



**FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA**

LONG-TERM INSURANCE ACT, 1998 (ACT 52 OF 1998)

SHORT-TERM INSURANCE ACT, 1998 (ACT 53 OF 1998)

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| Addressee: | Long- and short-term insurers, underwriting managers and intermediaries | File: | 10.41.1.7.2 and 10.41.2.7.2 |
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| [-]/[-]/2015 | [-]/[-]/2015 | [-]/2015 (LT&ST) | DRAFT |
| Subject: | CLARIFICATION OF THE LEGISLATIVE REQUIREMENTS RELATING TO THE TRANSFER, CANCELLATION AND REPLACEMENT OF POLICIES, AND REQUEST FOR INFORMATION PRIOR TO THE CANCELLATION OF POLICIES | | |

1. PURPOSE

1.1 The purpose of this Information Letter is to –

1.1.1 provide clarity on the legislative requirements that apply in respect of the cancellation of policies by insurers¹ (or underwriting managers² acting on behalf of insurers) or intermediaries³ (acting on behalf of policyholders), including the cancellation of policies pursuant to the cancellation of a binder agreement⁴;

1.1.2 provide clarity on the application of section 37(1) of the Long-term Insurance

¹ The term “insurer” has the meaning as defined in Part 6 of the Regulations made under the Long-term Insurance Act No. 52 of 1998, as published in GN R1492 of 1998 and amended by GN R197 of 2000, GN R164 of 2002, GN R1209 of 2003, GNR.1218 of 2006, GN R186 of 2007 and GN R952 of 2008GN R1493 of 1998, and substituted by GN R1077 of 2011 (the LTIA Regulations) and the Short-term Insurance Act No. 53 of 1998, as published in GN R1493 of 1998, amended by GN R462 of 2008 and substituted by GN R1076 of 2011 (the STIA Regulations).

² The term “underwriting manager” has the meaning as defined in Part 6 of the LTIA Regulations and the STIA Regulations.

³ The term “intermediary” refers to “independent intermediary” as defined in section 1 of the Short-term Insurance Act No. 53 of 1998 and in Part 3 of the LTIA Regulations.

⁴ The term “binder agreement” has the meaning as defined in Part 6 of the LTIA Regulations and the STIA Regulations.

Act, 1998 (“the LTIA”) and section 36(1) of the Short-term Insurance Act, 1998 (“the STIA”) in instances where policies are “transferred” from one insurer to another but no corresponding assets and liabilities relating to the transferred policies are transferred from the existing insurer to the new insurer; and

1.1.3 direct all insurers, under section 4(2) of the LTIA and STIA, to furnish information to the Registrar of Long- and Short-term Insurance (“the Registrar”) prior to the cancellation of –

1.1.3.1 policies resulting from the cancellation of a binder agreement; or

1.1.3.2 a book of policies, or part thereof, by insurers (or underwriting managers acting on behalf of insurers) or intermediaries (acting on behalf of policyholders).

1.2 This Information Letter –

1.2.1 reflects the manner in which the Registrar, and the Registrar of Financial Services Providers (“the Registrar of FSPs”), will interpret for regulatory purposes the LTIA, STIA, the Financial Advisory and Intermediary Services Act No. 37 of 2002 (“the FAIS Act”) and any subordinate legislation made under these Acts in respect of the cancellation of policies; and

1.2.2 sets out the information to be provided to the Registrar by insurers prior to the cancellation of policies by insurers (or underwriting managers acting on behalf of insurers) or intermediaries (acting on behalf of policyholders).

2. BACKGROUND

2.1 The Registrar has noted divergent practices relating to the transfer or cancellation of policies by insurers (or underwriting managers acting on behalf of insurers) and intermediaries (acting on behalf of policyholder), which practices in certain instances -

2.1.1 are incentivised by the potential to increase intermediary remuneration;

2.1.2 do not provide adequate policyholder protection; and

2.1.3 in respect of the “transfer” of policies from one insurer to another without any corresponding transfer of assets and liabilities, attempt to circumvent legislative requirements relating to the cancellation of policies.

2.2 The “transfer” of policies from one insurer to another without any corresponding transfer of assets and liabilities amounts to the *de facto* cancellation of the policies and must be treated as such.

- 2.3 Clarification is therefore provided and information is requested to ensure the consistent interpretation and application of the legislative framework and to facilitate and enhance the effective implementation of and compliance with the legislative framework in the interests of policyholders.

3. DEFINITIONS

For purposes of this Information Letter, any word or expression to which a meaning has been assigned in the LTIA, STIA or elsewhere in this Information Letter has the meaning so assigned to it, and -

- 3.1 “**book of policies**” means –

3.1.1 all the policies, falling under a particular product line, placed by an intermediary with a specific insurer;⁵ or

3.1.2 a group policy written as a life policy as defined in section 1 of the LTIA or an assistance business group scheme as defined in Part VII of the Policyholder Protection Rules (Long-term Insurance), 2004, issued under section 62 of the LTIA (“LT PPRs”);

- 3.2 “**cancellation**” includes –

- (i) the termination of a policy;
- (ii) the non-renewal of a policy where the policy contract provides for the automatic renewal of that policy; or
- (iii) the transfer of a policy from one insurer to another insurer where the transfer is not accompanied by the transfer of assets and liabilities relating to that policy; and

- 3.3 “**product line**” means policies (as defined in section 1 of the LTIA or STIA respectively) that have the same or closely related types of benefits and contractual terms, offered or entered into by a specific insurer.

4. CANCELLATION OF POLICIES BY INSURER

Responsibilities of insurer

- 4.1 Where an insurer cancels any policy⁶ (or an underwriting manager cancels a policy on behalf of an insurer) the insurer must –

⁵ An intermediary that has placed policies with an insurer forming part of different product lines/products of that insurer will therefore have a book of business for each product line/product.

⁶ Reference to “policy” in paragraph 4 and 5 must be construed as a reference to one or more policies.

- 4.1.1 if the policy is an assistance business group scheme, comply with Part VII of the LT PPRs;
- 4.1.2 if the policy is a short-term insurance policy, comply with Rule 7.3 of the Policyholder Protection Rules (Short-term Insurance), 2004, issued under section 55 of the STIA (“ST PPRs”);⁷
- 4.1.3 if the policy is a life policy as defined in section 1 of the LTIA, provide the policyholder with a reasonable period (informed by the requirements that apply in respect of short-term insurance policies) to secure another policy;
- 4.1.4 if the cancellation of the policy is related to the cancellation of a binder agreement, inform and provide the Registrar with the information in the format set out in Part A and C of the Annexure to this Information Letter, at least 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s) of the Binder Regulations^{8,9} and
- 4.1.5 if the cancellation of a policy is related to the cancellation of a book of policies or a substantial part thereof,¹⁰ provide the Registrar with the information in the format set out in Part B and C of the Annexure at least 30 days prior to the cancellation of such policy.
- 4.2 In terms of Rule 7.3 of the ST PPRs, a short-term insurer must provide the policyholder with notice of the unilateral cancellation at least 30 days prior to the cancellation date. When an insurer relies on an intermediary to provide the notice of cancellation to the policyholder, the insurer cannot calculate the required notice period from the date on which the intermediary was provided with the notification letter. The notice period must be calculated from the date on which the insurer receives proof that the policyholder is aware of the cancellation.

Responsibilities of intermediary

- 4.3 Where an insurer cancels a policy -
- 4.3.1 a mandated intermediary¹¹ may enter into another policy with another insurer on behalf of that policyholder in terms of the written mandate between the

⁷ Rule 7.3 provides that a policyholder must receive the notice of cancellation 30 days prior to the cancellation date.

⁸ Part 6 of the LTIA Regulations and STIA Regulations.

⁹ Insurers are reminded that when terminating a binder agreement the notification form (titled “Notification of the termination of a binder agreement”) must also be completed and submitted to the Registrar 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s) of the LTIA Regulations and STIA Regulations.

¹⁰ “Substantial part” is not defined in this Information Letter. It is in the discretion of the insurer to determine whether or not, in its opinion, a substantial part of a book of policies is being cancelled. As guidance, the Registrar is of the opinion that a substantial part for purposes of this Information Letter would constitute 15% or more of a book of policies.

¹¹ The term “mandated intermediary” has the meaning as defined in Part 6 of the LTIA Regulations and the STIA Regulations.

mandated intermediary and the policyholder; and

4.3.2 a non-mandated intermediary¹² may enter into a policy with another insurer on behalf of that policyholder if –

4.3.2.1 that policyholder has consented thereto; and

4.3.2.2 all relevant provisions of the FAIS Act (including those relating to conflicts of interest and replacement products) have been complied with.

4.4 The Registrar does not approve of so-called "negative consent" in terms of which a communication is sent to a policyholder informing him or her that another policy with another insurer will be entered into on behalf of the policyholder unless the policyholder specifically instructs the non-mandated intermediary not to enter into such a policy on behalf of the policyholder. Therefore, explicit prior consent from the policyholder must be secured before a non-mandated intermediary may enter into another policy with another insurer on behalf of that policyholder.

4.5 Further, where a policy is cancelled and the policyholder is moved to a specific new insurer (or the intention is to move a policyholder to a specific new insurer), the policyholder must always be made aware that he/she has a choice to either move to the new proposed insurer, move to another insurer of his/her choice, or to remain without cover.

5. CANCELLATION OF POLICIES BY INTERMEDIARIES (ON BEHALF OF POLICYHOLDERS)

Responsibilities of intermediary

5.1 A mandated intermediary¹³ may cancel a policy on behalf of a policyholder in accordance with a written mandate between the mandated intermediary and policyholder. Such a mandated intermediary may also enter into another policy with another insurer on behalf of that policyholder.

5.2 A non-mandated intermediary may only cancel a policy on behalf of a policyholder if -

5.2.1 that policyholder has consented thereto; and

5.2.2 all relevant provisions of the FAIS Act (including those relating to conflicts of interest and replacement products) have been complied with.

¹² The term "non-mandated intermediary" has the meaning as defined in Part 6 of the LTIA Regulations and the STIA Regulations.

¹³ Refer to footnote 11.

- 5.3 The Registrar does not approve of so-called "negative consent" in terms of which a communication is sent to a policyholder informing him or her that the policy will be cancelled on the policyholder's behalf unless the policyholder specifically instructs the non-mandated intermediary not to cancel that policy on behalf of the policyholder. Therefore, explicit prior consent must be secured before a non-mandated intermediary may cancel a policy on a policyholder's behalf.
- 5.4 Further, where a policy is cancelled and the policyholder is moved to a specific new insurer (or the intention is to move a policyholder to a specific new insurer), the policyholder must always be made aware that he/she has a choice to either remain with the existing insurer, move to the new proposed insurer or move to another insurer of his/her choice.

Responsibilities of insurer

- 5.5 Where a mandated or non-mandated intermediary cancels any policy on behalf of a policyholder, the insurer must –
- 5.5.1 if the policy is an assistance business group scheme, comply with Part VII of the LT PPRs;
- 5.5.2 if the cancellation of the policy relates to the cancellation of a binder agreement, inform and provide the Registrar with the information in the format set out in Part A and C of the Annexure to this Information Letter at least 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s) of the Binder Regulations; and
- 5.5.3 if the cancellation of a policy relates to the cancellation of a book of policies or a substantial part thereof,¹⁴ provide the Registrar with the information in the format set out in Part B and C of the Annexure –
- 5.5.3.1 at least 30 days prior to the cancellation of such policy; or
- 5.5.3.2 in the case of the cancellation of a substantial part of a book of policies and the insurer only becomes aware of the fact that a substantial part has been cancelled after the fact, as soon as possible after the insurer has become so aware.

6 TYPE AND FORMAT OF INFORMATION REQUESTED

The Public Officer must submit the information referred to under paragraphs 4.1.3, 4.1.4, 5.5.2 and 5.5.3 electronically in the format set out in the Annexure

¹⁴ Substantial part" is not defined in this Information Letter. It is in the discretion of the insurer to determine whether or not, in its opinion, a substantial part of a book of policies is being cancelled. As guidance, the Registrar is of the opinion that a substantial part for purposes of this Information Letter would constitute 15% or more of a book of policies.

together with the certification and indemnification contained in the Annexure and within the timelines set out in those paragraphs to the Registrar c/o FSB.INSCancellationOfPolicies@FSB.co.za.

7. FAILURE TO PROVIDE INFORMATION

A failure to provide the specified information within the timelines specified constitutes an offence under section 67 of the LTIA and section 65 of the STIA. The failure therefore may be referred to the Enforcement Committee of the Financial Services Board (“FSB”), in accordance with the Financial Institutions (Protection of Funds) Act No. 28 of 2001.

8. INFORMATION SHARING

This Information Letter is available on the website of the FSB (www.fsb.co.za).

Insurers must bring this Information Letter to the attention of their appointed auditors and statutory actuaries (where one has been appointed), underwriting managers and intermediaries, scheme or administrators.

9. DIRECTIVE 151.A.i (ST)

Directive 151.A.i (ST): *Reporting requirements prior to termination of binder agreements and related unilateral cancellation of short-term insurance policies* dated 31 March 2010, is hereby withdrawn.

DEPUTY REGISTRAR OF LONG- AND SHORT-TERM INSURANCE

NOTIFICATION AND INFORMATION TO BE PROVIDED BY INSURERS PRIOR TO THE CANCELLATION OF POLICIES

INSTRUCTIONS

An insurer must provide the Registrar with the following information in the format set out below on –

- the cancellation of any policy pursuant to the cancellation of a binder agreement at least 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s) of the Binder Regulations; or
- the cancellation of a book of policies (as defined in Information Letter [-]/2015) at least 30 days prior to the cancellation of any policies or, in the case of the cancellation of a substantial part of a book of policies and the insurer only becomes aware of the fact that a substantial part has been cancelled after the fact, as soon as possible after the insurer has become so aware.

The Public Officer must submit this notification and information electronically to the Registrar c/o FSB.INSCancellationOfPolicies@FSB.co.za.

1. Registered name of insurer:

2. This notification and information relate to the cancellation of policies pursuant to the –

termination of a binder agreement
(complete Parts A and C)

cancellation of a book of policies (as defined)
(complete Parts B and C)

PART A

3. What is the name of the binder holder?

4. Has the Registrar been notified of the termination of the binder agreement as required under the LTIA Regulations and STIA Regulations?

YES

NO

5. If yes, provide date on which notification was submitted.

6. If no, provide reasons for not notifying the Registrar as required under the LTIA Regulations and STIA Regulations.

PART B

7. What is the name of the intermediary?

8. Who initiated the cancellation of the book of policies?

the insurer

the intermediary (on behalf of the policyholder)

PART C

9. What are the reasons for the cancellation of the policies?

10. Provide details of the type of policies that will be cancelled.

11. Provide the number of policies that will be (or has been) cancelled.

Number of policies:

12. Provide the annual gross premium income attributable to the policies that will be (or has been) cancelled and indicate if the cancellation of the policies will have a material impact on the insurer's business.

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Material impact:

13. Are there any outstanding premiums and/or claims in respect of the policies that will be cancelled?

YES

NO

14. If the answer to 13 is yes, provide full details of the arrangements for addressing same. (please provide details on arrangements relating to outstanding premiums and details of arrangements relating to outstanding claims separately if both instances apply).

15. Will the risk (fully or partially) insured under the cancelled policy be placed with another insurer?

YES

NO

UNSURE

16. If the answer to 15 is yes –

16.1 What is the name of the insurer?

- 16.2 Will the benefits remain the same and, if not, explain the difference in benefits?

YES

NO

UNSURE

Difference (if applicable):

16.3 Will the premium amount remain the same and, if not, explain the difference in the premium amount?

YES NO UNSURE

Difference (if applicable):

16.4 Will new waiting periods apply and, if so, provide details of the new waiting periods?

YES NO UNSURE

Difference (if applicable):

16.5 Will new exclusions periods apply and, if so, provide details of the new exclusions?

YES NO UNSURE

Difference (if applicable):

17. If the answer to 15 is no or unsure, provide an explanation.

18. Who will inform policyholders of the cancellation of the policies?

18.1 The insurer

18.2 The binder holder

18.3 Intermediary

19. If the binder holder or intermediary will notify the policyholders (and/or members of a group policy or scheme), how will the insurer ensure that policyholders are indeed notified with the necessary notice period prior to the cancellation date?

20. Attach a copy of the proposed notification to the policyholders (or members of a group policy or scheme).
21. Provide a detailed explanation of the measures taken to ensure that all the requirements of the LTIA or STIA PPRs, as the case may be, have been complied with.

22. Where a premium collecting agency is appointed by the insurer, has the insurer notified the latter of the cancellation of the policies?

YES **NO**

23. If the answer to 22 is no, why not?

CERTIFICATION AND INDEMNIFICATION

I (name of Public Officer), identity/passport number of (name of insurer) hereby certify that the information is complete, accurate, true and not misleading in any manner.

I hereby, on behalf of the insurer referred to above, authorise the Financial Services Board, and its duly authorised agent, to confirm any information provided pursuant to this Information Letter or to make any such information available to any person referred to in section 22 of the Financial Services Board Act No. 97 of 1990.

Signed:

Date: