

DEPARTMENT OF FINANCE

NO. 1583

23 DECEMBER 2016

**SHORT-TERM INSURANCE ACT, 1998: PROPOSED AMENDMENT OF
REGULATIONS MADE UNDER SECTION 70**

I, Pravin J Gordhan, Minister of Finance, hereby publish for comment the proposed amendment of the Regulations made under section 70 of the Short-term Insurance Act 1998 (Act No. 53 of 1998) and published under GN R. 1493 of 27 November 1998, and amended from time to time, as set out in the Schedule hereto.

The proposed amendment of the Regulations is necessary to give effect to a number of conduct of business reforms undertaken and consulted on over the last few years.

The proposed Regulations and a detailed supporting document that highlights and explains the proposed amendments to be made to the current Long-term and Short-term Regulations are available on the National Treasury's website at <http://www.treasury.gov.za> and the Financial Services Board's website at <https://www.fsb.co.za>.

Comments on the proposed Regulations may be submitted in writing on or before 22 February 2017 to the National Treasury, c/o Dr Reshma Sheoraj at stregulations.insurance@treasury.gov.za or faxed to (012) 315 5206.

PRAVIN J GORDHAN
MINISTER OF FINANCE

SCHEDULE**1. Interpretation**

In this Schedule "the Regulations" means the Regulations under the Short-term Insurance Act, 1998 as published in GN R. 1493 of 1998 and amended by GN R. 462 of 2008, GN R. 1076 of 2011.

2. Part 1 of the Regulations is hereby amended by –

- (a) the insertion in Regulation 1.1 before the definition "long-term policy" of the following definition:

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

- (b) the insertion in Regulation 1.1 after the definition "independent intermediary" of the following definition:

"insurer" means a short-term insurer;"

- (c) the insertion in Regulation 1.1 after the definition "Part" of the following definition:

"policy" means a short-term insurance policy and "insurance policy" has a corresponding meaning;"

- (d) the insertion in Regulation 1.1 after the definition "policy" of the following definition:

"representative" means a natural person employed or mandated by a short-term insurer to render services as intermediary only in relation to short-term policies entered into or to be entered into by the short-term insurer;"

- (e) the deletion in Regulation 1.1 of the definition "SAFEX"; and

- (f) the insertion in Regulation 1.1 after the definition "section" of the following definition:

"services as intermediary" means any act performed by a person on behalf of an insurer or policyholder –

- (a) directed towards entering into, varying or renewing an insurance policy; or

- (b) with a view to -

(i) maintaining, servicing or otherwise dealing with;

(ii) collecting or accounting for premiums payable under;

(iii) receiving, submitting or processing claims under; or

(iv) providing administrative services, other than policy data administration services as defined in sub-regulation 5.6 in Part 5B performed on behalf of an insurer, in relation to,

an insurance policy;"

3. **Part 2 of the Regulations is hereby amended by the deletion of that Part.**
4. **Part 3 of the Regulations is hereby amended by –**
- (a) the insertion in Regulation 3.1 after the definition “rules of SAFEX” of the following definition:

“SAFEX’ means the South-African Futures Exchange;”

5. **Part 5 of the Regulations is hereby amended by –**
- (a) the substitution below “PART 5” in Part 5 for the heading “LIMITATION ON REMUNERATION” of the following heading:

“REMUNERATION”;

- (b) the insertion below “(Section 48)” in the heading of Part 5 of the following heading:

“PART 5A
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY”;

- (c) the substitution in Regulation 5.1 in Part 5A for subregulation (1) of the following subregulation:

“(1) No consideration shall directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of commission in monetary form.”;

- (d) the substitution in Part 5A for Regulation 5.3 of the following Regulation:

“Maximum commission payable

5.3 No commission shall exceed, in respect of –

- (a) a motor policy, 12,5 per cent of the premium payable by a policyholder under the policy; or
- (b) any other short-term policy, 20 per cent of the premium payable by a policyholder under the policy.”;

- (e) the insertion after Part 5A of the following Part:

“PART 5B
LIMITATION ON REMUNERATION FOR OUTSOURCING

Application of this Part 5B, and definitions

5.6 (1) This Part 5B applies to any outsourcing by an insurer of a binder function or policy data administration services.

(2) In this Part 5B, unless defined differently in this Part 5B or unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 6 has the meaning assigned to it in that Part, and -

“cell structure” means an arrangement under which a person (cell owner) -

- (a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares;
- (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and
- (c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up;

“outsourcing arrangement” means any arrangement of any form between an insurer and another person, whether that person is regulated or supervised under any law or not, in terms of which that party performs a function that is integral to the nature of the insurance business that an insurer provides, which would otherwise be performed by the insurer itself in conducting short-term insurance business, and includes rendering services under a binder agreement and rendering policy data administration services, but excludes rendering services as intermediary;

“policy data administration services” means the managing, recording and updating of policy and policyholder data of an insurer on behalf of that insurer in a manner that -

- (a) ensures complete integration between the information technology system of the insurer and the person that provides the services; and
- (b) enables the insurer to have continuous access to accurate, up-to-date, complete and secure policy and policyholder data.

Remuneration relating to outsourcing of policy data management services

Limitation on remuneration for policy data administration services

5.7 (1) An insurer or any other person must only offer or pay a fee for policy data administration services to any person, and that person must only accept such a fee, if that person has the operational capability to provide such policy data administration services.

(2) The fee referred to in paragraph (a) must not exceed 2% of the total premium payable by policyholders in respect of the policies to which the policy data administration services relate.

(3) Despite subregulation (1) above, an insurer or any other person must not offer or pay a fee for policy data administration services to -

- (a) a representative that is a natural person, and that representative must not accept such a fee; or

- (b) a binder holder, and that binder holder must not accept such a fee, if that binder holder has a binder agreement with the insurer to perform the service or function contemplated in section 48A(1)(a) of the Act.

Limitation on remuneration to binder holder

Remuneration that may be offered or provided to a binder holder

5.8 (1) An insurer may pay a binder holder a fee for the services rendered under the binder agreement, which fee must be reasonably commensurate with the actual costs incurred by the binder holder associated with rendering the services under the binder agreement, with allowance for a reasonable rate of return for the binder holder.

(2) Despite subregulation (1), an insurer must not without the prior approval of the Registrar referred to in subregulation (3) pay a binder holder a fee for the services rendered under the binder agreement that exceeds the value listed in the Table below, reflected as a percentage of the aggregate of the total premiums payable by policyholders in respect of the policies to which the binder function relates, if that binder holder is –

- (a) a non-mandated intermediary that is authorised to render “advice” as defined in the FAIS Act in respect of short-term insurance policies;
- (b) a non-mandated intermediary that is an associate of another non-mandated intermediary that is authorised to render “advice” as defined in the FAIS Act in respect of short-term insurance policies.

Table

BINDER FUNCTION	MAXIMUM FEE PAYABLE
Enter into, vary or renew a policy – section 48A(1)(a)	2%
Determine the wording of a policy - section 48A(1)(b), determine premiums under a policy - section 48A(1)(c) or determine the value of policy benefits under a policy - section 48A(1)(d), or any combination of the above	2%
Settle claims under a policy – section 48A(1)(e)	2%

(3) The Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer grant approval to the insurer to pay a binder holder a fee in excess of the fees referred to in regulation 3.21(2) if the Registrar is satisfied that:

- (a) such a fee is appropriate taking into account the nature, scale and complexity of the insurance business to which the relevant binder function relates; and
- (b) such a fee will not impede the fair treatment of policyholders;
- (c) no conflict of interest or potential conflict of interest exists; or
- (d) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders.

(4) Any fee referred to under subregulation (1) payable to a non-mandated intermediary that may perform the service or function contemplated in section 48A(1)(e) of the Act under a binder agreement, may not constitute or be based on a percentage of the difference between an amount claimed or the maximum value of policy benefits payable under a policy and the policy benefits actually provided to a policyholder in settlement of a claim.

(5) Any fee referred to under regulation 5.7 or this regulation 5.8, payable to a non-mandated intermediary that is a binder holder, must be disclosed to a policyholder, which disclosure must be included in the disclosures contemplated under regulation 6.2(1)(g).

Participation by a binder holder in profits attributable to the policies referred to in a binder agreement

5.9 (1) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(2) Subregulation (1) does not prohibit a non-mandated intermediary that is a binder holder and entered into a cell structure with an insurer from receiving dividends in respect of shares held in that insurer as part of that cell structure.”;

(f) the insertion after Part 5B of the following Part:

**“PART 5C
REMUNERATION PAYABLE BY POLICYHOLDER TO INDEPENDENT
INTERMEDIARY OR REPRESENTATIVE**

Limitation on remuneration payable by policyholder to independent intermediary or representative

5.10 An independent intermediary or representative may only charge a policyholder a fee in addition to any remuneration contemplated in Parts 5A and Part 5B if that fee -

- (a) relates to an actual service provided to a policyholder;
- (b) relates to a service other than services as intermediary;
- (c) does not relate to any other service for which the independent intermediary has been remunerated by another person;
- (d) is reasonable and commensurate with the service rendered; and
- (e) the amount and purpose thereof have been explicitly agreed to by the policyholder in writing.”; and

(g) the insertion after Part 5C of the following Part:

**“PART 5D
GENERAL PRINCIPLES FOR DETERMINING REMUNERATION**

Application of this Part 5D

5.11 (1) In this Part 5D, any word or expression to which a meaning has been assigned in any other Part has the meaning assigned to it in that Part.

(2) This Part 5D, applies to any remuneration offered or provided, directly or indirectly, by or on behalf of a short-term insurer, a policyholder or any other person, or accepted by any other person, for –

- (a) rendering services as intermediary;
- (b) providing policy data administration services;
- (c) performing a binder function or incidental activity under a binder agreement;
- (d) rendering any other services under any other outsourcing arrangement; or
- (e) services to a policyholder for which a fee referred to in regulation 5.10 is charged.

General principles for determining remuneration

5.12 (1) Remuneration paid to any person for the rendering of any service, activity or function performed by that person, must –

- (a) be reasonably commensurate with the actual service, function or activity performed;
- (b) not result in any service, function or activity referred to in regulation 5.11(2) being remunerated again;
- (c) not be structured in a manner that may increase the risk of unfair outcomes for policyholders; and
- (d) not be linked to the monetary value of claims for policy benefits repudiated, paid, not paid or partially paid.

(2) Subregulation (1) applies in addition to any specific requirements relating to remuneration for specific services, activities or functions set out in these regulations.”.

6. Part 6 of the Regulations is hereby amended by –

- (a) the substitution in Regulation 6.1 for the definition “associate” of the following definition:

“**associate**” –

- (a) has the meaning assigned to it in the General Code of Conduct; and
- (b) in addition to paragraph (a), includes, in respect of a juristic person, –

- (i) another juristic person that has a significant owner or director that is also a significant owner or director of the first mentioned juristic person; and
 - (ii) another juristic person that has a person as a significant owner or director who is an associate (within the meaning of paragraph (a)) of a significant owner or director of the first mentioned juristic person;”;
- (b) the insertion in Regulation 6.1 after the definition “enter into” of the following definition:

“**FAIS Act**’ means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);”;
- (c) the insertion in Regulation 6.1 after the definition “FAIS Act” of the following definition:

“**General Code of Conduct**’ means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the FAIS Act;”;
- (d) the insertion in Regulation 6.1 after the definition “General Code of Conduct” of the following definition:

“**incidental**’ means any activity that is necessary or expedient for the performance of a binder function;”;
- (e) the insertion in Regulation 6.1 after the definition “policy” of the following definition:

“**qualifying stake**’ means in respect of a person that -

 - (a) is a company, that another person, directly or indirectly, alone or together with a related or interrelated person -
 - (i) holds at least 15% of the issued shares of the first mentioned person;
 - (ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the first mentioned person;
 - (iii) has the ability to dispose of or control the disposal of at least 15% of the first mentioned person’s securities; or
 - (iv) holds rights in relation to the first mentioned person that, if exercised, would result in that other person, directly or indirectly, alone or together with a related or interrelated person -
 - (aa) holding at least 15% of the securities of the first mentioned person;
 - (bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the first mentioned person; or
 - (cc) having the ability to dispose of or direct the disposal of at least 15% of the first mentioned person’s securities;

- (b) is a close corporation, that another person, directly or indirectly, alone or together with a related or interrelated person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;
- (c) is a trust, means that another person has, directly or indirectly, alone or together with a related or interrelated person -
- (i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;
 - (ii) the power to appoint at least 15% of the trustees; or
 - (iii) the power to appoint or change any beneficiaries of the trust;";
- (f) the insertion in Regulation 6.1 after the definition "settle a claim" of the following definition:
- "short-term insurer'** for purposes of this Part excludes SASRIA as defined in section 1 and referred to in the Conversion of SASRIA Act, 1998 (Act 134 of 1998);";
- (g) the insertion in Regulation 6.1 after the definition "short-term insurer" of the following definition:
- "significant owner'** means a person that, directly or indirectly, alone or together with a related or interrelated person, has the ability to control or influence materially the business or strategy of another person. A person has the ability referred to in that subsection if -
- (a) the person, directly or indirectly, alone or together with a related or interrelated person, has the power to appoint 15% of the members of the governing body of the other person;
 - (b) the consent of the person, alone or together with a related or interrelated person, is required for the appointment of 15% of the members of a governing body of the other person; or
 - (c) the person, directly or indirectly, alone or together with a related or interrelated person, holds a qualifying stake in the other person;";
- (h) the substitution in Regulation 6.1 for the definition "underwriting manager" of the following definition:
- "underwriting manager'** means a person that -
- (a) performs one or more of the binder functions referred to in section 48A(1)(a) to (e); and
 - (b) if that person renders services as an intermediary as defined in Part 1 of the Regulation, -

- (i) does not perform any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder; and
 - (ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and
 - (c) does not have any relationship with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of that person's infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees *de facto*, directly or indirectly, performing any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder; and";
- (i) the substitution for Regulation 6.2 of the following Regulation:

"Requirements, limitations and prohibitions relating to binder holders

6.2 (1) An insurer, subject to regulation 6.5, may have a binder agreement with only one or more of the following persons -

- (a) subject to subregulations (1A), (1B), (2) and (3), a non-mandated intermediary; or
- (b) subject to subregulations (3) and (4), an underwriting manager.

(1A) An insurer may not enter in respect of commercial lines business into a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies.

(1B) An insurer may not in respect of personal lines business have a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies in respect of the functions contemplated in section 48A(1)(b) to (d) of the Act.

(2) A non-mandated intermediary referred to under subregulation (1)(a) may not conduct any business with any mandated intermediary that is an associate of that non-mandated intermediary in relation to the same policy or policies of an insurer.

(3) An underwriting manager referred to under subregulation (1)(b) may not conduct any business with a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary that is an associate of that underwriting manager in relation to the same policy or policies of an insurer.

(4)(a) An underwriting manager referred to under subregulation (1)(b) who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing.

- (b) Paragraph (a) does not apply if an underwriting manager enters into a binder agreement with an insurer during a termination period referred

to in regulation 6.3(1)(s) in respect of a binder agreement with another insurer and that underwriting manager may not perform any binder functions on behalf of that other insurer during that termination period.”;

- (j) the insertion after paragraph (c) in subregulation (1) in Regulation 6.3 of the following paragraph:

“(cA) specify the activities that are incidental to the performance of the binder function or functions, and the level and standard of service that must be rendered in respect of such activities.”;

- (k) the substitution in subregulation (1) in Regulation 6.3 for paragraph (d) of the following paragraph:

“(d) require that the binder holder at all times is fit and proper, and has appropriate governance, risk management, internal controls and information technology systems in place to render the services under the binder agreement.”;

- (l) the substitution in subregulation (1) in Regulation 6.3 for paragraph (p) of the following paragraph:

“(p) require the binder holder to provide the insurer at least every 24 hours with timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements.”;

- (m) the insertion after Regulation 6.3 of the following Regulation:

“Governance, oversight and record keeping requirements

6.3A (1) An insurer must before concluding a binder agreement and thereafter, on an ongoing basis, identify, assess, measure and manage the risks associated with conducting insurance business through binder agreements to ensure the consistent delivery of fair customer outcomes.

(2) An insurer must regularly assess a binder holder’s adherence to the binder agreement, specifically also the binder holder’s –

- (a) governance, risk management and internal controls;
- (b) fitness and propriety;
- (c) ability to comply with applicable laws and the binder agreement; and
- (d) operational and financial capability, including but not limited to the binder holder’s capability to provide access to timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements.

(3) An insurer must promptly take reasonable steps to rectify any non-adherence to a binder agreement.

(4) An insurer must retain a copy of a binder agreement for a period of at least 5 years from the date on which a binder agreement is terminated.”;

- (n) the deletion of Regulation 6.4;
- (o) by the substitution in paragraph (b) in subregulation (1) in Regulation 6.5 for the words preceding subparagraph (i) of the following words:

“(b) subject to regulation 6.2(1A), an insurer may conclude a binder agreement with -”;
- (p) by the substitution in Regulation 6.5 of subregulation (2) for the following subregulation:

“(2) Despite regulation 6.2(1A), (1B), (2) or (3), the Registrar may on application from an insurer referred to in regulation 6.2(1A), (1B), (2) or (3) or an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(1A), (1B), (2) or (3) exempt, subject to such conditions as the Registrar may impose, the insurer or such person from regulation 6.2(1A), (1B), (2) or (3), if the Registrar is satisfied that -

 - (a) no conflict of interest or potential conflict of interest exists; or
 - (b) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders; and
 - (c) the person has the operational and financial capability to perform the binder function or to conduct such business.”; and
- (q) by the deletion of Regulation 6.7.

7. Part 7 of the Regulations is hereby amended by the substitution for that Part of the following Part:

**“PART 7
TITLE AND COMMENCEMENT**

7.1 These regulations are called the Regulations under the Short-term Insurance Act, 1998.

7.2 An insurer must, in respect of the amendment to these regulations that came into operation on 1 May 2017, ensure that -

- (a) any agreements or arrangements relating to matters addressed in Part 3 concluded -
 - (i) before the publication of the amendment to the regulations for public comment in the *Gazette* on [-], are aligned with the regulations as amended by no later than 31 December 2017;
 - (ii) between the publication of the amendment to the regulations for public comment in the *Gazette* on [-] and 1 May 2017, are aligned with the regulations as amended by no later than 31 July 2017;
- (b) any agreements relating to matters addressed in Part 6 concluded before or on 1 May 2017 are aligned with the regulations as amended by no later than 31 December 2017.

Transitional arrangements

8. The amendment to the Regulations takes effect on 1 May 2017.”