

(28 February 2014 – to date)

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

SHORT-TERM INSURANCE ACT 53 OF 1998

(Gazette No. 19277, Notice No. 1191, dated 23 September 1998. Commencement date: 1 January 1999)

As amended by:

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

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

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

Insurance Laws Amendment Act 27 of 2008 – Government Notice 1200 in Government Gazette 31578, dated 5 November 2008. Commencement date: 15 December 2008, unless otherwise indicated [GN 1370, Gazette No. 31726, dated 15 December 2008]; [GN 168, Gazette No. 32993, dated 1 March 2010]; [GN 1078, Gazette No. 34878, dated 23 December 2011].

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

Publisher's Note:

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

Schedule 2

10. Exclusion of certain laws

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

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

Prepared by:

In partnership with:

ACT

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

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

ARRANGEMENT OF SECTIONS

Introductory provisions

1. Definitions

Part I

Administration of Act

2. Registrar and Deputy Registrar of Short-term Insurance
3. General provisions concerning Registrar
4. Special provisions concerning Registrar and his or her powers
5. Annual report
6.

Part II

Registration of short-term insurers

7. Registration required in order to carry on short-term insurance business
8. Prohibition on use of certain words, or performance of certain acts, by certain persons
9. Application for registration
10. Conditions of registration
11. Variation of registration conditions
12. Registrar may under certain circumstances prohibit short-term insurers from carrying on business
13. Termination of registration
14. Deregistration of short-term insurers as companies

Part III

Business and administration of short-term insurers

15. Limitation on business
- 15A. Reinsurers carrying on reinsurance business only, authorised to enter into certain short-term policies directly
16. Head office and public officer
17. Financial year and name

18. Notification of certain appointments, terminations and resignations
19. Auditor
- 19A. Statutory actuary
20. Appointment of auditor or statutory actuary by Registrar
21. Removal of appointees who are not fit and proper
22. Audit committee
23. Preference shares, debentures, share capital and share warrants
24. Registration of shares in name of nominee
25. Limitation on control and certain shareholding or other interest in short-term insurers
26. Furnishing of information concerning shareholders
27. Effect of registration of shares contrary to Act

Part IV

Financial arrangements

28. Maintenance of financially sound condition
29. Assets
30. Kinds and spread of assets
31. Deeming provisions concerning assets
32. Liabilities
33. Prohibitions concerning assets and certain liabilities
34. Failure to maintain financially sound condition
35. Returns to Registrar

Part V

Compromise, arrangement, amalgamation and transfer

36. Approval of Registrar required for compromise, arrangement, amalgamation or transfer
37. Application to Registrar
38. Conditions of approval
39. Approved transaction, and certain exemptions

Part VI

Business rescue and winding-up of short-term insurers

40. Business rescue
41. Winding-up
42. Voluntary winding-up

Part VII

Business practice, policies and policyholder protection

Business practice

- 43. Free choice in certain circumstances
- 44. Prohibition on inducements
- 45. Collection of premiums by intermediaries
- 46. Receipt for premium paid in cash
- 47. Copy of policy and inspection of policy records
- 48. Independent intermediaries: remuneration
- 48A. Binder agreements
- 49.

Policies

- 50. Limitation on policy benefits in event of death of unborn or of certain minors
- 51. Voidness of certain provisions of agreements relating to short-term policies
- 52. Short-term policies entered into by certain minors
- 53. Misrepresentation and failure to disclose material information
- 54. Validity of contracts

Policyholder protection

- 55. Protection of policyholders

Part VIII

Provisions relating to Lloyd's

- 56. General
- 57. Appointment of Lloyd's representative
- 58. Returns to Registrar
- 59. Claims against Lloyd's underwriters
- 60. Security to be furnished by or on behalf of Lloyd's underwriters
- 61. Payment of certain claims against Lloyd's underwriters
- 62. Imposition of prohibition on activities of Lloyd's underwriters
- 63. Application of other provisions of Act to Lloyd's

Part IX

Offences and penalties

- 64. Offences by persons other than short-term insurers
- 65. Offences by short-term insurers
- 66. Penalty for failure to furnish Registrar with returns etc.

Part X
Transitional and general provisions

Transitional provisions

67. Continued registration of existing insurers
68. Certain existing insurers to cease long-term insurance business or to separate it from short-term insurance business
69. Special provisions concerning short-term insurers that are not public companies
70. Regulations
71. Savings
72. Interpretation of certain references in existing laws
73. Short title and commencement

Schedule 1
Kinds of assets

1. Requirement for claim to be asset, and definitions
2. Derivatives
3. Kinds of assets

Schedule 2
Method of calculation of value of assets and liabilities

Part I
Valuation of assets

1. Amounts to be disregarded
2. Calculation of values
3. Registrar may reject certain values

Part II
Valuation of liabilities

4.
5.
6.
7. Determination of value of other liabilities

Schedule 3
Lloyd's security

1. Definition of “South African short-term insurance policy”
2. Security to be provided to Lloyd’s South African Trust
3. By whom and manner in which security to be provided
4. Amount of security
5. Contributions and withdrawal of surplus
6. Investment of trust funds
7. Returns in respect of Lloyd’s South African Trust
8. Transitional provisions

(Arrangement of sections amended by section 24 of Act 17 of 2003)

(Arrangement of sections amended by section 56 of Act 17 of 2003)

(Arrangement of sections amended by section 145 of Act 45 of 2013)

Introductory provisions

1. Definitions

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

“**accident and health policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if a -

- (a) disability event;
- (b) health event; or
- (c) death event,

contemplated in the contract as a risk, occurs, but excluding any contract -

- (d) of which the contemplated policy benefits -
 - (i) are something other than a stated sum of money;
 - (ii) are to be provided upon a person having incurred, and to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and
 - (iii) are to be provided to any provider of a health service in return for the provision of such service; or
- (e)
 - (i) of which the policyholder is a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967);

- (ii) which relates to a particular member of the scheme or to the beneficiaries of such member; and
- (iii) which is entered into by the scheme to fund in whole or in part its liability to such member or beneficiaries in terms of its rules;

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

“Advisory Committee” means the Advisory Committee on Short-term Insurance established by section 6;

(Definition of “Advisory Committee” deleted by section 109(a) of Act 45 of 2013)

“approved reinsurance policy” means any proportional short-term reinsurance policy in terms of which the reinsurer is liable for the liabilities of a short-term insurer under short-term policies and any non-proportional short-term reinsurance policy which remains in force until the liabilities under short-term policies have expired, entered into by the short-term insurer with -

- (a) another short-term insurer, if the policy benefits under that short-term reinsurance policy are to be provided in the Republic;
- (b) an insurer by virtue of section 2 of the Export Credit and Foreign Investments Re-insurance Act, 1957 (Act No. 78 of 1957);
- (c) Lloyd's underwriters in accordance with Part VIII; or
- (d) an insurer under a reinsurance policy in terms of which the reinsurer furnishes security in the form of -
 - (i) money in the Republic with the short-term insurer by which such reinsurance was entered into and on which the short-term insurer has a prior charge and lien; or
 - (ii) an irrevocable guarantee or a letter of credit issued by a bank and in the form prescribed by the Registrar,

against losses which may be occasioned by the failure of the reinsurer to discharge its obligations under the said policy or by the termination of such policy for any reason;

“Auditing Profession Act” means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

(Definition of “Auditing Profession Act” inserted by section 27(b) of Act 27 of 2008)

“auditor” means an auditor registered in terms of the Auditing Profession Act and appointed in terms of section 19(1) or 20(1) of this Act;

(Definition of “auditor” substituted by section 27(c) of Act 27 of 2008)

“bank” means a bank registered otherwise than provisionally in terms of the Banks Act, 1990 (Act No. 24 of 1990);

“Board” means the Financial Services Board established by section 2 of the Financial Services Board Act;

“Companies Act” means the Companies Act, 2008 (Act No. 71 of 2008);

(Definition of “Companies Act” substituted by section 109(b) of Act 45 of 2013)

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

“Court” means the High Court of South Africa;

“death event” means the event of the life of a person or an unborn having ended;

“director” includes a person who is a member or alternate member of a body performing, in relation to an entity that is not a company, functions similar to those performed by a board of directors in relation to a company;

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

“engineering policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk relating to -

- (a) the possession, use or ownership of machinery or equipment, other than a motor vehicle, in the carrying on of a business;
- (b) the erection of buildings or other structures or the undertaking of other works; or
- (c) the installation of machinery or equipment,

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

“fair value” has the meaning assigned to it in financial reporting standards;

(Definition of “fair value” inserted by section 27(d) of Act 27 of 2008)

“financial reporting standards” has the meaning assigned to it in section 1 of the Companies Act;
(Definition of “financial reporting standards” inserted by section 27(d) of Act 27 of 2008)
(Definition of “financial reporting standards” substituted by section 109(c) of Act 45 of 2013)

“Financial Services Board Act” means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

“financial statements” has the meaning assigned to it in section 1 of the Companies Act;
(Definition of “financial statements” inserted by section 27(d) of Act 27 of 2008)
(Definition of “financial statements” substituted by section 109(c) of Act 45 of 2013)

“fit and proper requirements” includes such qualities of competence, integrity and financial standing as may be prescribed by the Registrar by notice in the *Gazette*;
(Definition of “fit and proper requirements” inserted by section 109(d) of Act 45 of 2013)

“guarantee policy” means a contract in terms of which a person, other than a bank, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the policy as a risk relating to the failure of a person to discharge an obligation, occurs; and includes a reinsurance policy in respect of such a policy;

“health event” means an event relating to the health of the mind or body of a person or an unborn;

“holding company” means a holding company as defined in section 1 of the Companies Act;

“independent intermediary” means a person, other than a representative, who renders services as intermediary and includes a Lloyd's correspondent;

“liability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the incurring of a liability, otherwise than as part of a policy relating to a risk more specifically contemplated in another definition in this section, occurs; and includes a reinsurance policy in respect of such a policy;

“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 broker” means a person permitted by the Lloyd's Council to perform acts as a broker at Lloyd's;

“Lloyd's correspondent” means a person who is approved by Lloyd's and authorised by a Lloyd's broker or Lloyd's underwriter to act in the Republic as an agent for or on behalf of such broker or underwriter;

“Lloyd's representative” means the person referred to in section 57;

“Lloyd's underwriter” means an underwriting or non-underwriting member of Lloyd's;
(Definition of “Lloyd's underwriter” substituted by section 25(a) of Act 17 of 2003)

“long-term insurer” means a person registered or deemed to be registered as a long-term insurer under the Long-term Insurance Act, 1998;

“managing executive” means the chief executive officer of a short-term insurer and every manager of that short-term insurer who reports directly to that chief executive officer;
(Definition of “managing executive” substituted by section 25(b) of Act 17 of 2003)

“Medical Schemes Act” means the Medical Schemes Act, 1998 (Act No. 131 of 1998);
(Definition of “Medical Schemes Act” inserted by section 27(e) of Act 27 of 2008)

“Minister” means the Cabinet member responsible for finance;
(Definition of “Minister” substituted by section 27(f) of Act 27 of 2008)

“miscellaneous policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to any matter not otherwise defined in this section, occurs; and includes a reinsurance policy in respect of such a policy;

“motor policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a motor vehicle, occurs; and includes a reinsurance policy in respect of such a policy;

“official web site” means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board;
(Definition of “official web site” inserted by section 109(f) of Act 45 of 2013)

“personal lines business” means short-term insurance business in respect of which the policyholder is a natural person;

“policy benefits” means one or more sums of money, other than an annuity, or services or other benefits;

“policyholder” means the person entitled to be provided with the policy benefits under a short-term policy;

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

“prescribe” means to determine from time to time by notice on the official web site, unless notice in the *Gazette* is specifically required under a provision of this Act;

(Definition of “prescribe” substituted by section 109(g) of Act 45 of 2013)

“property policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk other than a risk more specifically contemplated in another definition in this section relating to the use, ownership, loss of or damage to movable or immovable property occurs; and includes a reinsurance policy in respect of such a policy;

“proportional reinsurance” means the reinsurance of a part of a liability under a short-term policy, where premiums are shared in the same proportion as losses between the reinsurer and the short-term insurer;

“Public Accountants' and Auditors' Act”

(Definition of “Public Accountants' and Auditors' Act” deleted by section 27(g) of Act 27 of 2008)

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

(Definition of “public company” substituted by section 27(h) of Act 27 of 2008)

(Definition of “public company” substituted by section 109(h) of Act 45 of 2013)

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

(Definition of “publish” inserted by section 109(i) of Act 45 of 2013)

“Registrar” means the person referred to in section 2;

(Definition of “Registrar” substituted by section 27(i) of Act 27 of 2008)

(Definition of “Registrar” substituted by section 109(j) of Act 45 of 2013)

“regulation” means a regulation under section 70;

“repealed Act” means the Insurance Act, 1943 (Act No. 27 of 1943);

“representative” means a natural person employed -

(Words preceding paragraph (a) substituted by section 25(c) of Act 17 of 2003)

- (a) by or working for a short-term insurer and receiving or entitled to receive remuneration; and
- (b) for the purpose of rendering services as intermediary in relation to short-term policies entered into or to be entered into by the short-term insurer only;

“risk” means a possibility that a particular event may occur during the period for which a short-term policy is operative;

“services as intermediary” means any act performed by a person -

- (a) the result of which is that another person will or does or offers to enter into, vary or renew a short-term policy; or
- (b) with a view to -
 - (i) maintaining, servicing or otherwise dealing with;
 - (ii) collecting or accounting for premiums payable under; or
 - (iii) receiving, submitting or processing claims under,a short-term policy;

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

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

“short-term policy” means an engineering policy, guarantee policy, liability policy, miscellaneous policy, motor policy, accident and health policy, property policy or transportation policy or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is renewed or varied;

“short-term reinsurance policy” means a reinsurance policy in respect of a short-term policy;

“statutory actuary” means an actuary appointed in accordance with section 19A(1) or 20(1);

(Definition of “statutory actuary” inserted by section 27(j) of Act 27 of 2008)

“subsidiary” means a company which, in terms of section 1(3) of the Companies Act, is deemed to be a subsidiary company;

(Definition of “subsidiary” substituted by section 109(m) of Act 45 of 2013)

“**survival benefit**” means a policy benefit which is to be provided in the event of the life of a person or an unborn continuing or having continued for a period;

“**this Act**” includes any regulation made, or matter prescribed under this Act;

(Definition of “this Act” inserted by section 27(k) of Act 27 of 2008)

“**transportation policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft or for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed, occurs; and includes a reinsurance policy in respect of such a policy;

“**unborn**” means a human foetus conceived but not born.

“**widely-held company**”

(Definition of “widely-held company” inserted by section 27(l) of Act 27 of 2008)

(Definition of “widely-held company” deleted by section 109(n) of Act 45 of 2013)

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

Part I

Administration of Act

2. Registrar and Deputy Registrar of Short-term Insurance

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

(Section 2 substituted by section 28 of Act 27 of 2008)

(Section 2 substituted by section 110 of Act 45 of 2013)

3. General provisions concerning Registrar

- (1) An approval of, or a determination or decision by, or a notice to be given by or to, the Registrar, shall, without derogating from legal rules on the making known or publication thereof, be valid only if it is in writing.
- (2) Whenever the approval of, or a determination or decision by, or the performance of any other act by the Registrar, is sought by a person under this Act or any other law, application therefor shall be made in writing to the Registrar and the application shall -
 - (a) be made in the form the Registrar requires; and
 - (b) be accompanied by -
 - (i) the fees prescribed by the Registrar; and
 - (ii) the information or documents which the Registrar requires.
- (3) If a person with an interest in the matter is aggrieved by a determination made, decision taken or act performed in the exercise or carrying out of the powers or duties of the Registrar, that person may appeal to the board of appeal established by section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section.
- (4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, which are held by the Registrar under this Act in relation to a short-term insurer, Lloyd's underwriter or an intermediary, or obtain a copy of or extract from any such document.

(Section 3(4) substituted by section 111 of Act 45 of 2013)
- (5) A document which purports to be certified by the Registrar as a document held in the Registrar's office or to be a copy of such a document, shall be *prima facie* proof of the content of such a document or copy, and shall be admissible in evidence in any proceedings.

4. Special provisions concerning Registrar and his or her powers

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

(Section 4(3) substituted by section 26(a) of Act 17 of 2003)

(Section 4(3) deleted by section 112(a) of Act 45 of 2013)

(4)

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

(Section 4(4)(f) substituted by section 112(b) of Act 45 of 2013)

(Section 4(4) substituted by section 29 of Act 27 of 2008)

(5)

- (a) If a person contravened or is contravening section 7(1)(a) of this Act, the Registrar may -
 - (i) by notice direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under short-term policies already entered into by that person; or
 - (ii) apply to the Court for the sequestration or liquidation of that person, whether he, she or it is solvent or not, in accordance with -
 - (aa) the Insolvency Act, 1936 (Act No. 24 of 1936);

- (bb) the Companies Act;
 - (cc) the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - (dd) the law under which that person is incorporated,
- as the case may be.

(b) In deciding an application contemplated in paragraph (a)(ii), the Court -

- (i) may take into account whether the sequestration or liquidation of the person concerned would be in the interests of the policyholders concerned;
- (ii) may make an order concerning the manner in which claims may be proven by policyholders; and
- (iii) shall (if necessary) appoint as trustee or liquidator a person nominated by the Registrar.

(6)

(Section 4(6) deleted by section 112(c) of Act 45 of 2013)

(7) The Registrar may -

- (a) determine that a policy or policies shall form part of a particular class of policies defined in section 1 of this Act or in section 1 of the Long-term Insurance Act, 1998, if a short-term insurer has not classified that policy or policies correctly into the appropriate class, and when the Registrar so determines, the policy or policies concerned shall be deemed to form part of the class of policies so determined for the purposes of, and subject to, the provisions of the said Act relating to that class of policies; or

(Section 4(7)(a) amended by section 26(b) of Act 17 of 2003)

- (b) upon application of a short-term insurer, determine that a policy or policies forming part of any class of policies defined in section 1 of this Act or in section 1 of the Long-term Insurance Act, 1998, shall form part of a different class of policies defined in the said section 1 of this Act, and when the Registrar so determines, that policy or policies shall for the purposes of this Act, be deemed to form part of the class of policies so determined and it or they shall be subject to all the -

- (i) provisions of this Act relating to that class of policies; and
- (ii) conditions determined by the Registrar:

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

(Section 4(7)(b) amended by section 26(b) of Act 17 of 2003)

(8)

(a) The Registrar may-

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

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

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

(Section 4(8) added by section 112(d) of Act 45 of 2013)

5. Annual report

(1) The Registrar shall submit to the Minister a report on the Registrar's activities under this Act during each year ending 31 December, and shall furnish any additional information relating to anything done by the Registrar under this Act that the Minister may require.

(2) A copy of the report submitted to the Minister in terms of subsection (1) shall be tabled in Parliament within 30 days after receipt of the report if Parliament is then in session or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

6.

(Section 6 repealed by section 113 of Act 45 of 2013)

Part II

Registration of short-term insurers

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

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

- (a) is registered or deemed to be registered as a short-term insurer, and is authorised to carry on the kind of short-term insurance business concerned, under this Act; or
 - (b) is authorised under section 56 to do so, and carries on that business in accordance with this Act.
- (2) Subsection (1) shall not apply to -
- (a) a pension fund organization registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), or exempted under section 2(3)(a) of that Act from the requirement to be so registered, if and in so far as it acts in accordance with that Act;
 - (b) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or exempted under section 3(2) of that Act from the requirement to be so registered, if and in so far as it enters into short-term policies in respect of any of which the value of the policy benefits to be provided, does not exceed R5 000 per member or another maximum amount prescribed by the Minister;
 - (c) a fund established in terms of an agreement referred to in section 23 of the Labour Relations Act, 1995 (Act No. 66 of 1995), if and in so far as it acts in accordance with the provisions of such agreement;
 - (d) a medical scheme registered under the Medical Schemes Act, if and in so far as it acts in accordance with that Act;
(Section 7(2)(d) substituted by section 30 of Act 27 of 2008)
 - (e) a long-term insurer, if and in so far as it enters into a long-term policy which it is entitled to enter into by virtue of its registration as a long-term insurer;
 - (f) an agricultural co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005), or allowed to continue to operate in terms of section 97 of that Act, if and in so far as it, as part of its main objectives, conducts short-term insurance business, and provides benefits the amount of which is not guaranteed and in respect of which its liability is limited to the amount standing to the credit of a fund specially maintained for that purpose;
(Section 7(2)(f) substituted by section 30 of Act 27 of 2008)
 - (g) the unemployment insurance fund established by the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), if and in so far as it acts in accordance with that Act; or
(Section 7(2)(g) substituted by section 30 of Act 27 of 2008)
 - (h) the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act No. 13 of 1944), if and in so far as it acts in accordance with that Act.

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

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

- (1) No person shall -
- (a) subject to section 8(1)(a) of the Long-term Insurance Act, 1998, without the approval of the Registrar apply to his, her or its business or undertaking a name or description which includes the word 'insure', 'assure' or 'underwrite' or any derivative thereof, unless such person is a short-term insurer or a Lloyd's underwriter;
(Section 8(1)(a) substituted by section 114(a) of Act 45 of 2013)
 - (b) perform any act which indicates that he, she or it carries on or is authorised to carry on short-term insurance business, unless he, she or it is a short-term insurer authorised to carry on that business or a Lloyd's underwriter.
 - (c) publish any advertisement, brochure or similar communication which relates to the business of a short-term insurer or a Lloyd's underwriter, or to a short-term policy, and which is misleading or contrary to the public interest or contains an incorrect statement of fact; or
(Section 8(1)(c) added by section 114(b) of Act 45 of 2013)
 - (d) publish any advertisement, brochure or similar communication which relates to a short-term policy that does not prominently include the name of the short-term insurer or Lloyd's underwriter underwriting the short-term policy.
(Section 8(1)(d) added by section 114(b) of Act 45 of 2013)

- (2) Subject to this Act, no person shall render services as intermediary in relation to a short-term policy, unless -
- (a) short-term insurers are the only underwriters in terms of the short-term policy concerned;
 - (b) such person is a Lloyd's correspondent and Lloyd's underwriters are the only underwriters in terms of the short-term policy concerned;
 - (c) short-term insurers and Lloyd's underwriters through a Lloyd's correspondent are collectively the only underwriters in terms of the short-term policy concerned; or
 - (d) such person does so with the approval of the Registrar.
- (3) The Registrar may from time to time by notice on the official web site or, in the case of any particular person, by notice to such person, subject to such conditions as the Registrar determines-
- (Words preceding paragraph (a) substituted by section 114(c) of Act 45 of 2013)*
- (a) and specifies in the notice, grant to persons generally or to any particular person or category of persons the approval contemplated in subsection (2)(d) to such extent as may be specified by the Registrar in the notice; and
 - (b) at any time withdraw or amend any such approval to such extent as may be determined by the Registrar.
- (4) Subsections (2) and (3) shall not apply in the case of a short-term reinsurance policy unless and to the extent that the Minister so determines by notice in the *Gazette*.
- (5) An independent intermediary shall not charge, in addition to any remuneration contemplated in section 48, any fee which is payable by a policyholder, unless the amount thereof is disclosed expressly and separately to the policyholder by the intermediary.
- (6) No short-term insurer which is liable under a short-term insurance policy may refer to or use in any such policy or advertisement, brochure or similar communication the term 'funeral' or 'burial' or any derivative thereof.
- (Section 8(6) substituted by section 27 of Act 17 of 2003)*

9. Application for registration

- (1) A person who wishes to carry on short-term insurance business shall apply to the Registrar for registration as a short-term insurer.

- (2) Subject to subsection (3), the Registrar -
- (a) may grant an application made in terms of subsection (1) on such of the conditions contemplated in section 10 as the Registrar may determine; and
 - (b) shall, if the Registrar grants such application, register the person concerned as a short-term insurer and issue to that person a certificate of registration, in such form as may be prescribed by the Registrar, authorising that person to carry on the short-term insurance business concerned and specifying the conditions contemplated in paragraph (a).
- (3) An application referred to in subsection (1) shall not be granted by the Registrar -
- (a) unless the applicant -
 - (i) is a public company and has the carrying on of short-term insurance business as its main object; or
 - (ii) is incorporated without a share capital under a law providing specifically for the constitution of a person to carry on short-term insurance business as its main object;
 - (b) if -
 - (i) the applicant does not have the financial resources, organisation or management that is necessary and adequate for the carrying on of the business concerned;
 - (ii) any person who is, or will, from the date of proposed registration, be a director or managing executive of the applicant is not fit and proper to hold the office concerned;
 - (iii) the direct or indirect control of the applicant by another person, whether by virtue of shareholding, voting power, the power to appoint directors, or in any other manner, will be contrary to the interests of policyholders;
 - (iv) the applicant is not, or will not be, able to comply with this Act; or
 - (v) the registration is contrary to the public interest;
 - (c) if the proposed name of the applicant, or a translation, shortened form or derivative thereof, is unacceptable because it -
 - (i) is identical to that of another short-term insurer or a long-term insurer;

- (ii) so closely resembles that of another short-term insurer or a long-term insurer that the one is likely to be mistaken for the other;
- (iii) is identical to that under which another short-term insurer or a long-term insurer was previously registered and reasonable grounds exist for objection to its use by the applicant concerned; or
- (iv) is misleading or undesirable,

unless the applicant has undertaken to adopt, within such period as the Registrar may determine, another name which is acceptable to the Registrar.

10. Conditions of registration

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

- (a) authorising the short-term insurer to enter into only certain short-term policies determined by the Registrar;
- (b) authorising the short-term insurer to enter into short-term policies other than certain short-term policies determined by the Registrar;
- (c) authorising the short-term insurer to enter into certain short-term policies determined by the Registrar only if those policies contain, or do not contain, particular terms or conditions determined by the Registrar;
- (d) limiting the amount or value of the policy benefits to be provided by the short-term insurer under certain short-term policies determined by the Registrar to an amount or value determined by the Registrar;
- (e) limiting the amount of the premiums that the short-term insurer may contract to receive, during a period determined by the Registrar, in respect of all or certain short-term policies determined by the Registrar that may be entered into by that short-term insurer during that period;
- (f) requiring the short-term insurer to enter into short-term reinsurance policies in terms of which that short-term insurer reinsures at least a portion determined by the Registrar of the liabilities incurred by it in terms of all or certain short-term policies determined by the Registrar that may be entered into by that short-term insurer during a period determined by the Registrar;
- (g) requiring that the provisions of the Memorandum of Incorporation, or equivalent constitution, of the short-term insurer must be suitable to enable it to carry on short-term insurance business; or

(Section 10(g) substituted by section 115 of Act 45 of 2013)

- (h) reasonably necessary to ensure that the short-term insurance business concerned is carried on soundly in compliance with section 28(1),

(Section 10(h) substituted by section 31 of Act 27 of 2008)

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

11. Variation of registration conditions

- (1) The Registrar may -

- (a) upon application of a short-term insurer and having regard, with the necessary changes, to section 9(3)(b);
- (b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 34(2)(a) in relation to a short-term insurer; or
- (c) if a short-term insurer has ceased to enter into certain short-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the short-term insurer has been allowed at least 30 days in which to make representations in respect of the matter,

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

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

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

- (1) If a short-term insurer -

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

(Section 12(1)(b) substituted by section 116(a) of Act 45 of 2013)

- (bA) no longer meets the conditions under which it was registered;
(Section 12(1)(bA) inserted by section 116(b) of Act 45 of 2013)
- (bB) has failed to comply with any other condition imposed under this Act;
(Section 12(1)(bB) inserted by section 116(b) of Act 45 of 2013)
- (bC) has failed to comply with any directive issued under this Act;
(Section 12(1)(bC) inserted by section 116(b) of Act 45 of 2013)
- (bD) is in the opinion of the Registrar not managed or owned by persons who are fit and proper; or not managed in accordance with the governance and risk management framework prescribed by the Registrar in the *Gazette*;
(Section 12(1)(bD) inserted by section 116(b) of Act 45 of 2013)
- (bE) has contravened or failed to comply with a provision of this Act; or
(Section 12(1)(bE) inserted by section 116(b) of Act 45 of 2013)
- (c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9(3),
(Section 12(1)(c) substituted by section 116(c) of Act 45 of 2013)

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

- (2) When the Registrar has given notice to a short-term insurer in accordance with subsection (1), and has allowed that insurer a reasonable period in which to make representations to the Registrar in respect of the matter, the Registrar may, by notice to the short-term insurer -
(Words preceding paragraph (a) substituted by section 116(d) of Act 45 of 2013)
 - (a) withdraw the first-mentioned notice;
 - (b) act in accordance with section 11; or
 - (c) prohibit the short-term insurer from carrying on such short-term insurance business as the Registrar may specify in the notice, and which has been specified in the first- mentioned notice.
(Section 12(2)(c) substituted by section 116(e) of Act 45 of 2013)
- (3) When the Registrar has, in accordance with subsection (2), prohibited a short-term insurer from carrying on certain short-term insurance business, the Registrar may thereafter -
 - (a) withdraw the prohibition by notice to the short-term insurer;

- (b) act in accordance with section 11(1) and thereupon, by notice to the short-term insurer, withdraw the prohibition and authorise the short-term insurer to carry on the short-term insurance business, subject to the conditions determined by the Registrar, specified in the new certificate of registration referred to in section 11(2); or
- (c) act in accordance with section 13(2)(c), 40(2) or 41(2), according to whichever provision the Registrar deems most appropriate in the circumstances and in the interests of the policyholders of the short-term insurer.

13. Termination of registration

- (1) If a short-term insurer fails to commence the carrying on of its short-term insurance business within a reasonable period after being registered to do so, and if, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that the short-term insurer will not commence the carrying-on of such business within a reasonable period thereafter, the Registrar shall, by notice to the short-term insurer, cancel its registration.
- (2) The Registrar shall -
 - (a) if a short-term insurer has ceased to enter into short-term policies to an extent which justifies its continued registration as a short-term insurer and, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that it will not resume the entering into of short-term policies to the required extent within a reasonable period thereafter;
 - (b) if a short-term insurer notified the Registrar of its intention to cease to enter into any more short-term policies and has requested so in writing; or
 - (c) if the Registrar considers it appropriate to act so in accordance with section 12(3)(c),

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

(Words following paragraph (c) substituted by section 117(a) of Act 45 of 2013)

- (3) When all of the short-term insurance business of a short-term insurer has been -

- (a) discontinued as a result of its amalgamation with, or its transfer to, another short-term insurer as contemplated in Part V; or
- (b) wound up as contemplated in Part VI,

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

(Words following paragraph (b) substituted by section 117(b) of Act 45 of 2013)

14. Deregistration of short-term insurers as companies

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

(Section 14 substituted by section 118 of Act 45 of 2013)

Part III

Business and administration of short-term insurers

15. Limitation on business

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

(Words preceding paragraph (a) substituted by section 119(a) of Act 45 of 2013)

- (a) if it is in the interests of the policyholders of a particular short-term insurer, or short-term insurers in general, to act so;
 - (b) after giving at least 30 days' notice of the Registrar's intention to act so in the case of -
 - (i) a particular short-term insurer, to that short-term insurer; or
 - (ii) short-term insurers generally, on the official web site; and
(Section 15(3)(b)(ii) substituted by section 119(b) of Act 45 of 2013)
 - (c) after considering any representations received in respect of the matter.
- (4) A short-term insurer shall not undertake to provide a survival benefit.
- (5) A short-term insurer, other than an insurer carrying on reinsurance business only, shall not be a long-term insurer as defined in the Long-term Insurance Act, 1998.

15A. Reinsurers carrying on reinsurance business only, authorised to enter into certain short-term policies directly

The Registrar may, subject to section 11, and notwithstanding sections 15(5) and 68, grant approval to an insurer carrying on reinsurance business only, to directly enter into short-term policies other than short-term reinsurance policies.

(Section 15A inserted by section 28 of Act 17 of 2003)

16. Head office and public officer

- (1) A short-term insurer shall -
- (a) have its head office in the Republic;
 - (b) appoint a natural person who is permanently resident in the Republic as its public officer;
 - (c) notify the Registrar of the address of that head office and of the name of that public officer; and
 - (d) if the address of that head office changes, or if that public officer or the name of that public officer changes, notify the Registrar thereof within 30 days after such change.
- (2) The public officer shall, as far as it is in his or her power, ensure that the short-term insurer complies with this Act.

- (3) Process in any legal proceedings against a short-term insurer may be served at the head office of that insurer or, if no such office is in existence, by service upon the public officer or, if he or she cannot be found or if no person has been appointed as public officer, by service upon the Registrar, which shall be deemed to be service upon the short-term insurer.

17. Financial year and name

A short-term insurer may not change -

- (a) its financial year; or
- (b) its name, or a translation, shortened form or derivative thereof,
(Section 17(b) substituted by section 29 of Act 17 of 2003)

without the approval of the Registrar.

18. Notification of certain appointments, terminations and resignations

- (1) A short-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director or managing executive appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such appointment or termination or resignation, as the case may be, together with the reasons for any such termination or resignation.
- (2) Any such director or managing executive who resigns or whose appointment has been terminated by a short-term insurer shall, at the request of the Registrar, inform the Registrar in writing of any matter relating to the affairs of that insurer of which the director or managing executive became aware in the performance of his or her duties and which may prejudice the insurer's ability to comply with this Act.
- (3) No information furnished by a director or managing executive in terms of subsection (2) may be used in any subsequent criminal proceedings against such director or managing executive.
(Section 18 substituted by section 30 of Act 17 of 2003)

19. Auditor

- (1) A short-term insurer shall at all times have one or more auditors appointed by it in accordance with the provisions of the Companies Act applicable to a public company.
(Section 19(1) substituted by section 32(a) of Act 27 of 2008)
(Section 19(1) substituted by section 120 of Act 45 of 2013)
- (2) No appointment of an auditor, other than a reappointment not involving a break in the continuity of the appointment, shall take effect unless it has been approved by the Registrar.

- (3)
(Section 19(3) deleted by section 32(b) of Act 27 of 2008)
- (4) If an auditor of a short-term insurer is a firm (as contemplated in the Auditing Profession Act), the Registrar's last approval of the appointment of that firm as auditor shall not lapse by reason of a change in the membership of the firm if at least half of the members of the firm, after the change, were members when the appointment of the firm was last approved by the Registrar.
(Section 19(4) substituted by section 32(c) of Act 27 of 2008)
- (5) Notwithstanding anything to the contrary in any law contained, the auditor of a short-term insurer shall-
- (a) whenever the auditor furnishes copies of a report or other document or particulars contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, also furnish a copy thereof to the Registrar; and
 - (b) if the auditor's appointment is terminated for any reason-
 - (i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and
 - (ii) if the auditor would, but for that termination, have had reason to submit a report contemplated in section 45(1)(a) and (3)(c) of the Auditing Profession Act, submit such a report to the Registrar; and
 - (c) inform the Registrar and the board of directors of the short-term insurer, without delay, in writing of any matter relating to the business of the short-term insurer of which the auditor becomes aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, constitutes a contravention of section 28(1) or any other section of this Act, or in future may prejudice the insurer's ability to comply with section 28(1) or any other section of this Act, which information must give a description of the matter and must include such other particulars as the auditor considers appropriate.
(Section 19(5) substituted by section 32(d) of Act 27 of 2008)
- (6)
- (a) The furnishing, in good faith, by an auditor of a report or information in terms of this section shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject.
 - (b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section shall not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.

- (7) The auditor of a short-term insurer must carry out the duties assigned to the auditor of a short-term insurer by this Act, the Act under which that insurer is incorporated and the Auditing Profession Act, and in addition to those duties must-
- (a) in relation to a statement forming part of the returns in respect of which the auditor is required to submit in terms of section 35, examine that statement or part thereof and satisfy himself, herself or itself that it is properly prepared so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any annexure thereto, has in all material respects been prepared in accordance with Chapter IV of the Auditing Profession Act; and
 - (b) carry out the other duties prescribed by the Minister.

(Section 19(7) substituted by section 32(e) of Act 27 of 2008)

- (8) Without derogating from an auditor's right to do so in respect of anything which is material to the carrying out of the auditor's duties, an auditor shall not be required to examine or express an opinion in relation to a statement forming part of a return, report or certificate or to the particulars thereof, in respect of which a statutory actuary is required, in terms of this Act, to make an examination, give an attestation or express an opinion.

(Section 19(8) added by section 32(f) of Act 27 of 2008)

- (9) An auditor may rely on the work performed by the statutory actuary in relation to the financial affairs of a short-term insurer, when the auditor expresses an opinion in relation to the financial affairs of that short-term insurer in terms of this Act or any other law, subject to compliance with the prevailing auditing standards.

(Section 19(9) added by section 32(f) of Act 27 of 2008)

19A. Statutory actuary

- (1) A short-term insurer shall from time to time appoint, and at all times have, a statutory actuary under the circumstances determined by the Registrar, either generally or in a particular case.
- (2) A short-term insurer may appoint an alternate to act in the place of its statutory actuary during his or her absence for any reason.
- (3) No person other than a natural person who is permanently resident in the Republic, is a Fellow of the Actuarial Society of South Africa and has, as an actuary, appropriate practical experience relating to short-term insurance business, shall be appointed as a statutory actuary or his or her alternate.
- (4) No appointment of a statutory actuary or his or her alternate shall take effect unless it has been approved by the Registrar.

- (5) The statutory actuary of a short-term insurer shall-
- (a) submit to the Registrar, if his or her appointment is for any reason terminated, a statement of what he or she believes to be the reasons for that termination; and
 - (b)
 - (i) without delay, report in writing to the board of directors of the short-term insurer any matter relating to the business of the short-term insurer of which he or she becomes aware in the performance of his or her functions as statutory actuary and which, in his or her opinion, constitutes a contravention of section 28(1) or any other section of this Act relating to the duties of the statutory actuary, or in future may prejudice the short-term insurer's ability to comply with section 28(1) or any other section of this Act relating to the duties of the statutory actuary, which report must give a description of the matter and must include such other particulars as the statutory actuary considers appropriate: Provided that the report must be submitted without delay also to the Registrar where, in the opinion of the statutory actuary, the matter-
 - (aa) materially prejudices the insurer's ability to comply with any of these sections;
 - (bb) does not materially prejudice the insurer's ability to comply with these sections, but the statutory actuary is of the opinion that immediate remedial action must be taken by the short-term insurer; and
 - (ii) if steps to rectify the matter are not taken by the board of directors of the short-term insurer to the satisfaction of the statutory actuary within 30 days after the date of the report, without delay inform the Registrar.
- (6)
- (a) The furnishing, in good faith, by a statutory actuary of a report or information in terms of subsection (5) shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which he or she is subject.
 - (b) The failure, in good faith, by a statutory actuary to furnish a report or information in terms of this section shall not confer upon any person a right of action against the statutory actuary which, but for that failure, that person would not have had.
- (7) In addition to duties assigned to the statutory actuary by any other law or a code of professional practice, the statutory actuary shall-
- (a) in relation to a statement forming part of the returns in respect of which he or she is required to submit in terms of section 35, examine that statement and satisfy himself or herself that it is

properly drawn up so as to comply with the requirements of this Act and attest or, as the case may be, express an opinion in connection with that statement; and

(b) carry out the other duties provided for in this Act or prescribed by the Minister.

(8) A statutory actuary shall-

(a) have the right of access at all times to the accounting records and other books and documents of the short-term insurer and be entitled to require from the directors or officers of that insurer the information and explanations he or she deems necessary for the carrying out of his or her duties;

(b) be entitled to-

(i) attend and speak at a general meeting of the short-term insurer;

(ii) receive the notices and other communications relating to a general meeting referred to in subparagraph (i) that a member of that short-term insurer is entitled to receive; and

(c)

(i) attend and be entitled to speak at any meeting of the board of directors of the short-term insurer on the business of the meeting which concerns the duties conferred on or assigned to him or her as statutory actuary by or under this Act and by any other law or code of professional practice; and

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

(Section 19A inserted by section 33 of Act 27 of 2008)

20. Appointment of auditor or statutory actuary by Registrar

(1) If a short-term insurer for any reason fails to appoint an auditor or statutory actuary, the Registrar may, notwithstanding section 90(1) and (2)(c) of the Companies Act, but subject to section 19 or 19A of this Act, appoint an auditor or statutory actuary for that short-term insurer.

(Section 20(1) substituted by section 121 of Act 45 of 2013)

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

(Section 20 substituted by section 34 of Act 27 of 2008)

21. Removal of appointees who are not fit and proper

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

(Section 21(1) substituted by section 35 of Act 27 of 2008)

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

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

22. Audit committee

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

(Section 22(1) substituted by section 36(a) of Act 27 of 2008)

(Section 22(1) substituted by section 122(a) of Act 45 of 2013)

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

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

(Words preceding paragraph (a) substituted by section 36(b) of Act 27 of 2008)

(Words preceding paragraph (a) substituted by section 122(b) of Act 45 of 2013)

- (a) to assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied by the short-term insurer in the day-to-day management of its business;
- (b) to facilitate and promote communication and liaison concerning the matters referred to in paragraph (a) or a related matter, between the board of directors and the managing executive, auditor and internal audit staff of the short-term insurer;

- (c) to recommend the introduction of measures which the committee believes may enhance the credibility and objectivity of financial statements and reports concerning the business of the short-term insurer; and
- (d) to advise on a matter referred to the committee by the board of directors.

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

(Section 22(3A) inserted by section 36(c) of Act 27 of 2008)

(4) If the appointment or composition of an audit committee is, in a particular case, inappropriate or impractical or would serve no useful purpose, the Registrar may, subject to such conditions as the Registrar may determine, exempt the short-term insurer concerned from the requirements of subsection (1).

(Section 22(4) substituted by section 36(d) of Act 27 of 2008)

23. Preference shares, debentures, share capital and share warrants

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

- (a) issue any securities or change the capital structure of the company;
- (b) reduce its share capital;
- (c) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 48 of the Companies Act; or
- (d) conclude a transaction contemplated in section 44 of the Companies Act.

(2) The conditions referred to in subsection (1) may include a new or varied registration condition contemplated in section 10 or 11.

(Section 23 amended by section 31 of Act 17 of 2003)

(Section 23 amended by section 37 of Act 27 of 2008)

(Section 23 substituted by section 123 of Act 45 of 2013)

24. Registration of shares in name of nominee

(1) A short-term insurer shall not knowingly -

- (a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended beneficial shareholder;
 - (b) register transfer of any of its shares to a person other than the intended beneficial shareholder,
- without the approval of the Registrar.

(2) Subsection (1) shall not apply to the allotment, issue or registration of the shares of a short-term insurer -

- (a) to or in the name of a trustee or custodian of a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or a representative of such trustee or custodian appointed in terms of section 68(6)(a) of the Collective Investment Schemes Control Act, 2002;

(Section 24(2)(a) substituted by section 38(a) of Act 27 of 2008)

- (b) to or in the name of an executor of the estate of a deceased shareholder of a company, a trustee of a shareholder whose estate has been sequestered or an administrator, curator or guardian of a shareholder who is otherwise under disability.

(Section 24(2)(b) substituted by section 124 of Act 45 of 2013)

- (c) for a period of not more than six months, to or in the name of a company controlled by a short-term insurer or an employee of the short-term insurer, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares;

- (d) to or in the name of a participant as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), or of a nominee contemplated in section 36(1)(b) read with section 39(2)(q) of the Securities Services Act, 2004: Provided that the participant or nominee concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;

(Section 24(2)(d) substituted by section 38(b) of Act 27 of 2008)

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

25. Limitation on control and certain shareholding or other interest in short-term insurers

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

(Section 25(1) substituted by section 32(a) of Act 17 of 2003)

(Section 25(1) substituted by section 125(a) of Act 45 of 2013)

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

(a) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and related parties, will amount to 25 per cent or more of the total nominal value of all of the issued shares of the short-term insurer concerned;

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

(Section 25(2) substituted by section 32(b) of Act 17 of 2003)

(Section 25(2) substituted by section 125(a) of Act 45 of 2013)

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

(Section 25(2A) inserted by section 125(b) of Act 45 of 2013)

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

(a) may be given -

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

(Section 25(3)(a)(i) substituted by section 32(c) of Act 17 of 2003)

(Section 25(3)(a)(i) substituted by section 125(c) of Act 45 of 2013)

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

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

(i) the public interest; or

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

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

(Words preceding subparagraph (i) substituted by section 32(d) of Act 17 of 2003)

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

(Section 25(3)(c)(i) substituted by section 125(d) of Act 45 of 2013)

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

that the Registrar may determine.

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

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

- (i) the total nominal value or number of all the issued shares of the short-term insurer; or

- (ii) all the shares in a specific class of shares issued by the short-term insurer; and

(Section 25(4)(a) substituted by section 125(e) of Act 45 of 2013)

- (b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his, her or its shareholding to 15 per cent of the voting rights attached to all the issued shares of the short-term insurer.

(Section 25(4)(b) substituted by section 125(e) of Act 45 of 2013)

- (5) For the purposes of this section “related party”, in relation to -

(Words preceding paragraph (a) substituted by section 32(e) of Act 17 of 2003)

- (a) a natural person, means -

- (i) a person who is recognised in law or the tenets of a religion as the spouse, permanent life partner or civil union partner of that person;

(Section 25(5)(a)(i) substituted by section 125(f) of Act 45 of 2013)

- (ii) a child of that person, including a stepchild, an adopted child and a child born out of wedlock;

(Section 25(5)(a)(ii) substituted by section 125(f) of Act 45 of 2013)

- (iiA) a parent or stepparent of that person;
(Section 25(5)(a)(iiA) inserted by section 125(g) of Act 45 of 2013)
 - (iiB) a person in respect of whom that person is recognised in law or appointed by a court as the person legally responsible for managing the affairs of or meeting the regular care needs of the first-mentioned person;
(Section 25(5)(a)(iiB) inserted by section 125(g) of Act 45 of 2013)
 - (iiC) a person who is the permanent life partner or spouse or civil union partner of a person referred to in subparagraphs (ii), (iiA) and (iiB);
(Section 25(5)(a)(iiC) inserted by section 125(g) of Act 45 of 2013)
 - (iiD) a person who is in a commercial partnership with that person;
(Section 25(5)(a)(iiD) inserted by section 125(g) of Act 45 of 2013)
 - (iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the short-term insurer concerned;
 - (iv) a juristic person whose board of directors acts in accordance with his or her directions or instructions;
 - (v) a trust controlled or administered by him or her;
- (b) a juristic person -
- (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
(Section 25(5)(b)(i) substituted by section 125(h) of Act 45 of 2013)
 - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
 - (iii) which is not a company or a close corporation, means another juristic person which would have been its subsidiary or holding company -
 - (aa) had it been a company; or
 - (bb) in the case where that other juristic person, too, is not a company, had both it and that other juristic person been a company;

- (iv) means any person in accordance with whose directions or instructions its board of directors acts;
 - (v) means another juristic person whose board of directors acts in accordance with its directions or instructions;
 - (vi) means a trust controlled or administered by it.
- (6) For the purposes of this section a person shall be deemed to exercise control over a short-term insurer if that person, alone or with related parties -
- (Words preceding paragraph (a) substituted by section 32(f) of Act 17 of 2003)*
- (a) holds shares in the short-term insurer of which-
 - (i) the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;
 - (ii) the total number of shares represents 25 per cent or more of all the shares in a specific class of shares issued by that short-term insurer;

(Section 25(6)(a) substituted by section 125(i) of Act 45 of 2013)
 - (b) is directly or indirectly able to exercise or control the exercise of more than 15 per cent of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
- (Section 25(6)(b) substituted by section 125(i) of Act 45 of 2013)*
- (c) has the right to appoint or elect, or control the appointment or election of, directors of that company who control more than 15 per cent of the votes at a meeting of the board.
- (Section 25(6)(c) substituted by section 125(i) of Act 45 of 2013)*

26. Furnishing of information concerning shareholders

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

insurer concerned, furnish it with the information it may require for the purposes of complying with section 24(1).

27. Effect of registration of shares contrary to Act

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

(Words preceding paragraph (a) substituted by section 126(a) of Act 45 of 2013)

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

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

(Words following paragraph (b) substituted by section 126(b) of Act 45 of 2013)

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

(Section 27(2) substituted by section 126(c) of Act 45 of 2013)

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

Part IV

Financial arrangements

28. Maintenance of financially sound condition

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

- (a) having assets;
- (b) providing for its liabilities and capital adequacy requirement; and
- (c) generally conducting its business,

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

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

- (a) it does not have assets as required by section 29;
- (b) it does not have in the Republic assets as required by section 30; or

- (c) it has not made provision for the liabilities and the capital adequacy requirement referred to in sections 29, 30 and 32 in accordance with the requirements of those sections and Schedule 2.
- (3) A short-term insurer which fails to comply with subsection (1) shall, without delay, notify the Registrar of the failure and furnish the reasons therefor.
- (4) A short-term insurer shall not declare or pay a dividend to its shareholders-
 - (a) while it fails or is likely to fail to comply with subsection (1);
 - (b) if the declaration or payment would result in it failing or being likely to fail to comply with subsection (1); or
 - (c) if, after the declaration or payment the aggregate value of assets required by section 29 would be less than the aggregate value of liabilities, issued share capital and non-distributable reserves.

(Section 28 substituted by section 39 of Act 27 of 2008 with effect from 28 February 2010)

29. Assets

- (1) A short-term insurer shall have assets the aggregate value of which, on any day, is not less than the aggregate value on that day of its liabilities and its capital adequacy requirement, when the values of those assets, liabilities and capital adequacy requirement are calculated in accordance with Schedule 2.
- (2) A short-term insurer shall, subject to section 31, have assets in the Republic of the kinds specified in Schedule 1, the aggregate value of which on any day is not less than the aggregate value on that day of those of its liabilities which are to be met in the Republic and its capital adequacy requirement in respect of those liabilities when the values of those assets, liabilities and capital adequacy requirement, are calculated in accordance with Schedule 2.

(Section 29 substituted by section 40 of Act 27 of 2008 with effect from 28 February 2010)

30. Kinds and spread of assets

- (1) Subject to section 31 and subsection (2), the assets which a short-term insurer is required in terms of section 29(2) to have in the Republic shall, at their fair value, in respect of the particular kinds or categories of assets specified by regulation, when expressed as a percentage of the aggregate value of the liabilities and the capital adequacy requirement referred to in section 29(2), not exceed the percentage specified by regulation in relation to those kinds or categories of assets.

(Section 30(1) substituted by section 41(a) of Act 27 of 2008 with effect from 28 February 2010)

- (2) The Registrar may, either in advance or at any time after having received a notice referred to in section 28(3), approve the increase of a percentage specified by regulation -
- (a) in a particular case;
 - (b) for the specified period; and
 - (c) subject to such conditions as the Registrar may determine.
- (3) Despite the requirement in subsection (1) that an asset must be valued at fair value, if the Registrar is satisfied that the value of an asset, when calculated in accordance with financial reporting standards, does not reflect a reasonable value for purposes of this Act, the Registrar may-
- (a) appoint another person, at the cost of the insurer, to place a reasonable value on that asset, which value so determined will be deemed to be the value of the asset; or
 - (b) direct the short-term insurer to calculate the value in a manner which the Registrar determines, which value so calculated will be deemed to be the value of the asset.

(Section 30(3) added by section 41(b) of Act 27 of 2008)

31. Deeming provisions concerning assets

For the purposes of sections 29 and 30 -

- (a) an asset of the kind specified in item 13, 16(2), (3) or (5) or 20(c) of the Table to Schedule 1, shall, subject to paragraph (b), be deemed to be in the Republic;
- (b) if there is documentary evidence of the title of a short-term insurer to an asset, that asset shall be deemed not to be in the Republic unless the documentary evidence is in the Republic or is held outside the Republic in such a manner and subject to such conditions as the Registrar may determine; and
- (c) an asset shall be deemed not to be held by a short-term insurer if it has been encumbered contrary to section 33(1)(a) in favour of another person, or if it is held by another person contrary to section 33(1)(b), unless the person in whose favour it is encumbered, or the person holding that asset is -
 - (i) the Minister of Labour or the Director-General: Labour, or any person acting on behalf of that Minister or Director-General in accordance with the laws of the Republic relating to compensation for occupational injuries and diseases;

- (ii) the government of any country other than the Republic in which the short-term insurer carries on insurance business or intends to carry on such business, or any person acting on behalf of such government, if the short-term insurer has encumbered those assets in favour of, or transferred those assets into the name of, that government or that person in order to comply with the laws of that country relating to short-term insurance; or
- (iii) another insurer and the encumbrance or transfer takes place in terms of a short-term reinsurance policy.

32. Liabilities

- (1) For the purposes of this Act, the liabilities of a short-term insurer shall include the following:
 - (a) The amount which the short-term insurer estimates will become payable in respect of claims incurred under short-term insurance policies -
 - (i) and reported but not yet paid, reduced by the amount which it estimates will be paid in respect of those claims under approved reinsurance policies;
 - (ii) but not yet reported, reduced by the amount which it estimates will be paid in respect of those claims under approved reinsurance policies, being an amount not less than the amount calculated in accordance with Part II of Schedule 2;
 - (b) an unearned premium provision, being an amount not less than the amount calculated in accordance with Part II of Schedule 2;
 - (c)
(Section 32(1)(c) deleted by section 42(a) of Act 27 of 2008 with effect from 28 February 2010)
 - (d) an unexpired risk provision if the short-term insurer concerned incurs an underwriting loss in the conduct of its short-term insurance business as reflected in any prescribed return in terms of this Act, and the insurer, in consultation with its auditor, considers it necessary to defray the possible cost of claims together with the costs to carry on the said business.
- (2) If an unexpired risk provision is considered to be necessary, the insurer shall determine the amount thereof in consultation with its auditor and, where a statutory actuary has been appointed, its statutory actuary.
(Section 32(2) substituted by section 42(b) of Act 27 of 2008 with effect from 28 February 2010)
- (3) For the purposes of subsection (1), an approved reinsurance policy entered into with an insurer as contemplated in paragraph (d) of the definition of 'approved reinsurance policy' in section 1, shall not

be deemed to cover the liabilities of a short-term insurer calculated in terms of subsection (1)(a) and (b), to an amount exceeding the amount of the security referred to in that paragraph.

(Section 32(3) substituted by section 42(b) of Act 27 of 2008 with effect from 28 February 2010)

33. Prohibitions concerning assets and certain liabilities

(1) A short-term insurer shall not -

- (a) encumber its assets;
- (b) allow its assets to be held by another person on its behalf;
- (c) directly or indirectly borrow any asset;
- (d) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons, unless the short-term insurer is registered to provide policy benefits in terms of a guarantee policy and does so in terms of a guarantee policy,
- (e) include in its assets, shares directly or indirectly held in its holding company,

(Section 33(1)(e) inserted by section 33 of Act 17 of 2003)

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

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

- (a) Derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the short-term insurer's liabilities under short-term policies and capital adequacy requirement in terms of section 29;
- (b) for the purpose of reducing investment risk; or
- (c) for the purpose of efficient portfolio management,

Provided that the short-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches the obligations under that instrument and from which it can discharge those obligations.

(Section 33(2) substituted by section 43 of Act 27 of 2008 with effect from 28 February 2010)

34. Failure to maintain financially sound condition

- (1) If a short-term insurer gives notice to the Registrar in terms of section 28(3), or if the Registrar is satisfied that a short-term insurer is failing, or is likely to fail within a reasonable period, to comply with section 28(1), the Registrar may, by notice, direct that short-term insurer to furnish the Registrar, within a specified period, with -
 - (a) specified information relating to the nature and causes of the failure; and
 - (b) its proposals as to the course of action that it should adopt to ensure its compliance with section 28(1).

- (2) When the Registrar has received the information and proposals referred to in subsection (1), the Registrar may, without derogating from the Registrar's powers under section 11 or 12 or any other provision of this Act -
 - (a) authorise the short-term insurer concerned, by notice, to adopt a course of action, approved by the Registrar after considering those proposals and after consultation with the auditor of the short-term insurer, and which the Registrar is satisfied will reasonably ensure that the short-term insurer complies with section 28(1), and the Registrar may, at that time, or at any time thereafter, after further consultation with the auditor, by notice authorise the modification of that course of action to the extent that the Registrar deems appropriate in the circumstances; or
 - (b) if it is reasonably necessary in the interests of the policyholders of the short-term insurer, at that time, or at any time thereafter, and notwithstanding any steps already taken by the Registrar in accordance with paragraph (a) or any other provision of this Act, act in accordance with section 40(2) or 41(2).

35. Returns to Registrar

- (1) A short-term insurer shall furnish the Registrar with returns relating to its business -
 - (a) in the medium and form;
 - (b) containing the information; and
 - (c) by the date or within the period,prescribed by the Registrar, either generally or in relation to a particular insurer.

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

- (a) direct the short-term insurer to furnish the Registrar, within a specified period, with specified information or documents which the Registrar considers necessary to complete or correct the return; or
 - (b) reject the return and require the short-term insurer to furnish the Registrar, within a specified period, with a new return which is complete and correct.
- (3) If the Registrar is satisfied that a statement forming part of the returns furnished by the short-term insurer in terms of subsection (1) or (2) requires further investigation, the Registrar may by notice direct the short-term insurer to furnish him or her by a specific date or within a specific period with a report-
- (a) in the medium and form; and
 - (b) containing the required information, compiled by a person nominated by the Registrar at the cost of the short-term insurer.

(Section 35(3) added by section 44 of Act 27 of 2008)

Part V

Compromise, arrangement, amalgamation and transfer

36. Approval of Registrar required for compromise, arrangement, amalgamation or transfer

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

(Section 36(1) substituted by section 127 of Act 45 of 2013)

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

37. Application to Registrar

When application is made to the Registrar for the approval of a transaction referred to in section 36 -

- (a) the parties to the transaction shall jointly -
 - (i) at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction, which particulars must be provided in such form as the Registrar may require;
(Section 37(a)(i) substituted by section 128(a) of Act 45 of 2013)
 - (ii) at least 30 days before lodging the application, cause a notice, in the form and containing the information required by the Registrar, to be published in such official languages in the *Gazette* and in such other media as the Registrar may determine;
(Section 37(a)(ii) substituted by section 128(a) of Act 45 of 2013)
 - (iii) upon making the application, provide the Registrar with the application and all other documents relating thereto and supporting the application;
- (b) a person who has an interest in the matter may, by notice given to the Registrar within 15 days after the publication in the *Gazette* of the notice referred to in paragraph (a)(ii), submit to the Registrar such representations concerning the transaction as are relevant to his, her or its interests;
- (c) the Registrar may -
 - (i) appoint a person, at the cost of the parties to the transaction, to enquire into, and report to him or her on, the desirability or otherwise of the transaction;
(Section 37(c)(i) amended by section 128(b) of Act 45 of 2013)
 - (ii) by notice, direct any party to the transaction to provide the Registrar or that person with all information and documents relating to the transaction which the Registrar may require; and
(Section 37(c)(ii) substituted by section 128(c) of Act 45 of 2013)
- (d) any policyholder, shareholder or creditor of the short-term insurer concerned may, within the period referred to in paragraph (b), file affidavits and other documents relating thereto and may appear before the Registrar and be heard in connection therewith.

38. Conditions of approval

Notwithstanding the provisions of the Companies Act, the approval of the Registrar of a transaction referred to in section 36(1) may be granted subject to such conditions as the Registrar may determine and shall not be granted-

(Words preceding paragraph (a) substituted by section 129 of Act 45 of 2013)

- (a) unless the provisions of this Part have been complied with;
- (b) if the transaction is inconsistent with this Act or contrary to the interests of the policyholders of the short-term insurer concerned; or
- (c) unless payment of the costs referred to in section 37(c)(i) has been made or secured.

39. Approved transaction, and certain exemptions

- (1) A transaction referred to in section 36(1) which is approved by the Registrar shall be binding on all persons and shall have effect as approved by the Registrar notwithstanding anything to the contrary contained in the constitution or rules of the parties thereto.
- (2) Notice of the passing of a special resolution (if any) by the members of a short-term insurer confirming a transaction referred to in section 36(1), together with a copy of the resolution and of the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by the public officer of the short-term insurer to be a true and correct copy, shall be furnished to the Registrar by the short-term insurer concerned within 60 days of the passing of the resolution.
- (3)
 - (a) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 36(1) or 68 shall, upon production by the short-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the approval of the Registrar, and without payment of any duty, tax, registration fee or other charge, make the endorsements upon the bond, title deed or registration certificate and the entries in his or her registers that are necessary to effect the transfer concerned.
 - (b) The exemption from the payment of any duty, tax, registration fee or charge contemplated in paragraph (a) shall only apply in the case of a transaction resulting from -
 - (i) a transfer of business compelled by law; or
 - (ii) the initiative or at the direction of the Registrar under section 34.

Part VI

Business rescue and winding-up of short-term insurers

(Heading substituted by section 130 of Act 45 of 2013)

40. Business rescue

- (1) Notwithstanding the provisions of the Companies Act or any other law under which a short-term insurer is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a short-term insurer, whether or not it is a company.
- (2) The Registrar may make an application under section 131 of the Companies Act in respect of a short-term insurer if the Registrar is satisfied, whether in accordance with section 12(2) or 34(2) of this Act or otherwise, that it is in the interests of the policyholders of the short-term insurer to do so.
- (3) The following acts are subject to the approval of the Registrar:
 - (a) The resolution of a short-term insurer to begin business rescue proceedings;
 - (b) the appointment of a business rescue practitioner;
 - (c) the adoption of a business rescue plan; and
 - (d) the exercise of a power by the business rescue practitioner under the Companies Act.
- (4) In the application of Chapter 6 of the Companies Act-
 - (a) a reference to the Commission shall be construed as a reference also to the Registrar;
 - (b) the reference to creditors shall be construed as a reference also to the policyholders of the short-term insurer;
 - (c) a reference relating to the inability of a short-term insurer to pay all its debts, shall be construed as relating also to its inability to comply with section 28(1) of this Act;
 - (d) in addition to any question relating to the business of a short-term insurer, there shall be considered also the question whether any proposed action is in the interests of the policyholders.
- (5) If an application to a Court for an order relating to the business rescue of a short-term insurer is made by an affected person other than the Registrar-
 - (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the Registrar at least 60 days before the application is set down for hearing; and

(b) the Registrar may, if satisfied that the application is not in the interests of the policyholders of the short-term insurer, join in the application as a party and file affidavits and other documents in opposition to the application.

(6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a short-term insurer shall not enter into any new short-term policies, unless the practitioner has been granted permission to do so by the Registrar.

(Section 40 substituted by section 131 of Act 45 of 2013)

41. Winding-up

(Heading substituted by section 132(a) of Act 45 of 2013)

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

(Section 41(1) substituted by section 132(b) of Act 45 of 2013)

(2) The Registrar may make an application under the Companies Act for the winding-up of a short-term insurer if the Registrar is satisfied, whether as contemplated in section 12(3) or 34(2) of this Act, or otherwise, that it is in the interests of the policyholders of that short-term insurer to do so.

(Section 41(2) substituted by section 132(b) of Act 45 of 2013)

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

(Words preceding paragraph (a) substituted by section 132(c) of Act 45 of 2013)

(a) a reference which relates to the inability of a short-term insurer to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 28(1) of this Act;

(b) in addition to any question whether it is just and equitable that a short-term insurer should be wound up, there shall be considered also the question whether it is in the interests of the policyholders of that short-term insurer that it should be wound up;

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

(Section 41(3)(c) substituted by section 132(d) of Act 45 of 2013)

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

(Section 41(3)(d) substituted by section 132(d) of Act 45 of 2013)

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

(Section 41(3)(e) substituted by section 132(d) of Act 45 of 2013)

- (4) If an application to the Court for or in respect of the winding-up of a short-term insurer is made by any person other than the Registrar -
 - (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the Court may allow on good cause shown, before the application is set down for hearing; and
 - (b) the Registrar may, if satisfied that the application is contrary to the interests of the policyholders of the short-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

42. Voluntary winding-up

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

(Words preceding paragraph (a) substituted by section 133(a) of Act 45 of 2013)

- (a) unless a copy thereof has been lodged with the Registrar and he or she has, by notice to the short-term insurer, declared that arrangements satisfactory to the Registrar have been made to meet all liabilities of the short-term insurer under short-term policies entered into by it prior to the winding-up; or
- (b) if the Registrar, by notice to the short-term insurer, declares that the resolution is contrary to this Act.

(Section 42 renumbered to 42(1) by section 133(b) of Act 45 of 2013)

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

(Section 42(2) added by section 133(b) of Act 45 of 2013)

Part VII

Business practice, policies and policyholder protection

Business practice

43. Free choice in certain circumstances

- (1) Subject to subsection (5), if a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or otherwise, that a short-term policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to make that policy or those policy benefits available shall be entitled, and shall be given prior written notification of that entitlement, to a free choice -
- (a) as to whether he or she wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilise a combination of those options; and
 - (b) if a new policy is to be entered into -
 - (i) as to the short-term insurer with which the policy is entered into and as to the person (if any) who is to render services as intermediary in connection with the transaction; and
 - (ii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of the interest of the creditor; and
 - (c) if an existing policy is to be made available -
 - (i) as to the person (if any) who is to render services as intermediary in connection with the transaction; and
 - (ii) as to whether or not a variation of the policy required for that purpose shall be such as to cause the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of the interests of the creditor.
- (2) The provisions of subsection (1) shall be deemed not to have been complied with unless the policyholder whose policy is to be made available has confirmed in writing, before the policy is used for the purpose of protecting the interests of the creditor concerned, that he or she -

- (a) was given prior written notification of his or her entitlement to the freedom of choice referred to in that subsection;
 - (b) exercised that freedom of choice;
 - (c) was not subject to any coercion or inducement as to the manner in which he or she exercised that freedom of choice.
- (3) Any policy benefits that may be provided under a policy referred to in subsection (1) shall accrue and be paid to a creditor only to the value of the interests of the creditor in the subject-matter of the policy, and any surplus shall accrue and be paid to the policyholder whose policy is used for the protection of the interests of the creditor concerned.
- (4) If the provisions of subsections (1) and (3) are not complied with, the security provided by the policy made available and used for the purpose shall be void and the policy benefits shall be provided to the person who made it available.
- (5)
- (a) Subsection (1) shall not apply in the case of a short-term policy which is required to be made available in relation to a contract in terms of which money is loaned upon the security of the mortgage of immovable property.
 - (b) In a case where a new policy is to be entered into, the premiums payable under that policy shall be reasonable in relation to the premiums generally charged by insurers under similar policies.
 - (c) A certificate by the Registrar that he or she is satisfied that the premiums concerned are reasonable, shall for the purposes of this subsection be sufficient proof of the reasonableness of such premiums.
- (6) This section does not apply if the short-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies.

(Section 43(6) inserted by section 172(2) of Act 34 of 2005)

44. Prohibition on inducements

Unless done in accordance with the rules made under section 55, no person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a short-term policy, other than a reinsurance policy.

(Section 44 substituted by section 134 of Act 45 of 2013)

45. Collection of premiums by intermediaries

Prepared by:

In partnership with:

No independent intermediary shall receive, hold or in any other manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer, other than a short-term reinsurance policy, and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums -

- (a) unless authorised to do so by the short-term insurer concerned as prescribed by regulation; and
- (b) otherwise than in accordance with the regulations.

46. Receipt for premium paid in cash

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

47. Copy of policy and inspection of policy records

- (1) A person who enters into or varies a short-term policy which constitutes personal lines business, other than a short-term reinsurance policy, shall be provided by the short-term insurer concerned, within 30 days after so entering into or varying the policy, with a copy of the document which embodies the contract of short-term insurance concerned.
- (2) The policyholder, and the person who entered into the short-term policy, shall be entitled to be provided, upon request, with a copy of the policy.

(Section 47(2) substituted by section 34 of Act 17 of 2003)

48. Independent intermediaries: remuneration

No consideration shall be offered or provided by a short-term insurer or a Lloyd's broker or a representative of such insurer or broker or any person on behalf of such insurer or broker, or accepted by any independent intermediary, other than commission or remuneration contemplated in the regulations and for rendering services as intermediary otherwise than in accordance with the regulations.

(Section 48 substituted by section 45 of Act 27 of 2008 with effect from 1 January 2012)

48A. Binder agreements

- (1) A short-term insurer or a Lloyd's underwriter may, in terms of a written agreement only, and in accordance with any requirements, limitations or prohibitions that may be prescribed by regulation, allow another person to do any one or more of the following on behalf of that insurer:
 - (a) enter into, vary or renew a short-term policy, other than a short-term reinsurance policy, on behalf of that insurer or Lloyd's underwriter;
 - (b) determine the wording of a short-term policy;
 - (c) determine premiums under a short-term policy;
 - (d) determine the value of policy benefits under a short-term policy;
 - (e) settle claims under a short-term policy.

- (2) A written agreement referred to in subsection (1) must-
 - (a) set out which of the activities referred to in subsection (1) that other person may perform and the particular kinds of short-term policies in respect of which those activities may be performed;
 - (b) set out the particular kinds of short-term policies which may be entered into, varied or renewed by that other person;
 - (c) state if that other person is authorised to determine the wording of the policies referred to in paragraph (a), and if authorised, the extent to which and the circumstances under which the wording may be determined;
 - (d) state if that other person is authorised to determine premiums in respect of the policies referred to in paragraph (a), and if authorised, the gross premiums or the basis for the calculation of gross premiums that may be determined, and the extent to which and the circumstances under which the premiums may be determined;
 - (e) state if that other person is authorised to determine the value of policy benefits, and if authorised, the maximum value of the policy benefits that may be determined under each kind of short-term policy referred to in paragraph (a), and the extent to which and the circumstances under which the benefits may be determined;
 - (f) state if that other person is authorised to settle claims under the policies referred to in paragraph (a), and if authorised, the extent to which and the circumstances under which the claims may be settled;

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

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

(Section 48A inserted by section 46 of Act 27 of 2008 with effect from 1 January 2012)

49.

(Section 49 substituted by section 32 of Act 22 of 2008)

(Section 49 repealed by section 136 of Act 45 of 2013)

Policies

50. Limitation on policy benefits in the event of death of unborn or of certain minors

Prepared by:

In partnership with:

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

- (a) of that unborn, or of that minor before he or she attains the age of six years, R10 000; or
- (b) of that minor after he or she attains the age of six years but before he or she attains the age of 14 years, R30 000,

or such other amount prescribed by the Minister.

51. Voidness of certain provisions of agreements relating to short-term policies

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

- (a) a short-term insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to a short-term policy;
- (b) the person who has entered into the short-term policy declares or admits that a person who acted on behalf of the short-term insurer in connection with an offer of that person to do so, or with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person;
- (c) the obligation of a short-term insurer under a short-term policy which constitutes personal lines business, or in relation to any other short-term policy, other than with the written consent or instruction of the insured, is dependent upon the discharging of an obligation of another person under a short-term reinsurance policy; or
- (d) a person who has entered into a short-term policy, or the insured under a short-term policy, waives a right to which he or she is, by or under this Act, entitled,

shall be void.

52. Short-term policies entered into by certain minors

A minor who has attained the age of 18 years may, without the consent of his or her guardian as if he or she has attained majority, enter into or vary, or deal with a short-term policy and pay the premium due under the policy with money which he or she has earned or which is at his or her disposal, and a

policy benefit under the policy shall be provided to the minor who may deal with it as he or she thinks fit without the consent of his or her guardian, as if he or she has attained majority.

53. Misrepresentation and failure to disclose material information

(Heading substituted by section 35 of Act 17 of 2003)

(1)

(a) Notwithstanding anything to the contrary contained in a short-term policy, whether entered into before or after the commencement of this Act, but subject to subsection (2)-

(i) the policy shall not be invalidated;

(ii) the obligation of the short-term insurer thereunder shall not be excluded or limited; and

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

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

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

(Section 53(1) substituted by section 35 of Act 17 of 2003)

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

54. Validity of contracts

(1) A short-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it.

- (2) If a person has entered into a short-term policy with a short-term insurer who was, in terms of this Act, prohibited from entering or not authorised to enter into the short-term policy, or with another person who is not a short-term insurer but who has in terms of a short-term policy undertaken an obligation as insurer, that person, by notice in writing to such short-term insurer or other person, or the Registrar by notice to such short-term insurer or other person and on the official web site, may cancel the short-term policy, whereupon that person shall be deemed to be in the same legal position in respect of such short-term insurer or other person as if the policy had been cancelled by that person on account of a breach of contract by such short-term insurer or other person.

(Section 54(2) substituted by section 137 of Act 45 of 2013)

- (3) Any contract entered into before the commencement of this Act the entering into of which is contrary to this Act or which contains terms prohibited by this Act, shall not be void nor shall the performance of its terms be unlawful merely because of any such fact.
- (4) For the purposes of the validity of a short-term policy the payment of a premium under a short-term policy to a person authorised as contemplated in section 45, shall be deemed to be payment to the short-term insurer under that short-term policy.

Policyholder protection

55. Protection of policyholders

- (1) The Registrar, by notice in the *Gazette*, may-
- (a) make rules not inconsistent with this Act, aimed at ensuring for the purpose of policyholder protection that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;
 - (b) vary or rescind any such rule; and
 - (c) determine the period which must elapse before a rule, variation or rescission takes effect after it has been published in the *Gazette*.
- (2) Without derogating from the generality of subsection (1) (a), rules may provide-
- (a) that provisions with a particular import may not appear in a policy and that they shall be void if they do so appear;

- (b) that particular information in relation to a policy shall be made known in a particular manner to a prospective policyholder or policyholder, and what the legal consequences shall be if that is not done;
 - (c) that a policyholder may cancel a policy under particular circumstances and within a determined period, and what the legal consequences shall be if he or she does so;
 - (d) for norms and standards with which policies, short-term insurers or types of short-term insurance business must comply;
 - (e) for standardised wording, definitions or provisions that must be included in policies;
 - (f) that in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 64(1)(c) or 65(1)(c) shall apply.
- (3) Rules referred to in subsection (2) may-
- (a) apply generally; or
 - (b) be limited in application to a particular kind or type of policies, short-term insurers or short-term insurance business.
- (4)
- (a) Before the Registrar prescribes any rule under this section, the Registrar must-
 - (i) publish notice of the release of the proposed rule in the *Gazette*, indicating that the proposed rule is available on the official web site and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and
 - (ii) submit the draft rules to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation.
 - (b) If the Registrar alters a proposed rule because of any comment, the Registrar need not publish the alteration before making the rule.
 - (c) After consideration of any comments received in response to the publication and tabling of the proposed rule in terms of paragraph (a), the Registrar may publish the final rule in the *Gazette*.

- (5) Any rule promulgated by the Minister prior to the commencement of the Financial Services Laws General Amendment Act, 2013, must be regarded as having been made under this section, and remains valid and enforceable until repealed or amended by the Registrar.

(Section 55 substituted by section 138 of Act 45 of 2013)

Part VIII

Provisions relating to Lloyd's

56. General

- (1) Subject to this Part, Lloyd's underwriters are authorised to carry on short-term insurance business.
- (2) If there is -
- (a) enacted any law governing Lloyd's whereby a material change is made in the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or
 - (b) made any bye-law by Lloyd's whereby the rights or obligations of Lloyd's underwriters are materially changed,

the Registrar may act under section 62(1) of this Act.

- (3) The Lloyd's Council shall, within 21 days after the enactment of a law or the making of a by-law contemplated in subsection (2), notify the Registrar accordingly.
- (4) In this Part "South African short-term insurance policy" has the meaning attached to it in paragraph 1 of Schedule 3.
- (5) In this Part and Schedule 3 -

"Lloyd's Council" means the council known as the Council of Lloyd's established by the Lloyd's Act, 1982, passed by the Parliament of the United Kingdom of Great Britain and Northern Ireland, to manage and superintend the affairs of Lloyd's;

"Lloyd's South African Transitional Trust" means the trust by that name contemplated in section 60(2)(a);

"Lloyd's South African Trust" means the trust by that name contemplated in section 60(2)(b);

"Lloyd's Trusts" means the Lloyd's South African Transitional Trust and the Lloyd's South African Trust.

57. Appointment of Lloyd's representative

- (1) Lloyd's shall appoint, and at all times have, a natural person permanently resident in the Republic as its representative, and another natural person as deputy representative, to act as representative in the event of the Lloyd's representative for any reason not being able to perform the functions connected to that office.
- (2) The appointment of the Lloyd's representative and the deputy representative shall not take effect unless it has been approved by the Registrar.
- (3) The Registrar may grant approval for the appointment of the Lloyd's representative and the deputy representative subject to such conditions as the Registrar may determine.
- (4) The Registrar shall not grant approval for the appointment of the Lloyd's representative and the deputy representative if the person concerned is not fit and proper to hold the office.
- (5) The Lloyd's representative shall comply, with the necessary changes –
 - (a) with section 19(1), (2), (3) and (5) in respect of the Lloyd's Trusts as if he or she were a short-term insurer; and
 - (b) with section 19A in respect of the Lloyd's Trusts as if he or she were a short-term insurer.
(Section 57(5) substituted by section 47 of Act 27 of 2008)
- (6) The Lloyd's representative shall, as far as it is in his or her power, ensure that -
 - (a) Lloyd's complies with this Act; and
 - (b) the trustees of the Lloyd's Trusts comply with the trust deeds of the Lloyd's Trusts,and shall notify the Registrar forthwith in writing if he or she is unable to cause the remedy of any non-compliance of which he or she becomes aware.
- (7) The Lloyd's representative shall -
 - (a) have his or her principal place of business in the Republic;
 - (b) notify the Registrar in writing of the address of that principal place of business; and
 - (c) if that address changes, notify the Registrar in writing thereof within 30 days after such change.

- (8) The Lloyd's representative and deputy representative in office at the date of commencement of Part VIII of this Act, shall be deemed to have been appointed with the approval of the Registrar under this section.

58. Returns to Registrar

- (1) Lloyd's or the Lloyd's representative shall furnish the Registrar with returns in respect of the short-term insurance business carried on by Lloyd's underwriters in the Republic -

- (a) in the medium and form;
- (b) containing the information; and
- (c) by the date or within the period,

prescribed by the Registrar, and section 35(2) shall, with the necessary changes, apply thereto.

- (2) The Lloyd's representative shall maintain, and within 30 days after the commencement of this Act, furnish the Registrar with a copy of, a list of the names and addresses of all Lloyd's correspondents, and shall notify the Registrar of any change in that list within 30 days of such change having occurred.

59. Claims against Lloyd's underwriters

- (1) Any claim against any Lloyd's underwriter under a South African short-term insurance policy shall be cognisable by any competent court in the Republic.
- (2) In any action or other proceedings instituted under subsection (1), the Lloyd's representative may be cited, in the name of his or her office, as nominal defendant or respondent, and the summons or application commencing the proceedings may be served on him or her.
- (3) The Lloyd's representative may institute and conduct any proceedings in a competent court in the Republic as nominal plaintiff or applicant on behalf of Lloyd's underwriters in relation to South African short-term insurance policies.
- (4) Where the Lloyd's representative is cited as a nominal party, the true party may, at any time before or after judgment, be substituted -
- (a) with the leave of the Court; or
 - (b) on production to the registrar of the High Court or clerk of the magistrate's court, as the case may be, of an affidavit setting out the true parties and their normal citation, if a copy has previously been furnished to the other party.

60. Security to be furnished by or on behalf of Lloyd's underwriters

- (1) Security shall be provided by or on behalf of Lloyd's underwriters in accordance with Schedule 3 to discharge their obligations under South African short-term insurance policies.
- (2) There shall be created by Lloyd's, subject to the Trust Property Control Act, 1988 (Act No. 57 of 1988) -
 - (a) the Lloyd's South African Transitional Trust, for the purposes of paragraph 8(1) of Schedule 3;
 - (b) the Lloyd's South African Trust, for the purposes of paragraphs 2 up to and including 7 of Schedule 3,after approval of its trustee and trust deed by the Registrar, to provide security as contemplated in subsection (1).
- (3) The Registrar may, subject to the Trust Property Control Act, 1988, vary or substitute any of the trust deeds of the Lloyd's Trusts after consultation with Lloyd's and the trustee concerned.

61. Payment of certain claims against Lloyd's underwriters

Subject to Schedule 3 and the trust deeds referred to in that Schedule, if a Lloyd's underwriter fails to pay a liability of that underwriter under a South African short-term insurance policy, the Lloyd's South African Transitional Trust fund or the portion of the Lloyd's South African Trust fund held in respect of that liability, as the case may be, shall be available to satisfy that claim where -

- (a) the claimant has a final judgment in respect of the claim after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor;
- (b) the Lloyd's South African Transitional Trust or the portion of the Lloyd's South African Trust concerned is wound up as contemplated in section 63(7); or
- (c) Lloyd's so agrees in the circumstances set out in the trust deed of the Lloyd's Trust concerned.

62. Imposition of prohibition on activities of Lloyd's underwriters

- (1)
 - (a) If the Registrar deems it necessary to act as contemplated in section 56(2); or
 - (b) if and for as long as -

- (i) Lloyd's or a Lloyd's representative fails to comply with his, her or its duties in terms of section 57; or
- (ii) a Lloyd's underwriter fails to comply with that underwriter's duties in terms of section 60, Schedule 3 or a trust deed of any of the Lloyd's Trusts,

the Registrar may, subject to subsections (2) and (3), and with the written approval of the Minister, prohibit Lloyd's underwriters or the underwriter concerned from carrying on short-term insurance business in the Republic.

- (2) Before exercising the powers contemplated in subsection (1), the Registrar shall give notice in writing to Lloyd's and the Lloyd's representative of the Registrar's intention to do so and the reasons therefor, and allow at least 30 days during which representations may be made in respect of the matter.
- (3) If the Registrar decides to proceed with the prohibition, the Registrar shall give notice to that effect in the *Gazette* specifying the date from which the prohibition will take effect.
- (4) If and for as long as the trustee of either of the Lloyd's Trusts fails to comply with a provision of Schedule 3 and of the trust deed of the Lloyd's Trust concerned, the Registrar may, with the written approval of the Minister, and after having given notice to Lloyd's and the Lloyd's representative, exercise the powers of the trustee under the trust deed.
- (5) Whenever the Registrar, with the written approval of the Minister, deems it necessary to satisfy the liabilities of any one or more Lloyd's underwriters towards the holders of South African short-term insurance policies and after having given notice thereof to Lloyd's, the Lloyd's representative and every Lloyd's correspondent, or when a notice is published in the *Gazette* in terms of subsection (3), the Registrar may -
 - (a) require Lloyd's to furnish him or her with such information as the Registrar deems necessary in connection with the liabilities of the Lloyd's underwriter or underwriters concerned towards the holders of those policies; or
 - (b) act in accordance with section 63(7),

whichever the Registrar considers most appropriate in the circumstances and in the interest of the holders of those policies.

- (6) The Lloyd's correspondent shall, on receipt of such written notice from the Registrar, within a period of 60 days of the date of the notice, pay into the Lloyd's South African Trust or the Lloyd's South African Transitional Trust or partly into the one and partly into the other, as directed by the Registrar, the money owing by him or her to the Lloyd's underwriter or underwriters concerned.

63. Application of other provisions of Act to Lloyd's

- (1) Section 45 shall apply with the necessary changes in relation to a Lloyd's correspondent as if the Lloyd's correspondent concerned were an independent intermediary in respect of the Lloyd's broker concerned and the Lloyd's broker were a short-term insurer.
- (2) Section 47 shall apply with the necessary changes in relation to a Lloyd's correspondent as if the Lloyd's correspondent concerned were a short-term insurer.
- (3) Section 21 shall apply with the necessary changes in relation to the Lloyd's representative or deputy representative and to the trustee of each of the Lloyd's Trusts as if each such trust were a short-term insurer and as if such representative and trustee were a director of a short-term insurer.
- (4)
 - (a) Section 19(5), (6), (7), (8) and (9) shall apply with the necessary changes in relation to the auditor appointed by virtue of section 57(5)(a) in respect of each of the Lloyd's Trusts as if the reference to section 28(1) in section 19(5)(c) were a reference to section 60 and the reference to section 35 in section 19(7)(a) were a reference to section 58(1) and paragraph 7 of Schedule 3.
 - (b) Section 19A shall apply with the necessary changes in relation to the statutory actuary appointed by virtue of section 57(5)(b) in respect of each of the Lloyd's Trusts as if the reference to section 28(1) in section 19A(5)(b)(i) were a reference to section 60 and the reference to section 35 in section 19A(7)(a) were a reference to section 58(1) and paragraph 7 of Schedule 3.

(Section 63(4) substituted by section 48 of Act 27 of 2008)

- (5) Section 20 shall apply with the necessary changes in relation to the Lloyd's representative or deputy representative in respect of the Lloyd's Trusts as if such representative were a short-term insurer.
- (6) Sections 31 and 33(1)(a), (b) and (c) and (2) shall, with the necessary changes, apply to the Lloyd's Trusts, and in such application -
 - (a) each Lloyd's Trust shall be deemed to be a short-term insurer;
 - (b) the reference to sections 29 and 30 in section 31 shall be construed as a reference to paragraph 6(1) and (2) of Schedule 3; and
 - (c) section 33(2) shall be deemed to read as follows:

“The Lloyd's Trusts shall not invest in derivatives other than derivatives acquired out of or in respect of assets that are in excess of the aggregate minimum amount required to be held in the trusts at the time in accordance with Schedule 3.”.

(7)

- (a) Sections 40 and 41 shall apply to the Lloyd's South African Transitional Trust and each portion of the Lloyd's South African Trust relating to a Lloyd's underwriter as if the first-mentioned Lloyd's Trust or that portion of the latter Lloyd's Trust were a short-term insurer and its policyholders were the persons who have or may have claims against it.
- (b) In such application -
 - (i) the reference in sections 40(2) and 41(2) to sections 12(3) and 34(2) shall be construed as a reference to section 62(5); and
 - (ii) portions of the Lloyd's South African Trust relating to more than one underwriter may be included in a single application for the purposes of winding-up.

Part IX Offences and penalties

64. Offences by persons other than short-term insurers

- (1) A person, other than a short-term insurer, who -
 - (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(3), (4) or (5)(a)(i), 21(2) or 26(2);
(Section 64(1)(a) substituted by section 49(a) of Act 27 of 2008)
 - (b) contravenes or fails to comply with a provision of section 8(1)(a) or (b) or (5), 16(2), 22(1), 27(1), 43(1), 44, 45, 46, 48 or 48A;
(Section 64(1)(b) substituted by section 49(a) of Act 27 of 2008)
 - (c) where a rule contemplated in section 55(2)(f) so provides, contravenes or fails to comply with a provision of any rule to the extent so provided; or
(Section 64(1)(c) substituted by section 139(a) of Act 45 of 2013)
 - (d) furnishes false information in relation to an application referred to in section 9(1) or an application for the approval of the Minister under a provision of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(Words following paragraph (d) (incorrectly cited as paragraph (c)) substituted by section 139(b) of Act 45 of 2013)

- (2) A person, other than a short-term insurer, who contravenes or fails to comply with a provision of section 7(1)(a) or (b), 8(2), 19A(5)(b) or 25(1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(Section 64(2) substituted by section 49(b) of Act 27 of 2008)

(Section 64(2) substituted by section 139(c) of Act 45 of 2013)

65. Offences by short-term insurers

- (1) A short-term insurer which -

- (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2), (3) or (4), 21(1) or (2), 26(1), 34(2)(a) or 35(2);

(Section 65(1)(a) substituted by section 50 of Act 27 of 2008)

- (b) contravenes or fails to comply with a provision of section 16(1), 17, 18, 22(1) or (2), 24(1), 35(1), 43(1), 44, 45, 46, 47, 48 or 48A; or

(Section 65(1)(b) substituted by section 50 of Act 27 of 2008)

(Section 65(1)(b) substituted by section 140(a) of Act 45 of 2013)

- (c) where a rule contemplated in section 55(2)(f) so provides, contravenes or fails to comply with a provision of any rule to the extent so provided,

(Section 65(1)(c) substituted by section 140(a) of Act 45 of 2013)

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

(Words following paragraph (c) substituted by section 140(b) of Act 45 of 2013)

- (2) A short-term insurer who contravenes or fails to comply with a condition contemplated in section 9(2)(a) or a provision of a notice under section 12(2)(c) or 13(2), or of section 7(1)(a), 15(1), (2), (4) or (5), 19(1) or (3), 23, 25(1) or (2), 28(1), (3) or (4) or 33, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 million.

(Section 65(2) substituted by section 140(c) of Act 45 of 2013)

66. Penalty for failure to furnish Registrar with returns etc

- (1)

- (a) A person who fails to furnish the Registrar with a return, information or document, as provided by this Act, within the prescribed or specified period or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty

not exceeding R5 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof.

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

(Section 66(1) substituted by section 141 of Act 45 of 2013)

- (2) A penalty contemplated in subsection (1) shall be imposed by notice by the Registrar on the person concerned, and such imposition shall be preceded by the procedures prescribed by the Minister to afford such person a reasonable opportunity to be heard, and shall take effect on a date specified in such notice of the Registrar which may be a date prior to the date of the notice.
- (3) A penalty so imposed shall constitute a debt due to the Board and shall be recoverable by action by the Board in any court having jurisdiction.

Part X

Transitional and general provisions

Transitional provisions

67. Continued registration of existing insurers

- (1) A person who immediately prior to the commencement of this Act was registered in terms of the repealed Act, and was, by virtue of that registration, authorised to carry on short-term insurance business as defined in that Act, shall be deemed to be registered as a short-term insurer in terms of this Act and shall, subject to this Act, be authorised, in the case of a person who was so authorised to carry on the short-term insurance business of providing or undertaking to provide policy benefits in terms of -
- (a) accident and health policies;
 - (b) engineering policies;
 - (c) guarantee policies;
 - (d) liability policies;
 - (e) miscellaneous policies;
 - (f) motor policies;
 - (g) property policies; or

(h) transportation policies,

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

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

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

A person referred to in section 67(1), who was, by virtue of such person's registration under the repealed Act, authorised to carry on both short-term insurance business and long-term insurance business, other than reinsurance business only, as defined in that Act, shall, within a period of six months after the commencement of this Act, make arrangements satisfactory to the Registrar and in accordance with the appropriate provisions of the Long-term Insurance Act, 1998, which have the result -

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

General provisions

69. Special provisions concerning short-term insurers that are not public companies

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

(Section 69(1) substituted by section 142(a) of Act 45 of 2013)

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

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

(Section 69(2A) inserted by section 51(a) of Act 27 of 2008)

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

(Section 69(3) substituted by section 51(b) of Act 27 of 2008)

(Section 69(3) substituted by section 142(b) of Act 45 of 2013)

70. Regulations

The Minister may make regulations not inconsistent with this Act -

(a) prescribing all matters which are required or permitted by this Act to be prescribed by regulation;

(b) limiting the amount which and the extent to which a short-term insurer may invest in particular kinds and categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;

(c) authorising the Registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (b);

(d)

(Section 70(1)(d) deleted by section 52(a) of Act 27 of 2008)

(e) prohibiting any consideration from being offered or provided, or limiting the consideration which may be offered or provided, from, by or on behalf of a short-term insurer or a Lloyd's underwriter to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;

(f) prohibiting any consideration from being offered or provided, or prescribing the manner in and conditions on which consideration may be offered or provided, from, by or on behalf of any person other than a short-term insurer or Lloyd's underwriter to any person for rendering services as intermediary, or to any other person associated in business with or related within the second degree of consanguinity or affinity to any person who has rendered or is to render such services;

- (g) prescribing different or additional requirements for the receipt or retention of, or dealing with money in respect of premiums;
- (gA) prescribing in respect of section 48A requirements, limitations or prohibitions relating to-
 - (i) the agreements contemplated in section 48A(1);
 - (ii) any additions to gross premiums or deductions from claims in respect of policies referred to in the agreements contemplated in section 48A(1);
 - (iii) any consideration that may be offered or provided from, by or on behalf of a short-term insurer or Lloyd's underwriter to a person that enters into an agreement contemplated in section 48A(1) with a short-term insurer or Lloyd's underwriter;
 - (iv) any participation or sharing in the profits attributable to the policies referred to in the agreements contemplated in section 48A(1); and
 - (v) the circumstances under which a person who has entered into an agreement contemplated in section 48A(1) may render services in respect of a policy not referred to that person by the relevant insurer, Lloyd's underwriter or an independent intermediary.
(Section 70(1)(gA) inserted by section 52(b) of Act 27 of 2008)
- (h) prescribing that every short-term insurer shall within a specified period as from the close of each financial year of its short-term insurance business furnish the Registrar with a statement of all changes which occurred during the said year in specified matters in relation to the insurer concerned.

(2) Regulations made under this section may-

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

(Section 70(2) substituted by section 52(c) of Act 27 of 2008)

(2A)

- (a) The Minister, despite the definition of "business of a medical scheme" in section 9(1) of the Medical Schemes Act, may make regulations identifying a kind, type or category of contract as an accident and health policy.
- (b) Regulations under paragraph (a)-
 - (i) must be made only-
 - (aa) in consultation with the Minister of Health;
 - (bb) after consultation between the National Treasury, the Registrar and the Registrar of Medical Schemes established under the Medical Schemes Act; and
 - (cc) after having regard to the objectives and purpose of the Medical Schemes Act, including the following principles entrenched therein-
 - (A) community rating;
 - (B) open enrolment; and
 - (C) cross-subsidisation within medical schemes; and
 - (ii) must provide for a short-term insurer or Lloyd's underwriter to submit specified information on any product within a kind, type or category of contract referred to in paragraph (a) to the Registrar and the Registrar of Medical Schemes within any specified timeframes;
 - (iii) may provide for matters relating to the design and marketing of any product within a kind, type or category of contract referred to in paragraph (a).
- (c) Where the Minister has made regulations referred to in paragraph (a), the kind, type or category of contract identified as a health policy in the regulations, is subject to this Act and not the Medical Schemes Act.

(Section 70(2A) inserted by section 52(d) of Act 27 of 2008)

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

(Section 70(2B) inserted by section 52(d) of Act 27 of 2008)

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

71. Savings

Anything done before the commencement of this Act under, in terms of or by virtue of a provision of the repealed Act by or in relation to persons registered in terms of that Act to carry on short-term insurance business as defined in that Act shall, in so far as it was done lawfully and unless it is clearly inappropriate, be deemed to have been done under, in terms of or by virtue of the corresponding provision of this Act.

72. Interpretation of certain references in existing laws

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

- (a) to a domestic insurer or a registered insurer, shall be construed as a reference to a short-term insurer or a long-term insurer, as the case may be;
- (b) to any particular kind of short-term insurance business as defined in the repealed Act, shall be construed as a reference to the kind of short-term insurance business referred to in this Act which constitutes that business.

73. Short title and commencement

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

Schedule 1 (Section 29)

Kinds of assets

Publisher's Note:

Schedule 1 has been amended by section 143 of Act 45 of 2013 by the substitution for the expression "in the Gazette", wherever it occurs, of the expression "on the official web site".

1. Requirement for claim to be asset, and definitions

For the purposes of this Schedule and section 29 a claim qualifies as an asset in the Republic only if it is enforceable in accordance with the law of the Republic and is realisable in the Republic, and -

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

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

“derivatives” means -

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

(Definition of “derivatives” substituted by section 53(a) of Act 27 of 2008)

“futures contract” means a standardised contract the effect of which is that-

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

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

(Definition of “futures contract” inserted by section 53(b) of Act 27 of 2008)

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

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

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

(Definition of “margin” substituted by section 53(c) of Act 27 of 2008)

“margin deposit” means a margin with SAFEX and a stock exchange outside the Republic;

(Definition of “margin deposit” substituted by section 53(d) of Act 27 of 2008)

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

(Definition of “margin with SAFEX” substituted by section 53(e) of Act 27 of 2008)

“n.e.s.” means not elsewhere specified in this Schedule;

“option contract” means a standardised contract the effect of which is that a person acquires the option-

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

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

(Definition of “option contract” inserted by section 53(f) of Act 27 of 2008)

“regulated market” means a market situated outside the Republic which is characterised by -

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

“securities” includes bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments prescribed by the Registrar;
(Definition of “securities substituted by section 36(a) of Act 17 of 2003)

“shares” includes share stock.

2. Derivatives

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

- (a) it is based on an underlying asset of the kind set out in the Table to this Schedule or has the equivalent effect to such an instrument; and
- (b) in the case of -
 - (i) an over-the-counter instrument, it is capable of being readily closed out and is entered into with a counterparty for which the relevant criteria have been approved by the Registrar subject to such conditions as he or she may determine;
(Paragraph 2(b)(i) substituted by section 36(b) of Act 17 of 2003)
 - (ii) an instrument referred to in item 16(5)(d) of the Table to this Schedule, it is listed; or
 - (iii) any other instrument, it is regularly traded on a licensed stock exchange in the Republic, or on any other financial market in the Republic approved by the Registrar subject to such conditions as he or she may determine.

3. Kinds of assets

The kinds of assets contemplated in section 29(2), are those set out in the following Table:

Table

Item no.	Description of assets
1.	Bank notes and coins, including Krugerrand coins of all denominations, issued or caused to be issued in terms of the South African Reserve Bank Act, 1989 (Act 90 of 1989).
2.	A credit balance in an account with, or a deposit, including a negotiable deposit and a bill accepted by, or a promissory note issued by, an institution registered under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993). <i>(Paragraph 3 Item 2 substituted by section 53(g) of Act 27 of 2008)</i>
3.	Public deposits with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984).
4.	Securities issued by, and loans made to, the Government of the Republic in terms of section 19 of the Exchequer Act, 1975 (Act 66 of 1975).
5.	Securities and loans guaranteed by a Minister of the Republic under section 35 of the Exchequer Act, 1975.
6.	Securities issued or guaranteed by, and loans made to or guaranteed by, a body, council or institution under the repealed Provincial Government Act, 1961 (Act 32 of 1961).
7.	Securities issued by, and loans made to, the Local Authorities Loans Fund Board under the repealed Local Authorities Loans Fund Act, 1984 (Act 67 of 1984). <i>(Paragraph 3 Item 7 substituted by section 53(h) of Act 27 of 2008)</i>
8.	Securities issued or guaranteed by, and loans made to or guaranteed by, the Rand Water Board under the Rand Water Board Statutes (Private) Act, 1950 (Act 17 of 1950).
9.	Securities issued or guaranteed by, and loans made to or guaranteed by, Eskom under the Eskom Act, 1987 (Act 40 of 1987).
10.	Securities issued or guaranteed by, loans made to or guaranteed by, and deposits with, the Land and Agricultural Bank of South Africa under the Land Bank Act, 1944 (Act 13 of 1944).
11.	Securities issued or guaranteed, and loans raised or guaranteed, under the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989).

12. Securities and loans, n.e.s, which are-
- (a) issued by or made to a body corporate established by a law of the Republic; and
 - (b) approved by the Registrar for the purposes of this Schedule generally by notice on the official web site subject to the conditions determined by the Registrar and specified in the notice.
13. Securities issued by-
- (a) the government of;
 - (b) a local authority in; or
 - (c) a body corporate established by a law of,
- a territory forming part of the Republic, but which territory at any time before 27 April 1994 did not form part of the Republic, which securities have been approved by the Registrar for the purposes of this Schedule generally by notice on the official web site and subject to the conditions determined by the Registrar and specified in the notice.
14. Immovable property in the Republic.
15. Motor vehicles, furniture and office equipment, including computer equipment, used by the short-term insurer concerned in the course of its business in the Republic.
- 16.
- (1) Shares and securities issued by a company incorporated in the Republic.
(Paragraph 3 Item 16(1) substituted by section 36(c) of Act 17 of 2003)
 - (2) Shares, debentures and depository receipts which are-
 - (a) issued by an institution incorporated outside the Republic; and
 - (b) listed on a licensed stock exchange in the Republic.
 - (3) Linked units-
 - (a) in respect of institutions one or more of which is or are incorporated outside the Republic; and
 - (b) which are listed on a licensed stock exchange in the Republic.

- (4) Loan stock listed on a licensed stock exchange in the Republic issued by a company incorporated in the Republic.
- (5)
- (a) Listed-
- (i) securities issued by a government of a country other than the Republic; or
- (ii) securities and shares issued by an institution incorporated outside the Republic.
(Paragraph 3 Item 16(5)(a) substituted by section 36(d) of Act 17 of 2003)
- (b) A credit balance in an account with, or a deposit, including a negotiable certificate of deposit, or a bill, accepted by, an institution incorporated outside the Republic, which would have been a bank in terms of the Banks Act, 1990, if it were incorporated in the Republic.
(Paragraph 3 Item 16(5)(b) substituted by section 36(d) of Act 17 of 2003)
- (c) Units which are derived from or linked to one or more assets referred to in paragraphs (a) and (b).
- (d) Derivatives and margin deposits on the assets referred to in paragraphs (a) and (b).
17. Participatory interests in a collective investment scheme registered in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).
(Paragraph 3 Item 17 substituted by section 53(i) of Act 27 of 2008)
18. Derivatives and the margin deposit in the Republic.
19. Claims secured by mortgages over immovable property in the Republic.
20. Other claims, n.e.s., against-
- (a) a long-term insurer in terms of a long-term policy;
- (b) a person in the Republic; and
- (c) a body corporate and any stock or shares in a body corporate which is not incorporated and registered in the Republic but which, in the opinion of the Registrar, carries on business in the Republic and which has been approved by the Registrar generally by notice on the official web site and subject to the conditions determined by the Registrar and specified in the notice
(Paragraph 3 Item 20 substituted by section 36(e) of Act 17 of 2003)

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

Schedule 2
(Sections 29, 30 and 32)

Method of calculation of value of assets and liabilities

Part I
Valuation of assets

1. Amounts to be disregarded

For the purposes of the calculation of the value of assets contemplated in sections 29 and 30 -

- (a) there shall be disregarded -
- (i) any amount of premium, excluding a premium in respect of a short-term reinsurance policy, which is due and payable, including a premium debited to an intermediary or a deferred instalment of a premium and which remains unpaid to an insurer, irrespective of whether or not the premium has been paid to an intermediary, after the expiry of a period of 60 days from the date on which it became due and payable in terms of the short-term policy;
 - (ii) an amount, excluding a premium in respect of a short-term reinsurance policy, which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;
 - (iii) an amount representing administrative, organisational or business extension expenses incurred directly or indirectly in the carrying on of short-term insurance business;
 - (iv) an amount representing goodwill or an item of a similar nature;
 - (v) an amount representing a reinsurance contract in terms of which the short-term insurer concerned is the policyholder, except to the extent that it represents a claim against a reinsurer in terms of an approved reinsurance policy; and
(Paragraph 1(a)(v) substituted by section 37 of Act 17 of 2003)
 - (vi) an amount representing a prepaid expense or a deferred expense; and

- (b) the value of the assets mentioned in paragraph 2, in which a reference to an item by number means a reference to the item of the Table to Schedule 1, shall be as specified in that paragraph.

2. Calculation of values

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

(Paragraph 2 substituted by section 54(a) of Act 27 of 2008 with effect from 28 February 2010)

3. Registrar may reject certain values

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

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

(Paragraph 3 substituted by section 54(b) of Act 27 of 2008 with effect from 28 February 2010)

Part II Valuation of liabilities

4.

(Paragraph 4 deleted by section 54(c) of Act 27 of 2008 with effect from 28 February 2010)

5.

(Paragraph 5 deleted by section 54(c) of Act 27 of 2008 with effect from 28 February 2010)

6.

(Paragraph 6 deleted by section 54(c) of Act 27 of 2008 with effect from 28 February 2010)

7. Determination of value of other liabilities

- (1) For the purposes of section 29, the value of the liabilities of a short-term insurer, other than those prescribed by the Registrar and referred to in paragraph 2, shall be determined in accordance with financial reporting standards applicable to public companies.

(Paragraph 7(1) substituted by section 54(d) of Act 27 of 2008 with effect from 28 February 2010)

(Paragraph 7(1) substituted by section 143 of Act 45 of 2013)

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

Schedule 3
(Section 60)

Lloyd's security

The security to be provided by or on behalf of Lloyd's underwriters in accordance with section 60 shall be as follows:

1. Definition of "South African short-term insurance policy"

- (1) In this Schedule "South African short-term insurance policy" means, subject to subparagraphs (2) and (3) -
- (a) a short-term policy which relates to -
 - (i) risks in respect of immovable property, including buildings, fixtures and other fixed improvements, located in South Africa; or
 - (ii) any other risks where -
 - (aa) the insured is a natural person resident in South Africa; or
 - (bb) in any other case, the insured has its registered office or principal office or principal place of business in South Africa; and
 - (b) a short-term reinsurance policy where the reinsured short-term insurer has its registered office in South Africa.
- (2) In paragraph 8, a South African short-term insurance policy means, subject to subparagraph (3), a short-term policy or short-term reinsurance policy referred to in subparagraph (1) which -
- (a) commenced before the date of commencement of section 60;
 - (b) has commenced on or after the date of commencement of section 60, and -

- (i) was accepted under an authority given by the underwriter before that date to another person; or
- (ii) commenced as a result of the exercise of a right granted by the underwriter before that date to the insured to determine if and when the risk would commence; or
- (iii) was accepted by a person in terms of an agreement dated prior to that date between the underwriter, a Lloyd's broker and one or more other Lloyd's underwriters or insurers or both,

in circumstances in which, in accordance with Lloyd's accounting practice, the policy is accounted for in any calendar year of account of the underwriter before the date of commencement of section 60.

- (3) A short-term policy or short-term reinsurance policy referred to in subparagraph (2) shall only be a South African short-term insurance policy if -
 - (a) the application for the policy was received;
 - (b) the policy documentation was issued; or
 - (c) the premiums under the policy are received,

by any person in South Africa on behalf of the underwriter.

2. Security to be provided to Lloyd's South African Trust

Subject to paragraph 8 and the approval of the Registrar, the security referred to in paragraph 4 shall be provided to the trustee of the Lloyd's South African Trust, to be held and administered by the trustee in terms of the trust deed of the Lloyd's South African Trust.

3. By whom and manner in which security to be provided

The security referred to in paragraph 4 shall be provided by the persons and in the manner set out in the trust deed of the Lloyd's South African Trust.

4. Amount of security

The value of the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.

(Paragraph 4 substituted by section 55(a) of Act 27 of 2008 with effect from 28 February 2010)

5. Contributions and withdrawal of surplus

The minimum amount contemplated in paragraph 4 is to be calculated quarterly, and if the minimum amount -

- (a) exceeds the value at that time of the portion of the Lloyd's South African Trust Fund relating to the underwriter concerned, the difference shall be paid to the trustee; or
- (b) is less than that value, the difference may be withdrawn, in accordance with the trust deed of the Lloyd's South African Trust.

6. Investment of trust funds

- (1) The funds in the Lloyd's South African Trust shall be invested in assets of the kinds set out in Schedule 1.
- (2) Subject to section 63(6), the aggregate value of the assets referred to in subparagraph (1) shall, in respect of each particular kind or category specified by regulation, when expressed as a percentage of the aggregate minimum amount required to be held in the trust at that time in accordance with this Schedule, not exceed the percentage specified by regulation in relation to that kind or category of asset.

(Paragraph 6(2) substituted by section 38(a) of Act 17 of 2003)

(Paragraph 6(2) substituted by section 55(b) of Act 27 of 2008 with effect from 28 February 2010)

- (3) The Registrar may approve the increase of a percentage specified by regulation -
 - (a) in a particular case;
 - (b) for a specified period; and
 - (c) subject to the conditions he or she may determine.
- (4) For the purposes of paragraph 5 and subparagraphs (1) and (2) assets shall be deemed to have been calculated in terms of this Schedule if the requirements set out in this Schedule and the requirements prescribed by the Registrar have been complied with in making the calculations.

(Paragraph 6(4) substituted by section 55(c) of Act 27 of 2008 with effect from 28 February 2010)

- (5) The net income or gain or loss arising from the investment of the funds in Lloyd's South African Trust shall be dealt with in accordance with its trust deed.

7. Returns in respect of Lloyd's South African Trust

A return in respect of the Lloyd's South African Trust shall be submitted to the Registrar by Lloyd's or the Lloyd's representative -

- (a) in the medium and form;
- (b) containing the particulars; and
- (c) by the date and within the period,

as prescribed by the Registrar.

8. Transitional provisions

- (1) In respect of a policy defined in subparagraph (2) of paragraph 1, paragraphs 2 up to and including 7 shall apply with the following changes:
 - (a) All references to the "Lloyd's South African Trust" shall be construed as references to the "Lloyd's South African Transitional Trust";
 - (b) such of the deposit held on the date of commencement of section 60 in respect of a Lloyd's underwriter under section 60(1)(i) and (j) of the repealed Act as is equal to the minimum amount for that Lloyd's underwriter calculated as set out in paragraph 4 as at a date agreed with the Registrar, shall be transferred on that date to the Lloyd's South African Transitional Trust for the credit of that underwriter's deposit in that trust, and any balance shall be paid to Lloyd's;
 - (c) in calculating the amount of the security, paragraph 4(c) shall be disregarded; and
 - (d) the reference to "quarterly" in paragraph 5 shall be construed as a reference to "annually or at such other intervals as may be approved by the Registrar from time to time":

Provided that this paragraph shall cease to apply, and the provisions of paragraphs 2 up to and including 7 shall apply from the latter date without change, to -

- (i) such policy in the event of the reinsurance, as set out in the trust deeds of the Lloyd's Trusts, of all the obligations under the policy by another Lloyd's syndicate; or
- (ii) if the Registrar and Lloyd's so agree.

(Proviso to paragraph 8(1) substituted by section 38(b) of Act 17 of 2003)

- (2) If the Lloyd's Trusts have not been created before the date of commencement of section 60, the provisions of section 60(1)(a), (b), (c), (i), (j), (l), (m), (n), (o), (p), (r) and (t), to the extent that they refer to the trust account and assets contemplated in the repealed Act, shall continue to apply until such creation, in lieu of the provisions of this Schedule.