

**REPUBLIC OF SOUTH AFRICA**

**DRAFT INSURANCE BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill published in Government Gazette No.      of      )  
(The English text is the official text of the Bill)*  
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**(MINISTER OF FINANCE)**

**[B - 2015]**

**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 replace certain parts of the Long-term Insurance Act, 1998, and Short-term Insurance Act, 1998; and to provide for matters connected therewith.**

**ARRANGEMENT OF SECTIONS****CHAPTER 1****INTERPRETATION AND OBJECTIVE OF ACT**

1. Definitions
2. General interpretation of Act
3. Objective of Act

## **CHAPTER 2**

### **CONDUCTING INSURANCE BUSINESS AND INSURANCE GROUP BUSINESS**

#### ***Part 1***

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

4. Principles

#### ***Part 2***

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

5. Insurance business and limitations on other business

#### ***Part 3***

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

6. Conducting of insurance business by branches of foreign reinsurers and Lloyd's underwriters
7. Claims against branches of foreign reinsurers or Lloyd's underwriters

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

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

8. Application of this Part
9. Registrar to determine scope of group supervision

10. Incorporation of or conversion to controlling company
11. Responsibility of controlling company
12. Transparent group structure

### **CHAPTER 3**

#### **KEY PERSONS AND SIGNIFICANT OWNERS**

##### ***Part 1***

##### ***Fit and proper requirements***

13. Fit and proper requirements for key persons and significant owners

##### ***Part 2***

##### ***Appointments and terminations of key persons***

14. Approval of appointment of certain key persons
15. Notification of appointment and change of circumstances of certain key persons
16. Termination of appointment of key persons by insurer or controlling company

##### ***Part 3***

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

17. Changes in control of insurer or controlling company
18. Registration of shares in name of nominee



**CHAPTER 4****LICENSING, AND SUSPENSION AND WITHDRAWAL OF INSURER'S LICENCE**

19. Application of Chapter
20. Requirements for licence
21. Licensing
22. Lloyd's deemed to be licensed
23. Licence conditions
24. Variation of licence conditions
25. Suspension of licence
26. Consequences of suspension of licence
27. Withdrawal of licence

**CHAPTER 5****GOVERNANCE*****Part 1******Insurers and insurance groups***

28. Governance framework
29. Failure to maintain governance framework
30. Auditor
31. Audit Committee

**Part 2**

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

- 32. Representative office

**CHAPTER 6**

**FINANCIAL SOUNDNESS**

**Part 1**

***Insurers and insurance groups***

- 33. Maintenance of financially sound condition
- 34. Capital add-on
- 35. Capital and securities
- 36. Failure to maintain financially sound condition

**Part 2**

***Additional financial soundness requirements for branches of foreign  
reinsurers and Lloyd's***

- 37. Security to be held in trust
- 38. Trust and trustees

**CHAPTER 7**  
**REPORTING AND PUBLIC DISCLOSURES**

- 39. Information concerning beneficial interests
- 40. Information for supervisory purposes - returns
- 41. Annual disclosures
- 42. Financial statements and accounting requirements
- 43. Auditing requirements
- 44. Information relating to governance and supervision of foreign reinsurers,  
Lloyd's or Lloyd's underwriters
- 45. Additional matters relating to this Chapter

**CHAPTER 8**  
**TRANSFERS OF BUSINESS AND OTHER SIGNIFICANT TRANSACTIONS**

- 46. Transfer, substitution, fundamental transaction or change of institutional form
- 47. Acquisitions or disposals

**CHAPTER 9**  
**RESOLUTION**

- 48. Application of this Chapter

**Part 1**

**Statutory management**

- 49. Appointment of statutory manager

**Part 2**

**Curatorship**

- 50. Appointment of curator

**Part 3**

**Business rescue**

- 51. Application of Companies Act to business rescue of insurers and controlling companies
- 52. Business rescue applications and resolutions

**Part 4**

**Winding-up**

- 53. Application of Companies Act to winding up of insurers and controlling companies
- 54. Winding-up applications and resolutions
- 55. Preferred claims of policyholders

**CHAPTER 10**

**ADMINISTRATION OF THIS ACT**

***Part 1***

***Applications and notifications***

- 56. Applications
- 57. Notifications

***Part 2***

***Administrative decisions***

- 58. Administrative procedure
- 59. Appeal against decision of Registrar

***Part 3***

***Powers and functions of Registrar***

- 60. Registrar and Deputy Registrar
- 61. General powers and functions of Registrar
- 62. Standards
- 63. Interpretation rulings
- 64. Exemptions
- 65. Supervisory approach
- 66. Fees

- 67. Publication by Registrar

**Part 4**

***Supervisory cooperation***

- 68. Cooperation with other regulatory authorities

**Part 5**

***Preventative and corrective measures***

- 69. Information request
- 70. Reviews, investigations and verifications
- 71. On-site visits and inspections
- 72. Directives
- 73. Appointment of auditor by Registrar

**Part 6**

***Remedial and enforcement measures***

- 74. Administrative penalties
- 75. Unlicensed insurance business
- 76. Debarment
- 77. Offences

**CHAPTER 11**  
**GENERAL PROVISIONS**

78. Consequential amendments, repeal of laws and transitional arrangements
79. Delays and exemptions
80. Short title and commencement

**SCHEDULE 1**  
**LAWS AMENDED**

**SCHEDULE 2**  
**CLASSES AND SUB-CLASSES**

**TABLE 1**  
**CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS – LIFE INSURANCE**

**TABLE 2**  
**CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS – NON-LIFE**  
**INSURANCE**

**SCHEDULE 3**  
**TRANSITIONAL ARRANGEMENTS**

1. Definitions and interpretation
2. General savings

3. Pending matters
4. Preservation and continuation of court proceedings and orders
5. Continued investigation and enforcement of previous Act
6. Continuation of previously registered insurers
7. Key persons and significant owners other than representatives, deputy representatives of Lloyd's and the trustees of the Lloyd's trust
8. Lloyd's Insurance groups

## CHAPTER 1

### INTERPRETATION AND OBJECTIVE OF ACT

#### Definitions

1. In this Act, unless the context indicates otherwise—

**"associate"** has the meaning set out in the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body;

**"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;

**"beneficiary"** means the person to whom an insurer undertakes to fulfill insurance obligations, which person may be or may not be the policyholder;

**"board of directors"** means the—

- (a) board of directors of a company registered under the Companies Act;
- (b) board of directors of a co-operative registered under the Co-operatives Act; or

(c) governing body of a member-based democratically controlled association of persons established by an Act of Parliament;

**"branch of a foreign reinsurer"** means an operating entity of a foreign reinsurer that is not a legal entity separate from the foreign reinsurer, and is part of a foreign reinsurer in terms of its organisation;

**"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;

**"captive insurer"** means an insurer that only insures its own operational risks, the operational risks of its holding company or subsidiaries of its holding company;

**"cell captive insurer"** means an insurer that only conducts insurance business through cell structures;

**"cell structure"** means an arrangement under which an entity (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; and
- (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation linked to profits or losses generated by the insurance business referred to in paragraph (c); and
- (c) places insurance business with the insurer referred to in paragraph (a), which business is ring-fenced on a going concern basis from the other insurance business of that insurer;

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

**"control functions"** means the dedicated functions (whether in the form of a unit or department) of an insurer responsible for supporting the board in the fulfillment of its

oversight responsibilities in respect of risk management, compliance, actuarial control, internal audit and any other function prescribed;

**"controlling company"** means a holding company of an insurance group that is a public company whose only business is the acquiring, holding and managing of another company or other companies;

**"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;

**"director"** means a member of a board of directors;

**"disability event"** means the event of a person becoming temporarily or permanently disabled so that the person is unable to—

- (a) continue his or her occupation or employment;
- (b) participate in any occupation or employment that is reasonably suitable for that person given, amongst other matters, his or her education, experience and age; or
- (c) carry on the functions required for normal activities of life;

**"encumber"** means any limitation on or qualification in respect of the exercise of a contractual right, including, but not limited to, any contractual obligation that must be fulfilled before that contractual right may be exercised;

**"financial conglomerate"** means an insurance group that includes at least one person subject to registration, licensing or approval under—

- (a) the laws, other than this Act, referred to in the definition of "financial institution" in section 1 of the Financial Institutions (Protection of Funds) Act;
- (b) 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); or
- (c) the National Credit Act, 2005 (Act No. 34 of 2005);

**"Financial Institutions (Protection of Funds) Act"** means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);

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

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

**"foreign reinsurer"** means an institution—

- (a) 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; and
- (b) registered as an external company under the Companies Act;

**"fit and proper requirements"** means, amongst other things—

- (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;

**"governing body"** means one or more persons, whether elected or not, which manages, controls, formulates the policy and strategy, directs the affairs of, or has the authority to exercise the powers and perform any of the functions of a member-based democratically-controlled association of persons established by an Act of Parliament;

**"head of a control function"** means the person appointed to ensure the performance of the responsibilities of a control function, and includes a person to whom a control function is outsourced;

**"health event"** means an event relating to the health (other than occupational or functional ability) of the mind or body of a person or an unborn;

**"insourcing"** means an arrangement of any form between an insurer or a branch of an insurer and another person (whether that person is supervised under any law or not), in terms of which the insurer or branch of the insurer performs any function or activity, whether directly or indirectly on behalf of that person;

**"insurance business"** means, subject to section 5, non-life insurance business and life insurance business conducted or deemed to be conducted in the Republic in the various classes and sub-classes of insurance business set out in Schedule 2, and includes reinsurance business in respect of the various classes and sub-classes of insurance business set out in Schedule 2;

**"insurance group"** means two or more persons, at least one of whom is an insurer, and includes—

- (a) the holding companies of any such persons, incorporated in the Republic;
- (b) their related persons or inter-related persons, including persons located or incorporated outside the Republic; and
- (c) their associates;

**"insurance obligations"** means all obligations, whether those obligations constitute an obligation to pay one or more sums of money, render services or provide any other obligations, including guaranteed and reasonably expected obligations of an insurer under or arising from insurance policies entered into by the insurer, irrespective of the risk covered under those policies;

**"insurance policy"** means a non-life insurance policy or a life insurance policy;

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

**"insurer"** means a person licensed or deemed to be licensed as an insurer under this Act, and includes Lloyd's, a Lloyd's underwriter and a reinsurer, unless specifically provided for otherwise in this Act;

**"inter-related"** has the meaning set out 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;

"key person" means—

- (a) a director;
- (b) a senior manager;
- (c) a head of a control function;
- (d) an auditor referred to in section 30;
- (e) a representative and a deputy representative of Lloyd's or a branch of a foreign reinsurer referred to in section 32; and
- (f) a trustee of a trust referred to in section 38;

**"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 business that consists of one or more of the following—

- (a) concluding life insurance policies;
- (b) assuming risk under life insurance policies;
- (c) undertaking insurance obligations under life insurance policies;

- (d) meeting insurance obligations under life insurance policies; or
- (e) any business that relates to business referred to in paragraph (a), (b), (c) or (d);

excluding—

- (a) business that is conducted by a person to whom or to which that specific business has been outsourced in terms of an outsourcing arrangement;
- (b) business that is insourced;

**"life insurance policy"** means any arrangement under which a person in return for the payment of a premium—

- (a) assumes a specified risk from another person by undertaking to—
  - (i) pay that other person or that other person's estate or another identified person—
    - (aa) a lump sum;
    - (bb) specified or determinable equal or unequal sums of money at specified intervals; or
  - (ii) render a service or services which—
    - (aa) serves to make good a full or partial patrimonial loss or liability for patrimonial loss of that other person, that other person's estate, or another identifiable person, on the happening of an uncertain or unplanned life event, disability event or death event relating to that other person or another identified person; or
    - (bb) serves as solace for a non-patrimonial loss of that other person, such other person's estate, or another identifiable person; or
- (b) agrees to pay another person or that person's estate, a lump sum or specified or determinable equal or unequal sums of money, from the start of the

arrangement, or on or from a fixed or 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 Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

and includes a renewal or variation of that arrangement;

**"linked insurer"** means an insurer licensed to conduct life insurance business only in the linked sub-classes set out in Schedule 2;

**"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 of Lloyd's;

**"lump sum"** means a single once-off payment of a sum of money;

**"micro-insurer"** means an insurer licensed to conduct only micro-insurance business;

**"micro-insurance 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) non-life insurance business, personal lines in—
    - (aa) classes 1-3, 11 and 14; and
    - (bb) class 10, but only to the extent that the liability directly relates to the classes referred to in item (aa); and

- (ii) life insurance business, classes 1 to 3; and
- (b) in the case of non-life insurance business, in respect of which the aggregate value of the insurance obligations under an insurance policy do not exceed the maximum amounts prescribed;
- (c) in the case of life insurance business, in respect of which the aggregate value of the insurance obligations relating to each insured under an insurance policy do not exceed the maximum amounts prescribed; and
- (d) in respect of which all policies comply with the Policyholder Protection Rules prescribed by the Registrar under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

**"Minister"** means the Minister of Finance;

**"non-life insurance business"** means business that consists of one or more of the following—

- (a) Concluding non-life insurance policies;
- (b) assuming risk under non-life insurance policies;
- (c) undertaking insurance obligations under non-life insurance policies;
- (d) meeting insurance obligations under non-life insurance policies; or
- (e) any business that relates to business referred to in paragraph (a), (b), (c) or (d);

excluding—

- (a) business that is conducted by a person to whom or to which that specific business has been outsourced in terms of an outsourcing arrangement;
- (b) business that is insourced;

**"non-life insurance policy"** means any arrangement under which a person, in return for the payment of a premium, assumes a risk from another person by undertaking to—

- (a) pay a lump sum;
- (b) pay specified or determinable equal or unequal sums of money at specified intervals;
- (c) render a service or services; or
- (d) effect a reinstatement,

which serves to make good a full or partial patrimonial loss or liability for patrimonial loss of that other person, that other person's estate, or another identified or identifiable person, on the happening of an uncertain or unplanned event, excluding a life event, disability event or death event, and includes a renewal or variation of that arrangement;

**"non-patrimonial loss"** means distress in some form or another flowing from the impairment of an interest in a person's life or wellbeing, such as the loss of amenities of life, the loss of a limb, impairment of health, the suffering of pain, sadness, hardship, unhappiness or inconvenience, and any other significant harm, where the interest relates to—

- (a) the own life and wellbeing of the person or that of his or her permanent life partner or spouse or civil union partner of a member in accordance with the Marriage Act, 1961 (Act No. 68 of 1961), the Recognition of Customary Marriages Act, 1998 (Act No. 68 of 1997), or the Civil Union Act, 2006 (Act No. 17 of 2006), or the tenets of a religion; or
- (b) the life and wellbeing of a third party, where close ties based on family, dependence or employment exist between the person and the third party;

**"official web site"** means the web site of the Financial Services Board;

**"outsourcing"** means an arrangement of any form between an insurer, a branch of an insurer or the controlling company of an insurer and another person, whether that person is supervised under any law or not, in terms of which that person performs a function or activity related to any aspect of the insurance business of that insurer (including any function or activity that enables the insurer to meet its insurance obligations), whether directly or indirectly, which would otherwise be performed by the insurer itself, and includes—

- (a) an arrangement with a related party or an inter-related party of the insurer, irrespective of that other person being located outside of the Republic;
- (b) a function or activity (such as pricing and actuarial services) performed by an insurer or a reinsurer for another insurer or reinsurer, whether under a reinsurance policy or not, but does not apply to the actual insurance provided under a reinsurance contract;

but excludes—

- (i) the insourcing of a function or activity by another person to an insurer; and
- (ii) the rendering of a financial service as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

**"person"** means any natural person, legal person, partnership, joint venture or trust, and any other body or association of persons corporate or unincorporate;

**"policyholder"** means the person with whom or with which an insurer concludes a non-life insurance policy or a life insurance policy;

**"premium"** means any direct or indirect, or partially or fully subsidised payment of any consideration;

**"prescribed"** means prescribed by the Registrar by Standard;

**"public company"** has the meaning set out in section 1 of the Companies Act, and includes a state-owned company as defined in section 1 of the Companies Act;

**"rider benefit"** means an additional insurance obligation under a non-life insurance policy or a life insurance policy, which obligation is ancillary to, and immaterial in relation to, the primary insurance obligations assumed under that policy;

**"Registrar"** means the Registrar of Insurance referred to in section 60;

**"regulatory action"** means the exercise of any power or function, or the taking of any action by the Registrar under this Act or another Act of Parliament;

**"regulatory authority"** has the meaning set out in section 1 of the Financial Services Board Act;

**"reinsurer"** means a person licensed or deemed to be licensed to conduct insurance business only in the reinsurance class and sub-classes set out in Schedule 2, and includes a branch of a foreign reinsurer so licensed, unless specifically provided for otherwise in this Act;

**"reinsurance business"** means any—

- (a) non-life insurance business or life insurance business conducted by an insurer with another insurer; or
- (b) business similar to insurance business conducted by an insurer with a person that is authorised by a regulatory authority to perform business similar to that referred to as insurance business under the laws of a country other than the Republic;

**"related"** has the meaning set out in section 1 of the Companies Act;

**"securities"** has the meaning set out in section 1 of the Companies Act and 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;

(b) a person who is directly accountable to the chief executive officer or the person who is in charge of an insurer or a controlling company; and

(c) in respect of an insurer or a controlling company—

(i) a person, other than a director or a head of a control function, 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

(ii) a person, other than a director or a head of a control function, 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"** means any person other than the Registrar that, directly or indirectly, alone or together with a related or an inter-related person—

(a) has the power to appoint a person to be a director of the board of directors of an insurer or a controlling company;

(b) must consent to the appointment of a person as a director of the board of directors of an insurer or a controlling company;

(c) in the case of an insurer or a controlling company that is a company—

(i) holds 15% or more of the issued shares of the insurer or controlling company, or a lower percentage as prescribed;

- (ii) is able to exercise or control the exercise of 15% or more of the voting rights associated with securities of that insurer or controlling company, or a lower percentage prescribed, whether pursuant to a shareholder agreement or otherwise; or
- (iii) holds rights in relation to the insurer or controlling company that, if exercised, would result in that person—
  - (aa) holding 15% or more of the securities of that insurer or controlling company, or a lower percentage prescribed;
  - (bb) having the ability to exercise or control 15% or more of the voting rights attached to shares or other securities of the insurer or controlling company, or a lower percentage prescribed; or
  - (cc) having the ability to dispose or direct the disposing of 15% or more of the securities of the insurer or controlling company, or a lower percentage prescribed; or
- (d) has the ability to materially influence the strategy of the insurer or controlling company in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise a form of control referred to in paragraphs (a) to (c);

**"Standard"** means a Standard prescribed by the Registrar under section 62;

**"start of the policy"** means when the insurer accepts or is deemed to accept insurance obligations under a policy;

**"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

(b) a public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"**this Act**" includes any Standard;

"**web site**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and

"**winding-up**" means any process for dissolving an insurer or insurance group that includes the selling of all assets, paying off creditors and distributing any remaining assets.

### **General interpretation of Act**

2. (1) This Act must be interpreted and applied in a manner that—

(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 Registrar 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—

(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.

(b) Subject to paragraph (a), this Act applies concurrently with and in addition to the Companies Act, the Cooperatives Act or the Act of Parliament that establishes the governing body of a member-based democratically-controlled association of persons, unless specifically provided for otherwise in this Act.

(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—

- (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 Registrar,

that power or duty must be exercised or performed in consultation with the Registrar, and any decision taken in accordance with that power or duty must be taken with the concurrence of the Registrar, 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 consultation or concurrence is not required.

(b) Paragraph (a) does not apply—

- (i) to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- (ii) subject to section 68 and section 22 of the Financial Services Board Act, to legislation relating to the access to information, the protection of information or the administration of justice administered by the Minister of Justice and Constitutional Development;

(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.

(6) If, in terms of this Act, information or a document is required to be publicly published, disclosed, produced or provided, it is sufficient if—

- (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
- (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.

(7) This Act codifies the common law definition of what constitutes insurance, a contract of insurance or an insurance policy to the exclusion of the common law.

### **Objective of Act**

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;
- (b) enhances the protection of policyholders and potential policyholders;

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

## **CHAPTER 2**

### **CONDUCTING INSURANCE BUSINESS AND INSURANCE GROUP BUSINESS**

#### ***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;
  - (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;
  - (e) deal with the Registrar in an open and cooperative way, and disclose to the Registrar anything relating to the insurer or insurance group of which the Registrar would reasonably expect notice; and
  - (f) prepare for recovery and resolution so, if the need arises, it can be restored or resolved in an orderly manner, with a minimum of disruption to policyholders.

**Part 2*****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 or deemed to be licensed under this Act.

(2) A person conducts insurance business in the Republic if—

- (a) the person conducts business similar to insurance business outside the Republic; and
- (b) that person or another person in the Republic, in relation to the business referred to under paragraph (a), directly or indirectly acts on behalf of the first-mentioned person, including, but not limited to, 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;

(3) An insurer may not itself, or through a subsidiary, branch or related person, without the approval of the Registrar, conduct any business other than insurance business.

(4) An insurer, other than Lloyd's, may not, without the approval of the Registrar, conduct any business, including business similar to insurance business, outside the Republic.

(5) (a) Despite any approval under subsection (3) or (4), the Registrar may direct an insurer to cease conducting business referred to in subsection (3) or (4), if the Registrar is of the opinion that that business may—

- (i) impede or is likely to impede the financial soundness of the insurer; or

(ii) introduce a risk or risks that cannot, to the satisfaction of the Registrar, be appropriately mitigated.

(b) An insurer must, within the period agreed with the Registrar, which period must not exceed three months after a directive referred to in paragraph (a) is issued, submit to the Registrar 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 Registrar that sets out the measures taken and the progress made with implementing the plan.

(d) The Registrar may restrict or prohibit certain activities or transactions of the insurer until the plan is implemented.

(6) (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.

(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.

(7) (a) The Registrar 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

- (ii) certain types, kinds or categories of business constitute insurance business to which this Act applies.

(b) The Registrar, when making a Standard under paragraph

(a), must have regard to—

- (i) any existing Act of Parliament that regulates that business;
- (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 at which it is not possible for a person to effectively retain and manage insurance risk.

(8) (a) No person may—

- (i) without the approval of the Registrar, apply to that person's business or undertaking a name or description which includes the word "assure", "insure", "life", "non-life" or "underwrite", or any derivative thereof, unless that person is licensed or deemed to be licensed as an insurer under this Act; or
- (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*****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;
- (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—

- (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.

## 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 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 32 may be cited as a nominal defendant or respondent, and the summons or application commencing the proceedings may be served on him or her.

(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.

(2) The trust referred to in section 38 must—

- (a) meet the insurance obligations under an insurance policy, if a branch of a foreign reinsurer or a Lloyd's underwriter fails to meet any insurance obligations under that insurance policy after—
- (i) a court has given a final judgment in respect of a claim; or
  - (ii) the Registrar 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
  - (iii) the trust or, in the case of Lloyd's the portion of the trust relating to a specific Lloyd's underwriter is wound-up as contemplated in section 54;
- or
- (b) pay a penalty imposed under this Act or by the enforcement committee referred to in the Financial Institutions (Protection of Funds) 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 been completed or have not been instituted within the period allowed therefor.

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

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

#### **Application of this Part**

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

#### **Registrar to determine scope of group supervision**

9. (1) An insurer must, within 14 days of becoming part of an insurance group, notify the Registrar thereof.

(2) (a) The Registrar, in respect of each insurance group, must on notification by an insurer, or on becoming aware that an insurer has become part of an insurance group, determine the scope of the insurance group that is subject to this Act and, in writing, inform the insurer and any holding company of that insurance group accordingly.

(b) The Registrar must make a determination under paragraph (a) within 180 days of receiving a notification under paragraph (1) or becoming aware that an insurer has become a part of an insurance group.

(c) The Registrar, in determining the scope of an insurance group that is subject to this Act, may exclude certain persons from the scope of that insurance group.

(d) The Registrar, when determining the scope of an insurance group that is a financial conglomerate, must consult with any other relevant regulatory authority that regulates a financial institution as defined in the Financial Institution (Protection of Funds) Act that is part of the insurance group.

(3) The insurance group as determined by the Registrar under subsection (2) is subject to this Act.

(4) The Registrar, on application from an insurer that is part of an insurance group, may exempt that insurance group from this Act or a part thereof, on the conditions determined by the Registrar.

(5) (a) The Registrar may, at any time, because of a change in the structure or risk profile of the insurance group, by written notice to the controlling company, amend the scope of the insurance group that is subject to this Act.

(b) The insurance group as amended under paragraph (a) is subject to this Act.

### **Incorporation of or conversion to controlling company**

**10.** A holding company of an insurance group referred to under section 9 that is not a controlling company must, within the period agreed with the Registrar, which period may not exceed 6 months after being informed of the scope of the insurance group that is subject to this Chapter—

- (a) incorporate a controlling company or convert to a controlling company; and
- (b) notify the Registrar of the prescribed details of that controlling company.

### **Responsibility of controlling company**

11. The board of a controlling company must, as soon as reasonably possible, notify the Registrar of any change in the structure or risk profile of the insurance group that may impact on the scope of the insurance group referred to in section 9.

### **Transparent group structure**

12. (1) (a) The Registrar may direct a controlling company to amend the structure of the insurance group, if the Registrar is of the opinion that the structure of an insurance group impedes the—

- (i) financial soundness of any insurer that is part of the insurance group; or
- (ii) ability of the Registrar to determine—
  - (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.

(b) The Registrar must, in respect of a financial conglomerate, prior to directing a controlling company under paragraph (a), consult with any other relevant regulatory authority that regulates a financial institution as defined in the Financial Institution (Protection of Funds) Act that is part of the insurance group.

(2) (a) A controlling company must, within the period agreed with the Registrar, which period may not exceed three months after a directive referred to in subsection (1) is issued, submit a restructuring plan to amend the structure of the group to the Registrar for approval.

(b) The controlling company whose restructuring plan was approved as contemplated in paragraph (a) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the restructuring plan.

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

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

(a) the Registrar 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 (2)(b); or

(iii) fails to implement an approved restructuring plan.

**CHAPTER 3****KEY PERSONS AND SIGNIFICANT OWNERS*****Part 1******Fit and proper requirements*****Fit and proper requirements for key persons and significant owners**

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

(2) The Registrar may, if the Registrar determines that a key person does not meet or no longer meets the fit and proper requirements, in addition to any other action that the Registrar may take under this Act—

- (a) direct the insurer or controlling company to—
  - (i) provide additional education or training to that key person;
  - (ii) utilise external resources to support that key person;
  - (iii) outsource the functions and duties of that key person; or
  - (iv) suspend or remove a director from its board of directors, or suspend or terminate the appointment of any other key person;
- (b) impose additional reporting requirements on and increase financial soundness monitoring activities of the insurer or controlling company; or
- (c) in the case of an insurer—
  - (i) vary the insurer's licensing conditions; or
  - (ii) suspend or withdraw the insurer's licence.

(3) If the Registrar instructs the insurer or controlling company to suspend or remove a director from its board of directors, or to suspend or terminate the appointment of any other key person (other than an auditor), the insurer or controlling company must do so within a period of 14 days, and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the insurer or controlling company.

(4) Despite anything to the contrary in any law or in any agreement, the appointment by an insurer or a controlling company of a key person is subject to the condition that the appointment may be terminated under subsection (3), and the insurer and controlling company must make any appointment subject to this condition.

(5) The Registrar may, if the Registrar is satisfied that a significant owner does not meet or no longer meets the fit and proper requirements, in addition to any other action that the Registrar may take, take any of the actions referred to section 17(5).

(6) The Registrar, in assessing if a person is fit and proper to be appointed or continue to be appointed, may request the verification of information, or may verify information at the Registrar's disposal by making enquiries to any organ of state, credit bureau or other source of relevant information concerning that person.

**Part 2*****Appointments and terminations 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 Registrar, and takes effect only if the Registrar approves the appointment:

- (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 30; and
- (b) in the case of a branch of a foreign reinsurer or Lloyd's—
  - (i) an auditor referred to in section 30;
  - (ii) a representative and a deputy representative of Lloyd's or a branch of a foreign reinsurer referred to in section 32; and
  - (iii) a trustee of a trust referred to in section 38.

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

(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 30 must be approved by the Registrar.

(c) The Registrar'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 Registrar, and the partner that takes responsibility for compliance with section 30 is not affected by this change.

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

**15.** (1) An insurer and a controlling company must, without delay, notify the Registrar of the appointment of—

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

(2) An insurer and a controlling company must, within 14 days, notify the Registrar of a change in circumstances that may adversely affect the fit and proper status of a key person or significant owner.

### **Termination of appointment of key persons by insurer or controlling company**

**16.** (1) An insurer and a controlling company must, within 14 days, notify the Registrar of the termination of the appointment of a key person.

(2) (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 Registrar, notify the Registrar 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.

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

(3) Any auditor of an insurer or a controlling company who resigns or whose appointment is terminated must submit to the Registrar—

- (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.

### ***Part 3***

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

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

17. (1) This section does not apply to branches of foreign reinsurers or Lloyd's underwriters.

- (2) No person may, without the approval of the Registrar—
- (a) become a significant owner of an insurer or a controlling company;
  - (b) dispose of any interest in an insurer or a controlling company, or a related party of that insurer or controlling company, in a manner that will result in that

person no longer being a significant owner of that insurer or controlling company.

(3) An insurer or a controlling company must inform the Registrar if any person—

- (a) becomes a significant owner;
- (b) increases any interest referred to in subsection (2);
- (c) disposes of any interest in accordance with subsection (2);
- (d) reduces any interest referred to in subsection (2).

(4) The Registrar may grant an approval referred to in subsection (2)—

- (a) if the Registrar is satisfied that the—
  - (i) proposed significant owner meets and is likely to continue to meet the prescribed fit and proper requirements;
  - (ii) holding and the likely influence of the proposed significant owner, will 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;
    - (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 licencing requirements and licensing conditions being met; and

- (ii) approval will not be contrary to the interests of policyholders or the public interest;
- (b) subject to the aggregate value of the interest held by the significant owner and related parties of the significant owner not exceeding or decreasing below the percentage that may be determined by the Registrar, without further approval in terms of this section.

(5) If the Registrar 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 Registrar may, in addition to any other action that the Registrar may take in terms of this Act—

- (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 party;
- (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; or
- (d) take any other action the Registrar may deem appropriate.

(6) Despite any other law, any acquisition or holding referred to in this section effected without the approval of the Registrar, has no legal force.

(7) (a) Despite any other law, no person may, in respect of an interest in an insurer or a controlling company, or a related party 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.

(8) (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 the—

- (i) merger constitutes an acquisition of shares for which approval is required in terms of this section; and
- (ii) Registrar 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 this Act, only.

(b) Sections 13(6) and 14(2) of the Competition Act do not apply to a merger in respect of which the Registrar 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 Registrar—

- (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 Registrar may prescribe the circumstances in which approval under subsection (1) is not required.

## **CHAPTER 4**

### **LICENSING, AND SUSPENSION AND WITHDRAWAL OF INSURER'S LICENCE**

#### **Application of Chapter**

**19.** (1) Sections 20, 21 and 23 do not apply to Lloyd's and Lloyd's underwriters.

#### **Requirements for licence**

- 20.** (1) In order to qualify for licensing as an insurer—
- (a) a person—
    - (i) that intends to conduct micro-insurance business, must be a profit company or a non-profit company registered under the Companies Act, a cooperative registered under the Co-operatives Act or a member-

- based democratically controlled association of persons established by an Act of Parliament;
- (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;
  - (iii) in any other case, 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 to the satisfaction of the Registrar that—
- (i) its key persons and significant owners meet the prescribed fit and proper requirements;
  - (ii) it has a sound business plan;
  - (iii) if it is a branch of a foreign reinsurer, the laws of the country under which the institution is authorised and supervised establish a regulatory framework equivalent to that established by this Act;
  - (iv) 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
  - (v) 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) The Registrar, prior to registration, 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;
- (b) so closely resembles that of another insurer that the one is likely to be mistaken for the other;
- (c) is identical to that under which another insurer was previously licensed, and reasonable grounds exist for objection to its use; or
- (d) is misleading or undesirable.

## **Licensing**

**21.** (1) An application for a licence must be made to the Registrar.

(2) The Registrar must, in the case of a financial conglomerate, only grant or refuse an application after consultation with any regulatory authority that regulates a related person of the applicant that is a financial institution as defined in the Financial Institution (Protection of Funds) Act.

(3) The Registrar 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.

(4) (a) The Registrar must grant or refuse an application within 180 days of the date on which the application was submitted to the Registrar, or such longer period agreed between the Registrar and the applicant.

(b) If the Registrar requested additional information in terms of section 56, then the period between the date on which the additional information

was requested and when the information was provided to the Registrar is not considered when determining the 180 days referred to in paragraph (a).

(5) (a) The Registrar must, on granting an application, issue a licence to an insurer and publish a notice of the licensing on the official web site.

(b) The licence must specify—

- (i) the full name of the insurer and any 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 23(9) subject to which the licence is granted.

(6) An insurer must ensure that—

- (a) a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional 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.

(7) An insurer may not change its name or any shortened form or derivative of the name of the insurer that may be used in conducting business without the approval of the Registrar.

(8) A licence granted under this Act cannot be transferred to another person.

### **Lloyd's deemed to be licensed**

**22.** (1) Lloyd's and Lloyd's underwriters are deemed to be licensed to conduct non-life insurance business in all the classes and sub-classes set out in Table 1 of Schedule 2, excluding classes 1 to 16, personal lines.

(2) The Registrar may impose licensing conditions similar to those referred to in section 23(9) on Lloyd's or a Lloyd's underwriter.

### **Licence conditions**

**23.** (1) An insurer, other than a micro-insurer, must be licensed to conduct non-life or life insurance business, and may not be licensed to conduct both.

(2) An insurer, in addition to being licensed to conduct non-life or 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 in respect of the kind of insurance business it will conduct.

(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.

(4) An insurer licensed under this Act 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.

(5) Only a cell captive insurer may conduct insurance business through cell structures.

(6) Only a linked insurer may conduct life insurance business in the linked sub-classes referred to in Schedule 2;

(7) A linked insurer may only reinsure its operational risk relating to the insurance business that it conducts.

(8) The Registrar may impose licensing conditions in addition to subsections (1) to (7), which may include conditions—

- (a) relating to the 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 21 of this Act;
- (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;
- (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 a member-based democratically controlled association of persons established by an Act of Parliament—

- (i) must be suitable to enable it to carry on insurance business; or
  - (ii) may not be amended without the approval of the Registrar; or
- (j) 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 Registrar may determine different conditions in respect of different types or kinds of insurers, and different classes and sub-classes of insurance business.

### **Variation of licence conditions**

**24.** (1) The Registrar may amend, delete, replace or vary any licensing conditions or impose other or additional licensing conditions—

- (a) on application by an insurer;
- (b) when in the public interest, the interests of the policyholders or potential policyholders of the insurer, or in the interest of maintaining the financial soundness of the insurer;
- (c) when revoking a suspension of a licence;
- (d) in the circumstances referred to in section 44; or
- (e) 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.

(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 Registrar must direct the insurer to—

- (a) transfer its insurance business to another insurer under section 46 of this Act by a specified date; or
- (b) make arrangements to the satisfaction of the Registrar to—
  - (i) discharge its obligations under all insurance policies entered into before the variation; or
  - (ii) ensure the orderly resolution of the business of the insurer.

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

## Suspension of licence

**25.** (1) The Registrar may, at any time, suspend an insurer's licence in full or in part, if it appears to the Registrar, on the basis of available facts and information, that the insurer—

- (a) no longer meets any licence condition under which it is licensed;
- (b) failed to comply with any other condition imposed under this Act;
- (c) contravened or failed or is unlikely to comply with a provision of this Act;
- (d) failed to comply with any notice, directive, request, determination, decision or exemption by, or a notice or information request issued under this Act;
- (e) failed to comply with any court order, directive, notice or undertaking given under the Financial Institutions (Protection of Funds) Act;
- (f) failed to give effect to a decision of the appeal board referred to under section 59 of this Act;
- (g) if it were then to apply for licensing under section 21 of this Act, would not be able to satisfy the Registrar as to the matters referred to in that section; or
- (h) failed to pay levies or fees payable in respect of the licence within 30 days after they became payable.

(2) The Registrar may, at any time, suspend an insurer's licence in full or in part, if it appears to the Registrar, on the basis of available facts and information, that—

- (a) a key person failed to comply with a responsibility, function or requirement imposed on that person under this Act; or
- (b) the circumstances referred to in section 44 justify the suspension.

(3) (a) The Registrar may suspend an insurer's licence under subsection (1) or (2) subject to any condition that the Registrar may determine.

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

(4) (a) The Registrar 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 Registrar deems appropriate.

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

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

26. (1) From the date on which a suspension takes effect as referred to in section 25(4), the Registrar must take all measures necessary to safeguard the interests of policyholders.

(2) From the date on which a suspension takes effect, the insurer may not—

(a) dispose of or encumber any assets or liability, or incur any additional liability, without the approval of the Registrar; and

(b) enter into new insurance policies or 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.

(3) The Registrar, subsequent to suspending the licence of an insurer, may—

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

### **Withdrawal of licence**

**27.** (1) The Registrar may withdraw an insurer's licence in full or in part, if it appears to the Registrar, on the basis of available facts and information, that—

- (a) an insurer—
  - (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;
  - (iv) notified the Registrar of its intention to cease to enter into any new insurance policies;
  - (v) failed to commence with conducting insurance business within a period of 12 months after being licensed to do so;
  - (vi) ceased to enter into insurance policies to an extent which does not justify its continued licensing as an insurer;

- (vii) no longer conducts insurance business as a result of an any transfer, substitution or fundamental transaction contemplated in section 46;
  - (viii) fails to submit any plan, scheme or strategy required under this Act, or fails to comply with any approved plan, scheme or strategy; or
  - (ix) subsequent to the suspension of its licence under section 25, fails to remedy the circumstances that informed the suspension to the satisfaction of the Registrar within a reasonable period; or
- (b) the circumstances referred to in section 44 justify the withdrawal; or
- (c) 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 Registrar in writing of the occurrence of a circumstance contemplated in subsection (1)(a)(v) to (vii) or (c).

(3) (a) Prior to the withdrawal of a licence, in the circumstances referred to under subsection (1) other than subsection (1)(a)(v), the Registrar 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 Registrar;
- (ii) not to enter into any new insurance policies from a date specified; and
- (iii) to transfer its insurance business to another insurer under section 46 of this Act by a specified date; or
- (iv) to make arrangements to the satisfaction of the Registrar to—
  - (aa) discharge its obligations under all insurance policies entered into before the date referred to in subparagraph (ii); or
  - (bb) ensure the orderly resolution of the business of the insurer.

(b) If an insurer fails to comply with a directive under paragraph (a), the Registrar may initiate any proceedings under Chapter 9 of this Act.

(4) (a) The Registrar 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 Registrar deems appropriate.

(b) The withdrawal of an insurer's licence takes effect on the date specified in the notice referred to in paragraph (a).

## CHAPTER 5

### GOVERNANCE

#### *Part 1*

#### *Insurers and insurance groups*

#### **Governance framework**

**28.** (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
- (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—

- (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, including effective control functions for risk management, compliance, actuarial matters and internal audit; and
- (c) must address and provide for the matters prescribed.

(3) (a) The board of directors of an insurer is responsible for meeting the requirements imposed on an insurer under this Act, irrespective of the delegation or outsourcing of any responsibilities.

(b) The board of directors of a controlling company is responsible for meeting the requirements imposed on an insurance group under this Act, irrespective of the delegation or outsourcing of any responsibilities.

(c) The representative of a branch of a foreign reinsurer or Lloyd's is responsible for meeting the requirements imposed on them and insurers under this Act, irrespective of the delegation or outsourcing of any responsibilities.

(4) The Registrar may prescribe governance requirements relating to—

- (a) 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;
- (b) internal control, including in respect of—
- (i) an internal control system;
  - (ii) required control functions;
  - (iii) requirements for control functions; and
  - (iv) roles, responsibilities and functions of control functions and heads of control functions; and
- (c) outsourcing and insourcing by an insurer or a controlling company, including in respect of—
- (i) an outsourcing policy and an insourcing policy, and the matters that must be included and addressed in those policies;
  - (ii) the principles and requirements with which any outsourcing or insourcing, and remuneration paid in respect of outsourcing or insourcing, must comply;
  - (iii) the requirements with which an insurer or a controlling company, and any person that will perform an outsourced function or activity, must comply, and the requirements that an insurer or a controlling company must comply with when insourcing;
  - (iv) the matters that must be included or addressed, or may not be included in an outsourcing contract or an insourcing contract;
  - (v) the functions or activities that may not be outsourced or insourced, or may only be outsourced or insourced after the Registrar has been

- notified of the proposed outsourcing or insourcing, and the information that must accompany that notification;
- (vii) matters relating to any outsourcing of which the Registrar must be informed; and
  - (viii) the requirements for sub-outsourcing; and
- (d) in the case of an insurer other than a branch of a foreign reinsurer or Lloyd's, the—
- (i) composition and governance of the board of directors, including requirements relating to independence;
  - (ii) roles and responsibilities of the board of directors (in addition to those provided for in the Companies Act);
  - (iii) duties of directors; and
  - (iv) structure of the board of directors, including the committees that must be established.

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

**29.** (1) An insurer or a controlling company must have procedures in place to identify any potential non-compliance with section 28, 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.

(2) (a) An insurer or a controlling company that fails to comply with section 28 must, without delay—

- (i) notify the Registrar of the failure and the reasons for the failure;

- (ii) within one month after the notification referred to in subparagraph (i), submit a compliance scheme to the Registrar 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.

(b) The Registrar 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.

(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 Registrar that sets out the measures taken and the progress made with implementing the compliance scheme.

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

- (a) restrict or prohibit certain activities or transactions of the insurer or insurance group; or
- (b) impose conditions or limitations on the insurer or board of directors.

(5) The Registrar, at any time, may—

- (a) 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;
- (b) direct an insurer to secure an independent review of the governance framework by a person nominated by the Registrar at the cost of the insurer or controlling company; or

- (c) direct an insurer or a controlling company, as the case may be, its board of directors or key persons to strengthen and effect improvements to the insurer or controlling company's governance framework or a part thereof.

## **Auditor**

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

(b) In the case of a branch of a foreign reinsurer and Lloyd's, the appointment of the auditor under paragraph (a) must extend to the trust referred to in section 38.

(2) Sections 90 to 93, inclusive, of the Companies Act apply to an insurer and a controlling company.

(3) Despite any other law, the auditor of an insurer or a controlling company must—

(a) submit any report or other document or particulars contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, also to the Registrar; and

(b) without delay, submit a detailed written report to the Registrar and the board of directors on any matter relating to the business of the insurer or insurance group, as the case may be, of which the auditor becomes aware in the performance of the auditor's functions and duties referred to in subsection (5), and which, in the opinion of the auditor—

- (i) causes the insurer or insurance group to be not financially sound, or is likely in future to prejudice the ability of the insurer or insurance group to be financially sound;
- (ii) constitutes a contravention, or is likely, in future, to constitute a contravention of any section of this Act;
- (iii) may result in an audit not being completed, or may result in a qualified or adverse opinion on the accounts; or
- (iv) may be contrary to the governance framework requirements of this Act, or amounts to inadequate maintenance of internal controls.

(4) Despite any other law, the auditor of a controlling company of an insurer or any significant owner of an insurer or a controlling company must, without delay, submit a detailed written report to the Registrar on any matter relating to an entity that is part of an insurance group or a significant owner of an insurer or a controlling company of which the auditor becomes aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, constitutes a contravention or will in future constitute a contravention of any section of this Act.

(5) (a) The furnishing, in good faith, by an auditor of a report or information under this section or section 13 may not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which that auditor is subject.

(b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section or section 13 does not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.

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

- (a) audit the financial soundness of the insurer or controlling company 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**

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

(2) Section 94 of the Companies Act, other than section 94(2), applies to an insurer and a controlling company.

(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;
- (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 branches of Foreign Reinsurers and Lloyd's***

### **Representative office**

**32.** (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.

(b) A representative and a deputy representative must be natural persons permanently resident in the Republic.

(3) The representative must—

(a) ensure compliance—

(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 the trust deed referred to in section 38; and

(b) notify the Registrar in writing of any non-compliance with paragraph (a).

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

**CHAPTER 6****FINANCIAL SOUNDNESS*****Part 1******Insurers and insurance groups******Financially sound condition*****Maintenance of financially sound condition**

**33.** (1) An insurer (other than a branch of a foreign reinsurer, a Lloyd's underwriter or Lloyd's) 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, whichever is the greater.

(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.

(3) A branch of a foreign reinsurer must at all times maintain its business in a financially sound condition, by providing security, in the form of assets valued in accordance with prescribed requirements to the trust referred to in section 38 that are at least equal to the technical provisions for the insurance business conducted by that branch in the Republic calculated in accordance with this Act.

(4) Lloyd's must at all times maintain its business in a financially sound condition, by providing security in the form of assets valued in accordance

with prescribed requirements to the trust referred to in section 38 that are at least equal to the aggregate of the technical provisions for each Lloyd's underwriter in respect of the insurance business conducted by that underwriter in the Republic calculated in accordance with this Act.

(5) For the purposes of subsections (1), (2) and (3)—

**"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 and, to the extent that the items have not been called up or paid, may comprise of such items as may be prescribed.

**"basic own funds"** consist of—

- (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;
- (b) subordinated liabilities; and

**"eligible own funds"** comprise the sum of basic own funds and ancillary own funds adjusted in accordance with the prescribed tiering restrictions;

(6) If the Registrar is not satisfied that any value calculated by an insurer or a controlling company in respect of its financial soundness reflects a reasonable value for the purposes of this Act, the Registrar may—

- (a) appoint another suitably qualified person, at the cost of the insurer or controlling company, to determine a reasonable value, which value so determined will be deemed to be the value; or

- (b) direct an insurer to calculate the value in a manner determined by the Registrar, which value so calculated will be deemed to be the value.
  - (7) The Registrar may prescribe—
    - (a) 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 held;
        - (bb) maximum and minimum percentages of certain assets that may be held;
        - (cc) location of assets that may be held;
        - (dd) custody arrangements in respect of assets; and
        - (ee) use or treatment of assets;
    - (b) in respect of technical provisions, the—
      - (i) methods and assumptions that must be used in the valuation and calculation of technical provisions;
      - (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;
    - (c) in respect of liabilities other than technical provisions, the methods and assumptions that must be used in the valuation of those liabilities;
    - (d) 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;
  - (iv) interests and transactions that must be disregarded; and
  - (v) items that do not constitute ancillary own funds;
- (e) in respect of the calculation of financial soundness of insurance groups, the principles, methods and assumptions that must be used in the calculation, and any approvals required in respect of such methods;
- (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;
- (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;
  - (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—



- (cc) responsibilities of the insurer, controlling company, board of directors and senior managers in respect of a full or a partial internal model;
- (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; and
- (i) requirements in respect of—
  - (i) investments;
  - (ii) the use of financial instruments, including derivatives;
  - (iii) off balance sheet transactions;
  - (iv) intra-group transactions;
  - (v) actuarial and accounting standards;
  - (vi) transactions that may increase, encumber or reduce assets or liabilities.

### **Capital add-on**

**34.** (1) The Registrar may determine a capital add-on for an insurer or an insurance group, if the Registrar is of the opinion that—

- (a) the risk profile of the insurer (other than a branch of a foreign reinsurer or Lloyd's) 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.

(2) The Registrar, if an insurer's minimum capital requirement exceeds its solvency capital requirement, may require the capital add-on to be applied to the minimum capital requirement of the insurer.

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

### **Capital and securities**

**35.** Despite the provisions of the Companies Act, an insurer that is a profit company registered under the Companies Act or a controlling company may not, without the approval of the Registrar—

- (a) authorise any additional shares, issue other securities or change the capital structure of the company;
- (b) reduce its share capital;
- (c) allow a subsidiary to acquire, directly or indirectly, shares in it; or
- (d) conclude a transaction contemplated in section 44 (financial assistance for subscription of securities) or 45 (loans or other financial assistance to directors) of the Companies Act.

**Failure to maintain financially sound condition**

**36.** (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 33.

(b) An insurer or a controlling company may not declare or pay a dividend to its shareholders—

(i) if it fails or is likely to fail to comply with section 33; or

(ii) if the declaration or payment would result in it failing or being likely to fail to comply with section 35.

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

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

(b) provide for its technical provisions or other liabilities in accordance with prescribed requirements,

must, without delay, notify the Registrar of the failure, the reasons for the failure and the measures to be implemented to comply with the requirements.

(3) (a) An insurer must—

(i) without delay, notify the Registrar of its failure to meet the minimum capital requirement or any risk of non-compliance with the requirement in the following three months;

(ii) within the period agreed with the Registrar, which period may not exceed one month after the notification referred to in subparagraph (i), submit a short-term recapitalisation scheme to the Registrar for approval; and

- (iii) within a period agreed with the Registrar, which period may not exceed three months after the notification referred to in subparagraph (i)—
  - (aa) restore the eligible own funds, at least to the level of the minimum capital requirement; or
  - (bb) reduce its risk profile to ensure compliance with the minimum capital requirement.

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

(c) An insurer whose short-term recapitalisation scheme was approved under paragraph (a) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the scheme.

- (4) (a) An insurer and a controlling company must—
  - (i) without delay, notify the Registrar of its failure to meet the solvency capital requirement or the group solvency capital requirement, as the case may be, referred to in section 35 or of any risk of non-compliance with the requirement in the following three months;
  - (ii) within the period agreed with the Registrar, which period may not exceed two months after the notification referred to in subparagraph (i), submit a recapitalisation strategy to the Registrar for approval that sets out the measures that the insurer will implement within a period agreed with the Registrar, which period may not exceed six months, to—

- (aa) re-establish the level of eligible own funds necessary for complying with the solvency capital requirement or the group solvency capital requirement; or
- (bb) reduce its risk profile to ensure compliance with the solvency capital requirement or the group solvency capital requirement.

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

(c) An insurer or a controlling company whose recapitalisation strategy was approved as contemplated in paragraph (a) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the recapitalisation strategy.

(5) The Registrar may restrict or prohibit certain activities or transactions of the insurer or insurance group until the prescribed requirements are complied with and the financial soundness of the insurer or insurance group has been restored.

(6) The short-term recapitalisation scheme referred to in subsection (3) and the recapitalisation strategy referred to in subsection (4) must include the matters as prescribed.

**Part 2*****Additional financial soundness requirements for branches of foreign reinsurers and Lloyd's*****Security to be held in trust**

**37.** (1) A branch of a foreign reinsurer or Lloyd's on behalf of each Lloyd's underwriter must provide security in the Republic in respect of the insurance business conducted in the Republic.

(2) The security referred to in subsection (1) must—

- (a) comply with section 33;
- (b) be held in trust and be provided to the trustee of the trust referred to in section 38;
- (c) be invested in accordance with any requirements prescribed under section 33; and
- (d) be reported on by the representative of the branch of a foreign insurer or Lloyd's in accordance with Chapter 7.

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

## Trust and trustees

**38.** (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 deed must comply with any prescribed requirements and be approved by the Registrar.

(3) The Registrar may, at any time, direct that the trust deed be varied or substituted, if the Registrar is satisfied that it is in the public interest, the interests of policyholders or potential policyholders of the insurer, or in the interest of maintaining financial soundness.

(4) The Registrar may prescribe requirements relating to the—

- (a) roles, responsibilities and functions of the 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) If any trustee of a trust fails to comply with any requirements of this Act or any provision of the trust deed, the Registrar may exercise the powers of that trustee under the trust deed.

**CHAPTER 7**  
**REPORTING AND PUBLIC DISCLOSURES**

**Information concerning beneficial interests**

**39.** (1) An insurer and a controlling company must, at least annually or when required by the Registrar, provide the Registrar with—

- (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 or issued or registered in that person's name.

## **Information for supervisory purposes – returns**

**40.** (1) In addition to any specific or general requirement provided for elsewhere in this Act, an insurer and a controlling company must provide the Registrar with any information the Registrar may require in the form, manner and at the intervals determined by the Registrar for the—

- (a) supervision and enforcement of this Act (including the resolution of an insurer or a controlling company); and
- (b) for the implementation and maintenance of the supervisory approach referred to in section 65.

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

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

## **Annual disclosures**

**41.** (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 Registrar may approve the non-disclosure of specific information if the disclosure thereof—

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

(b) If the Registrar approves the non-disclosure of specific information, the insurer or the controlling company must include a statement to this effect and the reasons therefor in its report.

(3) (a) In the event of any major development affecting the relevance of the information disclosed in the report, an insurer or a controlling company must disclose appropriate information on the nature and effects of that major development.

(b) For the purposes of paragraph (a), "a major development" has the meaning prescribed.

(c) In the circumstances referred to in section 36(3)(a), an insurer or a controlling company must immediately publish the amount 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 Registrar has approved that such publication need not take place.

## **Financial statements and accounting requirements**

**42.** (1) An insurer and a controlling company must annually prepare, in respect of the relevant financial year of the insurer or controlling company, financial statements in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body.

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

## **Auditing requirements**

**43.** (1) An insurer and a controlling company must 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—

- (a) such of the information referred to in sections 40 and 41 as prescribed; and
- (b) the financial statements referred to in section 42.

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

(3) The Registrar 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 40 and 41.

**Information relating to governance and supervision of foreign reinsurers,  
Lloyd's or Lloyd's underwriters**

**44.** (1) A branch of a foreign reinsurer and Lloyd's must as soon as reasonably possible notify the Registrar of any—

- (a) changes to a law (including any subordinate laws) of the country in which the head office of a foreign reinsurer or Lloyd's is located relating to the governance or supervision of that foreign reinsurer, Lloyd's or Lloyd's underwriters; and
- (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 or a Lloyd's underwriter with the laws referred to in paragraph (a).

(2) The Registrar 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 regulatory action that the Registrar may take—

- (a) impose additional reporting requirements and increase financial soundness monitoring activities; or
- (b) take actions under sections 24 to 27 (inclusive).

**Additional matters relating to Chapter**

**45.** (1) If the Registrar is of the opinion that any information provided in accordance with this Chapter is incomplete or incorrect, the Registrar may—

- (a) direct the insurer or controlling company to provide the Registrar, within a specified period, with specified information or documents to complete or correct information; or
- (b) reject the information and require the insurer or controlling company to provide the Registrar, within a specified period, with new information which is complete and correct.

(2) If the Registrar is of the opinion that information or a part thereof requires further investigation, the Registrar may direct the insurer or controlling company to secure a report from a person nominated by the Registrar, 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 Registrar.

## **CHAPTER 8**

### **TRANSFERS OF BUSINESS AND OTHER SIGNIFICANT TRANSACTIONS**

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

**46.** (1) An insurer may not, without the approval or direction of the Registrar, transfer all or any part of its insurance business to another person.

(2) An insurer or a controlling company may not, without the approval or direction of the Registrar—

- (a) participate in any fundamental transaction or compromise contemplated in Part A of Chapter 5 or section 155 of the Companies Act; or
- (b) change its institutional form.

(3) An insurer must, at least 30 days before applying to the Registrar for the approval of any transaction or change referred to under subsection (1), publish a notice, containing the prescribed information, and in the prescribed form, manner and media, inviting policyholders, shareholders or creditors of the insurer, to make representations to the insurer in respect of the proposed transaction or change, within the prescribed period.

(4) The Registrar must only grant an approval referred to under subsections (1) or (2) if the Registrar is satisfied—

- (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 transaction or change does not negatively impact on the interest of policyholders;
- (c) in the case of a controlling company, that the transaction or change does not negatively impact on the interests of policyholders of the insurers that are part of the insurance group.

(5) The Registrar may appoint a person, at the cost of the insurer or controlling company, to assess the transaction and express a view on the desirability or otherwise thereof.

(6) A transaction referred to in subsections (1) or (2) that is approved by the Registrar 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 transaction or change referred to in subsections (1) or (2) must, on receipt of the relevant bond, title deed or registration

certificate and a certified copy of the Registrar's approval, take the measures necessary to effect the transfer.

(8) Any transaction or change referred to in subsections (1) or (2) that is effected without the approval of the Registrar is void.

### **Acquisitions or disposals**

**47.** (1) An insurer or a controlling company must—

- (a) prior to making a material acquisition or disposal, obtain the approval of the Registrar; and
- (b) prior to making any other acquisition or disposal, notify the Registrar of that acquisition.

(2) The Registrar may prescribe what constitutes a material acquisition or disposal for the purposes of subsection (1)(a).

(3) The Registrar may refuse to approve a material acquisition or disposal, or object to any other acquisition or disposal, if the Registrar is of the opinion 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—
  - (i) the financial soundness of an insurer that is part of the insurance group; or
  - (ii) the ability of the Registrar to determine—
    - (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; and

(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.

(4) The Registrar must, in respect of a financial conglomerate, consult with any other relevant regulatory authority that regulates a financial institution as defined in the Financial Institution (Protection of Funds) Act that is part of the insurance group prior to—

(a) approving or refusing a material acquisition or disposal; or

(b) objecting to any other acquisition or disposal,

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

## CHAPTER 9

### RESOLUTION

#### Application of Chapter

**48.** (1) The Registrar, in addition to any other action that the Registrar may take under this Act or the Financial Institutions (Protection of Funds) Act, may act in accordance with this Chapter—

(a) in the circumstances referred to in section 27(3)(b); or

(b) if an insurer or a controlling company failed or fails to comply with the—

- (i) governance framework requirements, and—
  - (aa) a compliance scheme referred to in section 29 was not submitted as required by that section;
  - (bb) the Registrar considers that the compliance scheme submitted is inadequate; or
  - (cc) an approved compliance scheme is not complied with;
- (ii) minimum capital requirement or solvency capital requirement and—
  - (aa) a short-term recapitalisation scheme referred to in section 36(3) or a recapitalisation strategy referred to in section 36(4) was not submitted as required by that section, as the case may be;
  - (bb) the Registrar considers that the recapitalisation scheme or recapitalisation strategy submitted is inadequate; or
  - (cc) an approved recapitalisation scheme or recapitalisation strategy is not complied with.

(2) The Registrar may act in accordance with this Chapter in respect of a controlling company, if the circumstances referred to in subsection (1) prevail in respect of any insurer that is part of the insurance group.

**Part 1****Statutory management****Appointment of statutory manager**

**49.** (1) Despite any other law, the Registrar 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.

(2) The Registrar must, in respect of a financial conglomerate, a branch of a foreign reinsurer or Lloyd's, prior to acting under this section, consult with any other relevant regulatory authority that regulates a financial institution as defined in the Financial Institution (Protection of Funds) Act that is part of the insurance group.

(3) 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.

**Part 2****Curatorship****Appointment of curator**

**50.** (1) Despite any other law, the court may, on application by the Registrar, 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—

- (i) Companies Act;
- (ii) Co-operatives Act;
- (iii) Memorandum of Incorporation or the equivalent constitution, deed or founding instrument of an insurer that is a member-based democratically controlled association of persons established by an Act of Parliament; or
- (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 is 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 a member-based democratically controlled association of persons established by an Act of Parliament, and the present key persons shall be divested of all such powers in relation to the business;
- (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 Registrar 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;
- (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 Registrar, may—
  - (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 or controlling company prior to the latter being placed under curatorship, 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, notwithstanding 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;
- (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 Registrar;
- (g) must take custody of the cash, cash investments, stocks, 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;
- (h) must inform the Registrar 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;
  - (ii) for the winding-up of the insurer or controlling company; or
  - (iii) for any relief as envisaged by section 6 of the Financial Institutions (Protection of Funds) Act against the insurer or controlling company or any of its key persons;

- (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 Registrar has been obtained;
- (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;
- (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;
- (l) may engage, after consultation with the Registrar, 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;
- (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 Registrar;
- (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 or official 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;

- (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.

(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—

- (a) creditors are treated in an equitable manner; and
- (b) when acting under subsection (2)(e), 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.

(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 or provision of security, may be instituted against the insurer or controlling company after the expiration of a period of one year from the date of the cancellation.

(5) The Registrar must, in respect of a financial conglomerate or a branch of a foreign reinsurer, prior to acting under subsection (1), consult with any

other relevant regulatory authority that regulates a financial institution as defined in the Financial Institution (Protection of Funds) Act that is part of the insurance group

(6) 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**

#### **BUSINESS RESCUE**

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

51. (1) Notwithstanding the provisions of the Companies Act or any other law under which an insurer or controlling company is 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, and to the exclusion of any similar provisions under the Co-operatives Act or the Act of Parliament under which a member-based democratically controlled association of persons is established, and in such application the Registrar must be deemed to be an affected person.

(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 Registrar;

- (b) the reference to creditors must be construed as a reference also to the policyholders of the insurer;
- (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;
- (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.

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

**52.** (1) The Registrar may make an application under section 131 of the Companies Act in respect of an insurer or a controlling company, if the Registrar is satisfied 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.

(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 Registrar—

- (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 Registrar at least 60 days before the application is set down for hearing;

(ii) the Registrar may, if satisfied 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 in the application as a party and file affidavits and other documents in opposition to the application.

(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 Registrar.

(b) An insurer or a controlling company may file a resolution under section 129 of the Companies Act only after the Registrar has approved the resolution.

(c) Any resolution of an insurer or a controlling company that is not approved by the Registrar under paragraph (a) is void.

(4) Despite the provisions of the Companies Act, the following acts are subject to the approval of the Registrar:

(a) the appointment of a business rescue practitioner; and

(b) the adoption of a business rescue plan.

(5) Despite the provisions of the Companies Act, if the Registrar does not approve a resolution referred to in subsection (3)(a) or the appointment or plan referred to in subsection (4)(a) or (b), the Registrar may apply to court—

(a) for the winding-up of that person under section 53; or

(b) to place that person under curatorship in terms of section 50.

(6) As from the date upon 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 permission to do so by the Registrar.

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

#### ***Winding-up***

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

**53.** (1) Notwithstanding the provisions of the Companies Act or 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 the Act of Parliament under which a member-based democratically controlled association of persons is established, and in such application the Registrar is deemed to be the person authorised under the Companies Act to make an application to the court for the winding-up thereof.

(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;
- (b) a reference to an insurer or a controlling company in this section and section 54 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;
- (d) the references to the Master, Registrar of Companies, Panel and Commission must be construed as a reference also to the Registrar; and
- (e) the requirement to give security does not apply where the Registrar makes the application to court.

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

**54.** (1) The Registrar may make an application under the Companies Act for the winding-up of an insurer or a controlling company, if the Registrar is satisfied 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.

(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 Registrar—

- (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 Registrar at least 15 days, or such shorter period as the court may allow on good cause shown, before the application is set down for hearing; and
- (ii) the Registrar may, if satisfied 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.

(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 Registrar.

(b) An insurer or a controlling company may file a resolution under section 80 of the Companies Act only after the Registrar has approved the resolution.

(c) Any resolution of an insurer or a controlling company that is not approved by the Registrar under paragraph (a) is void.

(4) Despite the provisions of the Companies Act, the appointment of a trustee or a liquidator is subject to the approval of the Registrar.

(5) Despite the provisions of the Companies Act, if the Registrar does not approve a resolution referred to in subsection (3)(a) or the appointment referred to in subsection (4), the Registrar may apply to court for placing that person under curatorship in terms of the Financial Institutions (Protection of Funds) Act.

### **Preferred claims of policyholders**

**55.** (1) Despite the Insolvency Act, 1936 (Act No. 24 of 1936) or any other Act of Parliament, in the winding-up of an insurer the following claims of policyholders that are—

- (a) natural persons; or
- (b) small or medium business enterprises as defined in the National Small Business Act, 1996 (Act No. 102 of 1996),

must be paid from the balance of the free residue immediately after the cost of sequestration and the cost of execution within the meaning of sections 97 and 98 of the Insolvency Act, 1936, respectively, has been paid, in the following order of priority—

- (i) first, the full investment value or remaining investment value of a life insurance policy that, in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962), a policyholder was obligated to enter into or in respect of which a tax deduction on premiums paid was or is allowed;
- (ii) secondly, any other claim outstanding on the date that a final order for the provisional winding-up of an insurer is made and any other claim arising

before the expiry of the period referred to in subsection (2), up to a maximum amount of—

(aa) in the case of a life insurance policy, R 10 million;

(bb) in the case of a non-life insurance policy, R 3 million,

adjusted annually on the anniversary date of the commencement date of this Act to reflect the Consumer Price Index, as published by Statistics South Africa.

(2) The trustee or liquidator must, as soon as possible after a final order for the provisional winding-up of an insurer is made, publish a notice in appropriate media informing policyholders of the order, and the period (which may not be less than 30 days) during which claims may be submitted and the process for submitting such claims.

(3) All claims referred to in paragraph (b)(i) of subsection (1) rank equally and abate in equal proportions in respect of similar claims by other policyholders, and all claims referred to in paragraph (b)(ii) of subsection (1) rank equally and abate in equal proportions in respect of similar claims by other policyholders.

(4) Any residual value of a claim not payable in accordance with subsection (1) must be dealt with by the trustee or liquidator as an unsecured concurrent claim.

(5) All policyholders are exempted from the obligation to contribute towards the cost of sequestration when free residue is insufficient.

(6) For the purposes of this section, "investment value" means the value of an insurance policy calculated as the accumulated basic premium and

investment return stated in the policy, less deductions specifically provided for in the policy.

## CHAPTER 10

### ADMINISTRATION OF ACT

#### *Part 1*

#### *Applications and notifications*

#### **Applications**

**56.** (1) A written application must be submitted to the Registrar in the prescribed form and manner, and accompanied by the prescribed information and the prescribed fees—

- (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 Registrar under this Act or any other Act of Parliament.

(2) A person must promptly amend an application referred to under subsection (1) if any information provided to the Registrar on application becomes inaccurate.

(3) The Registrar, in respect of any application referred to in subsection (1)—

- (a) may—

- (i) require a person to furnish additional information and require that person to verify that information or any information that accompanied the application in the manner specified by the Registrar; and
  - (ii) take into consideration any other information regarding the person, derived from whatever source, including another regulatory authority;
- (b) must, after considering the application—
- (i) grant the application, if satisfied that the person complies with the requirements for that application; or
  - (ii) refuse the application, if not so satisfied.
- (c) Where an application is refused, the Registrar must notify the applicant of the refusal.
- (d) The Registrar may grant any application subject to any conditions.
- (4) Any approval, determination, decision, exemption or the performance of any other act by the Registrar is valid only if it is in writing.

## **Notifications**

**57.** A notification by a person under this Act must be made in the prescribed form and manner, and be accompanied by the prescribed information.

**Part 2**

**Administrative decisions**

**Administrative procedure**

**58.** Any decision or other action of an administrative nature taken by the Registrar that affects the rights of a person within the meaning of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), must comply with that Act.

**Appeal against decision of Registrar**

**59.** (1) Any person who feels aggrieved by any decision of the Registrar in respect of that person may appeal to the appeal board established by section 26(1) of the Financial Services Board Act, in accordance with that Act.

(2) Subsection (1) does not apply in respect of a decision of the Registrar to prescribe a Standard.

**Part 3*****Powers and functions of registrar*****Registrar and Deputy Registrar**

**60.** (1) The person appointed as executive officer in terms of section 13 of the Financial Services Board Act is the Registrar of Insurance, and has the powers and duties and the protection provided for by or under this Act or any other Act of Parliament.

(2) The person appointed as deputy executive officer in terms of section 13 of the Financial Services Board Act is the Deputy Registrar of Insurance.

(3) The Deputy Registrar of Insurance exercises or carries out the powers and duties of the Registrar of Insurance to the extent that such powers have been delegated to the Deputy Registrar under section 20 of the Financial Services Board Act, and to such extent that the Deputy Registrar has been authorised under section 20 of the Financial Services Board Act to perform such duties.

**General powers and functions of Registrar**

**61.** (1) The Registrar, in addition to other powers or functions conferred on the Registrar by or in terms of any other provision of this Act or any other Act of Parliament—

(a) must, subject to section 65, take steps the Registrar 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 Registrar considers necessary to protect policyholders in their dealings with insurers or insurance groups;
- (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;
- (d) may, at regular intervals, determine or amend any rate, parameter or percentage referred to or specified in this Act or the Standards by publishing a notice on the official web site;
- (e) may impose conditions that are consistent with this Act in respect of any approval or exemption given, determination or directive made, or decision taken or requirement imposed under this Act, and the Registrar may amend or withdraw those conditions;
- (f) may extend any time period for compliance with, or a period prescribed by, a provision of this Act in relation to a function of the regulator, either before or after the time period for compliance has passed or the period prescribed has ended;
- (g) may issue guidelines on the application of this Act; and
- (h) may take any measures the Registrar considers necessary for the proper performance and exercise of the Registrar's functions or duties or for implementation of this Act.

(2) The Registrar, in addition to subsection (1), must advise the Minister on matters of policy relating to insurance, and continuously recommend legislative amendments to the Minister to align this Act with international standards where necessary.

(3) The Registrar, in performing the powers and functions provided for, by or under this Act, including the making of Standards, or any other law, must have regard to—

- (a) the objective of this Act;
- (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.

## **Standards**

**62.** (1) The Registrar, subject to subsection (6), may prescribe Standards—

- (a) on any matter that is required or permitted to be prescribed in terms of this Act;
- (b) on any administrative matters necessary for the proper implementation and maintenance of the supervisory approach referred to under section 65 of this Act; and
- (c) that prescribe any requirements of this Act in greater detail.

(2) A Standard may—

- (a) apply to insurers, controlling companies, key persons or significant owners generally;
- (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—
- (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.

(3) (a) A Standard may—

- (i) impose requirements for approval by the Registrar in respect of specified matters;
- (ii) be made applicable to existing actions, activities, transactions, policies and appointments.

(b) Where a Standard is made applicable to existing actions, activities, transactions, policies and appointments, the Standard must allow for a reasonable period within which the Standard must be complied with.

(4) A Standard with respect to auditing standards and requirements applies despite any contrary requirement in a legislative instrument made under an Act of Parliament.

(5) (a) The Registrar may amend or repeal any Standard from time to time.

(b) Any amendment of a Standard must be made in accordance with subsection (6), and insurers, controlling companies, key persons or

significant owners must comply therewith within the period prescribed by the Registrar.

(6) (a) Before the Registrar prescribes any Standard under this section, the Registrar must—

(i) publish a draft of the instrument on the official web site, accompanied by—

(aa) a statement explaining—

(AA) the need for the instrument

(BB) the intended operation of the instrument;

(bb) a notice stating—

(AA) that any person may make a submission about the need for, and the content of, the instrument; and

(BB) where and how submissions may be made, and the period for making submissions, which must be at least 60 days; and

(ii) engage in the regulator's consultation arrangements that are referred to in section 87(1)(b).

(b) The Registrar must provide a copy of the documents referred to in subsection (1) to the Reserve Bank referred to in the South African Reserve Bank Act, 1989 (Act No. 90 of 1989) and the Director-General of the National Treasury established in terms of section 5 of the Public Finance Management Act.

(c) The Registrar must, when deciding whether to make the Standard, consider all of the submissions made, and the expected impact of the Standards.

(d) If the Registrar proposes, whether or not as a result of the consultation process, to make a Standard that is materially different in substance to

the draft Standards that was published in terms of paragraph (a), the Registrar must, before making the Standards, again follow the procedure in paragraph (a).

(e) The Registrar must publish the final Standard in the *Gazette*.

(f) With each Standard made by the Registrar, the Registrar must publish on the official web site a report of the consultative process undertaken in respect of the Standard, which report must include—

- (i) a general account of the issues raised in submissions;
- (ii) a general response to the issues raised in submissions; and
- (iii) a statement of the expected impact of the Standard.

(7) A Standard prescribed by the Registrar is subordinate legislation, and is not a decision or other action of an administrative nature.

### **Interpretation rulings**

**63.** (1) The Registrar may issue an interpretation ruling to facilitate the consistent and uniform application of this Act.

(2) An insurer or a controlling company must adhere to an interpretation ruling until such time as a court attaches a different interpretation to the subject matter of that interpretation ruling.

(3) (a) Before the Registrar issues any interpretation ruling under this section, the Registrar must publish a draft of the proposed interpretation ruling on the official web site, together with a notice 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.

(b) If the Registrar alters a proposed interpretation ruling because of any comment, the Registrar need not publish the alteration before issuing the interpretation ruling.

## **Exemptions**

**64.** (1) The Registrar may exempt any insurer or a controlling company from, or in respect of, a provision of this Act for a period and on conditions determined by the Registrar—

- (a) if practicalities impede the strict application of a specific provision of this Act;
- (b) if a strict application of a specific provision of this Act is not proportional to the nature, scale and complexity of the business of an insurer or an insurance group;
- (c) for developmental and financial inclusion objectives necessary to facilitate the progressive or incremental compliance of this Act by a specific insurer; and
- (d) if the granting of the exemption will not—
  - (i) conflict with the public interest; or
  - (ii) frustrate the achievement of the objective of this Act.

(2) An exemption may apply to insurers or controlling companies generally or be limited in its application to particular kinds or types of insurers or controlling companies, which may be defined either in relation to a category, kind, size or in any other manner.

(3) An exemption may be granted subject to any conditions specified by the Registrar.

(4) An exemption in respect of which an insurer or controlling company has to comply with conditions, lapses whenever the insurer or controlling company contravenes or fails to comply with any such conditions.

(5) The Registrar—

- (a) must publish an exemption on the official web site;
- (b) may, at any time, by notice to the insurer or controlling company and on the official web site withdraw any exemption, wholly or in part and on any ground which the Registrar determines sufficient.

### **Supervisory approach**

**65.** (1) The Registrar must implement and maintain a prospective, integrated and risk-based supervisory approach to achieve the objective of the Act that, amongst other matters—

- (a) provides for the monitoring, evaluation and verification, on a continuous basis, of the proper operation of the business of each insurer and insurance group to assess compliance with legislative and supervisory provisions by insurers and controlling companies;
- (b) provides for an appropriate combination of ongoing communication, off-site activities, on-site visits, inspections and the escalation of regulatory actions and enforcement measures;
- (c) provides for monitoring of the financial soundness of insurers, controlling companies or insurance groups and the financial stability of insurance markets in general;

- (d) is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurer or insurance group and the insurance markets, and the risks of not achieving regulatory and supervisory objectives;
- (e) takes into account the potential impact of regulatory and supervisory decisions on the stability of the Republic's financial system;
- (f) in times of exceptional movements in the financial markets, takes into account the potential pro-cyclical effects of regulatory and supervisory decisions; and
- (g) limits systemic risks.

(2) The supervisory approach must, amongst other matters, be informed by—

- (a) the continuous analysis of market and financial developments and other factors that may impact insurers or insurance groups and insurance markets;
- (b) underlying trends within the insurance sector in respect of, but not limited to, profitability, capital position, liabilities, assets and underwriting;
- (c) the extent to which macro-economic vulnerabilities and financial market risks impinge on prudential safeguards or the financial stability of the insurance markets; and
- (d) an established process to assess the potential systemic importance of insurers or insurance groups, including insurance policies they underwrite and instruments they issue in traditional and non-traditional lines of business.

(3) The supervisory approach referred to in subsection (1) must enable the Registrar to—

- (a) effectively supervise insurers, controlling companies and insurance groups, and evaluate the insurance markets;

- (b) identify the financial condition and deteriorating financial soundness of an insurer, a controlling company or an insurance group and to monitor how that deterioration is remedied; and
- (c) identify possible events or future changes in economic conditions that may have adverse effects on the overall financial soundness of an insurer, a controlling company or an insurance group, and assess the ability of the insurer, controlling company or insurance group to withstand those possible events or future changes in economic conditions.

## **Fees**

**66.** (1) The Registrar may prescribe the fees payable to the Registrar by any person, or categories, types or kinds of persons in respect of an application for approval, a determination, a decision or the performance of any other act by the Registrar under this Act.

(2) Fees are payable in the manner and subject to the requirements as prescribed.

(3) The Registrar need not consider any application until such time as the fee payable in respect of that application has been paid.

## **Publication by Registrar**

**67.** (1) The Registrar must publish and regularly update the following on the official web site—

- (a) the texts of this Act, Standards, interpretation rulings and amendments thereto;
- (b) the objectives of supervision and the Registrar's powers and functions;
- (c) the general criteria and methods used in the supervisory review process;
- (d) aggregate statistical data on key aspects of the application of the financial soundness and prudential framework referred to in Chapter 6;
- (e) information and analysis about the financial condition of the insurance sector;  
and
- (f) information about problem or failed insurers, controlling companies or insurance groups, including information on supervisory actions taken, subject to confidentiality considerations, and in so far as it does not jeopardise other supervisory objectives.

(2) The Registrar must at least annually and in a timely manner publish a report on the conduct of its supervision, describing its performance in pursuing its objectives.

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

### ***Supervisory cooperation***

#### **Cooperation with other regulatory authorities**

**68.** (1) The Registrar, subject to section 22 of the Financial Services Board Act, must take reasonable measures to establish adequate coordination arrangements with other regulatory authorities.

(2) The Registrar in respect of insurance groups, must together with the regulatory authorities of any financial institution, as defined in the Financial Institutions (Protection of Funds) Act, that is part of an insurance group—

- (a) determine the need for a group supervisor;
- (b) agree which regulatory authority is the group supervisor;
- (c) agree the roles and responsibilities of the group supervisor and the other regulatory authorities;
- (d) participate in formal or informal structures for cooperation and coordination amongst regulatory authorities responsible for and involved in the supervision of different components or parts of insurance groups (such as supervisory colleges); and
- (e) enter into cooperation agreements with regulatory authorities, which agreements, amongst other matters, must include procedures for—
  - (i) the exchange of information on an ongoing basis and in emergency situations;
  - (ii) communications with the holding company of the insurance group;
  - (iii) convening regular meetings between the group supervisor and relevant regulatory authorities, including supervisory colleges; and
  - (iv) conducting comprehensive assessments of the insurance group.

(3) In circumstances where the Registrar is the group supervisor, the Registrar must—

- (a) initiate suitable coordination arrangements between the relevant regulatory authorities which are proportionate to the nature, scale and complexity of the

risks inherent in the business of the insurance group, and establish the key functions of these coordination arrangements;

- (b) act as the key coordinator, convener and chairperson of meetings and supervisory colleges;
- (c) take the lead in carrying out insurance group supervision;
- (d) take into account assessments by relevant regulatory authorities in respect of any person that is part of an insurance group;
- (e) coordinate resolvability assessments and crisis management preparations;  
and
- (f) proactively share information on insurance groups.

## ***Part 5***

### ***Preventative and corrective measures***

#### **Information request**

**69.** (1) The Registrar, in addition to section 40, may at any time require any person to furnish the Registrar, within a specified period, with specified information or documents in the form and manner specified by the Registrar.

(2) The Registrar, without derogating from the generality of subsection (1) may require information from—

- (a) persons with whom the insurer or controlling company has entered into any type of contractual relationship;

(b) a key person, a related or inter-related party, or an associate of an insurer or a controlling company.

(3) Information requested may consist of—

- (a) qualitative or quantitative elements;
- (b) historic, current or prospective elements;
- (c) data from internal or external sources; or
- (d) any appropriate combination of the types of information referred to in paragraphs (a) to (c).

### **Reviews, investigations and verifications**

**70.** (1) The Registrar may, at any time, require an insurer, a controlling company, a key person or a significant owner to demonstrate compliance with any provision of this Act, or a directive given, an approval or an exemption granted, a request or a determination made, a requirement or a condition determined or imposed, or any other decision of the Registrar.

(2) The Registrar may, at any time if uncertain of clarity or accuracy of information provided, direct an insurer or a controlling company to have its accounts, records or financial statements audited by the auditor of that insurer or controlling company, or by another auditor identified by the Registrar, at the cost of the insurer or controlling company, and to submit the results of the audit to the Registrar within a specified time.

(3) The Registrar may, at any time, if the Registrar has a concern that any provision of this Act, or a directive given, an approval or an exemption

granted, a request or a determination made, a requirement or a condition determined or imposed, or any other decision of the Registrar may have been contravened, and a matter must be examined or verified, direct an insurer or controlling company to secure the examination or verification of the matter by a person nominated by the Registrar, at the cost of the insurer or controlling company, by a specified date or within a specific period, in the form, manner and containing the information required by the Registrar.

(4) The Registrar may, at any time, hold discussions with any key person, significant owner, related or inter-related parties, or associates of an insurer or a controlling company, for the purposes of—

- (a) effective supervision; or
- (b) bringing to the attention of the person any material concern, with a view to taking timely preventive and corrective measures to resolve the concern.

### **On-site visits and inspections**

**71.** (1) The Registrar may—

- (a) conduct an on-site visit under Chapter 1A of the Financial Institutions (Protection of Funds) Act; or
- (b) instruct an inspector to conduct an inspection under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).

(2) The Registrar may, in addition to the authority afforded in the Financial Institutions (Protection of Funds) Act or the Inspection of Financial

Institutions Act, 1998 (Act No. 80 of 1998), conduct an on-site visit or instruct an inspector to conduct an inspection in respect of—

- (a) a controlling company;
- (b) any persons with whom the insurer has entered into any type of contractual relationship; or
- (c) any related party of an insurer or any person that is part of an insurance group.

(3) (a) The Registrar, after an on-site visit or inspection has been carried out, may direct the person concerned to take any steps, or to refrain from performing or continuing to perform any act, to terminate or remedy any contravention of or failure to comply with any provision of this Act, or a directive given, an approval or an exemption granted, a request or a determination made, a requirement or a condition determined or imposed, or any other decision of the Registrar.

(b) Despite paragraph (a), the Registrar may not make an order contemplated in section 6D(2) (b) of the Financial Institutions (Protection of Funds) Act.

## **Directives**

**72.** (1) The Registrar may, in order to ensure the implementation, administration of or compliance with this Act, or to protect policyholders and the public in general, issue a directive to any person, including an insurer, a controlling

company, a key person, a significant owner or persons to whom an insurer has outsourced, to, within the period stated in the directive—

- (a) implement specific practices, procedures or processes;
- (b) take specific actions or measures;
- (c) desist from undertaking specific practices, procedures, processes, actions or measures;
- (d) cease prohibiting certain practices, procedures, processes, actions or measures; or
- (e) comply with the whole or a provision of this Act, or a directive given, an approval or an exemption granted, a request or a determination made, a requirement or a condition determined or imposed, or any other decision of the Registrar.

(2) A directive referred to in subsection (1) may—

- (a) apply to insurers, controlling companies, key persons, significant owners or persons to whom an insurer has outsourced generally;
- (b) apply to insurance business or the conducting of insurance business generally;
- (c) apply to a specific person, insurer, controlling company, key person, significant owner or person to whom an insurer has outsourced;
- (d) be limited in application to particular kinds or types of insurers, controlling companies, key persons, significant owners or persons to whom an insurer has outsourced; or

(e) be limited in application to a particular type, class or sub-class of insurance business, which may be defined either in relation to a category, type or in any other manner.

(3) A directive issued in terms of subsection (1) takes effect on the date determined by the Registrar in the directive, may take effect immediately, and may specify the time by which, or period during which, it must be complied with.

(4) The Registrar may cancel or revoke any previously issued directives.

(5) The Registrar must, where a directive is issued to ensure the protection of policyholders, potential policyholders, or the public in general, publish the directive on the official web site and any other media that the Registrar deems appropriate, unless the Registrar is of the opinion that the publication may negatively impact the financial soundness of an insurer or an insurance group, or the financial stability of the insurance sector.

(6) Nothing in the Memorandum of Incorporation of an insurer that is a company, or the equivalent constitution, deed or founding instrument of an insurer that is a member-based democratically controlled association of persons established by an Act of Parliament, or any contract or arrangement, prevents complying with a directive.

### **Appointment of auditor by Registrar**

**73.** (1) If an insurer or a controlling company for any reason fails to appoint an auditor under section 30, the Registrar may, despite the Companies Act, but subject to this Act, appoint an auditor for that insurer or controlling company.

(2) A person or firm appointed under subsection (1) as auditor of an insurer or a controlling company is deemed to have been appointed by that insurer or controlling company in accordance with this Act.

## ***Part 6***

### ***Remedial and enforcement measures***

#### **Administrative penalties**

**74.** (1) The Registrar may impose a fine in the case of any failure by a person to submit to the Registrar or publish within any period specified by or under this Act any information, statement, report, return or other document required by or requested under this Act to be so submitted, not exceeding R 5 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof.

(2) The Registrar must adjust the amount referred to in subsection (1) annually to reflect the Consumer Price Index, as published by Statistics South Africa.

(3) If a person fails to pay the fine or note an appeal, the Registrar may file with the clerk or Registrar of any competent court a statement certified by him or her as correct, stating the amount of the fine imposed on the person, and

such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the Financial Services Board for a liquid debt in the amount specified in the statement.

### **Unlicensed insurance business**

**75.** (1) If a person contravened or is contravening section 5(1) of this Act, the Registrar, in addition to any other action that the Registrar may take under this Act or the Financial Institutions (Protection of Funds) Act, may—

- (a) direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under insurance policies entered into by that person; or
- (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.

(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
- (c) must appoint as trustee or liquidator a person nominated by the Registrar.

## Debarment

**76.** (1) The Registrar may make an order debaring a person for a specified period from being employed by an insurer or a controlling company, being a significant owner of an insurer or a controlling company, or directly or indirectly participating in the insurance sector, if the Registrar is satisfied that a person has—

- (a) contravened any provision of this Act, or a directive given, an approval or an exemption granted, a request or a determination made, a requirement or a condition determined or imposed, or any other decision of the Registrar;
- (b) attempted, conspired with or aided, abetted, induced, incited, instigated, instructed or commanded, counselled or procured another person to contravene a provision of this Act, or a directive given, an approval or an exemption granted, a request or a determination made, a requirement or a condition determined or imposed, or any other decision of the Registrar; or
- (c) contravened or failed to comply with a law of a country other than the Republic that regulates business similar to insurance business.

(2) An insurer or a controlling company must, within a period of five days after being informed by the Registrar of the debarment of a person, ensure that the debarred person does not perform or undertake any activity referred to in subsection (1).

(3) The Registrar must publish a notice of the debarment and the reasons for the debarment, on the official web site, and in any other media, if appropriate.

## Offences

**77.** (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), 5(8), 17(2), 17(7) and 27(2); or
- (b) fails to comply with a directive issued under section or 75(1)(a);
- (c) fails to comply with a request under sections 39(2) or 69(1);
- (d) contravenes a debarment order made under section 76 in respect of that person;
- (e) deliberately makes a misleading, false or deceptive statement, or conceals any material fact; or
- (f) wilfully gives the Registrar information which is false, misleading or conceals any material fact.

(2) 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(2).

(3) A key person, a significant owner or a person to whom an insurer has outsourced commits an offence and is on conviction liable to a fine not exceeding R10 million if that person or significant owner fails to comply with a directive issued under sections 72(1) issued in respect of that person or significant owner.

(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(3), 30(3) or 30(4).

(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(5).

(6) An insurer 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 27(3).

## CHAPTER 11

### GENERAL PROVISIONS

#### **Consequential amendments, repeal of laws and transitional arrangements**

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

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

#### **Delays and exemptions**

**79.** (a) The Registrar to facilitate the implementation of this Act may, by notice in the *Gazette*—

- (i) 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
- (ii) where practicalities require the progressive or incremental application of a specific provision of this Act, exempt any insurer or controlling company from that provision for a period and on conditions determined in the notice.

(b) A delay or exemption in terms of paragraph (a) may—

- (i) apply to insurers or controlling companies generally;
- (ii) be limited in application to particular kinds or types of insurers or controlling companies;
- (iii) be limited in application to particular types, or classes or sub-classes of insurance business; or
- (iv) apply to key persons and significant owners generally.

### **Short title and commencement**

**80.** (1) This Act is called the Insurance Act, 2015, and comes into operation on a date fixed by the Minister by proclamation in the *Gazette*.

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

## SCHEDULE 1

## LAWS AMENDED

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
52 of 1998	Long-term Insurance Act	<p>1. The substitution for section 1 of the following section:</p> <p><b><u>"Definitions"</u></b></p> <p><b><u>1. (1) Any word or expression to which a meaning has been assigned in the Insurance Act, 2015, bears, subject to the context, that meaning and, unless the context otherwise indicates—</u></b></p> <p><b><u>"Board"</u></b> means the Financial Services Board established by section 2 of the Financial Services Board Act;</p> <p><b><u>"Court"</u></b> means the High Court of South Africa;</p> <p><b><u>"Financial Services Board Act"</u></b> means the Financial Services Board Act, 1990 (Act No. 97 of 1990);</p> <p><b><u>"insurer"</u></b> has the meaning set out in section 1 of the Insurance Act, 2015;</p> <p><b><u>"long-term insurance business"</u></b> means life insurance business as defined in section 1 of the Insurance Act, 2015;</p> <p><b><u>"long-term insurer"</u></b> means an insurer licensed to conduct life insurance business under the Insurance Act, 2015;</p> <p><b><u>"long-term policy"</u></b> means a life insurance policy as defined in the Insurance Act, 2015;</p> <p><b><u>"prescribe"</u></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> <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 Registrar, seeks to bring any information to the attention of any other person, or all or part of the public;</p> <p><b><u>"Registrar"</u></b> means the person referred to in section 2;</p> <p><b><u>"regulation"</u></b> means a regulation under</p>

		<p>section 72:  <u>"short-term insurer" means an insurer licensed to conduct non-life insurance business under the Insurance Act, 2015; and</u>  <u>"this Act" includes any regulation made, or matter prescribed under this Act.</u></p> <p>_____ (2) <u>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, 2015 that best corresponds to that type of policy."</u></p>
		<p>2. The whole of sections 4(5), 4(7), 5, 7, 8(1)(a), 8(2), 9 – 35, 37 – 43, 46, 69 – 71, 72(1)(b), 72(1)(c), 72(2A), and 73 – 75, and Schedules 1 – 3 are hereby repealed.</p>
		<p>3. The authority afforded under sections 2, 3, 4(1), 4(2), 4(4), 4(8), 36, 66 – 68, and 72 in respect of the prudential supervision of insurance only may continue to be exercised by the Registrar in respect of conduct of business supervision.</p>
		<p>4. To amend section 3 by the insertion of the following subsection after subsection (2):</p> <p>_____ <u>"(2A) (a) Sections 13, 14, 15, 16, 24, 25, 26 and 27 of the Insurance Act, 2015 are deemed to be sections also made under this Act.</u></p> <p>_____ <u>(b) The authority afforded to and obligation placed on the Registrar in the sections of the Insurance Act, 2015 referred to in paragraph (a) may be exercised by the Registrar in respect of supervising conduct of business under this Act."</u></p>
53 of 1998	Short-term Insurance Act	<p>1. The substitution for section 1 of the following section:</p> <p><b><u>Definitions</u></b></p> <p><b>1.</b> (1) <u>Any word or expression to which a meaning has been assigned in the Insurance Act, 2015, bears, subject to the context, that meaning and, unless the context otherwise indicates—</u></p> <p><u>"Board" means the Financial Services Board established by section 2 of the Financial Services Board Act;</u></p> <p><u>"Court" means the High Court of</u></p>

		<p>South Africa:</p> <p><b>"Financial Services Board Act"</b> means the Financial Services Board Act, 1990 (Act No. 97 of 1990);</p> <p><b>"insurer"</b> has the meaning set out in section 1 of the Insurance Act, 2015;</p> <p><b>"long-term insurer"</b> means an insurer licensed to conduct life insurance business under the Insurance Act, 2015;</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> <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 Registrar, seeks to bring any information to the attention of any other person, or all or part of the public;</p> <p><b>"Registrar"</b> means the person referred to in section 2;</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, 2015;</p> <p><b>"short-term insurer"</b> means an insurer licensed to conduct non-life insurance business under the Insurance Act, 2015;</p> <p><b>"short-term policy"</b> means a non-life insurance policy as defined in the Insurance Act, 2015; 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, 2015 that best corresponds to that type of policy."</p>
		<p>2. 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>3. The authority afforded under</p>

		sections 2, 3, 4(1), 4(2), 4(4), 4(8), 35, 58, 63(1), 63(2), 64 – 66 and 72 in respect of the prudential supervision of insurance may continue to be exercised by the Registrar in respect of conduct of business supervision.
		<p>4. The amendment of section 3 by the insertion of the following subsection after subsection (2):</p> <p><u>"(2A) (a) Sections 13, 14, 15, 16, 24, 25, 26 and 27 of the Insurance Act, 2015 are deemed to be sections also made under this Act.</u></p> <p><u>(b) The authority afforded to and obligation placed on the Registrar in the sections of the Insurance Act, 2015 referred to in paragraph (a) may be exercised by the Registrar in respect of supervising conduct of business under this Act."</u></p>
		<p>5. 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>
97 of 1990	Financial Services Board Act	<p>1. The amendment of the definition of "financial institution" by—</p> <p>(a) the substitution in paragraph (a) for subparagraph (vii) of the following subparagraph:</p> <p style="padding-left: 40px;">"(vii) any insurer as defined in section 1 of the Insurance Act, 2015(1);"; and</p> <p>(b) the deletion of paragraph (ix).</p>

**SCHEDULE 2****CLASSES AND SUB-CLASSES****TABLE 1****CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS****LIFE INSURANCE**

In this Table—

**"discretionary participation features"** means insurance obligations under a life policy—

- (a) that may be a significant portion of the total insurance obligations under the policy;
- (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;
  - (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;

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

- (a) stated in the policy in Rand terms; or

- (b) stated in or ascertainable from the 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 policy as a fixed rate of return or stated return linked to inflation over the full term of the policy;

**"fund"** means—

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

**"group policy"** means a policy concluded 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 policy exclusively for the benefit of the members of the association or fund, or the employees who are the beneficiaries under the insurance policy;

**"individual policy"** means a policy other than a group policy issued to a person, and includes a policy that is underwritten on a group basis;

**"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 a policy calculated as the accumulated basic premium and investment return stated in the policy less deductions specifically provided for in the policy;

**"linked"** means where the insurance obligations under a policy are not fully guaranteed or partially guaranteed, and are determined solely by reference to the value of particular assets or categories of assets which are specified in the policy and are actually held by or on behalf of the insurer specifically for the purposes of the policy;

**"market related"** means where the insurance obligations under a policy are not guaranteed, and are determined solely by reference to the value of particular assets or categories of assets which are specified in the policy, and the policyholder immediately shares in the performance of the underlying investment;

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

- (a) stated in the policy to be no less than an amount in Rand terms; or
- (b) stated in or ascertainable from the 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 policy as a fixed rate of return or stated return linked to inflation over the full term of the policy; and

**"underwritten on a group basis"** means where the risks covered under a policy are rated on the characteristics of a group of people together, as opposed to that of the individual(s) to whom the policy relates.

	<b>CLASS</b>	<b>SUB-CLASS</b>	<b>ADDITIONAL DESCRIPTION</b>
1.	<b>RISK</b>	a.	Individual Life and Death benefits Lump sum payable on the happening of a life event or death event
		b.	Individual Health – lump sum benefits Lump sum payable on the happening of a health event
		c.	Individual Health – recurring payment benefits Specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a health event
		d.	Individual Disability – lump sum benefits Lump sum payable on the happening of a disability event
		e.	Individual Disability – recurring payment benefits Specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a disability event
		f.	Group Life and Death benefits Lump sum payable on the happening of a life event or death event
		g.	Group Health – lump sum benefits Lump sum payable to a member of a group on the happening of a health event
		h.	Group Health – recurring payment benefits Specified or determinable equal or unequal sums of money payable at specified intervals to a member of a group on the happening of a health event
		i.	Group Disability – lump sum benefits Lump sum payable to a member of a group on the happening of a disability event
		j.	Group Disability – recurring payment benefits Specified or determinable equal or unequal sums of money payable at specified intervals to a member of a group on the happening of a disability event
2.	<b>CREDIT LIFE</b>	a.	Individual Lump sum payable 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
		b.	Group Lump sum payable to a member of a group 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
3.	<b>FUNERAL</b>	a.	Individual	Lump sum not exceeding an amount prescribed by the Registrar to cover cost associated with a funeral or the rendering of a service on the happening of a death event
		b.	Group	Lump sum not exceeding an amount prescribed by the Registrar payable to a member of a group to cover costs associated with a funeral or the rendering of a service on the happening of a death event
4.	<b>LIFE ANNUITIES</b>	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 – * 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	
5.	<b>INDIVIDUAL INVESTMENT</b>	a.	Guaranteed (fully or partially)	Lump sum or periodic payments payable – * on or from a fixed or determinable date not related to a life event, disability event or death event of a person; or * at the request of the policyholder
		b.	Market related	
		c.	Linked	
		d.	With Discretionary Participation features	
6.	<b>FUND INVESTMENT</b>	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, dependants or nominees of a particular member of the fund
		b.	Market –related	
		c.	Linked	
		d.	With Discretionary Participation features	

7.	<b>INCOME DRAWDOWN</b>	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 investment value is exhausted; or a lump sum or specified or determinable equal or unequal sums of money payable at specified intervals equal to the remaining investment value to the estate, or one or more dependants or nominees after the death of the policyholder
		b.	Market related	
		c.	Linked	
		d.	With Discretionary Participation features	
8.	<b>REINSURANCE</b>	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**

In this Table—

**"commercial lines"** means non-life insurance business other than in respect of personal lines;

**"fund"** means—

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

**"group policy"** means a policy concluded 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 policy exclusively for the benefit of the members of the association or fund, or the employees who are the beneficiaries under the insurance policy;

**"individual policy"** means a policy other than a group policy issued to a person, and includes a policy that is underwritten on a group basis;

**"personal lines"** means non-life insurance business where the policyholder is a natural person; and

**"underwritten on a group basis"** means where the risks covered under a policy are rated on the characteristics of a group of people together, as opposed to that of the individual(s) to whom the policy relates.

	<b>CLASS</b>	<b>SUB-CLASS</b>	<b>ADDITIONAL DESCRIPTION</b>	
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
			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), and, in respect of commercial lines, includes business interruption cover, including unforeseen trading expenses and loss of rent or revenue
		b.	Commercial lines	
3.	<b>AGRICULTURE</b>			Covers damage or loss to crop, agricultural equipment and other agricultural activities due to theft, fire, explosion, natural forces including storm, hail or frost, nuclear energy and land subsidence
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 structure; the undertaking of other works; or the installation of machinery or equipment, and includes loss of revenue

5.	<b>MARINE</b>			Covers damage or loss resulting from the possession, use or ownership of vessels used on a river, canal, dam, lake or sea
6.	<b>AVIATION</b>			Covers damage or loss resulting from the possession, use or ownership of aircraft or spacecraft
7.	<b>TRANSPORT</b>			Covers damage or loss resulting from the conveyance, storage, treatment and handling of goods in transit, irrespective of the form of transport
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>			Covers any legal expenses and costs of litigation
10.	<b>LIABILITY</b>	a.	Directors and officers	Covers liability to a third party
		b.	Employer liability	
		c.	Fidelity guarantee	
		d.	Product liability	
		e.	Professional indemnity	
		f.	Public liability	
		g.	Aviation	
		h.	Engineering	
		i.	Marine	
		j.	Motor	
		k.	Rail	
		l.	Transport	
		m.	Personal	
		n.	Other	
11.	<b>CONSUMER CREDIT</b>			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

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>			Covers loss resulting from insolvency, direct and indirect guarantees (failure of a person to discharge an obligation) and suretyship offered as part of normal business activities, other than a guarantee issued by a Bank registered under the Banks Act, 1990
14.	<b>ACCIDENT AND HEALTH</b>			Covers costs or loss of income resulting from a health event, other than costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), including any contracts identified by the Minister by regulation as an accident and health policy
15.	<b>TRAVEL</b>			Covers damage or loss resulting from cancellation, interruption, loss of property (including baggage), or other unforeseen events before, while and after travelling
16.	<b>MISCELLANEOUS</b>			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 Registrar. <sup>1</sup>
17.	<b>REINSURANCE</b>	a.		Proportional in respect of a class or sub-class referred to above.
18.		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 79 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.

**General savings**

2. (1) Anything done under a section, subsection or paragraph of an Act amended by this Act remains valid—

(a) to the extent that it is not inconsistent with this Act; and

(b) until anything done under this Act overrides it.

(2) (a) Any matter prescribed under a section of an Act amended by this Act remains valid and enforceable and is considered to have been made under this Act as a Standard—

- (i) to the extent that it is not inconsistent with this Act; and
- (ii) until it is repealed by the Registrar under this Act.

(b) For the purposes of paragraph (a), any matter prescribed by the Minister under an Act or section of an Act repealed by this Act must be regarded as having been made by the Registrar referred to in those Acts.

### **Pending matters**

3. Any matter 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 Registrar 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 repeal of the previous Act—
- (a) any investigation or inspection under the previous Act or other Financial Services Board legislation as defined in the Financial Services Board Act by the Registrar in respect of compliance with the previous Act and pending immediately before the effective date, may be continued by the Registrar, and the Registrar may take any regulatory action under those Acts that the Registrar deems appropriate in respect of any non-compliance;
- (b) for a period of three years after the effective date, the Registrar may initiate an investigation or inspection under the previous Act or other Financial Services Board legislation as defined in the Financial Services Board 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 Registrar 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 for a period of two years, subject to and in accordance with the requirements of this Act.

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

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

(4) If the Registrar 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 is similar to the business that the previously registered insurer conducted on the effective date, the Registrar must direct the insurer to—

- (a) transfer its insurance business to another insurer under section 46 of this Act by a specified date; or
- (b) make arrangements to the satisfaction of the Registrar to—
  - (i) discharge its obligations under all insurance policies entered into before the variation; or
  - (ii) ensure the orderly resolution of the business of the insurer.

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

7. (1) Any person appointed as a key person immediately before the effective date continues to hold that appointment from the effective date, and is

deemed to meet the fit and proper requirements of this Act, subject to the requirements of this Act.

(2) The Registrar must, when considering a licence application referred to in item 6(2), require the previously registered insurer to demonstrate and certify that its key persons and significant owners meet the prescribed fit and proper requirements.

### **Lloyd's**

8. (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 Registrar demonstrating how compliance with this Act will be achieved within 18 months after the effective date.

### **Insurance groups**

9. A previously registered insurer that is part of an insurance group must, within two months of the effective date, notify the Registrar thereof, and provide the Registrar with detailed information on the structure of the insurance group, its holding company and intra-group transactions.