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INSURANCE LAWS AMENDMENT BILL, 1999

To amend the Long-term Insurance Act, 1998, so as to amend certain definitions; to regulate advertising material relating to long-term policies; to further regulate the change of a long-term insurer's name, translation, shortened form or derivative thereof; to amend the provisions dealing with unregistered long-term insurance business; to amend provisions dealing with the acquisition of own shares; to amend provisions containing incorrect references; to exclude receipts issued by banks to comply with certain requirements; to further regulate the limitation of remuneration paid to intermediaries; to amend the provisions in respect of interest on policy loans; to amend the provisions in respect of the calculation of the value of assets and liabilities; to amend the provisions in respect of the kinds of assets a long-term insurer may hold; to amend the provisions in respect of the repeal of Acts; to amend the Short-term Insurance Act, 1998, so as to amend certain definitions; to regulate advertising material relating to short-term policies; to delete the provision requiring the approval for a change of name of a short-term insurer because of a duplication; to prohibit an accident and health policy from being referred to as a funeral policy; to further regulate the change of a short-term insurer's name, translation, shortened form or derivative thereof; to amend the amounts to be disregarded when valuing the assets of a short-term insurer; to amend provisions dealing with the acquisition of own shares; to further regulate the limitation of remuneration paid to intermediaries; to amend the provisions in respect of the calculation of the value of assets and liabilities; to amend the provisions in respect of the kinds of assets a long-term insurer may hold; to amend the transitional provisions relating to Lloyd's; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the republic of South Africa, as follows: —

Amendment of section 1 of Act 52 of 1998

1. Section 1 of the Long-term Insurance Act, 1998, is hereby amended by the substitution in subsection (1) 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 manager of that long-term insurer who reports directly to that chief executive officer;"

Amendment of section 4 of Act 52 of 1998

2. Section 4 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3)(a) If any advertisement, brochure or similar document 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 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 it or to cease publishing it or to effect the changes to it which the Registrar deems fit.

- (b) An advertisement, brochure or similar document which relates to a long-term policy must contain the name of the registered long-term insurer underwriting the long-term policy."

Amendment of section 8 of Act 52 of 1998

3. Section 8 of the Long-term Insurance Act, 1998, is hereby amended-

- (a) 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."; and

- (b) by the substitution for subsection (3) of the following subsection:

"(3) No person shall perform any act the object of which is or which results in —

- (a) another person entering into or offering to enter into a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party; or
- (b) (i) the surrendering of, or collecting of or accounting for premiums payable under;
- (ii) the receiving or submitting of, or assisting or otherwise dealing with, the settlement of a claim under; or
- (iii) the maintaining, servicing or otherwise dealing with, a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party [**without the consent of the Registrar, given either generally or in a particular case**]."

Amendment of section 24 of Act 52 of 1998

4. Section 24 of the Long-term Insurance Act, 1998, is hereby amended:

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

"(vi) **[reduce its share capital in terms of section 83 and 84 of the]** acquire its own shares in terms of section 85 of the Companies Act;" and

- (b) by the addition to paragraph (a) of the following subparagraphs:

- “(vii) issue a second different class of ordinary shares;
- (viii) convert any of its ordinary shares of a particular class into ordinary shares of another class;
- (ix) issue any shares to its subsidiary in terms of sections 39 and 89 of the Companies Act;”.

Amendment of section 32 of Act 52 of 1998

5. Section 32 of the Long-term Insurance Act, 1998, is hereby amended by the deletion of subsections (2) and (3).

Amendment of section 33 of Act 52 of 1998

6. Section 33 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) For the purposes of this Act, the following 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 ~~[3]~~2 and ~~[4]~~3."

Amendment of section 34 of Act 52 of 1998

7. Section 34 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 not -

- (a) encumber its assets;
- (b) allow its assets to be held by another person on its behalf;
- (c) directly or indirectly borrow any asset;
- (d) include shares held in its holding company in its assets;
- (e) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons,

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

Substitution of section 36 of Act 52 of 1998

8. Section 36 of the Long-term Insurance Act, 52 of 1998, is hereby amended by the substitution for section 36 of the following section:

“Returns to Registrar

36.(1) A long-term insurer shall furnish the Registrar with returns relating to its business —

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

prescribed by the Registrar, either generally or in relation to a particular insurer.

(2) If the Registrar is satisfied that a return furnished to him or her in terms

of subsection (1) is incomplete or incorrect, he or she may, by notice —

- (a) direct the long-term insurer to furnish the Registrar, within a specified period, with specified information or documents which the Registrar considers necessary to complete or correct the return; or
- (b) reject the return and require the long-term insurer to furnish the Registrar within a specified period, with a new return which is complete and correct.”.

Amendment of section 47 of Act 52 of 1998

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

“(2)The receipt, excluding a receipt issued by a bank as defined in section 1 of the Banks Act, 1991 (Act No. 94 of 1991) shall state the name, address and telephone number of the recipient, the policy number and the name of the long-term insurer on whose behalf the premium is received.”.

Substitution of section 49 of Act 52 of 1998

10. Section 49 of the Long-term Insurance Act, 1998, is hereby amended by the substitution for section 49 of the following section:

“ Limitation of remuneration to intermediaries

49. No consideration shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer **[or] nor shall any consideration be accepted by any independent intermediary from a long-term insurer or a person on behalf of a long-term insurer** for rendering services as intermediary as referred to in the regulations, other than commission contemplated in the regulations and otherwise than in accordance with the regulations.”.

Substitution of section 61 of Act 52 of 1998.

11. Section 61 of the Long-term Insurance Act, 1998, is hereby amended be the substitution for section 61 of the following section:

“[Prescription of certain debt] Interest on unpaid premiums and policy loans”

61(1) Interest on an unpaid premium, or on a loan made by a long-term insurer on the sole security of a long-term policy or on an advance made by a long-term insurer in respect of an amount which is to be payable under a long-term policy, shall not cease to accrue when that interest accumulated to, or exceeds, an amount equal to the amount of that unpaid premium, loan or advance.

(2) [Debt consisting of interest on an unpaid premium, or a loan granted by a long-term insurer on the sole security of a long-term policy, or on an advance granted by a long-term insurer in respect of an amount which is to be payable under a long-term policy, shall,] [i] In the case of a long-term policy entered into after 31 December 1973, an interest-bearing debt referred to in subsection (1) shall not prescribe before the liability of the long-term insurer under the long-term policy prescribes.”.

Amendment of Schedule 1 of Act 52 of 1998

12. The Table to Schedule 1 of the Long-term Insurance Act, 1998, is hereby amended-

(a) by the substitution for item 16(5)(a) of the following item:

“16(5) (a) Listed

- (i) securities issued by a government of a country other than the Republic; or
- (ii) securities and shares issued by an institution incorporated outside the Republic,

**[in respect of which the Registrar has recognised the —
(aa) on a stock exchange outside the Republic; or
(bb) in a country, other than the Republic, in which the a regulated market concerned is situated, subject to the conditions determined by the Registrar].”;**

(b) by the substitution for item 16(5)(b) of the following item:

“16(5)(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 in a country 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

(c) by the substitution for item 20 of the following item:

“20.(a) Other claims, n.e.s., against —

- ~~[(a)]~~(i) a long-term insurer in terms of a long-term policy; or
- ~~[(b)]~~(ii) a person in the Republic; **and**].
- ~~[(c)]~~(b) Other claims, n.e.s. against, or 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 of Act 52 of 1998

13. Schedule 2 of the Long-term Insurance Act, 1998, is hereby amended-

- (a) by the substitution for subparagraph (a)(i)(bb) of paragraph 5 of the following paragraph:

“(bb) another insurer approved by the Registrar to the extent and subject to the conditions determined by the Registrar; or”; and

- (b) by the deletion of paragraph 10(2)(d).

Amendment of Schedule 4 of Act 52 of 1998

14. Schedule 4 of the Long-term Insurance Act, 1998, is hereby amended by the addition of the laws:

<u>"49 of 1998</u>	<u>Insurance Amendment Act</u>	<u>The whole</u>
<u>51 of 1998</u>	<u>Insurance Second Amendment Act</u>	<u>The whole</u> ".

Amendment of Section 1 of Act 53 of 1998

15. Section 1 of the Short-term Insurance Act, 1998, is hereby amended-

- (a) by the substitution in subsection (1) for the definition of ‘Lloyd’s underwriter’ of the following definition:

"Lloyd’s underwriter’ means an underwriting or non-underwriting member of Lloyd’s;"; and

- (b) by the substitution in subsection (1) 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 manager of that short-term insurer who reports directly to that chief executive officer;".

Amendment of Section 4 of Act 53 of 1998

16. Section 4 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3)(a) If any advertisement, brochure or similar document 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 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 it or to cease publishing it or to effect the changes to it which the Registrar deems fit.

(b) An advertisement, brochure or similar document which relates to a short-term policy must contain the name of the registered short-term insurer underwriting the short-term policy."

Amendment of Section 8 of Act 53 of 1998

17. 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 may refer to or use in any such policy the terms 'funeral' or 'burial' or any derivative thereof."

Amendment of section 17 of Act 53 of 1998

18. 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,".

Amendment of section 24 of Act 53 of 1998

19. Section 23 of the Short-term Insurance Act, 1998, is hereby amended:

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

"(vi) **[reduce its share capital in terms of section 83 and 84 of the]** acquire its own shares in terms of section 85 of the Companies Act";
and

(b) by the addition to paragraph (a) of the following subparagraphs:

"(vii) issue a second different class of ordinary shares;

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

- (ix) issue any shares to its subsidiary in terms of section 39 and 89 of the Companies Act;”.

Amendment of section 33 of Act 53 of 1998

20. Section 33 of the Short-term Insurance Act, 1998, is hereby amended by the insertion after paragraph (1)(c) of the following paragraph, the existing paragraph (d) becoming paragraph (e):

“(d) include shares held in its holding company in its assets;”.

Amendment of section 48 of Act 53 of 1998

21. Section 48 of the Short-term Insurance Act, 1998, is hereby amended by the substitution of subsection (1) of the following subsection:

“48.(1) No consideration shall be offered or provided by a short-term insurer or a Lloyd’s broker or a representative of such insurer or broker or any person on behalf of such insurer or broker **[or]** nor shall any consideration be accepted by any independent intermediary from 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, other than someone who has entered into an agreement contemplated in subsection (2), for rendering services as intermediary, and otherwise than in accordance with the regulations.”.

Amendment of Schedule 1 of Act 53 of 1998

22. The Table to Schedule 1 of the Short-term Insurance Act, 1998, is hereby amended-

- (a) by the substitution for item 16(5)(a) of the following item:

“16(5) (a) Listed

- (i) securities issued by a government of a country other than the Republic; or
- (ii) securities and shares issued by an institution incorporated outside the Republic,

[in respect of which the Registrar has recognised the —
(aa) on a stock exchange outside the Republic; or
(bb) in a country, other than the Republic, in which
the a regulated market concerned is situated,
subject to the conditions determined by the
Registrar].”;

- (b) by the substitution for item 16(5)(b) of the following item:

"16(5)(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 in a country 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.";

(c) by the substitution for item 20 of the following item:

"20.(a) Other claims, n.e.s., against —

[(a)](i) a short-term insurer in terms of a short-term policy; or

[(b)](ii) a person in the Republic **[:and]**.

[(c)](b) Other claims, n.e.s. against, or 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 of Act 53 of 1998

23. Schedule 2 of the Short-term Insurance Act, 1998, is hereby amended by the substitution for subparagraph (v) of paragraph 1(a) 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 the reinsurance contract; and"

Amendment of Schedule 3 of Act 53 of 1998

24. Schedule 3 of the Short-term Insurance Act, 1998, is hereby amended-

(a) by the substitution for paragraph 6(2) of the following paragraph:

"(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 the 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."; and

(b) by the substitution for subparagraph (i) the proviso to paragraph 8(1) of the

following subparagraph:

- “(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**”.

MEMORANDUM AND OBJECTS OF THE PROPOSED AMENDMENTS TO THE LONG-TERM INSURANCE ACT AND SHORT-TERM INSURANCE ACT

This explanatory memorandum relates to the attached draft amendment which is being circulated for comment.

(b) Amendment to the definition of “managing executive” of Act 52 of 1998.

(a) Current position

The present definition is used inter alia as one of the categories of persons who, for purposes of registration, have to be fit and proper to hold the office concerned. The definition is interpreted as only referring to the chief executive officer or a manager of the long-term insurer.

(b) New approach

The definition is expanded to not only include the chief executive officer but also a manager who reports directly to the chief executive officer.

(c) Reasons

The amendment is necessary since -

- unintended consequences resulted from the previous word, such as that only the chief executive officer or a manager reporting to the chief executive officer must be fit and proper;
- it is necessary, from a regulatory point of view, that the chief executive officer and management reporting to the chief executive officer must be fit and proper; and
- the concept of fit and properness does not only hinge on a person but also on the top management of a long-term insurer.

2. Amendment of section 4(3) of Act 52 of 1998

(a) Current position

The subsection deals with the Registrar's right to direct a person to either cease or not to publish documentation which is misleading or contrary to the public interest. It further allows the Registrar to request changes to the documentation.

(b) New approach

The subsection is expanded to ensure that an advertisement, brochure or similar document which relates to a long-term insurance policy must contain the name of the long-term insurer who underwrites the policy.

(c) Reasons

The amendment is necessary since -

- it is a measure to prevent persons from conducting unregistered insurance business;
- it affords the public the opportunity to verify the contents of the advertisement or brochure with the particular long-term insurer; and
- the provision was not carried forward from the Insurance Act, 27 of 1943.

3. Amendment of section 8(2) of Act 52 of 1998

(a) Current position

The subsection requires the Registrar's prior approval if a long-term insurer needs to change its name.

(b) New approach

The subsection is expanded to also obtain the Registrar's approval if a translation, shortened form or derivative of the long-term insurer's name is changed.

(c) Reasons

The amendment is necessary since -

- the Registrar has in the past registered a translation, shortened form or derivative of long-term insurer's names e.g. SANLAM;
- it is essential for the Registrar's record keeping that any change in not only the name, but also the derivative and shortened form, is updated;
- to prohibit a particular long-term insurer from using a name closely related to another long-term insurer which, apart from a business point of view, may cause doubt as to with whom a consumer is contracting with.

4. Amendment of section 8(3) of Act 52 of 1998

(a) Current position

The subsection prohibits a person from engaging another person to enter into or deal with long-term policy with a long-term insurer which is not registered, or from dealing with claims without the Registrar's consent.

(b) New approach

The substantive part of the subsection remains and the option of requesting the Registrar to consent to such an arrangement is deleted.

(c) Reasons

The need to remove the Registrar's discretion has been identified. The result is that there will be an absolute prohibition. An absolute prohibition is necessary, because allowance by the Registrar will not be in the public interest.

5. Amendment of section 24 of Act 52 of 1998

(a) Current position

The Act provides, in a limited manner, for holding shares in a holding company. These provisions were necessary to facilitate the demutualisation process. The Act up to now did not cater for cell captives and especially already registered long-term insurance companies which may want to start conducting cell captive business within their current business.

(b) New approach

The provisions are amended to be in line with the provisions of the Companies Act. The amendments are made to make it possible for the Registrar to know if a registered long-term insurance company issues shares or convert them into a different class, or where the insurance company contemplates underwriting cell captive business.

(c) Reasons

The recent amendment to the Companies Act which facilitates the buy back of shares is embraced and the legislation is amended to follow suite. New developments in the market regarding cell captive business is catered for.

6. Amendment of section 32 of Act 52 of 1998

(a) Current position

The subsection requires the approval of the Registrar where the assets which a long-term insurance company holds in respect of its long-term insurance business in any of its policyholder funds include shares in its holding company and where such shares are deemed for purposes of section 39(2) of the Companies Act to be held by the insurer in a representative capacity for the sole benefit of the owners of the policies for which the policyholder funds exist.

(b) New approach

The provision is deleted from the Act.

(c) Reasons

Following the amendments to the Companies Act, subsections (2) and (3) have become superfluous.

7. Amendment of section 33(1) of Act 52 of 1998

The amendment rectifies the reference to the schedules in the Act.

8. Amendment of section 34 of Act 52 of 1998

(a) Current position

Section 32(2) of the Act requires the approval of the Registrar where the assets which a long-term insurance company holds in any of its policyholder funds include shares in its holding company.

(b) New approach

A long-term insurance company is not allowed to include shares in its holding company in its assets without the prior approval of the Registrar.

(c) Reasons

Following the deletion of section 32(2) of the Act which requires the approval of the Registrar where the assets which a long-term insurance company holds in respect of its long-term insurance business in any of its policyholder funds include shares in its holding company and where such shares are deemed for purposes of section 39(2) of the Companies Act to be held by the insurance company in a representative capacity for the soul benefit of the owners of the policies for which the policyholder fund concerned exists, section 34(1) has to be amended to retain the necessity for the Registrar's approval.

9. Amendment of section 36 of Act 52 of 1998

The amendment rectifies the numbering of the subsection.

10. Amendment of section 47(2) of Act 52 of 1998

(a) Current position

The Act provides that where a premium is paid in cash, that a receipt must be issued containing certain information which includes the name of the insurance company involved, the policy number and details of the recipient.

2. New approach

Where a premium is paid to a bank, the bank is excluded from the requirements of the subsection.

3. Reasons

The current banking systems do not allow for a bank to state the name of the insurance company and the policyholder. The result is that banks are continuously breaching the provisions of the section in the Act. This section protects a particular segment of the market and most notably the less sophisticated part of the market where premiums are paid in cash to a person collecting it on a frequent basis. Enough protection is built into the banking systems to safeguard a policyholder paying the premium in cash to a bank.

11. Amendment of section 49 of Act 52 of 1998

(a) Current position

The words "... or accepted by an independent intermediary for rendering services as intermediary" are interpreted as placing a restriction on an independent intermediary to agree to a separate fee with a client for services rendered to that client or prospective client.

3. New approach

The section is amended to make it clear that the prohibition only refers to commission paid by a long-term insurer to an independent intermediary.

4. Reasons

There is an ambiguity present in the wording of the section. The object of section 49 is the regulation and limitation of remuneration paid by long-term insurers to intermediaries. The object is not to regulate or restrict the ability of an intermediary and a client to separately agree a fee in relation to services rendered by the intermediary to the client. The client must have the right to contract freely with the intermediary and to pay a fee to the intermediary as part

of the agreement.

4. Amendment of section 61 of Act 52 of 1998

(a) Current position

The Act is silent on the working of the “in duplum rule” and therefore the common law principle applies to long-term insurance companies. According to the rule unpaid interest on a capital amount may accumulate up to an amount equal to the capital.

2. New approach

The working of the rule is excluded in the case of loans against policies.

3. Reasons

This provision was written into the now repealed Insurance Act, 1943, following recommendations by the Law Commission during the 1970's. The current Act was promulgated without the provision. The Life Offices' Association made representations to the Advisory Committee on Long-term Insurance regarding this issue and the Committee resolved that the amendment should be made. Some of the reasons for this amendment include:

- that an adversarial relationship may develop between insurers and policyholders if policy loans are not repaid;
- that other policyholders have to subsidize those who do not repay the loans;
- a high level of lapsed policies may occur; and
- that insurers can circumvent the rule quite easily by implementing system changes which will have a huge cost implication and which will ultimately be borne by policyholders.

13. Amendment of item 16 to Schedule 1 of Act 52 of 1998

1. Current position

Listed securities and shares issued by a foreign government or institution will be regarded as an asset in the Republic if the Registrar has recognised the stock exchange or the country in which a regulated market exists.

2. New approach

These assets will still be regarded as assets in the Republic, but the stock exchange or the country within which a regulated market exists is no longer subject to recognition by the Registrar. These assets remain subject to the

spreading limitations set out in the Table to Regulation 2.2.

3. Reasons

Greater responsibility will be placed on the directors of long-term insurers to assess the risks in investing on foreign stock exchanges and in regulated markets. This will facilitate investments in e.g. developing countries without having to wait for the Registrar's recognition.

14. **Amendment of item 20 to Schedule 1 of Act 52 of 1998**

(a) Current position

Item 20 in the Table to Schedule 1 is one of the assets a long-term insurer may hold in the Republic. The item only includes claims against stocks and 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.

(a) New approach

The item is re-arranged to also allow for claims against, and for stocks and 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.

(c) Reasons

The amendment is necessary since -

- unintended consequences resulted from the previous wording, such as a claim against a stock or share of a body corporate;
- only claims were allowed as an asset under this section; and
- claims against, and stocks and shares in, a body corporate described above should be allowed as an asset as they were allowed in the Insurance Act, 27 of 1943.

15. **Amendment of paragraph 5(a)(i)(bb) to Schedule 2 of Act 52 of 1998**

(a) Current position

Paragraph 5(a) contains the definition of what approved reinsurance is. Approved reinsurance is significant in the calculation of a long-term insurer's liabilities because it is deducted from the amount of liability. Paragraph 5(a)(i)(bb) provided that if reinsurance is placed with an insurer approved by the Registrar, such reinsurance will be deemed to be approved reinsurance. The latter paragraph deals with foreign insurers.

(b) New approach

The paragraph is expanded to allow the Registrar to approve a foreign insurer subject to conditions.

(c) Reasons

The amendment is necessary since -

- in certain circumstances the Registrar needs to restrict the percentage of business placed with any one foreign insurer;
- the Registrar needs to prescribe what the kinds of risks that may be reinsured with a particular foreign insurer; and
- it is necessary to require the foreign insurer to provide the local insurer with security.

16. Amendment of paragraph 10(2)(d) to Schedule 2 of Act 52 of 1998.

(a) Current position

The intention was for actuaries to use an accurate method of calculation from the date of inception of the Act.

(j) New approach

The paragraph is deleted.

(c) Reasons

Due to the wording of the Act the purpose of the paragraph was not achieved. It was not achieved because at the time of calculation, the date is always a date in the future.

17. Amendment of Schedule 4 of Act 52 of 1998.

This amendment repeals two amendment Acts which were promulgated during 1998 and which were not included in the list of repealed Acts.

18. Amendment to the Definition of “Lloyd’s Underwriter” of Act 53 of 1998.

(a) Current position

The definition describes a Lloyd's underwriter to only include an underwriting member.

(b) New approach

The definition is expanded to also include a non-underwriting member of Lloyd's.

(c) Reasons

Under the provisions relating to Lloyd's it is possible for an underwriting member to be on risk in a particular year and to then become a non-underwriting member in the next year although its liability regarding the previous year continues. It is for this reason that a non-underwriting member has to be included in the definition.

19. Amendment to the definition of "managing executive" of Act 53 of 1998.

This amendment corresponds to the one under Act 52 of 1998. Kindly refer to above.

20. Amendment of Section 4(3) of Act 53 of 1998.

(a) Current position

The subsection deals with the Registrar's right to direct a person to either cease or not to publish documentation which is misleading or contrary to the public interest. It further allows the Registrar to request changes to the documentation.

(b) New approach

The subsection is expanded to ensure that an advertisement, brochure or similar document which relates to a short-term insurance policy must contain the name of the short-term insurer who underwrites the policy.

3. Reasons

The amendment is necessary since -

- it is a measure to prevent persons from conducting unregistered insurance business;
- it affords the public the opportunity to verify the contents of the advertisement or brochure with the particular long-term insurer; and
- the provision was not carried forward from the Insurance Act, 27 of 1943.

21. Substitution of Section 8(6) of Act 53 of 1998.

(a) Current position

The Act is silent on whether a short-term insurer may refer to a policy as a “funeral policy” or “burial policy”. No short-term insurer may change its name without the prior approval of the Registrar.

14. New approach

A new provision is included to prohibit short-term insurers from marketing and calling or referring to a short-term insurance policy, which is defined, as a funeral policy or burial policy. The provision relating to the approval for a change of name is deleted from the Act.

(c) Reasons

The inclusion is necessary since -

- assistance business is one of the classes of long-term insurance business which only a registered long-term insurer may underwrite;
- the repealed Insurance Act, 27 of 1943, prohibited short-term insurers from referring to any of their policies as a funeral policy and allowed long-term insurers to use the word “funeral”; and
- assistance business is exclusively long-term insurance business and should be kept in that realm.

The deletion is necessary because it is contained in section 17 of the Act and is therefore a duplication.

22. Amendment of section 17 of Act 53 of 1998

(a) Current position

The subsection requires the Registrar’s prior approval if a short-term insurer needs to change its name.

(b) New approach

The subsection is expanded to also obtain the Registrar’s approval if a translation, shortened form or derivative of the short-term insurer’s name is changed.

(c) Reasons

The amendment is necessary since -

- the Registrar has in the past registered a translation, shortened form of derivative of a short-term insurer's names e.g. SANTAM;
- it is essential for the Registrar's record keeping that any shared in not only the name, but also the derivative and shortened form, is updated;
- to prohibit a particular short-term insurer from using a name closely related to another short-term insurer which, apart from a business point of view, may cause doubt as to with whom a consumer is contracting .

23. Amendment of section 24 of Act 53 of 1998

This amendment corresponds with the one in the Long-term Insurance Act. Kindly refer to item 5 above.

24. Amendment of section 33 of Act 53 of 1998

The Registrar's approval is required where shares in a holding company are included in its assets. This is a consequential amendment following on the amendment of the Companies Act.

25. Amendment of section 48 of Act 53 of 1998

1. Current position

The words "... or accepted by an independent intermediary for rendering services as intermediary" are interpreted as placing a restriction on an independent intermediary to agree to a separate fee with a client for services rendered to that client or prospective client.

2. New approach

The section is expanded to make it clear that the prohibition only refers to commission paid by a short-term insurer to an independent intermediary.

3. Reasons

There is an ambiguity present in the wording of the section. The object of section 48 is the regulation and limitation of remuneration paid by short-term insurers to intermediaries. The object is not to regulate or restrict the ability of an intermediary and a client to separately agree a fee in relation to services rendered by the intermediary to the client. The client must have the right to contract freely with the intermediary and to pay a fee to the intermediary as part of the agreement.

26. Amendment to Item 16 of the Table of Schedule 1 to Act 53 of 1998.

(a) Current position

Listed securities and shares issued by a foreign government or institution will be regarded as an asset in the Republic if the Registrar has recognised the stock exchange or the country in which a regulated market exists.

(b) New approach

The assets will still be regarded as assets held in the Republic, but the Registrar is not obliged to recognise the stock exchange or the country within which a regulated market exists. These assets remain subject to the spreading limitations set out in the Table to Regulation 2.2.

(c) Reasons

Greater responsibility will be placed on the directors of short-term insurers to assess the risks in investing on foreign stock exchanges and regulated markets. This is an attempt to encourage investments in e.g. developing countries without having to wait for the Registrar's recognition.

27. Amendment of Item 20 of the Table to Schedule 1 of Act 53 of 1998.

(a) Current position

Item 20 in the Table to Schedule 1 is one of the items a short-term insurer may hold which is regarded as an asset in the Republic. The item only includes claims against stocks and shares.

(b) New approach

The item is re-arranged to allow for claims against short-term insurers and persons in the Republic, and also for stocks and shares in a body corporate which carries on business in the Republic.

(c) Reasons

The amendment is necessary since -

- unintended consequences resulted from the previous word, such as a claim against a stock or share of a body corporate;
- only claims were allowed as an asset under this section; and
- claims and stocks and shares in a body corporate should be allowed as an asset as they were allowed in the Insurance Act, 27 of 1943.

28. Amendment of paragraph 1(a) to Schedule 2 of Act 53 of 1998.

(a) Current position

Paragraph 1(a) provides which assets shall be disregarded in calculation of the value of an asset. One of the amounts to be disregarded is the amount representing a negative liability.

(b) New approach

The paragraph is expanded to delete “a negative liability” and allow for a claim against an approved reinsurer in terms of a reinsurance contract to be regarded as an asset.

(c) Reasons

The amendment is necessary since -

- The term negative liability does not have a clear meaning in the accounting profession; and
- It makes clear that reinsurance placed with a non-approved reinsurer will be disregarded in valuing the assets the short-term insurer holds.

29. Amendment to paragraph 6(2) of Schedule 3 of Act 53 of 1998.

The amendment reflects the correct reference.

30. Amendment to Schedule 3 of Act 53 of 1998.

(a) Current position

The proviso provides that the transitional provisions shall cease to apply if obligations under a Lloyd's policy are reinsured and the Registrar and Lloyd's so agree.

(b) New approach

The amendment makes it clear that the transitional provisions will cease to apply in the event of either the one or the other occurrence.

(c) Reasons

The intention was not that the transitional provisions should cease in the event of two conditions being simultaneously present but if only one of them is present.

