

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 16 July 2003.)

To amend the Long -term Insurance Act, 1998, so as to insert certain definitions and substitute a definition; to further regulate advertising material relating to long-term policies, changes to a long -term insurer's name and conditions of registration; to make new provision regarding the business of reinsurers; to make new provision in respect of notifications of certain appointments, terminations and resignations, certain acts by a long -term insurer in respect of own shares, references to associates of persons holding interests in long -term insurers, maintenance of financially sound conditions and in respect of certain deeming provisions relating to assets of a long -term insurer; to correct incorrect references; to provide for further prohibitions concerning assets; to effect textual corrections; to provide for the exemption from the conditions in place for a certain conditional transaction; to further regulate the issuing of receipts in respect of premium payments; to make further provision in respect of failure to disclose material information by policyholders; to further regulate the holding of assets in the Republic by long -term insurers and the valuation of liabilities of long-term insurers; to repeal Schedule 2 to the said Act; and to refine the requirements in Schedule 3 for the calculation of the values of assets, liabilities and capital adequacy requirement; to amend the Short -term Insurance Act, 1998, so as to substitute certain definitions; to further regulate advertising material relating to short-term policies; to prohibit certain references in short -term policies to funerals; to make new provision regarding the business of reinsurers, changes to a short-term insurer's name, notification of certain appointments, terminations and resignations, certain acts by a short -term insurer in respect of own shares and references to associates of persons holding interests in short-term insurers; to provide for further prohibitions concerning assets; to provide for the furnishing of free policy copies to policyholders; to make further provision in respect of failure to disclose material information by policyholders; to further regulate the holding of assets in the Republic by short -term insurers and the calculation of the value of the assets of a short-term insurer; and to repeal a certain Act; and to provide for matters connected therewith.

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

Amendment of Arrangement of Sections of Act 52 of 1998

1. The Arrangement of Sections of the Long-term Insurance Act, 1998, is hereby amended–

- (a) by the insertion after item 15 of the following item:
"15A. Reinsurers carrying on reinsurance business only, authorised to provide policy benefits under fund policies directly";
- (b) by the substitution for item 18 of the following item:
"18. Notification of certain appointments, [and] terminations and resignations";
- (c) by the substitution for item 59 of the following item:
"59. Misrepresentation and failure to disclose material information";
- (d) by the deletion of item "Schedule 2 Method of calculation of value of assets and liabilities"; and
- (e) by the substitution in item "Schedule 3" for the words "Financial soundness method of calculation of value of assets and liabilities" of the words:
"Calculation of values of assets, liabilities and capital adequacy requirement".

Amendment of section 1 of Act 52 of 1998

2. Section 1(1) of the Long-term Insurance Act, 1998, is hereby amended–

- (a) by the insertion after the definition of "Board" of the following definition:
" 'capital adequacy requirement' means an amount which a long-term insurer is required to have in terms of paragraph 2 of Schedule 3;";
- (b) by the insertion after the definition of "disability policy" of the following definition:
" 'fair value' means the fair value of an asset determined by reference to South African Statements of Generally Accepted Accounting Practice;";
- (c) by the insertion after the definition of "life policy" of the following definitions:
" 'linked liabilities' means the liabilities of a long-term insurer in respect of linked policies;
'linked policy' means a long-term policy of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined solely by reference to the value of particular assets or categories of assets which are specified in the policy and are actually held by or on behalf of the insurer specifically for the purposes of the policy;";
- (d) by the substitution for the definition of "managing executive" of the following definition:
" 'managing executive' means the chief executive officer of a long-term insurer [or] and [a] every manager of that long-term insurer who reports directly to that chief executive officer;"; and
- (e) by the insertion after the definition of "managing executive" of the following definition:
" 'market-related policy' means a long-term policy, other than a linked policy, of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined in whole or in part by reference to the value of particular assets or categories of assets;";

Amendment of section 4 of Act 52 of 1998

3. Section 4 of the Long-term Insurance Act, 1998, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

"(3) (a) If any advertisement, brochure or similar **[document]** communication which relates to the business of a long-term insurer, or to a long-term policy, and which is being, or is to be, published or issued by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Registrar may by notice direct that person not to publish or issue it or to cease publishing or issuing it or to effect the changes to it which the Registrar deems fit.

(b) An advertisement brochure or similar communication which relates to a long-term policy must include the name of the long-term insurer underwriting the long-term policy."; and

(b) by the substitution in subsection (7)(a) and (b) for the expression "Short-term Insurance Act, 1997" of the expression "Short-term Insurance Act, 1998".

Amendment of section 8 of Act 52 of 1998

4. Section 8 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 10 of Act 52 of 1998

5. Section 10 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for paragraph (h) of the following paragraph:

"(h) reasonably necessary to ensure that the long-term insurance business concerned is carried on soundly and in a manner whereby the long-term insurer will **[be in a position to meet]** have assets with a fair value of not less than its liabilities and capital adequacy requirement."

Insertion of section iSA in Act 52 of 1998

6. The following section is hereby inserted in the Long-term Insurance Act, 1998, after section 15:

"Reinsurers carrying on reinsurance business only, authorised to provide policy benefits under fund policies directly

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

Substitution of section 18 of Act 52 of 1998

7. The following section is hereby substituted for section 18 of the Long-term Insurance Act, 1998:

"Notification of certain appointments, terminations and resignations

18. (1) A long-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director or managing executive appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such

appointment or termination or resignation, as the case may be, together with the reasons for any such termination or resignation.

(2) Any such director or managing executive who resigns or whose appointment has been terminated by a long-term insurer shall, at the request of the Registrar, inform the Registrar in writing of any matter relating to the affairs of that insurer of which the director or managing executive became aware in the performance of his or her duties and which may prejudice the insurer's ability to comply with this Act.

(3) No information furnished by a director or managing executive in terms of subsection (2) may be used in any subsequent criminal proceedings against such director or managing executive."

Amendment of section 24 of Act 52 of 1998

8. Section 24 of the Long-term Insurance Act, 1998, is hereby amended -
- (a) by the substitution in paragraph (a) for subparagraph (vi) of the following subparagraph:

"(vi) reduce its share capital **[in terms of sections 83 and 84 of the Companies Act]**"; and
 - (b) by the addition to paragraph (a) of the following subparagraphs and proviso:

"(vii) issue different classes of ordinary shares;

(viii) convert any of its ordinary shares of a particular class into ordinary shares of another class;

(ix) allow its subsidiary to acquire directly or indirectly shares in it in terms of section 89 of the Companies Act :

Provided that such conditions may, notwithstanding paragraphs (a), (b) and (c) of section 11(1), include a varied or a new registration condition contemplated in sections 10 and 11, and that in any such case section 11(2) shall apply with the necessary changes;"

Amendment of section 26 of Act 52 of 1998

9. Section 26 of the Long-term Insurance Act, 1998, is hereby amended-
- (a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to this section, no person shall, without the approval of the Registrar, acquire or hold shares or any other interest in a long-term insurer which results in that person, directly or indirectly, alone or with **[an associate]** a related party, exercising control over that long-term insurer."
 - (b) by the substitution for subsection (2) of the following subsection:

"(2) No person shall acquire shares in a long-term insurer if 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 his, her or its **[associates]** related parties, will amount to 25 percent or more of the total nominal value of all of the issued shares of the long-term insurer concerned, without first having obtained the approval of the Registrar."
 - (c) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

"(i) subject to the aggregate nominal value of the shares owned by the person concerned and his, her or its **[associates]** related parties not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;"
 - (d) by the substitution in subsection (3)(c) for the words preceding subparagraph (i) of the following words:

"may be refused if the person concerned, alone or with his, her or its **[associates]** related parties, has not already owned shares in the long-term insurer-";

- (e) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
"For the purposes of this section ['**associate**'] 'related party', in relation to-"; and
- (f) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
"For the purposes of this section a person shall be deemed to exercise control over a long-term insurer if that person, alone or with [**associates**] related parties-".

Amendment of section 29 of Act 52 of 1998

10. Section 29 of the Long-term Insurance Act, 1998, is hereby amended –

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
"(b) providing for its liabilities and capital adequacy requirement; and"; and
- (b) by the substitution in subsection (1) for the words following on paragraph (c) of the following words:
"so as to be in a position to meet its liabilities and capital adequacy requirement at all times."

Amendment of section 30 of Act 52 of 1998

11. Section 30 of the Long-term Insurance Act, 1998, is hereby amended –

- (a) by the substitution for subsection (1) of the following subsection:
"(1) A long-term insurer shall–
(a) have assets the aggregate value of which, on any day, is not less than the aggregate value, on that day, of its liabilities and capital adequacy requirement; and";
(b) subject to section 32, have, in the Republic, assets, the aggregate value of which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which are to be met in the Republic, and the capital adequacy requirement in respect of those liabilities,
when the values of those assets, [**and**] liabilities and capital adequacy requirement are calculated [**by means of –**
(i) **the method set out in Schedule 2; and**
(ii) **the financial soundness method**] as set out in Schedule 3."; and
- (b) by the substitution for subsection (2) of the following subsection:
"(2) A long-term insurer shall not declare a dividend or pay a dividend to its shareholders [**if, and for as long as,**]-
(a) while it fails to comply with subsection (1);
(b) if that would result in it failing to comply with subsection (1); or
(c) if [**the**], after such declaration or payment [**of the dividend would result in it failing to comply with subsection (1)**], it would have assets the aggregate value of which would be less than the aggregate value of its liabilities, issued share capital and non-distributable reserves."

Amendment of section 31 of Act 52 of 1998

12. Section 31 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection :

- "(1) Subject to section 32, a long-term insurer shall, in the Republic, have assets, other than assets in respect of linked liabilities [**referred to in section 33(2)**]-
(a) which have an aggregate value which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which have to be met in the Republic, and minimum capital adequacy requirement, when the values of those assets are calculated by reference to their [**market**] fair value [**as**

defined in the regulations] and the values of those liabilities, other than the said linked liabilities, and minimum capital adequacy requirement, are calculated **[by means of the method]** as set out in Schedule **[2]** 3; and

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

Amendment of section 33 of Act 52 of 1998

13. Section 33 of the Long-term Insurance Act, 1998, is hereby amended –

- (a) by the substitution for subsection (1) of the following subsection :

"(1) For the purposes of this Act, the liabilities of a long-term insurer shall include its contingent liabilities for policy benefits which have not become claimable, and which are specified in **[Schedules]** Schedule 3 **[and 4]."**; and
- (b) by the deletion of subsection (2).

Amendment of section 34 of Act 52 of 1998

14. Section 34 of the Long-term Insurance Act, 1998, is hereby amended –

- (a) by the addition to subsection (1) of the following paragraph:

"(e) include in its assets shares held directly or indirectly in its holding company."; and
- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) derivatives designated as an asset in respect of a linked policy **[referred to in section 33(2)]**;"

Amendment of section 36 of Act 52 of 1998

15. Section 36 of the Long-term Insurance Act, 1998, is hereby amended by the insertion of the figure (1) at the beginning of the first subsection, which currently is not numbered.

Amendment of section 39 of Act 52 of 1998

16. Section 39 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for paragraph (c) of the following paragraph:

"(c) unless payment of the **[costs]** cost referred to in section 38(1)(c)(i) has been made or secured."

Amendment of section 44 of Act 52 of 1998

17. Section 44 of the Long-term Insurance Act, 1998, is hereby amended by the addition of the following subsection:

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

Amendment of section 47 of Act 52 of 1998

18. Section 47 of the Long-term Insurance Act, 1998, is hereby amended by the addition to subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):

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

defined in section 1 of the Mutual Banks Act 1993 (Act No 124 of 1993).".

Amendment of section 59 of Act 52 of 1998

19. Section 59 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for the heading and subsection (1) of the following heading and subsection, respectively:

Misrepresentation and failure to disclose material information

59. (1) (a) Notwithstanding anything to the contrary contained in a long-term policy **[contained]**, whether entered into before or after the commencement of this Act, but subject to subsection (2)–

[(a)] (i) the policy shall not be invalidated;

[(b)] (ii) the obligation of the long-term insurer thereunder shall not be excluded or limited; and

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

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

Substitution of certain expression in Afrikaans text of Act 52 of 1998

20. The Long-term Insurance Act, 1998, is hereby amended by the substitution in the Afrikaans text in the definition of "uitvoerende bestuurder" in section 1(1), and in sections 9(3)(b)(ii), 22(1) and 23(3)(b) for the expression "bestuurder" of the expression "bestuur".

Amendment of Schedule 1 to Act 52 of 1998

21. Schedule 1 to the Long-term Insurance Act, 1998, is hereby amended –

- (a) by the substitution in paragraph 1 for the definition of "securities" of the following definition:

" 'securities' includes bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments **[of whatever nature]** prescribed by the Registrar.";
- (b) by the substitution in paragraph 2(b) for subparagraph (i) of the following subparagraph:

"(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;"
- (c) by the substitution in paragraph 3 for subitem (1) of item 16 of the following subitem in the Table:

"(1) Shares and **[debentures]** securities issued by a company incorporated in the Republic.";
- (d) by the substitution in the said Table for paragraphs (a) and (b), respectively, of item 16(5) of the following paragraphs:

"(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

[, in respect of which the Registrar has recognised the –

(aa) stock exchange outside the Republic; or

(bb) country, other than the Republic, in which the regulated market concerned is situated,

subject to the conditions determined by the Registrar].
- (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, [in a country approved by the Registrar,] which would have been a bank in terms of the Banks Act, 1990, if it were incorporated in the Republic."; and
- (e)

by the substitution in the said Table for item 20 of the following item:

"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 in the Gazette and subject to the conditions determined by the Registrar and specified in the notice."

Repeal of Schedule 2 to Act 52 of 1998

22. The Long-term Insurance Act, 1998, is hereby amended by the repeal of Schedule 2.

Substitution of Schedule 3 to Act 52 of 1998

23. The following Schedule is hereby substituted for Schedule 3 to the Long-term Insurance Act, 1998:

"Schedule 3

(Sections 30 and 31)

Calculation of values of assets, liabilities and capital adequacy requirement

Definition

1. For the purposes of this Schedule 'approved reinsurance policy' means–

- (a)

for the purposes of calculating the contingent liabilities of a long-term insurer under unmatu

red long-term policies in terms of which the policy benefits are to be provided –

(i)

in the Republic, any proportional reinsurance policy in terms of which the reinsurer is liable for the liabilities under unmatu

red policies which remain in force until the contingent liability under unmatu

red policies has expired, entered into by the long-term insurer with–

(aa)

another long-term insurer registered to do long-term busi-

ness of the same class, only if that reinsurance policy is also to be discharged in the Republic; or

(bb)

another insurer approved by the Registrar to the extent and subject to the conditions determined by the Registrar; or

- (cc) any reinsurance effected prior to 1 January 1952, and relating to long-term policies issued before that date; or
- (ii) outside the Republic, a reinsurance policy relating to the contingent liabilities and capital adequacy requirement concerned; or
- (b) for the purposes of calculating the liabilities of a long-term insurer other than contingent liabilities under unmatured long-term policies, any reinsurance.

Calculation of values

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

Effect of reinsurance

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

Amounts to be disregarded

4. For the purposes of the calculation of the value of assets -
- (a) only such assets actually held by the long-term insurer or those approved by the Registrar in terms of section 34(1)(a) and (b), may be taken into account; and
 - (b) there shall be disregarded -
 - (i) an amount which remains unpaid after the expiry of a period of 12 months from the date on which it became due and payable;
 - (ii) an amount representing administrative, organisational or business extension expenses incurred directly or indirectly in the carrying on of long-term insurance business;
 - (iii) an amount representing goodwill or an item of a similar nature;
 - (iv) an amount representing a negative liability in respect of a long-term policy in terms of which the long-term insurer concerned provides or undertakes to provide a policy benefit: Provided that this provision shall not be construed as precluding the deduction of a negative liability in respect of a long-term policy from liabilities;
 - (v) an amount representing a prepaid expense or a deferred expense; and
 - (vi) an amount representing a reinsurance contract in terms of which the long-term insurer is the policyholder, except to the extent that it represents a claim against a reinsurer in terms of the reinsurance contract.

Calculation subject to certain provisions

5. For the purposes of the calculation of the value of contingent
- (a) where a portion of a future premium is not contractually payable but can become payable at the option of the policyholder, such portion of a future premium and the benefits purchased thereby shall be

disregarded, unless it causes an increase in the net liability, in which case it shall be valued; and

- (b) no allowance shall be made for potential profits to be earned from long-term insurance policies which the long-term insurer may enter into in future.

Registrar may reject certain values

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

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

Valuation of other liabilities

7. (1) The liabilities of a long-term insurer, other than its contingent liabilities under long-term policies, shall be determined in accordance with South African Statements of Generally Accepted Accounting Practice.

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

Amendment of Arrangement of Sections of Act 53 of 1998

24. The Arrangement of Sections of the Short-term Insurance Act, 1998, is hereby amended–

- (a) by the insertion after item 15 of the following item:
"15A. Reinsurers carrying on reinsurance business only, authorised to enter into certain short-term policies directly";
- (b) by the substitution for item 18 of the following item:
"18. Notification of certain appointments, **[and]** terminations and resignations"; and
- (c) by the substitution for item 53 of the following item:
"53. Misrepresentation and failure to disclose material information".

Amendment of section 1 of Act 53 of 1998

25. Section 1(1) of the Short-term Insurance Act, 1998, is hereby amended–

- (a) by the substitution for the definition of "Lloyd's underwriter" of the following definition:
" 'Lloyd's underwriter' means an underwriting or non-underwriting member of Lloyd's";
- (b) by the substitution for the definition of "managing executive" of the following definition:
" 'managing executive' means the chief executive officer of a short-term insurer **[or] and [a]** every manager of that short-term insurer who reports directly to that chief executive officer"; and
- (c) by the substitution for the words preceding paragraph (a) of the definition of "representative" of the following words:
" 'representative' means a natural person employed – " .

Amendment of section 4 of Act 53 of 1998

26. Section 4 of the Short-term Insurance Act, 1998, is hereby amended-

(a) by the substitution for subsection (3) of the following subsection :

"(3) ~~(a)~~ If any advertisement, brochure or similar **[document]** communication which relates to the business of a short-term insurer, or to a short-term policy, and which is being, or is to be, published or issued by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Registrar may by notice direct that person not to publish or issue it or to cease publishing or issuing it or to effect the changes to it which the Registrar deems fit.

(b) An advertisement, brochure or similar communication which relates to a short-term policy must include the name of the short-term insurer underwriting the short-term policy."; and

(b) by the substitution in paragraphs (a) and (b) of subsection (7) for the expression "Long-term Insurance Act, 1997" of the expression "Long-term Insurance Act, 1998".

Amendment of section 8 of Act 53 of 1998

27. Section 8 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) No short-term insurer which is liable under a short-term insurance policy **[shall change its name without the prior approval of the Registrar]** may refer to or use in any such policy or advertisement, brochure or similar communication the term 'funeral or 'burial' or any derivative thereof.".

Insertion of section iSA in Act 53 of 1998

28. The following section is hereby inserted in the Short-term Insurance Act, 1998, after section 15:

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

15A. 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.".

Amendment of section 17 of Act 53 of 1998

29. Section 17 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) its name, or a translation shortened form or derivative thereof.".

Substitution of section 18 of Act 53 of 1998

30. The following section is hereby substituted for section 18 of the Short-term Insurance Act, 1998:

"Notification of certain appointments, terminations and resignations

18. (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."

Amendment of section 23 of Act 53 of 1998

31. Section 23 of the Short-term Insurance Act, 1998, is hereby amended –

- (a) by the substitution in paragraph (a) for subparagraph (vi) of the following subparagraph:

"(vi) reduce its share capital **[in terms of sections 83 and 84 of the Companies Act]**"; and

- (b) by the addition to paragraph (a) of the following subparagraphs and proviso: "(vii) issue different classes of ordinary shares;

(viii) convert any of its ordinary shares of a particular class into ordinary shares of another class;

(ix) allow its subsidiary to acquire directly or indirectly shares in terms of section 89 of the Companies Act;

Provided that such conditions may, notwithstanding paragraphs (a), (b) and (c) of section 11(1), include a varied or a new registration condition contemplated in sections 10 and 11, and that in any such case section 11(2) shall apply with the necessary changes;".

Amendment of section 25 of Act 53 of 1998

32. Section 25 of the Short-term Insurance Act, 1998, is hereby amended –

- (a) by the substitution for subsection (1) of the following subsection:

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

- (b) by the substitution for subsection (2) of the following subsection:

"(2) No person shall acquire shares in a short-term insurer if 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 his, her or its **[associates] related parties**, will amount to 25 percent or more of the total nominal value of all of the issued shares of the short-term insurer concerned, without first having obtained the approval of the Registrar.";

- (c) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

"(i) subject to the aggregate nominal value of the shares owned by the person concerned and his, her or its **[associates] related parties** not exceeding such percentage as may be determined by the Registrar without further approval in terms of this section;"

- (d) by the substitution in subsection (3)(c) for the words preceding subparagraph (i) of the following words:

"may be refused if the person concerned, alone or with his, her or its **[associates] related parties**, has not already owned shares in the short-term insurer-"

- (e) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"For the purposes of this section ['**associate**'] 'related party', in relation to-"; and

- (f) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"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 [**associates**] related parties:-".

Amendment of section 33 of Act 53 of 1998

33. Section 33 of the Short-term Insurance Act, 1998, is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph:

"(e) include in its assets, shares directly or indirectly held in its holding company."

Amendment of section 47 of Act 53 of 1998

34. Section 47 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The policyholder, and the person who entered into the short-term policy, shall be entitled[, **against payment of a fee not exceeding that which may be prescribed by the Registrar,**] to be provided, upon request, with a copy of the policy."

Amendment of section 53 of Act 53 of 1998

35. Section 53 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for the heading and subsection (1) of the following heading and subsection respectively:

Misrepresentation and failure to disclose material information

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

[(a)] (i) the policy shall not be invalidated;

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

[(c)] (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."

Amendment of Schedule 1 to Act 53 of 1998

36. Schedule I to the Short-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution in paragraph 1 for the definition of "securities" of the following definition:

" 'securities' includes bills, bonds, debentures and debenture stock, loan stock, promissory notes, annuities, negotiable certificates of deposit and other financial instruments [**of whatever nature**] prescribed by the Registrar";

- (b) by the substitution in paragraph 2(b) for subparagraph (i) of the following subparagraph:

- "(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;"
- (c) by the substitution in the Table in paragraph 3, for subitem (1) of item 16 of the following subitem:
 - "(1) Shares and **[debentures]** securities issued by a company incorporated in the Republic.";
- (d) by the substitution in the said Table for paragraphs (a) and (b), respectively, of item 16(5) of the following paragraphs:
 - "(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**[, in respect of which the Registrar has recognised the -**
 - (aa) stock exchange outside the Republic; or**
 - (bb) country, other than the Republic, in which the regulated market concerned is situated,****subject to the conditions determined by the Registrar].**
 - (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**[, in a country approved by the Registrar]**, which would have been a bank in terms of the Banks Act, 1990, if it were incorporated in the Republic."; and
- (e) by the substitution in the said Table for item 20 of the following item:
 - "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 in the *Gazette* and subject to the conditions determined by the Registrar and specified in the notice."

Amendment of Schedule 2 to Act 53 of 1998

37. Part I of Schedule 2 to the Short-term Insurance Act, 1998, is hereby amended by the substitution in paragraph 1(a) for subparagraph (v) of the following subparagraph:

- "(v) an amount representing **[a negative liability or]** 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"

Amendment of Schedule 3 to Act 53 of 1998

38. Schedule 3 to the Short-term Insurance Act, 1998, is hereby amended—

- (a) by the substitution in paragraph 6 for subparagraph (2) of the following subparagraph:
 - "(2) Subject to section 63**[(4)]** (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 trust at that time in accordance with Schedule **[3]** 2, not exceed the percentage specified by regulation in relation to that kind or category of asset.";
- (b) by the substitution in paragraph 8 for the proviso to subparagraph (1), of the following proviso:

"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; ~~and~~ or
- (ii) if the Registrar and Lloyd's so agree."

Substitution of certain expression in Afrikaans text of Act 53 of 1998

39. The Short-term Insurance Act, 1998, is hereby amended by the substitution in the Afrikaans text in the definition of "uitvoerende bestuurder" in section 1(1), and in sections 9(3)(b)(ii), 21(1) and 22(3)(b) for the expression "bestuurder" of the expression "bestuur".

Repeal of Act 49 of 1998

40. The Insurance Amendment Act, 1998 (Act No. 49 of 1998), is hereby repealed.

Short title and commencement

41. This Act is called the Insurance Amendment Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.