lines	Covers damage or loss resulting from the possession, use or ownership of vessels used on or in a river, canal, dam, lake or sea
		b.	Commercial lines	
6.	<b>AVIATION</b>	a.	Personal lines	Covers damage or loss resulting from the possession, use or ownership of aircraft or spacecraft
		b.	Commercial lines	
7.	<b>TRANSPORT</b>	a.	Personal lines	Covers damage or loss resulting from the conveyance, storage, treatment and handling of goods in transit, irrespective of the form of transport
		b.	Commercial lines	
8.	<b>RAIL</b>			Covers damage or loss resulting from the possession, use or ownership of railway rolling stock or related infrastructure
9.	<b>LEGAL EXPENSE</b>	a.	Personal lines	Covers any legal expenses and costs of litigation
		b.	Commercial lines	
10.	<b>LIABILITY</b>	a.	Directors and officers	Covers liability to another person
		b.	Employer liability	
		c.	Product liability (including product guarantee and product recall)	
		d.	Professional indemnity	
		e.	Public liability	
		f.	Aviation	

<sup>1</sup> Livestock includes bloodstock, wildlife, birds and aquaculture.

CLASS		SUB-CLASS		DESCRIPTION
		g.	Engineering (including environmental impairment liability)	
		h.	Marine	
		i.	Motor	
		j.	Rail	
		k.	Transport	
		l.	Personal	
		m.	Other	
11.	<b>CONSUMER CREDIT</b>	a.	Personal lines	Lump sum payable to satisfy all or part of a financial liability to a credit provider in the event of loss resulting from the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement
		b.	Commercial lines	
12.	<b>TRADE CREDIT</b>			Covers loss resulting from the provision of export credit or agricultural credit or any other trade credit as a result of insolvency or any other event
13.	<b>GUARANTEE</b>		Commercial lines	Covers loss resulting from— * insolvency; * the direct and indirect failure of a person to discharge an obligation; * suretyship offered as part of normal business activities, other than a guarantee issued by a Bank registered under the Banks Act, 1990 (Act No. 94 of 1990)
14.	<b>ACCIDENT AND HEALTH</b>	a.	Individual— Personal lines	Covers costs or loss of income resulting from— * a disability or death event caused by an accident; or * a health event, other than costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), including any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class;
		b.	Individual— Commercial lines	Covers costs or loss of income resulting from— * a disability or death event caused by an accident; or * a health event, other than costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), including any— * kind, type or category of contract identified by the Minister in regulations as a policy that may be entered into under this class; * an event covered under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)

CLASS		SUB-CLASS		DESCRIPTION
		c.	Group	Covers costs or loss of income of a beneficiary resulting from— * a disability or death event caused by an accident; or * a health event, other than costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998). Includes any— — kind, type or category of contract identified by the Minister in regulations as a policy that may be entered into under this class; — an event covered under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)
15.	TRAVEL	a.	Individual— Personal lines	Covers damage or loss resulting from— * cancellation, interruption, loss of property (including baggage), or other unforeseen events before, while and after travelling; * a death, disability or health event while travelling
		b.	Individual— Commercial lines	
		c.	Group	
16.	MISCELLANEOUS	a.	Personal lines	Covers damage to or loss resulting from a risk not addressed under any other class or sub-class referred to in this Table, which risk is approved by the Prudential Authority
		b.	Commercial lines	
17.	REINSURANCE	a.	Proportional in respect of a class or sub-class referred to above.	
		b.	Non-proportional in respect of a class or sub-class referred to above	

## SCHEDULE 3

### TRANSITIONAL ARRANGEMENTS

#### Definitions and interpretation

1. (1) In this Schedule, unless the context indicates otherwise—

“**effective date**” means the date fixed by the Minister in accordance with section 73(1) as the date that this Act comes into operation;

“**previous Act**” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), or both, as the case may be; and

“**previously registered insurer**” means an insurer registered or deemed to have been registered under the previous Act.

- (2) A reference in this Schedule to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

#### Repeal of matters prescribed under previous Act

2. Any matter prescribed by the Minister under a section of a previous Act in respect of the prudential supervision of insurers before the section was amended or repealed is hereby repealed, including Parts 2 and 4 of the Regulations under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and Parts 2 and 3 of the Regulations under the Short-term Insurance Act (Act No. 53 of 1998), 1998.

#### Pending matters

3. Any matter relating to prudential supervision pending before the Registrar under the previous Act immediately before the effective date and not fully addressed at that time, must be concluded by the Prudential Authority in terms of that previous Act, despite its amendment.

#### Preservation and continuation of court proceedings and orders

4. (1) Any proceedings in any court in terms of the previous Act immediately before the effective date are continued in terms of that Act, as if it had not been amended.

(2) Any order of a court in terms of the previous Act, and in force immediately before the effective date, continues to have the same force and effect as if that Act had not been amended, subject to any further order of the court.

#### Continued investigation and enforcement of previous Act

5. (1) Despite the partial repeal of the previous Act—

(a) any investigation or inspection under the previous Act by the Registrar in respect of compliance with the previous Act and pending immediately before the effective date, may be continued by the Prudential Authority, and the Prudential Authority may take any regulatory action under those Acts that the Prudential Authority deems appropriate in respect of any non-compliance; and

(b) for a period of three years after the effective date, the Prudential Authority may initiate an investigation or inspection under the Financial Sector Regulation Act in respect of any suspected non-compliance with the previous Act that occurred during the period of three years immediately before the effective date, and may take any regulatory action under those Acts that the Prudential Authority deems appropriate in respect of that non-compliance.

#### Continuation of previously registered insurers

6. (1) As of the effective date, every previously registered insurer that was, immediately before that date, registered as a long-term insurer or a short-term insurer under the previous Act continues to exist as an insurer, as if it had been licensed under this Act, and may continue to conduct the insurance business for which it was so registered until a licence is granted or not granted during the period of two years referred

to in subitem (2), subject to and in accordance with the governance, financial soundness, security, reporting and public disclosure obligations imposed under this Act.

(2) The Prudential Authority must, within a period of two years after the effective date, direct all previously registered insurers to apply for a licence in accordance with this Act.

(3) The Prudential Authority must, within two months of the effective date, issue guidance on the process the Prudential Authority will implement to give effect to subitem (2).

(4) If the Prudential Authority does not grant a licence, or does not grant a licence in respect of all the classes or sub-classes set out in Schedule 2 that are similar to the business that the previously registered insurer conducted on the effective date, the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to—

- (a) discharge its obligations under all insurance policies entered into in respect of that classes or sub-classes before the relicensing;
- (b) ensure the orderly resolution of that insurance business of the insurer; or
- (c) transfer that insurance business to another insurer under section 50 of this Act by a specified date.

(5) Section 23(5)(a) comes into effect six months after the date on which an insurer is relicensed.

### **Maintenance of financial soundness**

7. An insurer that immediately after the effective date fails to comply with the financial soundness requirements must submit a scheme or strategy referred to in section 39 of this Act to the Prudential Authority in accordance with that section, subject to that insurer holding capital of at least R 10 million.

### **Reporting**

8. An insurer whose 2016 financial year end falls before the effective date, must, despite the effective date, comply with the reporting obligations imposed under this Act in respect of that financial year.

### **Key persons and significant owners other than representatives, deputy representatives of Lloyd's and trustees of Lloyd's trust**

9. (1) Any person appointed as a key person and any significant owner of an insurer immediately before the effective date is deemed to meet the fit and proper requirements of this Act, subject to the requirements of this Act.

(2) Despite sub-item (1), the Prudential Authority may act in accordance with section 19 if the Prudential Authority reasonably believes that a key person or significant owner does not comply or no longer complies with the prescribed fit and proper requirements.

(3) The Prudential Authority must, when considering a licence application referred to in item 6(2)—

- (a) approve the directors and auditor of the insurer; and
- (b) require the previously registered insurer to demonstrate and certify that its key persons (other than directors and auditor) and significant owners meet the prescribed fit and proper requirements.

### **Conducting of business other than insurance business inside Republic and conducting of any other business outside Republic**

10. (1) As of the effective date, every previously registered insurer that, immediately before that date, was conducting any business other than insurance business in the Republic or conducting any business, including business similar to insurance business, outside the Republic, may continue to conduct that business for a period of two years.

(2) A previously registered insurer must, when directed under Item 6 to apply for a licence in accordance with this Act, also apply for approval to conduct—

- (a) any business other than insurance business in the Republic, including any business performed on behalf of another person; or
- (b) any business, including business similar to insurance business, outside the Republic.

(3) If the Prudential Authority does not approve the business referred to in sub-item (2), the Prudential Authority must direct the insurer to make arrangements to the satisfaction of the Prudential Authority to ensure the orderly resolution or transfer of that business of the insurer.

**Lloyd's**

**11.** (1) The requirements of the previous Act continue to apply to Lloyd's and Lloyd's underwriters for a period of 18 months after the effective date.

(2) Lloyd's must, within three months after the effective date, submit a plan to the Prudential Authority demonstrating how compliance with this Act will be achieved within 18 months after the effective date.

**Insurance groups**

**12.** A previously registered insurer that is part of a group of companies must, within two months of the effective date, notify the Prudential Authority thereof, and provide the Prudential Authority with detailed information on the structure of the group of companies, its holding company and intra-group transactions.

## MEMORANDUM ON THE OBJECTS OF THE INSURANCE BILL

### BACKGROUND TO THE BILL

#### 1. BACKGROUND

- 1.1 The Insurance Bill of 2016 (“the Bill”) provides a consolidated legal framework for the prudential supervision<sup>1</sup> of insurers.
- 1.2 The Bill gives effect to important national government policy objectives by enhancing—
  - access to insurance through the introduction of a microinsurance<sup>2</sup> regulatory framework;
  - the financial soundness of insurers and the financial services sector, and the protection of policyholders through—
    - introducing a new Solvency Assessment and Management (SAM) regime;
    - introducing a framework for insurance group supervision; and
    - enhancing reinsurance arrangements; and
  - alignment with international standards (adapted to South African circumstances) in accordance with South Africa’s G20 commitments.

#### 2. THE ENVISAGED EFFECTIVE DATE

- 2.1 It is envisaged that the Bill will replace those sections of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (“the Insurance Acts”) relating to prudential supervision.
- 2.2 It is important that the Bill becomes effective as soon as possible for the following reasons:
  - The Bill has been in development for a 6 year period, and the development process has been comprehensive and inclusive.
  - Dual reporting has already commenced and insurers have started with the development of the necessary processes and systems to meet the requirements of the Bill. A delay in implementing the Bill may result in increased implementation costs and a loss of momentum.

#### 3. COMPLEMENTING BROADER FINANCIAL SECTOR REFORMS

The Bill builds on the Twin Peaks model of financial regulation that is envisaged in the Financial Sector Regulation Bill, 2015, in respect of prudential supervision.

#### 4. OBJECTIVE OF THE BILL

The objective of the Bill is to promote the maintenance of a fair, safe and stable insurance market for the benefit and protection of policyholders by establishing a legal framework for insurers and insurance groups that—

<sup>1</sup> Prudential supervision is necessary to promote and enhance the safety and soundness of insurers to protect policyholders against the risk that insurers may fail to meet their obligations and to assist in maintaining financial stability.

<sup>2</sup> Microinsurance refers to insurance that is accessed by the low-income population, provided by a variety of different providers and managed in accordance with generally accepted insurance practices.

- facilitates the monitoring and preserving of the safety and soundness of insurers;
- enhances the protection of policyholders and potential policyholders;
- increases access to insurance for all South Africans; and
- contributes to the stability of the financial system in general.

The key policy objectives that are sought to be achieved by the Bill are discussed below.

## 5. POLICY OBJECTIVE 1: ENHANCING ACCESS TO INSURANCE

- 5.1 A well functioning micro-insurance market is essential to financial inclusion, as it allows low income households access to a variety of good value formal financial products appropriate to their needs. Greater financial inclusion has positive effects on economic growth and the reduction of income inequalities. Financial stability at household level is essential to growth and prosperity for individuals, companies and communities. Without the protection against unexpected loss provided by insurance, even those households and businesses that have established some financial security may find themselves dragged back into the cycle of poverty.
- 5.2 The Bill gives effect to the National Treasury's *Microinsurance Policy Document* released in July 2011. It supports the development of an inclusive insurance sector through the proportionate and appropriate regulation and supervision of microinsurance. It balances lowering regulatory barriers to entry, so as to facilitate access and support affordability, while at the same time ensuring that there is appropriate and sufficient consumer protection in place.
- 5.3 The Bill achieves the above by—
  - Facilitating formalisation by currently informal providers, and in the process promoting the formation of regulated and well capitalised insurers and small business development;
  - Lowering barriers to entry, which should encourage broader participation in the market and promote competition among insurers, further supporting poverty alleviation through economic growth and job creation;
  - Enhancing consumer protection within this market segment through appropriate prudential<sup>3</sup> regulation and improved enforcement of compliance; and
  - Facilitating effective supervision and enforcement and supporting the integrity of the insurance market as a whole.
- 5.4 The Bill allows for a lower minimum regulatory capital requirement for microinsurers as well as a simpler dedicated prudential regulatory model (to be prescribed) suited to the risk profile of microinsurers.
- 5.5 To support the ease and effectiveness of supervision, the Bill provides that entities must be registered as dedicated microinsurers, under a separate licence, in order to benefit from the lighter prudential requirements.

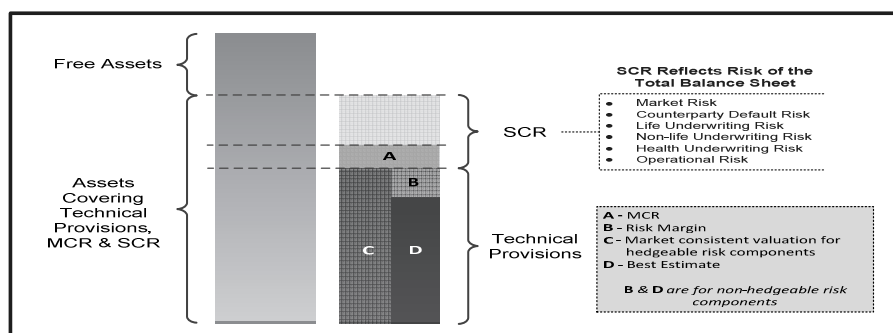
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<sup>3</sup> Enhanced conduct of business regulation will be facilitated through dedicated Conduct of Business / Market Conduct legislation. The legislation will provide for specific requirements relating to advice and intermediation, and product standards.



## 6. POLICY OBJECTIVE 2: ENHANCING FINANCIAL SOUNDNESS—THE NEW SOLVENCY ASSESSMENT AND MANAGEMENT (SAM) REGIME

- 6.1 The prevailing legal framework no longer adequately meets the objectives of prudential supervision. The prevailing framework is rules-based and primarily relies on historical information. This does not allow for a proactive and risk-sensitive approach to prudential supervision, whereby the supervisory requirements are based on the amount of risk that an insurer takes on.
- 6.2 The new SAM regime introduces a forward-looking risk-based approach to solvency, by aligning the capital requirements with the underlying risks of an insurer.
- 6.3 Its primary objective is the protection of policyholders and beneficiaries.
- 6.4 It also has the following additional objectives:
- Alignment of capital requirements with the underlying risks of an insurer;
  - Establishing a proportionate, risk-based approach to supervision with appropriate treatment both for small insurers and large, cross-border groups;
  - Providing incentives to insurers to adopt more sophisticated risk monitoring and risk management tools; and
  - Helping to maintain financial stability.
- 6.5 The SAM regime is principles-based regulation based on an economic balance sheet, and utilises a three pillar structure of capital adequacy (Pillar 1), systems of governance (Pillar 2), and reporting requirements (Pillar 3).
- 6.6 Pillar 1 sets out the quantitative requirements for assessing the financial soundness of insurers. The economic balance sheet approach to be adopted under SAM integrates the interdependencies between all assets and liabilities, calculated at market consistent values. The insurer is required to hold enough capital resources to meet the Solvency Capital Requirement (SCR), which is based on the risk profile of the insurer. The Minimum Capital Requirement (MCR) sets a minimum lower capital boundary for an insurer's capital requirement. The different levels of capital requirements allow the supervisor to take stronger supervisory action as the insurer's financial soundness position deteriorates. The solvency balance sheet is illustrated below.



- 6.7 Pillar 2 sets out the governance and risk management requirements for insurers. Effective risk management and sound governance structures are of equal importance to an insurer's solvency. Weaknesses in these areas may create susceptibility to an external 'trigger event', ultimately resulting in a solvency problem. A shortcoming in regulatory frameworks highlighted by the global financial crisis has been the lack of sufficient mechanisms to provide supervisors with an early warning of a potential solvency concern, or sufficient powers to intervene. Pillar 2 addresses this issue, by assessing the

effectiveness of corporate governance and risk management. Pillar 2 serves as a major link between Pillar 1 and Pillar 3 of SAM, by considering the extent to which the corporate governance structure is embedded in the day-to-day running of the business.

- 6.8 A key tool in this regard is an insurer's Own Risk and Solvency Assessment (ORSA) process. The ORSA encompasses maintenance and embedding of the risk management system, forward-looking capital planning and management, stress and scenario testing and emerging risk management. Under the ORSA process, insurers are required to conduct at least annually, and at any instance of a material change in the risk profile of the business, a self-assessment of their risks and the level of solvency needed to cushion those risks. The ORSA is intended to identify, assess, monitor, manage, and report all material and complex risks that the insurer faces. It is intended to enable the insurer to continuously meet its solvency needs. The ORSA integrates risk and capital management, because it reflects an insurer's own risk appetite. It is important that an insurer is able to demonstrate that the ORSA is an integral part of managing the business against the chosen strategy, and that any changes to strategy or risk appetite consider the effects on solvency needs.
- 6.9 Pillar 3 focuses on supervisory reporting and public disclosure. It seeks to create transparency, with the aim of harnessing market discipline in support of regulatory objectives. The quality and quantity of data which is requested from insurers on a quarterly and annual basis will be enhanced, which in turn will allow a supervisory process that is more risk-based and forward-looking than the supervisory process which is followed under the current Insurance Acts. The enhanced data will also facilitate the monitoring of financial stability risks that will be required for macroprudential supervision. Sensitive information, the disclosure of which would result in significant undue competitive disadvantage, or which is subject to policyholder or other counterparty confidentiality obligations, will be reported confidentially to the regulator.
- 6.10 The SAM regime is based on Solvency II— the prudential supervisory framework of the European Union— but is adapted to South African circumstances. This was informed by the fact that South Africa has strong economic links with Europe and the fact that Solvency II represents international regulatory best practice. It will also assist South Africa in attaining Solvency II 3rd country equivalence, which will help ensure that South African based insurers may continue doing business in the European Union (EU) and other jurisdictions without concerns with respect to the quality of their home supervision.
- 6.11 A number of other emerging economies such as Brazil, India and China are also enhancing their prudential supervisory frameworks along these lines.

## **7. THE FRAMEWORK FOR INSURANCE GROUP SUPERVISION**

- 7.1 The prevailing legislative framework does not allow for insurance group supervision.
- 7.2 A significant number of South African licensed insurers are currently operating within a group structure. Insurance groups benefit from the pooling and diversification of risk, intra group financing, and integrated governance structures. However, being part of a group also presents a range of risks to an insurer. These may include, for example, direct or indirect risk exposures to other group entities, conflicts of interest, and inadequate risk assessment. The recent global financial crisis has demonstrated that the failure of one entity within a financial conglomerate may damage, or even cause the failure of, related entities.
- 7.3 The Bill introduces a new group-wide supervision regime for insurers. This allows the regulator to regulate and place requirements on the controlling

companies, in order to protect policyholders and beneficiaries from risks emanating from the insurance group. The regime follows a similar structure to that of the SAM regime discussed above. It is principles-based regulation based on an economic balance sheet, and utilises a three pillar structure of capital adequacy (Pillar 1), systems of governance (Pillar 2), and reporting requirements (Pillar 3).

## **8. ENHANCING REINSURANCE ARRANGEMENTS**

- 8.1 The reinsurance market in South Africa plays a crucial role in the insurance sector, as indeed it does in most other insurance markets across the world. Reinsurance contributes to the stability of insurance markets. It assists in improving the risk profile and the financial soundness of insurers, by diversifying and limiting accumulations of exposure, and consequently creating underwriting capacity. It provides insurers with lower or more predictable claims costs. It also reduces volatility, and thus the uncertainty of the insurers' pricing risks, by pooling.
- 8.2 However, to achieve the above, reinsurers must be able and willing to meet their obligations as they fall due. It is therefore critical to put in place a prudential framework that protects the financial position of insurers from non-performance by reinsurers, specifically reinsurers operating outside the Republic, taking into account the different standards of supervision that non-resident reinsurers may be subject to in their home jurisdictions.
- 8.3 The prevailing legislative framework inadvertently allows for undesirable regulatory arbitrage and an un-level playing field. Further, the framework could be improved to enhance the role played by reinsurance in the insurance sector.
- 8.4 The Bill facilitates a new reinsurance regulatory framework that allows for a wider recognition of reinsurance, including through the use of branches, with appropriate recognition of the risks of different reinsurance structures in a manner that is consistent with South Africa's international trade obligations. The new framework also—
  - establishes a level playing field;
  - increases competition;
  - addresses certain supervisory concerns relating to inward reinsurance;
  - facilitates the maintenance and improvement of the current skill levels of the South African reinsurance industry for the benefit of the wider economy; and
  - enhances and strengthens the ongoing development of the local reinsurance industry as a hub for reinsurance business into Africa.

## **9. POLICY OBJECTIVE 3: ALIGNMENT WITH INTERNATIONAL STANDARDS**

- 9.1 Since the 2008 global financial crisis, the G20 (of which South Africa is a member), guided by the International Monetary Fund and the Financial Stability Board (of which South Africa is a member by virtue of its membership of the G20), has led the process to make the global financial sector safer. Given that insurers operate globally, but are regulated nationally, it is imperative that national regulators coordinate the supervision of multinational institutions by setting and applying international standards. Also, by committing to international standards, our financial institutions are able to operate in other countries with greater ease, as the different country regulators work together.

- 9.2 In respect of insurers, the international standard setting body is the International Association of Insurance Supervisors (“IAIS”), which has issued Insurance Core Principles (“ICPs”) with which all jurisdictions must comply.
- 9.3 The prevailing legislative framework has not been subject to a comprehensive review since 1998, and is, therefore, no longer consistent with the IAIS ICPs. This has been confirmed by the assessments conducted by the International Monetary Fund and World Bank in 2008, 2010 and 2014 in respect of insurance regulation in South Africa in terms of their joint “Financial Sector Assessment Program” (“FSAP”).
- 9.4 The Bill is aligned to the IAIS ICPs.

## **SUMMARY OF THE BILL**

### **10. MAIN FEATURES OF THE BILL**

#### **10.1 PROPORTIONALITY**

The Bill entrenches the principle of proportionality, which means that regulatory requirements will be applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurer (and reinsurer), so that requirements imposed on small and medium-size insurers are not too onerous. An insurer’s own risk profile will serve as the primary guide to assess the application of the principle. Proportionality will be applied coherently across all aspects of the Bill.

#### **10.2 FRAMEWORK LEGISLATION**

10.2.1 The Bill is drafted as framework legislation. It is enabling or empowering (and should be in respect of the new solvency regime). This means that it contains the fundamental policy or underlying principles of legislation that are unlikely to change over time. It provides for the basic or minimum issues and powers necessary to regulate insurers, and delegates the power to make secondary legislation and other authority to implement and enforce the Bill to the Prudential Authority. It may be described as a skeleton form to which flesh is to be added by secondary legislation. The supervisory, regulatory and regulatory action powers afforded to the Prudential Authority under the Financial Sector Regulation Bill, 2015, complements the Bill. The Financial Sector Regulation Bill, 2015, and the Bill together constitutes a comprehensive and integrated regulatory framework for the prudential supervision of insurers.

10.2.2 The delegation of the power to make secondary legislation and other authority to implement and enforce the Bill is important because, amongst other reasons, of the specialised and/or technical nature of the subject matter with which the Bill deals and to allow for or facilitate—

- expert input into its design and technical language to be used in its wording; and
- flexibility in responding to events, emergencies and industry developments.

### **11. STRUCTURE OF THE BILL**

- 11.1 *Chapter 1* of the Bill deals with the interpretation and objective of the Bill.
- 11.2 *Chapter 2* addresses the overarching framework for conducting insurance business and insurance group business by insurers, branches of foreign

reinsurers, Lloyd's and insurance groups, and the general principles for conducting insurance business or insurance group business.

- 11.3 *Chapter 3* deals with the requirements for significant owners and key persons of insurers, branches of foreign reinsurers, Lloyd's and insurance groups (directors, senior managers, heads of control functions, auditors, and representatives and trustees of branches of foreign reinsurers and Lloyd's).
- 11.4 *Chapter 4* deals with the licensing framework for insurers, branches of foreign reinsurers and controlling companies of insurers.
- 11.5 *Chapter 5* deals with the governance framework requirements for insurers, branches of foreign reinsurers, Lloyd's and insurance groups.
- 11.6 *Chapter 6* deals with the financial soundness requirements for insurers and insurance groups and the security requirements for branches of foreign reinsurers and Lloyd's.
- 11.7 *Chapter 7* deals with the reporting and public disclosure requirements for insurers, branches of foreign reinsurers, Lloyd's and insurance groups.
- 11.8 *Chapter 8* deals with matters relating to the transfer of business and other significant transactions by insurers, branches of foreign reinsurers, Lloyd's and insurance groups.
- 11.9 *Chapter 9* deals with matters relating to the resolution of insurers, branches of foreign reinsurers, Lloyd's and insurance groups.
- 11.10 *Chapter 10* provides for the administration of the Bill and the powers and functions of the regulator.
- 11.11 *Chapter 11* provides for general matters such as savings, consequential amendments, repeal of laws and transitional provisions.

## **12. ORGANISATIONS AND INSTITUTIONS CONSULTED**

- 12.1 The process for the development of the Bill was comprehensive and inclusive.
- 12.2 On 17 April 2015, subsequent to securing Cabinet approval, a draft Bill was published for public comment by 29 May 2015. A response to the public comments is available.
- 12.3 The National Treasury also hosted workshops with industry associations on 31 July 2015 to discuss their comments on the draft Bill.

## **13. THE MICRO-INSURANCE REGULATORY FRAMEWORK**

- 13.1 Following the release of the National Treasury's Microinsurance Policy Document in July 2011, a Microinsurance Steering Committee consisting of members from the National Treasury and the Financial Services Board was established with the mandate of facilitating the development of the microinsurance regulatory framework and the drafting of microinsurance legislation. The Steering Committee established four working groups, tasked with making detailed recommendations on product standards, requirements with respect to advice and intermediation, prudential requirements and tax treatment.
- 13.2 The recommendations of the working groups will be released as part of a Microinsurance Update to be published during the course of 2015, and those recommendations informed the Bill.

## ENHANCING FINANCIAL SOUNDNESS

### 14. THE NEW SOLVENCY ASSESSMENT AND MANAGEMENT (SAM) REGIME & THE FRAMEWORK FOR INSURANCE GROUP SUPERVISION

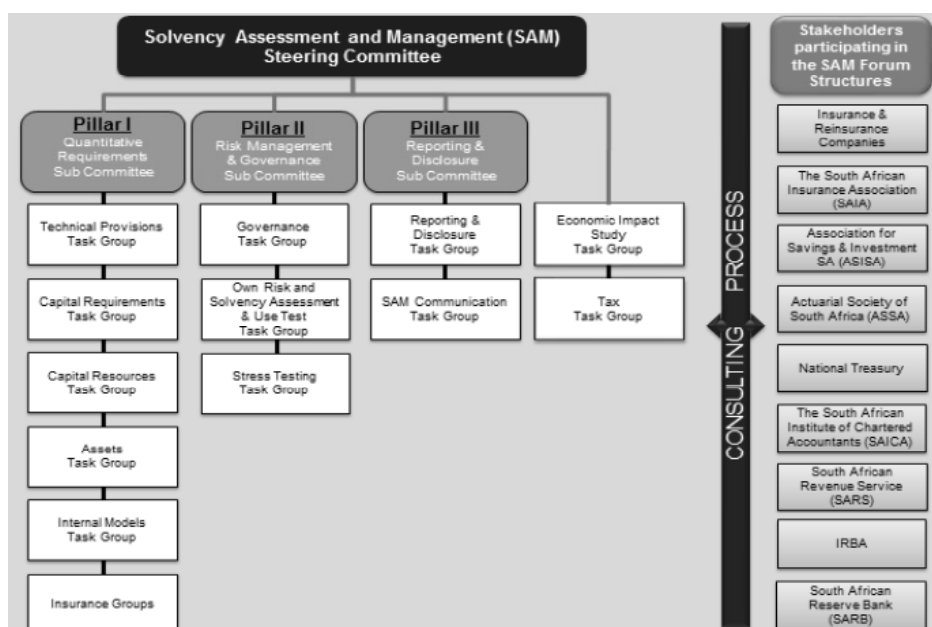
#### 14.1 The SAM Project Structure

14.1.1 In order to govern the development of the SAM regime, a SAM Steering Committee was established in 2009. The SAM Steering Committee then established various Sub-Committees, Task Groups and working groups to provide input on the various components of the SAM regime.

14.1.2 The stakeholders included in the SAM project structures comprise the following:

- National Treasury;
- Financial Services Board;
- South African Reserve Bank;
- South African Revenue Service;
- Independent Regulatory Board of Auditors; and
- Professional bodies, industry and industry associations such as insurers, the South African Insurance Association (“SAIA”), the Association for Savings and Investment South Africa (“ASISA”), the Actuarial Society of South Africa (“ASSA”), and the South African Institute of Chartered Accountants (“SAICA”).

The following figure illustrates the SAM project structures:



14.1.3 The Bill has been developed over a period of 6 years by producing various versions which have been subject to a closed consultation process through the SAM project structures.

## 14.2 Quantitative and Qualitative Impact Studies

- 14.2.1 The Bill has also been informed by impact studies that have been completed on both the quantitative and qualitative aspects of the SAM regime.
- 14.2.2 Three quantitative impact studies have been completed to test the quantitative financial soundness requirements.
- 14.2.3 In addition to the quantitative impact studies, there have been two qualitative studies to consider the readiness of the industry to comply with the governance and risk management requirements under Pillar 2.
- 14.2.4 The reports from all quantitative impact studies and the Pillar 2 readiness review studies are available on the website of the Financial Services Board ([www.fsb.co.za](http://www.fsb.co.za)).

## 14.3 Parallel Run

To prepare the industry for the implementation of the SAM Framework, a parallel run has been initiated, in which insurers are required to report information under the SAM regime along with the existing reporting required under the Insurance Acts. This process started on 1 July 2014, and will continue until the full implementation of the SAM regime. The key benefits from this dual reporting process is that the insurers are able to provide the information that will be expected when the SAM regime goes live, and that any remaining issues are dealt with before implementation.

## 15. ENHANCING REINSURANCE ARRANGEMENTS

The reinsurance arrangements are informed by—

- a research project commissioned by the Financial Services Board, which consisted of—
  - an international scan of issues in other jurisdictions and international best practice and trends in the structuring of global reinsurance operations;
  - a market survey that took the form of interviews with reinsurers operating in South Africa to understand their strategies and business challenges; interviews with local insurers to understand their reinsurance needs and key factors influencing their reinsurance decisions; interviews with local reinsurance brokers to understand the factors driving reinsurance placements; and
  - a public policy assessment that examined national interest issues with respect to the local reinsurance industry in the context of the National Treasury's Gateway to Africa initiative;
- international trade obligations, and international standards & guidance; and
- supervisory concerns and considerations.

A discussion paper on reinsurance arrangements was released at the end of April 2015 for comment by 1 June 2015.

## 16. ALIGNMENT WITH INTERNATIONAL STANDARDS

The process of aligning the Bill with the IAIS ICPs was informed by the IAIS ICPs itself and the findings of the assessments conducted by the International Monetary Fund and World Bank in 2008, 2010 and 2014 in respect of insurance regulation in South Africa in terms of their joint Financial Sector Assessment Program ("FSAP").

## **FINANCIAL IMPLICATIONS OF THE BILL**

### **17. FINANCIAL IMPLICATIONS FOR THE STATE**

There are no significant financial implications envisaged for the fiscus, as the regulator will continue to be funded through fees and levies imposed on financial institutions (this is consistent with the prevailing situation).

### **18. FINANCIAL IMPLICATIONS FOR THE INSURANCE INDUSTRY, CONSUMERS, AND THE BROADER ECONOMY- A COST-BENEFIT ANALYSIS**

- 18.1 Greater financial inclusion has positive effects on economic growth and the reduction of income inequalities. Financial stability at household level is essential to growth and prosperity for individuals, companies and communities.
- 18.2 In addition to the quantitative impact studies described above, an Economic Impact Study on the impact of the SAM regime was commissioned. This study considered the direct costs and benefits, as well as the potential indirect impacts from changes in behaviour from the introduction of the SAM regime. These results were then used to model the wider economic impact of the introduction of the SAM regime on the South African economy.
- 18.3 Not only does SAM increase compliance with international standards, but the introduction of SAM facilitates a forward looking and risk-based approach to insurance supervision. The SAM framework will also enhance the risk management within the insurance industry. The alignment of risk to capital and enhanced management and supervision of risk is expected to lead to a more financially stable insurance industry. This, in turn, is expected to lead to a more stable financial sector, due to the interconnectedness of the South African financial sector. Given the potential financial stability risks that a systemic failure could result in, the costs introduced by SAM are small in comparison to the cost of a financial sector collapse.
- 18.4 The Economic Impact Study shows that the implementation of SAM does not result in a cost to the economy, but rather that there is evidence to believe that the implementation of SAM may have a neutral to slightly positive impact on the overall economy and contribute towards GDP growth and employment.
- 18.5 The implementation of SAM will result in additional costs to the insurance industry. These costs will be offset by the benefits described above, although they are more difficult to measure. Even if these costs are passed on to consumers in the medium term, they are likely to be small, and may even be negligible given the difficulty in quantifying counterbalancing benefits and the fact that pricing may be influenced by many other factors.
- 18.6 The study has also identified some other potentially negative impacts of SAM, most notably the potential negative impact on financial inclusion. The introduction of a dedicated microinsurance regulatory framework and a proportionate approach to the implementation of the SAM framework will mitigate these negative impacts.
- 18.7 The study has further identified a number of recommendations relating to some of the detailed requirements in order to facilitate a smooth transition to the SAM Framework. These recommendations relate to clarifications of the SAM Framework, the supervisory approach taken, further transitional considerations and the application of proportionality.
- 18.8 Overall, the study suggests that the implementation of SAM is likely to lead to better risk management at a direct cost that is small when seen in the context of the size of the South African insurance industry. This additional cost to the insurance industry will lead to a neutral to slightly positive impact for the



economy as a whole, while also contributing to a more sustainable and stable financial sector.

18.9 Given that insurers operate globally, but are regulated nationally, it is imperative that national regulators coordinate the supervision of multinational institutions by setting and applying international standards. Also, by committing to international standards, our financial institutions are able to operate in other countries with greater ease, as the different country regulators work together.

18.10 In conclusion, the Bill will result in additional costs to the insurance industry. These costs will be offset by improvements to the sustainability of the insurance industry and the stability of the financial system as a whole.

## **19. CONSTITUTIONAL IMPLICATIONS**

None.

## **20. PARLIAMENTARY PROCEDURE**

20.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution, as the Bill contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

20.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.





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