

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
SHORT-TERM INSURANCE  
BILL**

[B 79—97]

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*(As agreed to by the Portfolio Committee on Finance (National Assembly))*

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[B 79A—97]

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REPUBLIEK VAN SUID-AFRIKA

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**PORTEFEULJEKOMITEE-AMENDEMENTE  
OP  
KORTTERMYNVERSEKERINGS-  
WETSONTWERP**

[W 79—97]

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*(Soos goedgekeur deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering))*

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[W 79A—97]

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**AMENDMENTS AGREED TO**  


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**SHORT-TERM INSURANCE BILL**  
**[B 79—97]**

CLAUSE 1

1. On page 8, in line 13, after “occurs” to insert:
  - , 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
2. On page 10, in line 27, after “intermediary” to add “and includes a Lloyd’s correspondent”.
3. On page 10, in line 40, to omit all the words after “is” up to and including the second “Lloyd’s” in line 42 and to substitute:
 

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
4. On page 10, from line 43, to omit the definition of “Lloyd’s Council”.
5. In the Afrikaans text, on page 13, in line 13, to omit “aangetas” and to substitute “benadeel”.
6. On page 12, after line 29, to insert the following definition:
 

(xl) “regulation” means a regulation under section 70; (xlv)
7. On page 14, in line 12, to omit “this Act” and to substitute “entering into a short-term policy”.

CLAUSE 6

1. On page 18, to omit all the words in line 35.

## CLAUSE 8

1. On page 22, in line 8, after “insurer” to insert “or a Lloyd’s underwriter”.
2. On page 22, in line 11, after “business” to add “or a Lloyd’s underwriter”.
3. On page 22, after line 35, to add the following subsection:

(6) No short-term insurer shall change its name without the prior approval of the Registrar.

## CLAUSE 12

1. On page 26, in line 26, to omit “the inadmissible” and to substitute “such”.

## CLAUSE 13

1. In the Afrikaans text, on page 29, in line 6, after “registrasie” to insert “om aldus te doen,”.
2. In the Afrikaans text, on page 29, in line 9, to omit “so ’n” and to substitute “sodanige”.

## CLAUSE 24

1. On page 36, in line 12, to omit all the words after “months” up to and including “or” in line 14.
2. On page 36, after line 18, to insert the following paragraph:

(d) to or in the name of a person acting as a depositary institution by virtue of an authorisation under section 2 of the Safe Deposit of Securities Act, 1992 (Act No. 85 of 1992), or of a company contemplated in section 12(1)(s)(i) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985): Provided that the person or member concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf shares are held;

## CLAUSE 29

1. On page 40, in line 38, to omit “in terms of paragraph 1 of Schedule 4” and to substitute “as prescribed by regulation”.
2. On page 40, in line 40, to omit “Schedule 3” and to substitute “Schedule 2”.
3. On page 40, in line 46, to omit “in terms of paragraph 2 of Schedule 4” and to substitute “as prescribed by regulation”.
4. On page 40, in line 48, to omit “Schedule 3” and to substitute “Schedule 2”.

## CLAUSE 30

1. On page 40, in line 52, to omit “in Schedule 2” and to substitute “by regulation”.
2. On page 42, in line 2, to omit “in Schedule 2” and to substitute “by regulation”.
3. On page 42, in lines 5 and 6, to omit “in Schedule 2” and to substitute “by regulation”.

## CLAUSE 32

1. On page 42, in lines 46, 48 and 50 to omit “Schedule 3” and to substitute “Schedule 2”, respectively.

## CLAUSE 33

1. On page 44, in line 12, to omit “money” and to substitute “any asset”.

## CLAUSE 39

1. On page 48, after line 34, to add the following paragraph to subsection (3):
  - (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.

## CLAUSE 40

1. On page 48, in lines 41 and 42, to omit “or to the account referred to in Schedule 7,”.
2. On page 48, in lines 46 and 47, to omit “or the account referred to in Schedule 7,”.
3. On page 48, in line 48, to omit “, 34(2) or 62(3)” and to substitute “or 34(2)”.
4. On page 50, from line 15, to omit paragraph (d).

## CLAUSE 41

1. On page 50, in line 41, to omit “or the account referred to in Schedule 7,”.
2. On page 50, in lines 45 and 46, to omit “or the account referred to in Schedule 7,”.
3. On page 50, in line 47, to omit “, 34(2) or 62(3)” and to substitute “or 34(2)”.
4. On page 50, in line 48, to omit “or Lloyd’s underwriters”.

5. On page 50, in line 55, to omit “, or the account referred to in Schedule 7,”.
6. On page 52, in line 1, to omit “or Lloyd’s underwriters”.
7. On page 52, from line 15, to omit paragraph (f).

## CLAUSE 45

1. On page 56, in lines 1 and 2, to omit “contemplated in Schedule 6” and to substitute “prescribed by regulation”.
2. On page 56, in line 3, to omit “Schedule 6” and to substitute “the regulations”.

## CLAUSE 46

1. On page 56, after line 6, to add the following subsection:
  - (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.

## CLAUSE 48

1. On page 56, in line 17, to omit “any person” and to substitute:
  - 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
2. On page 56, in line 20, to omit “Schedule 5” and to substitute “the regulations”.
3. On page 56, in line 21, after “insurer” to insert “or a Lloyd’s underwriter”.
4. On page 56, in line 22, to omit “its” and to substitute “their”.
5. On page 56, in line 24, after “insurer” to insert “or Lloyd’s underwriter”.
6. On page 56, in line 39, after “insurer” to insert “or Lloyd’s underwriter”.
7. On page 56, in line 40, after “insurer” to insert “or Lloyd’s underwriter”.
8. On page 56, from line 51, to omit paragraph (b).
9. On page 58, in line 8, after “insurer” to insert “or a Lloyd’s underwriter”.
10. On page 58, in line 11, to omit “so referred to” and to substitute:
  - in relation to that kind of short-term policy

11. On page 58, in line 12, after “insurer” to insert “or Lloyd’s underwriter”.
12. On page 58, in line 13, to omit “its” and to substitute “their”.

CLAUSE 49

1. On page 58, in line 22, to omit the first “to” and to substitute “with”.

CLAUSE 54

1. On page 62, in line 10, to omit “him or her” and to substitute “that person”.

CLAUSE 56

1. On page 64, in line 6, to omit “empowered” and to substitute “authorised”.
2. On page 64, after line 16, to add the following subsections.

(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.

CLAUSE 57

1. On page 64, in line 29, to omit paragraph (a).
2. On page 64, in line 32, to omit “16(1)(a), (c) and (d) and with section”.
3. On page 64, in lines 32 and 33, to omit “account referred to in Schedule 7” and to substitute “Lloyd’s Trusts”.
4. On page 64, from line 34, to omit subclause (6) and to substitute the following subclause:

(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.

5. On page 64, after line 35, to add the following subsections:

- (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.

#### CLAUSE 58

1. On page 64, in line 37, to omit "The Lloyd's Council" and to substitute "Lloyd's or the Lloyd's representative".

#### CLAUSE 59

1. On page 66, in line 2, after "a" to insert "South African".
2. On page 66, in line 3, to omit "entered into by virtue of any act performed by a Lloyd's correspondent".
3. On page 66, in line 6, after "cited" to insert:
 

, in the name of his or her office,
4. On page 66, in line 6, after "respondent" to add:
 

, and the summons or application commencing the proceedings may be served on him or her
5. On page 66, from line 7, to omit subsection (3) and to substitute the following:
 

(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.
6. On page 66, after line 12, to add the following:
 

(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.

CLAUSE 60

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 59:

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

**60.** (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.

CLAUSE 61

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 60:

**Payment of certain claims against Lloyd's underwriters**

**61.** 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.

#### CLAUSE 62

Clause rejected

#### NEW CLAUSE

1. That the following be a new Clause to follow Clause 61:

#### **Imposition of prohibition on activities of Lloyd's underwriters**

**62.** (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.

#### CLAUSE 63

1. On page 68, in line 5, to omit "Sections 45 and 48" and to substitute "Section 45".
2. On page 68, in line 12, after the second "representative" to insert the following:
 

and to the trustee of each of the Lloyd's Trusts as if each such trust were a short-term insurer and
3. On page 68, in line 12, after the third "representative" to insert "and trustee".
4. On page 68, in line 13, to omit "and Lloyd's were the short-term insurer".
5. On page 68, in line 15, after the second "of" to insert "each of".
6. On page 68, in lines 15 and 16, to omit "account referred to in Schedule 7" and to substitute "Lloyd's Trusts".
7. On page 68, in lines 19 and 20, to omit "account referred to in Schedule 7" and to substitute "Lloyd's Trusts".
8. On page 68, after line 20, to add the following subsections:
  - (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.

## CLAUSE 64

1. On page 68, in line 35, to omit “R20 000” and to substitute “R100 000”.
2. On page 68, in line 36, to omit “6 months” and to substitute “one year”.
3. On page 68, in line 40, to omit “R200 000” and to substitute “R1 000 000”.
4. On page 68, in line 41, to omit “5” and to substitute “10”.

## CLAUSE 65

1. On page 68, in line 52, to omit “R20 000” and to substitute “R100 000”.
2. On page 70, in line 5, to omit “R200 000” and to substitute R1 000 000”.

## CLAUSE 70

Clause rejected.

## NEW CLAUSE

That the following be a new Clause to follow Clause 69:

**Regulations**

- 70.** (1) 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 of 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) prescribing the calculation of the additional amounts of assets contemplated in section 29;
  - (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;
- (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 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.

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

#### SCHEDULE 1

1. On page 80, in line 23, to omit “approved” and to substitute “recognised”.
2. On page 80, in line 44, after “(c)” to insert “any stock or shares in”.

#### SCHEDULE 2

1. Schedule rejected.

#### SCHEDULE 3

1. On page 92, in line 36, to omit “Schedule 3” and to substitute “Schedule 2”.
2. On page 94, in line 27, after “calculated” to add:
 

, and in the case of a property unit trust, the market value, and if it is listed on a stock exchange and for which a closing price was quoted on that stock exchange on the date as at which the value is determined, the closing price, or the closing price last so quoted
3. On page 94, in lines 29 and 30, to omit “SAFEX referred to in Schedule 2” and to substitute:
 

the South African Futures Exchange referred to in section 17 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989)
4. On page 96, in line 47, to omit all the words after “be” up to and including “from” in line 49 and to substitute:

the amount calculated by means of the formula—

$$\frac{(A-B)}{2}$$

in which formula—

A represents the amount remaining after deducting from the total amount of all of the premiums payable to the short-term insurer under all of the short-term policies concerned for the whole of

the period for which each of those short-term policies is operative, of—

- (a) the total amount of so much of those premiums as has been refunded as a result of a cancellation or variation of the policy;
- (b) the total amount payable by the short-term insurer as premiums under approved reinsurance policies in respect of the short-term policies concerned;

B represents

- 5. On page 96, in line 51, before “policies” to insert “reinsurance”.
- 6. On page 96, in line 51, after “premiums” to insert “reduced by”.

SCHEDULE 4

Schedule rejected.

SCHEDULE 5

Schedule rejected.

SCHEDULE 6

Schedule rejected.

SCHEDULE 7

Schedule rejected.

## NEW SCHEDULE

1. That the following be a new Schedule:

**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:

**Definition of "South African short-term insurance policy"**

1. (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.

### **Security to be provided to Lloyd's South African Trust**

2. 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.

### **By whom and manner in which security to be provided**

3. 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.

### **Amount of security**

4. (1) The minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter is an amount equivalent to—

- (a) the estimated amount payable by the underwriter in respect of claims which have been incurred under South African short-term insurance policies and reported but not yet paid; less
- (b) an allowance in respect of reinsurance cover held, which allowance shall be a percentage of the amount contemplated in item (a), calculated by the formula—

$$\frac{A-B}{A} \times 100$$

in which formula—

A represents the premium income received by all Lloyd's underwriters under all short-term insurance policies underwritten by them less brokerage and commission; and

B represents the amount of A less all premiums paid for reinsurance cover held by those underwriters,

during, in the case of both A and B, the latest calendar year prior to the calculation as reported in the most recent published Global Results of Lloyd's available at the time and approved by the Registrar; plus

(c) a provision for claims incurred but not yet reported equal to 7% of the total net amount of the premiums under South African short-term insurance policies received by or on behalf of the underwriter at Lloyd's Policy Signing Office during the year ended on the last day of the quarter concerned.

(2) For the purpose of item (c) of subparagraph (1) "net amount" means the net amount after deduction of the aggregate of—

- (a) the same percentage of such total premiums as the percentage contemplated in item (b) of subparagraph (1), in respect of reinsurance cover held;
- (b) the aggregate of the refunds made by or on behalf of the underwriter during the year in respect of premiums under South African short-term insurance policies;
- (c) brokerage and commissions in respect of the premiums concerned; and
- (d) any tax payable on the premiums concerned, other than taxes payable on net income:

Provided that only premiums received and refunds made on or after the date of commencement of section 60 shall be taken into account for that purpose.

### **Contributions and withdrawal of surplus**

5. 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.

### **Investment of trust funds**

6. (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(4), the aggregate value of the assets referred to in subparagraph (1) shall, in respect of each particular kind of 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 Schedule 3, not exceed the percentage specified by regulation in relation to that kind or category of asset.

(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 valued in accordance with Schedule 3.

(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.

### **Returns in respect of Lloyd's South African Trust**

7. 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.

### **Transitional provisions**

8. (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 deeds of trust of the Lloyd's Trusts, of all the obligations under the policy by another Lloyd's syndicate; and
- (ii) if the Registrar and Lloyd's so agree.

(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.